



The Global Initiative
for Economic, Social and Cultural Rights

Submission to the European Commission on the Implementation of the European Pillar of Social Rights

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The Global Initiative for Economic, Social and Cultural Rights (GI-ESCR) is an international human rights non-governmental organisation. Together with partners around the world, GI-ESCR works to advance the realisation of economic, social and cultural rights tackling the endemic problems of poverty, social justice and inequality through a human rights approach. Our programme on public services and private actors examines the human rights obligations related to the delivery of these services. Find out more on <https://www.gi-escr.org/private-actors-public-services>.

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Public services are at the core of the European social model and are crucial in realising the shared values of solidarity, equality, including gender equality, and social cohesion and inclusion. The COVID-19 pandemic has emphasised the importance of universally accessible, quality, public services such as health care, education, transportation, or water and sanitation, which have been essential in responding to the crisis.

These services have also been shown to be critical to maintain healthy democracies. On one hand, inequalities driven by lack of access to public services have been a key driver of the growing social unrest witnessed throughout the continent in the past few years,¹ and are central to the rise of demagogic and authoritarian movements. On the other hand, strong public services have been found to positively impact on the trust people have in governments and for the quality of society.² They are a precondition to reducing inequalities and, as the pandemic has shown, are a determinant of societies' resilience

¹ Democratic Audit UK, 'Patterns of protest in Portugal show the relationship between the 'old' politics of labour and 'new' anti-austerity movements' (Democratic Audit UK, 5 June 2015) <https://www.democraticaudit.com/2015/06/05/patterns-of-protest-in-portugal-show-the-relationship-between-the-old-politics-of-labour-and-new-anti-austerity-movements/>, accessed 27 November 2020; John Lichfield, 'Just who are the gilets jaunes?' (The Guardian, 9 February 2019) <https://www.theguardian.com/world/2019/feb/09/who-really-are-the-gilets-jaunes>, accessed 26 November 2020.

² Eurofound, "Challenges and prospects in the EU: Quality of life and public services" (Publications Office of the European Union, 2019) https://www.eurofound.europa.eu/sites/default/files/ef_publication/field_ef_document/ef19039en.pdf, accessed 26 November 2020.

to crises. They could also play a central role in building a sustainable response to the effects of the climate crisis and the ecological breakdown.

However, both austerity measures and market liberalisation policies across the continent, sometimes driven by the European Union, have resulted in diminished quality, availability and accessibility of public services, and in their growing commercialisation that has undermined economic, social and cultural rights. A number of United Nations human rights experts have for instance documented how the commercialisation of public services may result in unequal access for marginalised groups, lead to economic discrimination and segregation, and reinforce unbalanced power relationships.³

In many countries this process has been compounded by the use of public-private partnerships (PPPs) to finance and/or deliver public services. PPPs are long-term contractual arrangements in which the private sector provides and finances infrastructure assets and services that have traditionally been provided by the state, such as health and education. The European Commission, European Investment Bank and European Bank for Reconstruction and Development have been responsible for promoting PPPs both within and outside the European Union. However, a wealth of evidence shows that PPPs can increase inequalities, undermine democracy and human rights, expose governments to financial risks, and typically suffer from a lack of transparency and limited public scrutiny.⁴

Public services are a human rights requirement

International human rights law, and in particular the International Covenant for Economic, Social and Cultural Rights, which binds all EU Member States, requires that the EU and its members ensure that social services essential for the realisation of economic, social and cultural rights, such as health care and education, be provided in a democratic and non-commercial way, with public control, for the public good.⁵ Public services obligations have been largely recognised in the human rights practice and interpretation, including at

³ UN Human Rights Council (HRC) 'Report of the Special Rapporteur on the right to education, Koumbou Boly Barry, Right to education: the implementation of the right to education and Sustainable Development Goal 4 in the context of the growth of private actors in education' (10 April 2019) UN Doc A/HRC/41/37; HRC 'Report of the Special Rapporteur on extreme poverty and human rights, Philip Alston' (26 September 2018) UN Doc A/73/396; HRC 'Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context Leilani Farha' (18 January 2017) UN Doc A/HRC/34/51; HRC 'Report of the Special Rapporteur on the human rights to safe drinking water and sanitation, Léo Heller: Human rights and the privatization of water and sanitation services' (21 July 2020) UN Doc A/75/208.

