

Update on concessions Directive - request for action

(27 February 2013) Last week EPSU discussed the concessions and procurement Directives with Commissioner Barnier. The Commissioner clarified that the EC proposal on concessions did not seek to privatise water services, and indeed he said that water services are a “bien commun”. Nonetheless, EPSU remains concerned that the Directive will add to the pressures to externalise public services, including water, and so EPSU’s position on the Directive remains very critical. The Directive will now be discussed in the next months in a ‘trilogue’ (between the EC, Council and EP) and we need to continue to voice our concerns as well as pressing for safeguards and/or exclusions for public services, including water (as set out in [EPSU’s position on the concessions Directive adopted by the Executive Committee last November](#)). The public consultation prior to the EC proposal showed that a large number of organisations had legitimate concerns about an EU Directive in this area. Many citizens and a number of governments have also expressed their concerns since the publication of the EC’s proposal.

The timetable for the trilogue meetings will follow but we understand the first meeting will be on 12 March, with preparatory meetings taking place before this. We ask EU/EEA members therefore to urgently raise with your Government the points below, which aim to build on assurances given that the Directive is not about privatization and to anchor in the text safeguards for public services:

- **Broad exclusion of public services** / services of general (economic) interest: we should continue to press for the exclusion of water supply, wastewater services, waste disposal, health services, social services, social security, education, railway and local public transport, energy, municipal services, culture, promotion of culture and audiovisual media.

- **Public consultation before setting up a concession**: this would be a new EPSU demand that we discussed with Commissioner Barnier. There are precedents for such a requirement, including in the EU framework for State aid in the form of public services compensation. Point 14 of the State aid

Communication(2012/C/8/03) says, *“Member States should show that they have given proper consideration to the public service needs supported by way of public consultation or other appropriate instrument to take the interests of users and providers into account.* Point 60 (a) obliges the results of this consultation to be made public. The concessions Directive could also require that the Aarhus provisions of public information, consultation and participation apply to all stages of the process of concessions, especially regarding how quality of water is protected. The Directive should spell out too that the concessions are covered by existing Directives on information and consultation, e.g., *“The process of determining whether a service should be run as concession as well as the granting of a concession, are subject to general information and consultation of workers’ provisions in place.”*

- **Impact assessment:** This issue was also discussed with the Commissioner. The Directive should oblige public authorities/grantors to carry out an impact assessment to show how the concession will protect the common good, ensure the human right to water (e.g in the case of water concessions) and promote quality public services; e.g. *“ The public authority/grantor in establishing a public service concession will assess how the concession will contribute to protect the common good and implement the rights set out in the Charter for fundamental rights and the Protocol on Services of General Interest as well as the human right to water.”*

- **Transparency for citizens:** This has been a key EPSU demand. The EP IMCO report calls for ‘non-confidential’ parts of concessions contracts (and public procurement contracts) to be made public, but this is not enough. There should be full transparency of contracts, as argued in the EPSU position, i.e., *“The details of concession contracts, including regarding the transfer of operating risk and eventual payments from the grantor to the economic operator, shall be made public and open to scrutiny. Any subsequent modifications to the contract shall also be made public. Member States and the grantor shall ensure that Services of General Interest (SGI) concessions are subject to the transparency requirements and public control mechanisms that apply for publically-delivered services.”*

- **Evaluation:** this is also a longstanding EPSU demand. There should be an obligation to evaluate the performance of the concession after a certain period (recognising that most concessions are renegotiated during their life time); e.g. *“{The grantor of the concession will evaluate the operation and results of the*

concession after each period of 3 years (or after each ¼ of a period of the concession, whichever is the earliest). The aim of the evaluation shall be to assess how the concessionaire has contributed effectively and in a sustainable and affordable manner to realising the objectives of the concession. The report shall be made available for public debate}.”

- **Social standards:** Social considerations, including the mandatory respect of national labour law and collective agreements of the place of work must be guaranteed, as set out in the EP IMCO report. We should also continue to press for a reference to social clauses and ILO C94 ([see arguments in EPSU study on pay clauses](#)).

A note will follow on the public procurement Directives.

Many thanks in advance for your support, and please let us know about your Government's position in the trilogue discussions,

ANNEX

Background documents in support of demands for quality public services

Evolution of single market / need for a "positive" agenda for public services and workers' rights

- ETUC resolution on A social Compact for Europe adopted by the Executive Committee 5-6 June 2012
- [EPSU position on the EC Communication: A Quality Framework for Services of General Interest in Europe](#), adopted by the EPSU Executive Committee 24-25 April 2012 (EN/FR/DE/ES/SV/RU)
- [EPSU resolution on EU policy on public services](#), adopted by the Executive Committee, November 2011 (EN/FR/DE/ES/SV/RU)
- EPSU background paper on EU policy on social services of general interest (SSGI): [Towards a “voluntary quality framework for social services”? October 2010](#)
- EPSU [Opinion and Recommendations on Services of General Interest \(SGI\) after the Lisbon Treaty](#), EPSU Executive Committee, November 2009 (EN/FR/DE/ES/SV/RU)
- ETUC resolution A new impetus for public services, adopted by the Executive

Committee 1-2 June 2010, (EN/FR)

- [Five reasons why action is needed now to promote quality public services in Europe](#) (EN/FR/GE/SP/SV – Annex English only), June 2005

Public procurement reform / ILO 94

- [EPSU/ETUC letter February 2013 to IMCO on importance of social considerations for eventual trilogue](#)
- ETUC position on the public procurement framework, adopted by the Executive Committee 6-7 March 2012 (EN/FR)
- EPSU response to the European Commission Green Paper on the modernization of EU public procurement policy: [Towards a more efficient European Procurement Market, April 2011 \(EN only\)](#)
- EPSU [Study on pay and other social clauses in European public procurement](#), Thorsten Schulten, Kristin Alsos, Pete Burgess, **Klaus Pedersen, December 2012 (EN/RU)**

Concessions directive

- [EPSU position on the EC proposal for a Directive on the award of concessions contracts](#), November 2012 (EN/FR/DE/ES/SV/RU)
- EPSU briefing “[10 facts about public-private partnerships \(PPPs\)](#)”, December 2011
- [Self-assessment or public debate? evaluating the liberalisation of network services in the EU and USA](#)”, by D. Hall, PSIRU, September 2007 (EN only)
- [Re-municipalising municipal services in Europe](#), a PSIRU report for EPSU, May 2012 (EN/RU)

"Right to water" - Citizens' initiative

- European Citizens' Initiative “Water is a human right!” (www.right2water.eu)
- [Why water is a public service: exposing the myths of privatization](#), PSIRU, April 2012 (EN/FR/ES/GR/PT/RU/S-C/HU/RO/CS)
- EPSU press release on [IMCO vote on concessions](#) 23 January 2013
- EPSU press release on [trilogue on concessions](#)

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