Europe for business or Europe for its people? The European Union and the GATS

Mirjam van Reisen

The European Union (EU) prides itself on its social democracy, the core common value that connects the people and member states. Yet the GATS negotiations challenge this very foundation of the EU, as they further weaken the ability of EU member states to decide social policy, even in key areas such as health, education, water and sanitation. The GATS negotiations give unprecedented access to business, at the expense of democratic control and decision-making by elected representatives. The GATS threatens the very fabric of the EU, both in its social dimension and its democratic character. It is not surprising, therefore, that there is an increasing pressure from social movements, including trade unions, to stop the current negotiations.

Commercial services: a crucial sector for the European Union

For Europe the service industry is of crucial importance. The EU is the world's largest exporter of commercial services, accounting for 26% of total global services transactions and for more than 40% in terms of balance of payments. The EU is also the world's largest importer of commercial services. The services sector employs 69% of all jobs in the EU and accounts for more than 70% of total output.[1] The EU had a constant 24% share of World Trade Volume in commercial services from 1995 until 2000 [2]:

TABLE 1

World trade volume in billions of USD

	1995	2000
EU	332.56	583.25
USA	252.71	518.56
Japan	143.54	201.15
Rest of the World	668.16	1,146.28
World Total	1,396.97	2,449.24
EU as % total	24	24

The European Commission—the executive arm of the EU—attaches great priority to the General Agreement on Trade in Services (GATS) negotiations, and it is also quite clear about the nature of GATS. On its information web site it introduces the negotiations as follows: *«The GATS is not just something that exists between governments. It is first and foremost an instrument for the benefit of business. The Commission is keen to help business in advancing and developing liberalisation under the GATS. But it also needs the active involvement of business, so that the EU's policy corresponds to the real export and economic growth interests of our service industries.»*[3]

While the Commission continues to maintain that the GATS agreement has the purpose of creating multilateral rules for creating a level playing field in services and will lead to potential economic benefits for developing countries, it is clear that the drive behind the GATS is the wish to conquer the lucrative global market for services.

There are several serious problems with the way the negotiations have been conducted so far:

- The *preferential access of business* in setting the pace, priorities and strategies for the negotiation, coupled with the lack of access of public and civil society organisations to get their concerns heard and addressed;
- The absence of defining conditions that would ensure that privatisation will be in the *public interest*, not only in developing countries but also in Europe;
- The *incompatibility* of the objectives of the GATS negotiations with the development objectives set out in the EU treaty;
- The possible *buy-offs* given for the requests for privatisation pursued by the EU abroad.

The preferential access of business

The invitation for input into the GATS negotiations has been almost entirely restricted to business. In an exchange with civil society organisations Commissioner Pascal Lamy made it very clear where he took most input from—even if this was disguised by a derogatory comment on NGOs: *«...it is notable that, while industry not surprisingly has actively been providing input, few substantive contributions have been received from NGOs.»*[4]

It is also clear that the EU goes as far as to publicly identify that it aims to target the negotiations towards business priorities: *«An active service industry involvement in the negotiations is crucial to target the EU's negotiating objectives towards the priorities of business.»*[5]

The broad involvement of industry in the negotiations is paralleled by tremendous secrecy of the negotiations that makes the decision-making process entirely non-transparent. Because of unnecessarily rushed procedures, imaginary deadlines and strict rules of confidentiality, national parliaments, the European Parliament and the 133 Committee of the member states have been left to rubberstamp the Commission's negotiation tactics, without being fully informed. The Commission justified this on strategic grounds relating to the complexity of the negotiations of «playing a one-hundred-and-forty-plus game in Geneva» and the «traditional way of doing this.»[6]

In the UK, Barclays Bank Chairman and President of the British Bankers Association Andrew Buxton, set up a structure to assure maximum involvement of the private sector in the GATS negotiation. On the basis of the Buxton model, a Liberalisation of Trade in Services Committee (LOTIS) and High-Level Group were established in 1996 to assure the maximum input of trade in the negotiations. They achieved their objective. The Corporate Europe Observatory (CEO) uncovered minutes (covering meetings in 2000 and 2001) exposing the business sector's privileged access to key negotiating information and the policy-making process on GATS in the UK. According to researcher Erik Wisselius, the distinction between public and private has become completely blurred within the UK. He observes: *«The LOTIS structures provide a private forum where government and business discuss strategies for ongoing WTO negotiations on liberalisation of trade in services. This allows the UK financial service industry an unjustified control over large parts of the UK trade policy agenda.»*[7]

