

Bolkestein is about capturing the global market

GATS + Bolkestein = a recipe for disaster

The EU's "Lisbon Strategy" adopted by the European Council in Lisbon in March 2000 is an ambitious agenda for reform of the economy, including the labour market and the education sector. The reforms are supposed to make the European Union the most competitive economy in the world. One of the key reforms in this strategy is the services directive, also known as Bolkestein directive, aiming at creating an effective internal market for services, and at enabling European corporations to provide their services more easily throughout the EU.

The consequences of the Directive in the EU itself has been widely debated, but one dimension has been lacking, namely how the Directive fits into a wider global strategy: The attempt to help European corporations gain a larger share of the global market in services.

The European Commission is at the forefront of the effort to ensure global market access for European TNCs in the current negotiations of the World Trade Organisation's General Agreements on Trade in Services (GATS), which aims to liberalise services throughout all WTO member countries. And in the minds of the Commission there is a strong link between the GATS and the Directive.

The relationship between the proposed EU services directive and the GATS agreement is clearly expressed in the original proposal for the services directive of the Commission (COM (2004) 2 final). This states that the GATS agreement reinforces "the need for the EU swiftly to establish a genuine internal market in services to ensure the competitiveness of European businesses and strengthen Europe's negotiating position".

In other words, the European Commission sees the Bolkestein directive as about creating a bigger market for European corporations at home –in a market of over 450 million consumers- in order to help them to grow and organise themselves so as to grab a larger chunk of the global market.

At the same time, the higher level of liberalisation within the EU that the Bolkestein Directive would bring into force, would allow the EU to put more substantial "offers" to other countries on the table during the GATS negotiations when the hard bargaining over market access to this or that country takes place during the "request" and "offer" process. In this process the members of the WTO –including the EU- put forward requests for more access to other countries' services markets, and offer more access to their own markets in specific sectors. The "offers" that could be made if the Bolkestein Directive is passed, would enable the EU to get a better deal for European corporations internationally in gaining access to other countries' services markets. For with the Directive more sectors will be liberalised further than they are today, and as a consequence the market in a given sector will be more attractive to corporations established outside the EU. To take but a few examples: The EU is offering more access to its own market in sectors like distribution (e.g. supermarkets and hypermarkets) and in postal services, while the EU is requesting more market access in other countries in sectors like water supply and transport services.

The proposed EU Directive on services has gone through several drafts but its broad aim is still to do away with the national regulations that the individual EU member countries have in place for the various service sectors. Such regulations are said to pose a barrier to service providers who want to provide their services throughout the European Union.

The Directive has been widely criticised for promoting commercialisation of public services such as education, energy and water supply, for being a framework for social dumping, and for curtailing the ability of Member States to regulate services to protect the environment, consumers, public health etc. The Directive is all about deregulation. But less discussed is the international context and importance of the directive, and what this might mean for Europeans.

1. The Bolkestein Directive would enable the EU to put more service sectors on the table during the GATS negotiations

The European Commission negotiates in the WTO on behalf of all 25 EU member states. But it has always been somewhat restrained during the GATS negotiations by the fact that many services sectors have not been thoroughly addressed by previous directives, including education and water supply. For if no EU-rules apply to a sector, the rules of Member States apply. And to offer market access to a sector where 25 different sets of rules apply is more difficult than to offer access to the entire EU market with one set of rules. The fact that many services sectors are not covered by specific rules at the EU-level has meant that the Commission has had little or nothing to offer on behalf of the whole European Community. Should the Bolkestein services directive be adopted, however, all the service sectors covered by it, could be offered up.

2. The Bolkestein Directive would boost the power of all TNCs, not just European ones, and would give e.g. US and Japanese TNCs more leverage via the GATS

The European Union has already made substantial commitments under the GATS agreement in service sectors such as architecture, libraries, museums, nurseries, veterinary services, education and hospital services. Substantial commitments mean that the EU has agreed to give suppliers of these services that are based in countries outside the EU “national treatment”. Corporations in these service sectors from the US, Japan and other countries enjoy the same privileges as European corporations, and will enjoy the rules of the Directive if it is adopted.

For with the acceptance of the EU to give corporations from other countries “national treatment”, new rules inside the EU itself in certain sectors will apply to them as well.

