



Michel Barnier  
European Commissioner for Internal  
Market and Services

European Commission  
BERL 10/034

B - 1049 Brussels

[Michel.Barnier@ec.europa.eu](mailto:Michel.Barnier@ec.europa.eu)

Ref.: JWG/cb

Brussels, 21 September 2011

Dear Commissioner Barnier,

EPSU has received two leaked documents related to the intention of the Commission to propose changes to procurement legislation to make them apply to concessions. The first document is a summary of the public consultation and impact assessment. The second is the draft changes to the procurement legislation.

A first comment is that summary of the public consultation shows an incredible slant towards the option advocated by the Commission (and which the Commission had already announced was in the pipeline for a long time as part of the Single Market proposals), without giving any proof that the consultation results support this option. This shows a predetermination to pursue a particular policy line in the face of growing evidence of the shortcomings of PPPs, not least in the UK where even UK Conservatives are now critical of PPPs.

Second, the reference to the stakeholder consultation only reflect comments in favour of legislation and not those that have questioned, or have opposed, such legislation, including the European Parliament (see <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&language=EN&reference=P7-TA-2010-0173> point 13). This shows a bias beyond belief and, taken together with the first point, makes a shambles of the whole public consultation.

Third, the social consequences are glossed over (p.6 of that document). The Commission states that it wishes to promote concessions; argues that legislation is needed to stimulate their development; recognizes that there might be (increased) social consequences as a result; and then denies that these are problematic. Again, the Commission's assessment is not serious. Furthermore, there has been no discussion of the impact assessment. Several EU Social Dialogue Committees might be concerned (electricity, gas, local government, healthcare to mention a few). Further public discussion, including discussion with the social partners, is needed on the impact assessment before the proposal for a Directive is published. This point is underlined in EPSU's response to the consultation (see <http://www.epsu.org/a/6884>).

./...

• EUROPEAN  
FEDERATION  
OF PUBLIC  
SERVICE  
UNIONS  
• FEDERACIÓN  
SINDICAL  
EUROPEA DE  
SERVICIOS  
PÚBLICOS  
• FÉDÉRATION  
SYNDICALE  
EUROPÉENNE  
DES SERVICES  
PUBLICS  
• EUROPEISKA  
FEDERATIONEN  
FÖR ÖFFENTLIG  
ANSTÄLLDAS  
FÖRBUND  
• EUROPÄISCHER  
GEWERKSCHAFTS-  
VERBAND FÜR DEN  
ÖFFENTLICHEN  
DIENST  
• ЕВРОПЕЙСКАЯ  
ФЕДЕРАЦИЯ  
ПРОФСОЮЗОВ  
ОБЩЕСТВЕННОГО  
ОБСЛУЖИВАНИЯ

Fourth, the second document proposes legislation while the European Parliament has not finished its input into the consultation on the Modernisation of Procurement to which the document refers. The Commission itself has argued that broader changes to procurement legislation might be needed. There will be an untenable situation if we have a draft legislation on concessions that proposes changes to procurement legislation; and then we will have further changes to the same legislation. The two sets of proposals will make it impossible for citizens and the European Parliament to comprehend what is going on, and how the changes are related to each other.

The whole procedure undermines the good governance principles that should guide the work of the Commission. We will share these concerns with the Ombudsman, who although cannot react to unpublished documents, should be kept informed.

Dear Commissioner,

We ask you:

- To publish the results of the consultation and impact assessment before legislation is put forward in order to allow for public debate and scrutiny of the arguments advanced by the Commission
- To refrain from any legislative proposal until discussions in the European Parliament or the revision of the public procurement legislation are completed;

Yours sincerely,



Jan Willem Goudriaan  
EPSU Deputy General Secretary