1 European Services Forum, Information Pack, 13 November 2002.

2 *European Commission and WTO members' requests to the EC and its member states for improved market access for services*, consultation document, undated. http://europa.eu.int/comm/trade/services/imas.pdf

3 European Commission, *Opening World Markets for Services*, http://gats-info.eu.int/gats-info/g2000.pl?news=bbo, in part also quoted in Erik Wesselius, *Behind GATS 2000: Corporate Power at work*, The World Trade Organisation Series No. 4, TNI Briefing Series No. 2002/6, May 2002.

4 Reply from Commissioner Lamy to the open letters from NGOs regarding the services negotiations, July 2002.

5 European Commission, *Opening World Markets for Services, op. cit.*

6 Reply from Commissioner Lamy to the open letters from NGOs regarding the services negotiations, July 2002.

7 Erik Wisselius, *Liberalisation of Trade in Services: Corporate Power at Work,* http://www.gatswatch.org/LOTIS/LOTIS.html#note06, Minutes of LOTIS Committee meeting, 22 February 2001.

Business is receiving access into the negotiations that is denied to Non-Governmental Organisations, Members of the British Parliament or the general public. The minutes record a civil servant statement that *«the case for liberalisation of services was «vulnerable when the NGOs asked for proof of where the economic benefits of liberalisation lay.»*[8] The minutes also note a realisation on the part of the negotiators that health, education, water and energy were singled out by the NGOs because these are basic services that people *«have a right to receive from their governments.»*[9]

The new European business NGOs

In 1996 Buxton established with a colleague the Financial Leader's Group (FLG). This group included 40 CEOs, mainly from Europe and the US. The group was set up with the intention of bringing new life into the WTO negotiations on services. Commissioner Leon Brittan (UK), previously in charge of the negotiations on behalf of the Commission, recognised the «usefulness» of the input provided by the service industry in the negotiations and invited Buxton to set up a similar structure at the European level: the European Service Forum (ESF).[10] The ESF was launched in 1999 in a meeting hosted by the European Commission. This structure comprises 42 major European service companies to date, represented by their CEO's. The services include construction and related engineering services, distribution services (including food and water), energy services, environmental services, financial services, legal services and other professional services, telecommunications, postal and express delivery services, tourism and others. The objective of the ESF is to pursue the commercial profit-making interests of the European service industry abroad.

Even though the ESF is not representing a public interest it participated as a registered NGO at the Ministerial Conference in Seattle in December 1999 and in Doha in 2001, and, moreover, was an official member of the EU Delegation at these two conferences.[11]

After retiring from the European Commission Sir Leon Brittan became chairman of the high-level LOTIS Group.[12]

The European Water Force

One of the members of the ESF is Vivendi. This is the company built on the French General Water Company, original concessionaire for public water distribution in France.

Water is one of the big areas of the public service industry. The world water market is estimated to be worth more than USD 400 billion, according to some analysts. According to the World Bank, the water markets of the world are worth up to USD 800 billion, which makes them comparable in scale to the fossil fuel market. Water companies see GATS as a vehicle for opening up these water markets.[13] Water also seems to be a key issue for the EU in the GATS negotiations, with highly expanding and dynamic European water companies looking at water as an enormous potential market.

The world's leading provider of outsourced and privatised water is Vivendi Water, headquartered in Paris, with worldwide operations. It is part of Vivendi Environment, which had an increase in revenues from USD 21.3 billion in 1999 to USD 29.3 billion in 2001. Water accounts for almost half of its revenues and municipalities account for 74% of the water revenues.

In 1999 Vivendi acquired US Filter, North America's largest water company, and is now the market leader in the US. Through US Filter Vivendi gained important access to the lucrative US (public) market in water, which, according to US Environmental Protection Agency estimates, will need a USD 151 billion injection of public financing over the next 20 years to maintain the safety and quality of the US water infrastructure.