It could be argued that what is problematic about service liberalisation is liberalisation itself, and that it's not really important whether a European, US, Japanese or Korean corporation, for instance, provides the service. But there at least two reasons why this is not always the case.

First, some services are more bound up with political, economic and cultural traditions than others, such as education, legal services and hospital services. Some ways of providing services and doing business are very particular to certain countries. The US, for instance, has a particular approach to education which is more based on students' fees and which tend to be more commercialised. Adoption of the Bolkestein directive would give new advantages to US corporations active in the education sector, and could improve their ability to undermine public education. The more you open up the market for “education services” in the EU, the more room of manoeuvre you give US TNC's in this and other areas.

Second, the GATS agreement provides corporations based outside the EU with GATS privileges that are not available to European corporations: They can pressure the EU via the WTO to put their rules in line with the hitherto vaguely defined GATS-rules on domestic regulation. In particular,

GATS provides corporations, via their host governments, with the option of challenging a domestic regulation by means of the WTO's Dispute Settlement System. It could allow foreign TNCs, via their national governments, to shrink the space in the EU for regulation in the public interest even further. For instance, under WTO rules, they could claim that a certain rule was either "unnecessary" or too "burdensome" and therefore restricting international trade. As a consequence the EU could be forced to deregulate even further. Since the GATS-rules on domestic regulation are very vague, they will probably be developed through the "case law" of the Dispute Settlement System. We cannot know exactly how far these rules will go. That is a danger in itself.

3. GATS would effectively "lock in" the Bolkestein directive from future change

It's very hard to change an EU directive once it's been adopted by the European Parliament. If any EU Member State has a bad experience with implementing a directive, it cannot act until a qualified majority at the Council of Ministers agrees with the need for change.

But if there was such a majority, it could still be difficult to change a directive because it might relate to international commitments that the EU has made. Under GATS, for example, once the European Union has committed itself to liberalising a certain service sector, it's practically impossible to backtrack. If it tried to do so, another country could challenge the decision by means of the WTO's Dispute Settlement Body, and could either penalise the decision heavily or simply block it altogether.

Or to put it in another way: If we want to change an EU Directive we need that complicity of a majority of the governments of the EU Member States. But if that same directive deals with services covered by the EU commitments under the GATS agreement, we also need the support of all the governments of WTO Member States –not least the WTO members with an interest in sectors affected by a proposed change to a Directive.

4. New vital areas would be dealt with in secrecy

Trade policy is being negotiated under immense secrecy and lack of public scrutiny.

The GATS negotiations are aimed at promoting further trade liberalisation in services and at developing disciplines to curb national regulation. Although these negotiations could have a profound negative impact on the opportunities for member states to regulate their services, they are being conducted in utmost secrecy from the public. Most of the valuable information from the negotiations comes from leaked documents, not from negotiators following rules on transparency that are either not in place or are extremely weak.

Why is this?

If the whole process was to be completely transparent and open, it would curtail the ability of negotiators to move forward, it is argued by trade negotiators. Firstly, because it would complicate the talks with other countries. It can be compared to a game of cards. If a player had to put all her cards on the table, the opponents would have an advantage. Secondly, transparency would give interest groups a chance to block proposals in their disadvantage.

The last argument is exactly why the demand for transparency is important. Trade negotiations today are about vital issues affecting millions of people and it's therefore unacceptable that they are dealt with in secrecy.

Adoption of the Bolkestein Directive will expand the area that can be dealt with at international trade negotiations, particularly the GATS-negotiations. For instance planning laws that inhibit the expansion of large supermarkets at the expense of small shops, is part of the Bolkestein Directive, and as a consequence this issue can now be addressed at the GATS as well.

The more that issues are dealt with and agreed upon behind those walls, the weaker democracy becomes.

Civil society, inducing the labour movement, environmentalists and women's organisations, and many more, have pointed out repeatedly that the Bolkestein directive makes it more difficult to defend social and women's rights, environmental protection, public health, and other public interests. But when it is considered in the light of the ongoing GATS negotiations and the present global context – a context the Directive was designed to address – it becomes even more dangerous.

Kenneth Haar
ATTAC-Denmark