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Concessions Directive: European Commissioner renounces transparency and equity in public water services to please German public lobbies

Brussels, 26 June 2013. Through its proposal for a directive on “concessions”, the European Commission has tried to improve transparency in the delivery of public services of general economic interest, to ensure equity for operators of these services and to improve legal security for local governments that want to enter into Public-Private Partnership contracts (PPPs).

The initial draft directive proposed by Commissioner Barnier provided procedural guidance to local authorities if and when they decide to enter into a PPP with an external operator. It did not create any obligation for authorities to outsource any of their public service.

On June 21, contrary to previous statements and despite evidence that the directive has nothing to do with “privatization” of water services, Commissioner Barnier announced that he was willing to exclude water services from the list of services that would have to comply with the future directive.

This decision is detrimental to European citizens. Furthermore, the way it was taken is not the sign of transparency and public accountability.

A dangerous exclusion

Excluding water from the scope of the directive on concessions would significantly reduce its usefulness and would go against the interests of EU citizens.

- AquaFed estimates that there are currently over 12,000 PPP contracts for water or wastewater in Europe that are designated as "concessions" in the EU legislation. This number exceeds by far the number of PPP contracts in other sectors and might be close to half the total number of “concessions” contracts across the European Union that are potentially subject to the future directive. In that context, excluding water would mean that the Directive would only reach half of its initial target.
- The exclusion of water services would not improve transparency in the activity of opaque public utilities and would not reduce inequity of treatment of operators in a sector that is very sensitive for European citizens and in which many of them are calling for increased transparency. End-users will bear the burden of this.

We hope that the EU will be able to find a more appropriate solution. The Commission should not promote a half-useful, half-detrimental directive. Either the Directive is adopted without any exclusion or exception of any kind for the water sector, or its merits are not sufficient and it should be significantly modified for all sectors before it can be adopted.

Democracy as a pretext

The Commissioner has justified this decision by accepting to please the signatories of the current European Citizens' Initiative on the Human Right to Water. He treats these signatories as if they were representative of all European Citizens and as if they were opposed to this directive.

This is premature. Relevant services of the EC declare that they have not yet received the initiative formally and it has never been discussed within the European Parliament.

Furthermore, this Initiative has only attracted many signatories because, in reality, it has been marketed throughout Europe to support better implementation of the human right to safe drinking water and sanitation. Private water operators support the human right to safe drinking water and

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sanitation. On 22 March 2013, AquaFed even proposedⁱ to the EU Commission and Parliament to amend the European Charter on Fundamental Rights in order that this human right is included in EU legislation.

The implementation of the human right to safe drinking water and sanitation and the ways of organising the related services are completely disconnected issues, practically and legally. This has been formally recognized by both international lawⁱⁱ and the UN Special Rapporteur on this human rightⁱⁱⁱ.

The number of ECI signatories that are willing to defend this human right, but are opposed to the Concessions Directive cannot be known. It is certainly very small in comparison with the European population, since the Initiative does not even mention the draft directive on Concessions. Furthermore, by the end of February 2013, more than 1.2 million people had signed this Initiative when, before that date, the official campaign website www.right2water.org had never mentioned the Concessions Directive.

It is significant to note that close to 80% of signatories (1.3 million) are from Germany, while citizens from other parts of Europe that are the most-exposed to private management of public water services, i.e. England, Spain, France and the Czech Republic have never been very interested in this Initiative and the number of signatories in these countries is still very small. Therefore, this Citizens Initiative is obviously fueled by German lobbies. It cannot be considered as representative of European citizens and not justify the exclusion of water from the Concessions directive.

German public sector lobbies oppose increasing transparency of public water services

German municipally-owned utilities that deliver services to cities outside their owners' territory without benefiting from an "in-house" status and ever having been put into competition with anybody lobbied hard against this directive. These German utilities could have been required to justify their price to water-users in a far more transparent way than they do at present. They would also have to face the test of competition. In Germany, a lot of false arguments were raised. Several lobbies have insinuated that the European Union was willing to force German municipalities to "privatise" their water services. This has been repeatedly rebuffed by Commissioner Barnier and his colleagues. This was pure propaganda, but it was effective: many German parliamentarians have lobbied against this directive being used in the water sector and Commissioner Barnier has yielded to them.

The fear of German public utilities of having to run their business in a more transparent way was however stronger than the Commission's willingness to secure legal certainty for local authorities when outsourcing their water activities and stronger than the international obligations of European States to ensure, "regardless of the form of provision, transparency, non-discrimination and accountability" in water supply services as requested by the human right.

Aquafed will therefore ask the Commission under Regulation (EC) 1049/2001 for access to the communications it has had with German and other lobbies concerning the special treatment they lobbied for with regards to water activities

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AquaFed is the International Federation of Private Water Operators. Open to companies and associations of companies of all sizes and from all countries, it aims to contribute to solving water challenges by making Private Sector know-how and experience available to the international community. It brings together more than 300 water companies that serve hundreds of millions of people in 40 countries.

In Europe, AquaFed is present through its members in the majority of EU Member States, mostly by means of PPP (Public-Private Partnerships, including concession-type) contracts and through contracts with industrial water-users. The third of the European population benefits from water or wastewater services that are at least partially operated by private or public-private companies. The majority of these people is served by companies represented by our Federation.

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ⁱ www.aquafed.org/pages/fr/admin/UserFiles/pdf/2013-03-22_AquaFed_EuropeanCharter_PressRelease_EN.pdf

ⁱⁱ The UN Human Rights Council in its same historic resolution that embedded the right to safe drinking water and sanitation in international law. Its Article 7 of this resolution says: “Recognizes that States, in accordance with their laws, regulations and public policies, may opt to involve non-State actors in the provision of safe drinking water and sanitation services and, regardless of the form of provision, should ensure transparency, non-discrimination and accountability.”

ⁱⁱⁱ The UN Special Rapporteur on the human right to safe drinking water and sanitation wrote a specific report on the matter and confirmed the disconnect in her letter dated 10 Oct 2012 to Ms. Anne Marie Perret, Representative of the Citizens' Committee European Citizens Campaign - ECI where she wrote: “In seeking to ensure universal service provision, human rights are neutral about the type of service delivery that is decided upon in a particular country - whether it is direct provision by the State, whether services are operated by a private company after a formal delegation, or whether the provision of services is informal. However, the provision through private actors does under no circumstances exempt the State from its human rights obligations to progressively realize the rights to water and sanitation.”