

## TTIP Documents Leaked by Greenpeace

On 2 May 2016 Greenpeace Netherlands released secret documents from the EU-US TTIP negotiations which is publicly available at [www.ttip-leaks.org](http://www.ttip-leaks.org). The 248 leaked pages comprise TTIP negotiating texts, including the US position, and internal EU documents outlining the state of play of the trade talks. Greenpeace says these documents comprise about three-fourths of the existing consolidated texts. A brief analysis of the documents by Greenpeace is available [here](#).

### Public Services

These leaked documents raise quite a number of issues but I will concentrate here on what they say about public services such as health. We have had many reassurances from European Union officials and UK politicians that the NHS and other public services are protected in TTIP. In July of last year the European Parliament passed a resolution on TTIP which it claimed would strengthen public service protection in the treaty. But the documents show that the Parliament's recommendations were completely ignored.

At the beginning of the chapter on services, an exception is made for certain services:

X.1.8 'services' means any service in any sector except services supplied in the exercise of governmental authority

'services and activities performed in the exercise of governmental authority' means services or activities which are performed neither on a commercial basis nor in competition with one or more economic operators

These services 'performed in the exercise of governmental authority' are what we know as public services. But this definition is then severely restricted since it does not cover public services which are performed on a commercial basis or which are in competition with other economic services. And this has always been the crucial weakness in the proclaimed exemption for public services. Because many of them, including health, involve a commercial element and are in competition with private providers.

This was the definition of public services adopted in the General Agreement on Trade in Services (GATS) in 1995 which also exempted services 'in the exercise of governmental authority'. A legal review of the GATS treaty exemption by the

World Health Organisation in 2002 concluded that this exemption has very little weight: it 'doesn't apply to a service merely because the government provides it'. Numerous services, once considered public, have been privatised in the two decades since GATS offered this 'exemption'.

To have any meaning, this GATS exemption would have to be strengthened. But in TTIP, it is not, it is simply repeated.

The EU, as well as Individual member states can insert their own stronger exemptions into the treaty. The EU has made a general reservation which seems to offer a different definition of what should be considered a public service:

The EU reserves the right to adopt or maintain any measure with regard to the provision of all health services which receive public funding or State support in any form, and are therefore not considered to be privately funded.

This phrasing suggests that any private service which is publicly subsidised is 'not considered to be privately funded'. It is not clear how this could stand up to a legal challenge since it is not so much an exemption as an alternative definition of what is considered to be a public service.

The conservative UK government has made no exemption for the NHS or public services in general. But the German government, which wants to maintain an option for greater control over its own public sector, has focused precisely on this weak GATS-type exemption.

Health and Social Services: Germany reserves the right to adopt or maintain any measure .... where services may be provided by different companies or entities involving competitive elements (which are thus not "Services carried out exclusively in the exercise of governmental authority").

In other words, the German government explicitly recognises that the TTIP exemption for health and social services doesn't actually exempt them.

### **The right to renationalise**

There have been many statements also from EU commissioners that a future government would be able to renationalise any part of the NHS that had previously been put out to the private sector. For instance, in January 2015, the Trade Commissioner, Cecelia Malmström, [wrote](#) that 'member states are free to

change their policies and bring back outsourced services back into the public sector whenever they choose to do so'. But the text of the treaty still contains what has been called the 'ratchet' or 'standstill' clause which explicitly prohibits this.

Article 6.1 of the chapter on services deals with government measures in the public sector that exist at the time the treaty is signed and which are exempt from the terms of the treaty. The treaty does not affect them retrospectively. But the treaty would determine any changes made. The only changes allowed would be changes that were in agreement with the terms of the treaty. The article stipulates that any government measure affecting services would remain exempt from the terms of the treaty only if this measure made changes which do not 'decrease the conformity of the measure' with the articles of the treaty. Any government measure which involved the renationalisation of a privately run service would clearly 'decrease the conformity' of this measure with the terms of TTIP and would therefore no longer be exempt from the requirements of the treaty. Every independent analysis of TTIP is in agreement that this clause in the treaty would stand in the way of any attempt to bring back outsourced (privatised) services into the public sector.

### **Summary**

The leaked chapter on services undermines all the claims of TTIP defenders that public services will be exempt from the treaty and governments will be free to bring privatised services back into the public sector. None of the proposals voted on by the European Parliament have been incorporated into the treaty.