POLICY BRIEF

3/ 2023 — Social

Caring for Profit: How shareholder-oriented transnational investors are pushing into critical social infrastructures

Key Points

In recent years, transnational corporations and financial investors have been capturing more and more areas of social infrastructure. In England, this is particularly pronounced, whereas in Austria, this development has been slower. Germany has experienced significant financialization pressures, although it has not followed the familiar Anglo-Saxon model. The profit-maximizing business models – in particular profit skimming, tax avoidance and "cherry picking" – pose a risk to general welfare as well as to the stability of society and the economy. That is why protective measures need to be strengthened. This includes:

- higher transparency standards, especially regarding disclosure of ultimate owners;
- more public funding for the provision of critical social infrastructures;
- stricter rules on employment in the care and health sectors;
- strengthening of non/limited-profit schemes ("Gemeinnützigkeit").

Background

The special status and worthiness of protection of critical infrastructures have recently received increased attention. For several years now, efforts to regulate and control controversial business practices by international investors have been increasing (e.g., through "investment controls"). The Covid-19 pandemic and the recent war in Ukraine, however, have markedly contributed to the intensification of discussions on better safeguards for foundational economic sectors and everyday infrastructures. Moreover, the conversion of these "lifelines of our societies" (van Laak 2018) is considered a central lever for the social-ecological transformation of our economies and societies at large.

Existing approaches for the protection of critical infrastructures and industries - especially in the context of investment control - do not go far enough. They regularly focus on geopolitics, i.e., the origin of an investor, instead of the investor's activities, thus ignoring the risks of the business models which are primarily focused on shareholder-value maximisation. By concentrating on increasing the investors' capital, these strategies are at risk of neglecting the crucial aims associated with crises prevention and public service provision. While business practices in health care and medical research have received increased attention during the Covid-19 pandemic, essential critical social infrastructure sectors, such as senior and child-care or housing, are still largely ignored. Furthermore, the thresholds for investment controls are too low (often only after >25% equity purchases).

Main findings

Since the 1980s, mixed economic structures have been displaced in the wake of neoliberal reforms. The economy, the state and society have increasingly been subjected to market-oriented restructuring. Various processes of liberalisation, privatisation and financialisation have contributed to a transformation of political economies. Where classic markets were difficult to establish, the public sector was to become "leaner" and more efficient according to New Public Management principles. These neoliberal transformations have progressed to differing degrees in the countries studied, namely England, Germany and Austria. An important question is, thus, to what extent national regulatory frameworks influence the entry of transnational investors into critical social infrastrucures. The three-country comparison shows, relatively clearly, that England, with its liberalisation policies, has by far created the most attractive framework for shareholder-oriented transnational investors. This is also indicated by the large share of private equity investments. English legislation places hardly any limits on the extraction and shifting of profits to tax havens. In this environment, high-risk, value-extracting business models can flourish and have led, among other things, to the bankruptcy of the largest nursing home operator (Southern Cross).

In Germany, privatization occurred in combination with corporatist control mechanisms. This led to a much more comprehensive and tightly meshed regulatory framework than in England. In addition, the decentralised federal structure (with a lot of autonomy at regional levels) resulted in a multitude of different regulations. This makes nationwide standardization more difficult for large operators. Whether this has a limiting effect on transnational investments is questionable. After all, the entry and spread of shareholder-oriented transnational private investors in the German critical social infrastructure "markets" has been increasing significantly in recent years. Although they still account for a relatively small share overall, they are expanding. It seems that the size of the country, its market as well as its growth potential should more than compensate for the disadvantage of regulatory comprehensiveness from the investors' point of view.

In Austria, there are hardly any financial investors actively present as yet and only a few strategic investors such as the listed care group Orpea. This can be seen as a result of even stricter regulation, while the small size of the (fragmented) "market" most likely also plays an additional role. The fact that in five federal states only non-profit operators of care homes are allowed, as well as the strict rules of the Limited-Profit Housing Act are other potential restrictions for certain types of profit-oriented investors. However, strategic investors such as Orpea can also expand within this framework. Their business model is based, among other things, on developing target markets with more complex regulatory frameworks, as there is less competitive pressure here.

This results in various opportunities for private investor participation in critical social infrastructure. This pattern is also largely reflected in the sector-specific regimes. In the area of housing provision, we can observe different degrees of market-oriented restructuring. In England, the Housing Act 1980 represented the first and essential pillar of the societal restructuring of Thatcherism. The right-to-buy program included in this program enabled tenants of public housing to become owners of their apartments at a price well below market value. Around 12% of the entire housing stock was sold under this publicly subsidised privatization program. In addition, the Housing Act 1988 abolished rent ceilings and extended the options for fixed-term rentals. Another key change came with the Housing Act 2008, which opened up the non-profit sector to private for-profit actors. This was followed by further liberalisation, most recently by the possibility of charging market rents for certain income groups.

