To: Commissioner Michel Barnier, Commissioner for internal market and services

Brussels, June 11, 2013

Re: Response to Commissioner Barnier's letter on reserved contracts in public procurement

Dear Commissioner Barnier,

We thank you for your answer dated May 21 responding to our open letter of March 19 on reserved contracts. We appreciate that you also had some reservations on the possible implications of the new provision suggested by the Council (art. 17.2)[1].

We would like to provide you with some additional information, partly drawn from the experience of our members, on:

- the impact of the new provision suggested by the Council (art. 17.2) on contracts restricted to social enterprises (art. 17.1)[2] that pursue the aim of the social and professional integration of persons with disabilities and disadvantaged persons
- the impact of the new provision suggested by the Council (art. 17.2) on the liberalisation of public services and privatisation of public entities.

Why does the new provision adopted by the Council have a direct impact on contracts restricted to social enterprises that pursue the aim of the social and professional integration of persons with disabilities and disadvantaged persons?

In order to use public procurement to achieve social policy goals, such as the social and professional integration of persons with disabilities and disadvantaged people, it is very important to preserve the opportunities that art. 17.1 provides.

- Art. 17 is not mandatory for member states; while transposing this provision into national legal orders, member states might decide to transpose only art. 17.2.
- As you also stated in your response, the economic operators that benefit from reserved markets on the basis of art. 17.1 traditionally are non-profits, social economy organisations and social enterprises. So far, traditional businesses do not employ at least 30% of people with disabilities or disadvantaged people.
- Based on current practice, we can confirm that several social enterprises that pursue the aim of the social and professional integration of people with disabilities and disadvantaged people, deliver public services, such as maintenance of green spaces, waste collection and disposal. As art. 17.2 allows the award of every type of public service contract, this could lead to examples of direct competition. In fact, in the procedures for the award of public service contracts, just one type of reserved contract could be introduced (17.1 or 17.2).

[1] "reserved contracts" for organisations whose main aim is the integration of former employees of public authorities into the private sector

[2] contracts restricted to enterprises that pursue the aim of the social and professional integration of persons with disabilities and disadvantaged persons

- In some member states, legislation is in place to set obligations on public and private employers to employ a percentage of people with disabilities according to the size of the enterprise[3]. However, official statistics show that businesses prefer to pay penalties instead of complying with law.

How does the new provision adopted by the Council have an indirect impact on the liberalisation of public services and privatisation of public entities?

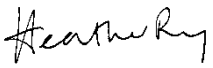
- Art. 17.2 can apply only in two circumstances: when former public officials leave their position within a contracting authority to deliver public services on behalf of an organisation that fulfills the conditions set out in letters a, b and c; and when public officials are made redundant by a contracting authority and are then employed by an organisation fulfilling the above conditions. This clearly contradicts recital (3a) of the public procurement directive adopted by the Council itself and recital (3b) adopted by the IMCO Committee.

- Liberalization of public services and privatization of public entities is clearly a choice and a competence of member states: this is why the public procurement directive has to be neutral in this respect. We also would like you to pay attention to the fact that, in the context of the current economic crisis, if our demand is not met and art.17.2 is not deleted, there are serious risks that this provision could be used by contracting authorities to cut the costs for the provision of public services: this might have a negative impact on the quality, affordability and accessibility of public services for citizens, as well on the working conditions of former public employees.

We are at your disposal in order to provide you with further explanations concerning how recital 17.2 can negatively affect the use of public procurement to achieve social policy goals. We also consider that the present formulation of this recital may lead to a distortion of competition in the internal market that is not justified.

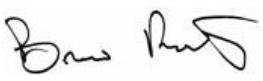
We are confident that the Commission's services will take our arguments under consideration while facilitating the negotiations between the Parliament and the Council.

Yours sincerely,

Heather Roy, President, Social Platform 

Parody Nunez Ignacio Carlos, President, ENSIE 

Alain Coheur, President, Social Economy Europe 

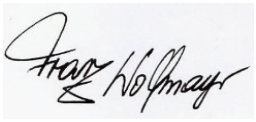
Bruno Roelants, Secretary General, CECOP 

[3] For example, in Italy Legge 12 marzo 1999, n. 68, "Norme per il diritto al lavoro dei disabili"; in France, Loi du 11 février 2005 pour l'égalité des droits et des chances, la participation et la citoyenneté des personnes handicapées.

Cristina Martins, President, IFSW European Region [International Federation of Social Workers – Europe e.V.]



Franz Wolfmayr, President, European Association of Service Providers for persons with disabilities



Julien Fortin, President, RREUSE



Luigi Martignetti, Secretary General, REVES (Réseau Européen des Villes & Regions de l'Economie Sociale)



Petru Vasile Gafiuc, Secretary General, Social Firms Europe CEFEC



Maria Priscila Soares, Vice-president, P'actes Européens