Vivendi now has several charitable foundations, among which is the Water Force Foundation, which undertakes development programmes and emergency and rehabilitation programmes to re-establish water facilities in areas struck by humanitarian or man-made disasters, such as China, Albania, Kosovo, Turkey, El Salvador and India. The Water Force foundation has a team of a hundred volunteers. Vivendi water is now working in over 100 countries, and in developing countries often through World Bank financed water programmes, as for instance in Niger and Burkina Faso.

On its web site the European Commission makes only scarce mention of its intention to advance the global access of Vivendi and others to public and commercial water services: *«Another area which could deserve further attention in further negotiations is water distribution, which falls under the heading of distribution services. Further liberalisation of this sector would offer new business opportunities to European companies, as the expansion and acquisitions abroad by a number of European water companies show.»*

On several occasions French President Jacques Chirac has been even clearer in promoting the interest of the European water companies, particularly referring to the Millennium Development Goals. He estimated the costs of basic infrastructure for water, energy and transport for developing countries at USD 404.3 million a year. During a roundtable on financing for development in poor countries Chirac referred to the need for developing countries to invest in key sustainable development sectors such as education, health, water and energy. He noted: *«There again the priority is the sectors of energy and water... France has established original methods in the area of water.»*[14]

During the same roundtable, UK Prime Minister Blair made clear and direct references to the desire to privatise public services related to the environment, including water: *«Our project is to generate financing for development by the private industrial sector and public services which will put in place sustainable development in the poorest countries of the world. We are looking to associate with private investment, the power to mobilise the states, all this in respect of the environment.»*[15]

But Betram Zagema puts the success of British privatisation of water in doubt: *«In 1989, when much of Britain's water was privatised, asset management plans and maximum price levels were agreed between the companies and the regulator. However, most companies underspent on investments and used their soaring profits to pay shareholders and management. Meanwhile, the infrastructure is crumbling, leakages are not repaired and sewers have been overflowing. Between 1989 and 1997, the companies involved were successfully prosecuted 128 times. Among other*

8 *Ibid.*

9 *Ibid.*

10 *Ibid.*

11 European Services Forum, Information Pack, 13 November 2002.

12 Erik Wisselius, *op. cit.*, quotes from Brittan's first speech as chairman of the LOTIS Group: «When I was the EU Commissioner responsible for trade negotiations I invited business leaders to become more involved... Now that I am in the private sector myself, I am especially pleased to take on the Chairmanship of the High-Level LOTIS Group.» In: Lord Brittan of Spennithorne, «Liberalising world trade: why business must make its voice heard», *IFSL World*, Edition 1, Spring 2001: http://www.ifsl.org.uk/about/benefits.cfm.

13 Bertram Zagema, *Milieu Defensie*, http://www.gatswatch.org/GATSandDemocracy/water.html

14 Jacques Chirac, at the Roundtable on Financing for Development in Poor Countries at the World Summit on Sustainable Development, Johannesburg, South Africa, 2 September 2002.

15 Jacques Chirac and Tony Blair in a joint press release at the World Summit on Sustainable Development in Johannesburg, South Africa, 2 September 2002.

things, they were charged with failure to meet leakage targets, as well as with water pollution and illegal sewage discharge. The penalties, however, have not been severe. Northumbrian, a subsidiary of Suez, was fined less than £10,000 [about USD 15,700] *for supplying contaminated water to 15,000 customers in 1997.»*[16]

Vivendi was involved in Buenos Aires with much the same result: *«In 1999 the regulator concluded that «the main goals set at privatisation have not been met, in terms of the raising of water quality standards or in expansion of the system.' Yet the regulator has little power to call the companies to account.»*[17]

Whether in Paris, or in World Bank-induced programmes for water provision in cities like Cochabamba, Bolivia, or Accra, Ghana, privatisation has lead to price increases of 200% or more, hitting particularly people living in poverty. The idea that profit-making companies can provide clean drinking water for the poor cannot be substantiated by facts: *«Yet while consumers face (spectacularly) higher bills as a result of water privatisation, the chief executives of the water companies have seen their salaries increase by similar degrees. Privatisation of water management also changes the logic of the system. The public goals of sustainable water management and universal delivery are replaced by the profit orientation of private companies.»*[18]

