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Ms Elżbieta Bieńkowska

Commissioner for Internal Market, Industry, Entrepreneurship and SMEs
European Commission
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Open letter regarding the Services Notification Procedure Directive

Brussels, 28/2 2019

Dear Commissioner Bieńkowska,

we are writing to you to complain about the European Commission's approach (DG GROW, to be specific) in preparing the Services Notification Procedure Directive, which is currently in trilogue negotiations.[1]

We are part of a coalition of more than 160 civil society groups, unions, mayors, and progressive parties running major European cities, which last month wrote to the Romanian EU Presidency to protest the proposed directive for its potential to "reduce space for progressive policies, including at local level", and because the measures are "disproportionate and at odds with the subsidiarity principle". [2]

Documents released following an access to documents request show that DG GROW's preparation of the proposed directive was seriously biased and violated the Commission's own rules. [3]

The public consultation that was held in spring 2016 and informed the draft directive failed to secure input from a broad range of stakeholders, leading to imbalanced conclusions. Only one trade union and not a single other civil society group contributed to the consultation. The Commission's own rules instruct officials "to consult broadly and transparently among stakeholders who might be concerned by the initiative, seeking the whole spectrum of views in order to avoid bias or skewed conclusions ("capture") promoted by specific constituencies." No such pro-active broad consultation appears to have taken place in preparation of the Notification Procedure Directive.

Considering how controversial the 2006 Services Directive was, the Commission should have actively approached organisations affected by service sector regulation, whether or not they were likely to be critical of the Commission's plans. The failure to consult municipalities and critical civil society voices created a bias and led to skewed conclusions. [4]

Furthermore, the Commission has failed to publish the individual consultation responses on its website, despite its own rules requiring disclosure and repeated requests by Corporate Europe Observatory (CEO) to address this transparency blind spot. Only in response to an access to documents request filed by CEO did DG GROW eventually release a rudimentary list of companies, groups and public authorities that participated in the consultation.[5] Said list has still not been published on the Commission's website, nor have the submissions to the consultation.

According to the Commission's own figures, 126 replies were submitted to the consultation, of which 107 came from organisations and the remainder from individuals. Not taking into account the

individuals who participated, it is clear that **three quarters** of the organisations which submitted responses were businesses or business representatives, with most other submissions having been made by government ministries.

The list of participants released in response to CEO's access to documents request shows that only four municipalities (three Lithuanian, one Polish) and seven regional authorities (two Italian and one Lithuanian, as well as four ministries from German *Bundesländer*) were included in the consultation. Not a single larger city was included, nor any EU-level federations of municipalities. This is a remarkable failure, considering the far-reaching impacts the proposed directive would have on municipalities (who would have to seek the Commission's advance permission for any decision related to the services sector).

The January 2017 draft directive went on to clearly mirror the demands which had been promoted by big business lobby groups during the consultation phase.

But even beyond the consultation, the documents released via the access to documents request reveal a very intimate working relationship between DG GROW and three major industry lobbying groups: BusinessEurope, EuroCommerce, and EuroChambres. While these lobby groups expressed full support for the Commission's proposed directive, the reaction by virtually all other respondents was negative. This includes strongly worded criticism by more than a dozen associations of engineers, tax advisers, architects, free professions and small services businesses.

While these organisations seem to never have received a response from the Commission, DG GROW entertained an active correspondence and held several closed-door strategy sessions with the three big business lobby groups – a relationship that resembles a strategic partnership, not extended to any other stakeholders. Instead, most of these more critical voices were ignored.

This approach is undemocratic and unacceptable, it has favoured special interests and appears to almost certainly have contributed to a strong pro-corporate bias of the proposed directive, which comes at the expense of other vital stakeholders. Commission President Juncker in 2014 instructed his Commissioners to “ensure an appropriate balance and representativeness in the stakeholders they meet”. By logical extension, this should also apply to Commission officials involved in policy-making.

We look forward to your response to our concerns, especially with regard to DG GROW's violation of the Commission's own rules. Which measures will you take to avoid such flaws in the preparation of EU directives in the future?

With kind regards,

Olivier Hoedeman, Corporate Europe Observatory & Ulrik Kohl, Councillor, City of Copenhagen

On behalf of:

ACiDe - Debt Citizen Audit Platform in Belgium
Alter Summit
ATTAC Germany
ATTAC Austria
Barcelona En Comú, Spain
CADTM - Committee for the abolition of illegitimate debts
Corporate Europe Observatory (CEO)
Ecologistas en Acción, Spain
Groen Links Amsterdam, The Netherlands
ODG - Debt Observatory on Globalisation (Barcelona, Spain)
Rassemblement citoyen de la gauche et des écologistes, Grenoble, France
Transnational Institute (TNI)

Notes:

- 1: Notification procedure for authorisation schemes and requirements related to services, 2016/0398(COD).
- 2: "Stop the EU's Services Notification Procedure - municipalities need democratic space to protect the interests of citizens!" <https://corporateeurope.org/economy-finance/2018/11/stop-eu-services-notification-procedure-municipalities-need-democratic-space>
- 3: For an indepth analysis, see "Veto power to please lobbyists – corporations behind Commission power grab over services", Corporate Europe Observatory, February 2019: <https://corporateeurope.org/power-lobbies/2019/02/veto-power-please-lobbyists-corporations-behind-commission-power-grab-over>
- 4: In its report on the consultation, for instance, the Commission makes the following claim about the views of public authorities: "Four out of five public authorities considered preventive examination necessary to ensure a more uniform application of single market rules for services whereas for business this is nearly 2 out of 3." As the consultation failed to involve public authorities in a meaningful way (virtually no municipalities nor their federations, very few regional public authorities), these conclusions are arguably misleading. "Results of the stakeholders consultation";
<https://ec.europa.eu/docsroom/documents/17562/attachments/1/translations/en/renditions/pdf> (page 4)
- 5: Ref. Ares(2019)292870 – 18/01/2019;
<https://www.asktheeu.org/en/request/5964/response/20003/attach/2/Public%20consultation%20submissions.pdf>