

European Commission Directorate-General for Trade



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Protecting public services in TTIP and other EU trade agreements



In the EU, public services such as healthcare and education are amongst the best in the world. They play a special role which Europeans value, and which EU law recognises.

For that reason the EU, and individual EU countries, are required to protect public services in any new laws or policies they adopt - including EU-wide trade agreements with countries outside Europe.

So all EU trade deals provide three important guarantees for public services – on regulation, monopolies and so-called 'national treatment'. These ensure that EU governments remain entirely free to manage public services as they wish.

1. Monopolies – if they wish, EU governments can organise public services so that just one supplier provides the service. This is what economists call a 'monopoly'. The single supplier can be:

- publicly owned – in other words, a 'public monopoly'
- a private firm with the exclusive right to offer a particular service.

And it can operate at any level – nationally, regionally or locally.

2. 'National treatment' and 'market access'- for publicly-funded healthcare and social services, education or water services, EU governments don't have to treat companies or individuals from outside the EU the same as those from within Europe and do not have to provide access to their markets.

Instead, governments can:

- favour European firms over foreign ones
- prevent foreign firms from providing, or investing in, these services
- reverse at a later date any decision to allow foreign firms to provide, or invest in, a particular service.

3. Regulation – EU trade agreements leave EU governments free to regulate whatever they consider to be public services.

Governments can do so:

- however they choose - for example, in the way they:
 - give licenses to suppliers to provide a particular service
 - set the quality standards that suppliers have to meet
- at any level of government – national, regional or local

There is just one condition, which concerns companies from outside the EU which a government has already allowed to operate in its territory.

In such cases, the government must treat the companies concerned the same way as it treats European ones.

These three guarantees apply, regardless of how the EU lists its commitments on services in its trade agreements:

- in some agreements, each EU country specifies the kinds of service it will open up to foreign suppliers – this is known as ‘positive listing’
- in others, EU states say they will open up all services to foreign providers, except for certain services listed in an annex – known as ‘negative listing’

The TTIP will work in exactly the same way, offering the same three guarantees for public services.

How this looks in a trade agreement

Trade deals, like other policies, can be complex. Trade negotiators and lawyers sometimes use technical terms which are precise, but which aren’t always easy for others to understand. The section below shows:

- text in existing EU trade agreements which refers to public services
- what that text means in plain English.

Text in EU trade agreements:

EU: services considered to be public utilities at a national or local level may be subject to public monopolies or to exclusive rights granted to private operators.

Meaning in plain English:

EU governments are free to decide what they consider to be public ‘utilities’ or services.

If they wish, EU governments can organise these services so that just one supplier provides the service – what economists call a ‘monopoly’. This single provider can be:

- publicly owned (‘public monopoly’)
- a private firm which has the right to offer a particular service (‘exclusive rights’)

Text in EU trade agreements:

The EU reserves the right to adopt or maintain any measure with regard to:

- publicly funded education services
- the provision of all health and social services which receive public funding or state support in any form, and are therefore not considered to be privately funded.
- services relating to the collection, purification, distribution and management of water to all kinds of users.

Meaning in plain English:

EU governments can take measures with regards to certain services in whatever way they choose. This can include the way they:

- provide public funding or state support
- decide who can operate or invest in their market.

Governments can do so, even if it means they treat EU suppliers or investors differently from ones based in the country signing the trade deal with the EU. These services comprise:

- publicly-funded education:
 - primary and secondary schools
 - colleges and universities

- publicly-funded healthcare and social services:
 - hospitals
 - ambulances
 - residential health facilities
 - welfare services for: children, the elderly, other vulnerable groups
 - benefits for disabled people
- the supply of water.

In addition, governments can freely choose contractors if they decide to outsource some elements of public services, as long as they comply with the rules on government procurement. Of course, the governments are free to change their minds in the future and reverse any decision on such outsourcing. Usually, such issues are defined in the specific chapter on public procurement.

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