The German United Services Trade Union also concludes that the profits that must be generated for shareholders increase prices and lead to cutting corners in general maintenance. There is also evidence that the public sector continues to pay for the protection of drinking water, while the private companies increase their profits.[19]

In 2000 Vivendi went to the Paris Stock Exchange, then to the New York Stock Exchange. Meanwhile Vivendi has expanded much beyond water and is now the owner of major commercial pay television stations across Europe,[20] of Universal Studios in the US, and of publishing companies, including educational, telecommunications and music publishing.

European water companies have received and often still receive considerable state support enabling their expansion. The suggestion that the GATS negotiations are aiming to create a «level playing field» for all players needs to be seriously questioned, as does the stated objective that the privatisation of water distribution contributes to social and sustainable development.

The incompatibility of GATS and development; jobs, jobs, jobs, for whom?

The crucial importance of the GATS for the EU is seen in the preservation and creation of jobs, as reiterated continuously by Commissioner Lamy. However there is concern among NGOs that this will be at the expense of jobs and sustainable livelihoods in developing countries.

The European Union Treaty has a provision that European policies with an impact on developing countries need to take development policy objectives into account. The EC requests for liberalisation in services to developing countries specifically focus on three stipulations:

- that developing countries give up their right to require foreign investors to employ local people at the managerial level;
- that they give up their right to require foreign companies to form joint ventures with local companies;
- that they give up their right to restrict foreign investors from owning land in the country.

By giving up these rights developing countries give up the conditions that are necessary for Foreign Direct Investment to be beneficial to the sustainable development of their countries. The Irish group Conhlámh who researched this area concludes: *«Most developing countries have spent the last two decades under the direction of the IMF and World Bank undergoing «structural adjustment' in the expectation of becoming attractive to foreign investors and gaining from the development potential listed above. Now that many structural adjustment processes are well advanced, the EU is now seeking in the GATS negotiations to remove the very elements through which FDI could have a positive contribution to a country's development process.»*[21]

Recognising that the GATS is a bargaining forum the crucial question to be asked is what, if anything, developing countries are receiving in return for the concessions requested of them. In a statement to the GATS Council by Cuba, Dominican Republic, Kenya, Nigeria, Pakistan, Senegal and Zambia, a group of developing countries expressed concern at the lack of reciprocity in the process of the GATS negotiations: *«Developing countries have made what for them represented substantial commitments under GATS with respect to many service industries but have not received concessions of any meaningful economic value, including under the movement of natural persons mode of supply* [one of four modes of supply of services defined in the GATS]. *This imbalance was further accentuated by the major commitments that some developing countries undertook autonomously including under structural adjustment programmes… without receiving reciprocal benefits.»*[22]

The EU Parliament Socialist Party Group recognised this problem of upward pressure to liberalise. In a letter to Pascal Lamy, MEP van den Berg wrote on behalf of his colleagues in the group: *«You make a strong point on the lessons of GATS for our fears of upward pressure on commitments, but the acid test will be the conduct and outcome of post-Doha GATS negotiations, where the requests by the EU, among others, have in some cases systematically targeted the exclusions and qualifications listed by our trading partners.»*[23]

The Socialist Group in the EU Parliament emphasises the need for unequivocal assurance that the EU proposal would leave countries' rights to impose limits on foreign ownership, including joint venture obligations, intact, whether for established or new investments. In an earlier letter, Commissioner Lamy had indeed committed himself to this position.[24]

The lack of the EU to liberalise and reform its common agricultural policy, one of the major potential areas that could benefit developing countries, and where most of its employment and income-earning capacity is situated, is notable in this regard. It seems therefore that many of the concessions are achieved by sticks, rather than carrots, with the threat to withdraw aid and loans being used as one of the instruments for macro-economic conditionality.

16 Bertram Zagema, *Milieu Defensie*, *op. cit.*

17 *Ibid.*

18 *Ibid.*

19 See the German contribution in this edition of the Social Watch Report.

20 In France, Spain, Italy, Poland, Scandinavia, Belgium and the Netherlands.

21 *GATS Negotiations and the Right of Host Countries to Impose Performance Requirements,* Comhlámh Briefing Paper, November 2002, p. 3.

