



WasserInBürgerhand!
WaterInCitizens'Hands!

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European Commission
DG Internal Market and Services
Formulation and enforcement of public procurement law II
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Belgium

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Submission on Public Concession Contracts

for the Consultation of the European Commission

Dear madams and sirs!

WasserInBürgerhand! (*WaterInCitizens'Hands!*) is a network of German citizen's groups which locally and nationally aim to secure that water is a public good and that water and waste water management are public. All of our member groups have been working for years on that issue, some are or were heavily involved in referenda against privatization plans. All German referenda in the past has shown overwhelming successes in favour of public services. As a nationwide group, we bring together the expertise of some highly experienced water specialists and have also been monitoring the water and public services policies of the EU intensely. For more information on us, please see our website www.wasser-in-buergerhand.de.

We thank you for the possibility to participate in the consultation on public concession contracts and would like to contribute as follows:

A) Public services and concessions in general

We want to express our strong support for the right of municipalities to freely manage public services, respectively services of general economic interest by their own, public companies. This model has a long and successful tradition in Germany and is the only one which really gives the citizens control over their public services. The European Court also stressed this right of the municipalities with its decision C-206/08 made on 10 September 2009.

This is also the reasoning of Lisbon treaty which for the first time acknowledges local self-government in article 4, paragraph 2. Furthermore, protocol 26 stresses "the essential role and the

wide discretion of national, regional and local authorities in providing, commissioning and organising services of general economic interest as closely possible to the needs of the users“ and „the diversity between various services of general economic interest and the differences in the needs and preferences of users that may result from different geographical, social or cultural situations“. The Commission should take these new provisions into account in its reasoning about public concessions.

Finally, also the recent report on new developments in public procurement of the EP – 2009/2175(INI), rapporteur: MEP Heide Rühle – stresses the importance of the Lisbon treaty and several rulings of the European Court on the right of municipalities to organize its services of public interest by its own means and in cooperation with other public bodies; warns that it regards a revision of the public procurement directives at this juncture as premature and doubts whether a proposal for a legal act dealing with service concessions would have any added value; and criticises the lack of transparency regarding the composition and results of the work of the internal Commission advisory committee on public procurement.

We call on the Commission to:

1. Listen to the citizen's voice who are against further liberalization and privatization. In Germany, no single referendum on privatization voted in favour of privatization; to the contrary, all were clearly in favour of public services.
2. Ensure that municipalities can operate their public services by their own public companies without any public tendering of concessions.
3. Follow the recommendations of the report on new developments in public procurement of the EP, 2009/2175(INI).
4. Not to force liberalization through a directive on service concessions.

B) Public-public partnerships

In Germany, public-public partnerships amongst municipalities have proven, for a long time, to be an efficient way to deliver and improve public services. The European Court, too, in its rulings of the last years generally protected the right of municipalities and its public companies to freely cooperate without being forced to tender any concession (cf. European Court C-295/95 of 19 April 2007 and C-480/06 of 9 June 2009).

The report on new developments in public procurement of the EP – 2009/2175(INI), rapporteur: MEP Heide Rühle – regards public-public partnerships as falling outside the scope of the public procurement directives, provided that the following criteria are all met: the purpose of the partnership is the joint provision of a public-service task conferred on all local authorities, the task is carried out solely by the public authorities, i.e. without the involvement of private individuals or undertakings, and the activity involved is essentially performed on behalf of the public authorities concerned.

We call on the Commission to:

1. Ensure that municipalities can freely cooperate amongst each other and with their public companies as long as they are completely public. This applies to all types of national models of cooperation, may it be by mandate or by delegation.
2. Follow the recommendations of the report on new developments in public procurement of the EP on public-public partnerships, 2009/2175(INI).

C) Water and waste water

Especially regarding water and waste water, we think that the European Union should renounce to any kind of liberalization or further concessions. As the EU Water Framework Directive states, water is “not a commercial product like any other but, rather, a heritage which must be protected, defended and treated as such.” This has to be taken into account in any discussion about policies that might affect water.

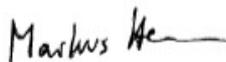
We are deeply worried about several remarks by the European Commission of the last year. Firstly, President Barroso in his September 2009 Political Guidelines: “We can do more to open up the market for ... environmental services”. As such wording could imply an inclusion of the water sector, we wrote to Mr Barroso to get clarification. In his answer from 27 January 2010, Mr Barroso gave no clarification at all. Secondly, Commissioner for the Internal Market and Services Michel Barnier in his EP hearing on 13 January 2010 said, in response to a question by MEP Rühle asking whether he was considering including water in his stated legal initiative on concessions: „I cannot see why I should treat water differently concerning concessions, as also waste or waste water.“ The Parliament has recently voted the latest Internal Market Committee report on public procurement that explicitly dismisses the idea of developing a new legislative initiative on concessions, but we hear that the Commission still intends to proceed with such an initiative and that certain French water companies are the main force driving this misguided push. Thirdly – and not the least worrisome – Commission spokesperson Joe Hennon in his presentation of the latest Commission's report on water scarcity and droughts in Europe (18 May 2010) claimed: “We consider water to be a commodity, like anything else.” This is directly contradictory to the EU water framework directive.

We call on the Commission to:

1. Ensure that water remains “not a commercial product like any other but, rather, a heritage which must be protected, defended and treated as such.” (EU Water Framework Directive).
2. Ensure that water and waste water services remain outside the scope of the concession regime of the EU, and that municipalities can operate their water and waste water services by their own public companies without any public tendering.
3. Support the European Parliament's former decisions not to liberalize the water and waste water sector.

If you have any question, please feel free to contact us. We are also available to report to the Commission personally in Brussels.

Yours sincerely,



Markus Henn
(on behalf of WasserInBürgerhand!)