Dear Commissioner,

Thank you for the constructive meeting we had with you on 29 September. I take the opportunity to clarify some of the points we discussed and to inform you that, together with EPSU, I look forward to future cooperation on these. I would also welcome a more 'structured' format for regular exchange and consultation on Single Market policy developments.

**Horizontal objectives in public procurement**

I was pleased you confirmed your intention to include clear wording in the revised procurement Directives on the possibilities for public authorities to pursue ‘horizontal’ objectives in public procurement and to fully respect applicable labour law and collective agreements, for example by inserting the Monti clause. As mentioned, we consider it important that there is no conflict between EU and international law and for that reason the Directives must state that Member States can apply all ILO standards, including Convention 94 on social clauses, which remains very relevant. Our members and citizens expect the EU to counter growing problems of social and wage dumping, including through the uncontrolled use of sub-contracting. This is more than ensuring ‘social inclusion’ – important that it is to prevent anyone ‘falling out of the boat’ – it is about striving for the upwards convergence of living and working conditions.

**In-house and free choice**

Regarding the right of public authorities to choose ‘in-house’ provision of services, I was also pleased that you stated clearly that the EC will uphold and protect this right, which is far more than an ‘exception’ to the Treaty. We have now received the staff working paper you referred to that aims to confirm recent ECJ rulings and will read it carefully. In my view however, the right to ‘in-house’ or the direct provision of services by public authorities (and including public-public cooperation) must also be clearly stated in the procurement Directives to avoid any legal uncertainty, i.e., that the Directives are without prejudice to the in-house provision of services. Such a clarification will also be important to include in any Directive on concessions.

**Service concessions**

In this respect we noted that you said that the EC’s intention is not to promote concessions *per se*, but rather to ensure that a clear (competition) framework applies. You mentioned that this is necessary as the Treaty principles and EC guidance to date has been insufficient to tackle cases of corruption and non transparency of contracts, in particular as regards water and waste concessions. From our experience, corruption is more linked to the running of these services through the private sector and with certain national failures than with the procurement
process itself, but we look forward to receiving further information on the problems encountered. Since our meeting with you, ETUC/EPSU have met with your services but unfortunately we have not yet seen the studies from which the EC draws its conclusions. I stress the need for public service concessions to be assessed against issues related to quality of services, quality and quantity of employment, and the ‘general interest’, i.e. public services principles of universal access, affordability, continuity, sustainability etc. The EC needs also to assess whether risk is in fact transferred to the private party. I would respectfully point out that it is not correct to say that service concessions are unregulated – as you know there are a number of applicable EU Directives (e.g. on water quality, waste hierarchy etc). The 2004 EC White Paper stated clearly that in any conflict with competition rules, the general interest must prevail and it is important that this is integrated into any EC assessment of competition problems. I remain convinced that everyone would benefit from receiving the EC’s evaluation of problems with concessions now, before the draft Directives are published in December in order to allow for further discussion. I also still consider that the revision of the procurement Directives should be addressed first.

The EU role in public services

As we referred to in the meeting, there are a number of current dossiers impacting on public services being dealt with by different DGs such as procurement, concessions, State aid and trade. Our reading of the Lisbon Treaty is that EU and Member States have shared responsibility for ensuring universal access to quality public services. This means it is not acceptable for the EC to remain on the sidelines in everything else but competition law/market access. Further EU integration will depend on building solidarity among citizens and governments. This demands a common approach to public services, based on respect for the principles that underpin them. Here the EC must play a role alongside Member States (and including local authorities), to maintain and develop quality public services across Europe.

Yours sincerely,

Bernadette Ségol
General Secretary