22 *Ibid.*

23 Dated 22 November 2002, Brussels.

24 Pascal Lamy to Max van den Berg, MEP, PES Group Vice-President, Brussels, 7 October 2002. Lamy states in the letter: «National treatment and possibility of joint ventures: leaving aside the question of whether limits on foreign ownership have the pro-development effect some might attribute to them, I would like to clarify that our proposals would leave countries' right to impose such limits intact. This applies both to established foreign investors and to new investments.»

The buy-off price for Europe?

Water provision in the context of environmental services, such as waste, is one important area of liberalisation requests from the EU to the US.[25] The important question is, what will the EU have to give in return for gaining greater access to the US market?

The EU has made specific commitments to liberalise primary and secondary education, higher education and adult education. So far the EU has received requests to privatise some higher education facilities, which might be regarded as a first step toward privatisation of the whole education sector.

As for health, the EC has committed hospital services and social services to the GATS. So far only a limited number of requests address health and social services, and these requests come, according to the information provided by the Commission, mainly from developing countries.

Mounting pressure

The EU Treaty of Nice, which is intended to define the competence and ways of working of the EU after its inclusion of Eastern Europe in 2004, has also been opposed on grounds related to GATS. In the Irish referendum of the Nice Treaty it was argued that the Treaty would diminish the control of EU member states over GATS areas, including social services. The diminished control at national level will not be matched by an increased accountability to the European Parliament. The Treaty will, therefore, severely limit the right of elected representatives to regulate vital public services (defined under article 133 of the Treaties of the EU). It is, therefore, expected to lead to an increasing «democratic deficit» on the issues, which are at the very heart of European social democracy.[26] Nevertheless the Irish people voted to approve the Nice Treaty, removing one of the last obstacles to its enforcement.

In conclusion it is useful to observe that the pressure by European social movements and trade unions is having some effect, and has perhaps brought about the summary publication and consultation process of the requests made to the EU.

This is also seen in a strengthening of positioning in the Socialist Group of the European Parliament, which states in a letter to Commissioner Lamy: *«Politically the stakes could hardly be higher. In this context it is hard—perhaps impossible—to defend politically a proposal for a new demarche in global governance, which essentially creates new rights for multinational investors, with no corresponding rights for employees, host communities, etc... Many of us believe that, in the present context, such rules can only be acceptable as part of a package which confers equally new substantial obligations on cross-border investors. It is, of course, hard to see how this can be achieved multilaterally while the current US Administration is in power. This leaves me wondering whether there is scope for an EU initiative or a «coalition of the willing»—bearing in mind the EU's dominant position in cross-border investment and the number of important investors headquartered within the Union.»*[27]

If such steps are unlikely to be realised the Socialist Group sends the following warning to Pascal Lamy in conclusion: *«I am thrown back on another sentiment expressed by several Group members: that perhaps the time is not right for the investment negotiations—or at least that they do not deserve the degree of priority that the EU currently accords to them.»*[28]

To what extent the European Parliament and the EU national parliaments will be able to influence, alter or set a halt to the negotiations will perhaps be a litmus test of the democratic character of the EU.

European Solidarity Towards Equal Participation of People (Eurostep) is a Brussels-based coalition of 20 European development organisations. Its members are: 11.11.11, ActionAid, ActionAid-Ireland, Concern, Deutsche Welt Hunger Hilfe, Forum Syd, Fundación Intermón Oxfam, Helinas, Hivos, IBIS, KEPA, Manitese, Mellemfolkeligt Samvirke, Movimondo, Novib, OIKOS, Oxfam GB, Swiss Coalition of Development Organisations, Terre des Hommes-Germany. ■

EUROSTEP
<admin@eurostep.org>

25 http://www.gatswatch.org/docs/EU%20requests/042-02.pdf.

26 Eamon Crudden in the *Irish Times*, 17 October 2002: «EU could force privatisation of services – Democratic control over whether a member-state or the EU decides to privatise public services must be maintained.»

27 Dated 22 November 2002, Brussels.

28 *Ibid.*