

# Update on the draft Directives on public procurement and concessions



EPSU standing committee for local and regional government  
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## Recap on EPSU and trade union work on public procurement and concessions...

- ✓ Lobbying on the 2004 public procurement Directives to improve social dimension (ETUC, ETUFs, NGOs)
- ✓ Campaign and guide “*Making the most of public money – a practical guide to contracting under the revised EU public procurement directives*”  
<http://www.epsu.org/a/744>
- ✓ Input into the EC SRPP Guide from 2004 – 2010 (!!)
- ✓ Social partner Guides to best value in public procurement (private security, cleaning, clothing-textiles, contract catering)
- ✓ EPSU/CEMR statement on EC SRPP Guide 2010, letter to IMCO rapporteur Marc Tarabella 2012
- ✓ EPSU (mainly LRG) research and activities on PPPs

# Key EPSU points (1)

## **Public services = investment in society**

- ✓ Economic crisis and cuts in public spending used as pretext for privatisation in spite of growing evidence that outsourcing not more efficient – see study <http://www.epsu.org/a/8011>
- ✓ Growing evidence of failure and extra cost of public-public partnerships (PPPs) - see EPSU factsheet <http://www.epsu.org/a/8193>
- ✓ Direct public provision i.e., ‘in-house’/public-public cooperation – valid option and outside scope of internal market rules

**If public procurement is used then should include sustainability considerations, including quality of work**

## Key EPSU points (2)

**Revised Directive(s) must respect collective agreements and underpin sustainable development**

- ✓ Tax payers' money should be used to **benefit citizens** - competition on wages does not benefit citizens
- ✓ Remove option for '**lowest cost**' in principle and include life-cycle' (external) costs – also for social aspects + make the sustainable tenders the norm
- ✓ Strengthen references to quality of work, workers' information and consultation, respect for national legislation and **collective agreements** in force
- ✓ Include refererence to ILO C94 on Labour clauses in Public Contracts in Directive and other ILO standards (not just 'core' standards)
- ✓ Demand full **transparency** of contracts, monitoring and evaluation of outcomes (for citizens)

# Open question on social services (1)

- ✓ Articles 74-76 of procurement Directive foresee specific regime for *social and other specific services*, listed in Annex XVI and above a certain threshold (500,000 euro).
  - ✓ CAs will only need to publish prior notices and results of tenders
  - ✓ MS shall ensure that CAs may take into account quality, continuity, accessibility, availability and comprehensiveness of services etc
  - ✓ MS may provide that choice of provider shall not be made solely on the basis of price
- ✓ Article 17 allows MS to reserve contracts to economic operators whose main aim is the social and professional integration of disadvantaged workers (as well as disabled as in previous Directive) with lower threshold

## Open question on social services (2)

- ✓ Article 17 of concessions Directive foresees specific regime for services listed in Annex X '*falling within the scope of this Directive*' – same list in Annex as in public procurement Directives - not clear what HSS concessions fall under scope (Sweden?)?
- ✓ CAs will have to publish a prior information notice (Article 26.3) as well as the results of award (Article 27.1)
- ✓ Remedies Directive will apply

# Assessment of 'where we are at'

## On public procurement, degree of support for:

- ✓ Removing 'lowest cost' tendering
- ✓ Having clearer framework to integrate sustainability/social concerns **at each stage of the procurement process**
- ✓ Tackling social/wage dumping – also in sub-contracting

## On concessions:

- ✓ Doubts about the soundness of EC proposal to regulate (service) concessions, e.g., scope, definition of concession, risk allocation between public and private partner, length on contract, modifications / renewals, differences between sectors... (see EPSU/ETF joint letter to EP)
- ✓ EC says only wants to ensure 'transparency' and equal treatment (for economic operators, not, for citizens e.g. UK PFI hospital contracts secret!!)
- ✓ Less trade union expertise and different opinions on need for EU regulation; but all agree current proposal problem

# 'Tools' to support lobbying on public procurement with MEPs / MS

- ✓ Input into evaluation of Directives from NSDPP Network (EN/FR/DE/SV/ES/RU)
- ✓ 5 Key messages on Green Paper from NSDPP (EN/DE)  
<http://www.epsu.org/a/7787>
- ✓ NSDPP “Myths” on public procurement
- ✓ NSDPP assessment of public procurement Directives (EN/FR/DE)
- ✓ Briefing papers ClientEarth  
[www.clientearth.org/sustainable-public-procurement-briefings](http://www.clientearth.org/sustainable-public-procurement-briefings)
- ✓ EPSU research papers and Factsheet on PPPs (EN/FR/DE/ES/SV/RU)
- ✓ EPSU study on ILO C94 (forthcoming)
- ✓ EPSU / ETUC / NSDPP amendments on the EC proposals
- ✓ EPSU resolutions November 2011 and April 2012