In Germany, the abolition of the Non-Profit Housing Act in 1990 increasingly pushed non-profit housing companies into the logic of marketisation. In the en-bloc privatisations that began at the turn of the millennium, public housing stocks were sold primarily to international financial investors for the purpose of short-term and, as it turned out, shortsighted – public budget restructuring. During the global financial and economic crisis, ownership changed from these financial investors to strategic investors. In Austria, too, there were liberalisations of tenancy law (especially in 1994) and individual privatisations at the beginning of the 2000s.

HOUSING	HEALTH	CARE
various rental law liberalisation (EN, DE, AT)	abolition of cost recovery principle and establishment of DRG system (DE)	creation of internal market and obligatory tendering (EN)
abolition (DE) and weakening (EN) of the non-profit rules	introduction of compulsory insurance (DE)	introduction of long-term care insurance (DE)
EU internal market rules hamper social housing construction (AT)	foundations of primary health care centers (EN, DE)	standardised cost model with "generous" scope for costing in Styria (AT)
en-bloc privatisations of public housing (EN)	sale of hospitals (DE)	sale of municipal and non-profit care homes (EN, DE, AT)
tenant privatisations (right-to-buy, EN)	outsourcing of secondary services (EN, DE, AT)	scaling back municipal investments in nursing homes (EN)
capital market financing opened for housing associations (EN)	promotion of public-private partnerships (EN, DE, AT)	

Figure 1: Policies in Marketisation in sectoral comparison, Source: AK Wien

DRG = Diagnose-related groups

However, the extent of liberalization and privatisation is significantly lower than in England and Germany. In the care sector, developments in England show how a system originally geared to universal provision has been fundamentally changed in a relatively short time. A key legislative change was the NHS and Community and Care Act 1990, which opened up opportunities for private (profit and non-profit) providers, heralding the demise of public provision. The Health and Social Care Act 2012 further strengthened the contracting logic of new public management. In addition, following the blueprint from other sectors, a separate regulatory authority was created, the effectiveness of which can only be doubted in view of the insolvencies and the costs passed on to the general public.

The most relevant change in the German care regime was the introduction of long-term care insurance in 1995, a legally mandatory partial cost insurance with the option of choosing between different care arrangements. In Austria, the complexity of federalism and the associated small size of the "market" seem to have deterred private equity investors so far. For other investors, however, this does not appear to be a barrier, as the Austria-wide expansion of Orpea subsidiary Senecura shows. The full range of different market-oriented reforms can be seen in the healthcare sector. Through the National Health Service (NHS), the English health care system is closely linked to the regulations of the care sector.

Thus, some of the findings mentioned above on forcing (internal) competition and opening up to different private investors also applies to the healthcare sector. In contrast to the care sector, however, long-term public-private partnerships are playing a more important role, especially in the hospital sector, as part of the Private Finance Initiative which was launched in 1992.

Together with the numerous shorter-term outsourcing contracts, this means that an increasing number of strategic investors and financial investors are participating in the tax-funded, public NHS system. In Germany, the way was paved for the entry of shareholder-oriented investors in the 1990s. The Health Care Structure Act 1993 introduced the freedom of choice between health insurers, a cap on budgets and the partial abolition of the cost recovery principle. After the introduction of the Diagnose Related Group-system in the early 2000s numerous privatisations in the hospital sector occurred. In 2003, the so-called primary health care centers (Medizinische Versorgungszentren) were established and became the gateway for private equity investors into outpatient care in Germany. Restructuring of a similar nature can also be found in Austria. However, a much more restrictive regulatory framework (e.g., in the context of primary health care centers) has so far ensured a greater focus on the common good.

HOUSING	HEALTH	CARE
expand rental law regulation e.g., tenant-friendly rental law reform	**tighten access criteria for the operation of health and care facilities**: e.g., binding it to certain legal forms	
housing subsidies only for non-profit actors	**expand publicly managed health and care facilities**: e.g., primary health care centers.	
more **public housing construction**	**promote public interest-oriented real estate management**	
proactive land policy e.g., spatial planning	**strengthen whistleblower systems**	
	introduce mandatory collective bargaining agreements and binding staffing ratios in line with quality standards	
	strengthening local controls and co-determination	
set effective non-profit rules: e.g., for permanent asset commitment and the prohibition of value extraction		
strengthen transparency and disclosure requirements: e.g., improved corporate reporting and effective register of beneficial owners		
expand investment screenings: e.g., increased focus on risks to the common good		
sharpen liability rules: e.g., to minimise moral hazard risks in private equity sales		

Figure 2: What Policy can do: Options for the protection of critical social infrastructure, Source: AK Wien

Demands

- Critical social infrastructures should be regulated independently and must take precedence over the competitive regime of the internal market
- Access to these special and critical economic sectors should be linked to certain conditions, such as a commitment to social and environmental (minimum) standards, the renunciation of tax avoidance, or the introduction of salary corridors and asset commitments
- Unearned incomes should contribute significantly more to the financing of these areas that are fundamental for all residents, for example through wealth-based taxes
- „high performers of everyday life“ (Krisch et al. 2020) should receive tax relief on their labour income
- Reorient economic policy from fiscal rules (keyword: Golden Investment Rule) to the regulations of the Capital Market Union, which aims to attract private capital through state subsidies and other forms of state de-risking (Gabor & Kohl 2022)

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