⁴ See European Court of Auditors 'Public Private Partnerships in the EU: Widespread shortcomings and limited benefits' (European Court of Auditors, 2018) https://www.eca.europa.eu/Lists/ECADocuments/SR18_09/SR_PPP_EN.pdf, accessed 30 November 2020; Cecilia Gondard 'French Court of Auditors' annual report reiterates failure of public-private partnerships' (Eurodad, 14 March 2019)

<https://www.eurodad.org/french-court-of-auditors-annual-report-reiterates-failure-of-public-private-partnerships>, accessed 30 November 2020; United Kingdom National Audit Office, 'PF1 and PF2' (National Audit Office, 18 January 2018) <https://www.nao.org.uk/wp-content/uploads/2018/01/PF1-and-PF2.pdf>, accessed 30 November 2020.

⁵ Sylvain Aubry and Sarah Jameson, 'States' Human Rights Obligations Regarding Public Services: The United Nations Normative Framework' (The Global Initiative for Economic, Social and Cultural Rights, 19 October 2020) <https://bit.ly/38HpM7g>, accessed 27 November 2020.

the United Nations.⁶ Accordingly, public services must be accessible to all, without discrimination, of a sufficient quality, responsive to the needs of those they serve, accountable, and adequately funded.

The European Pillar of Social Rights also sets out explicit requirements for public services. Principle 20 states that “[e]veryone has the right to access essential services of good quality”, and the Pillar reaffirms other specific economic and social rights that require public services, such as childcare (Principle 11), social protection (Principle 12), health care (Principle 16), and housing (Principle 19). These principles must be interpreted in accordance with the human rights obligations of the EU and its Member States to ensure public services to deliver on these rights.

The European Union should play a key role in ensuring the provision of public services

The European Union must take strong and targeted action to ensure the public provision of services essential to the realisation of economic, social and cultural rights in all of its Member States. This is a human rights requirement, as well as a political and ecological emergency. We propose that the European Commission:

1. Explicitly recognise that services that are essential for the realisation of economic, social, and cultural rights, including health care, education, food, water, sanitation, transportation, and energy are of different nature and should be considered differently from other goods and services by being kept outside of the free-market competition framework and rules. For these services, the focus should be on encouraging collaboration and solidarity, rather than fostering competition, to ensure the realisation of rights;
2. Through the Social Scoreboard, monitor, measure and report on the availability, accessibility (including financial accessibility), acceptability and quality of public services in Member States, as part of measuring Member States’ performance and progress in the ‘Public support / Social protection and inclusion’ dimension;
3. Play an active role in coordinating efforts for solidarity and improving services across Europe. This includes supporting municipalities who have been at the forefront in developing and providing public services and in promoting social and ecological transformation. Local authorities should have access to funding from the Recovery and Resilience Facility and be involved in the shaping of national plans as to how this money should be spent;
4. Halt existing and planned PPPs in public services, such as health, education, and water and sanitation; and
5. Facilitate and encourage a rights-aligned fiscal environment, in particular by encouraging coordinated progressive and fair taxation across the European Union and acting effectively against all tax havens.

⁶ *ibid.*

In accordance with their extraterritorial obligations under international human rights law, the European Union and its members must apply the same principles beyond their borders, in particular through development aid and cooperation. They must ensure that their development interventions are focused on strengthening public services. We propose that the European Commission:

1. In line with the European Parliament resolution of 13 November 2018 on EU development assistance in the field of education,⁷ commit not to use development aid money to fund commercial for-profit providers of public services; and
2. Stop promoting and financing PPPs in public services.

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⁷ European Parliament resolution on EU development assistance in the field of education, 13 November 2018, P8_TA(2018)0441.