Building the European Federation of Public Service Unions
The history of EPSU (1978 – 2016)

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To the memory of Rodney Bickerstaffe,
President of the European Public Services Committee

About this book
The European Federation of Public Service Unions (EPSU) issues or commissions many publications. There are, however, no publications about EPSU itself (as far as we are aware). Jan Willem Goudriaan, EPSU General Secretary since the last EPSU Congress of 21–23 May 2014, therefore felt it important to document key developments of EPSU history. The following publication is an attempt to fill this gap as much as possible. It traces the evolution of the organisation from the late 1980s to the present. This work has been undertaken on the basis of reports of activities and other information sources. On its path from the European Public Services Committee, the EPSC, to EPSU, the organisation has undergone a number of constitutional changes, marking its development towards a well-established European trade union federation. The 1996 General Assembly saw a first important revision of the organisation’s constitution and the European Federation of Public Service Unions (EPSU) was borne. The federation’s executive body was renamed ‘Executive Committee’ to replace the term ‘Presidium’. Thus references in the text to ‘EPSC’ and ‘Presidium’ predate May 1996. The term ‘General Assembly’ was replaced by ‘Congress’ through a further constitutional change at the Lisbon General Assembly in 2000. During its various phases of development, EPSU continuously built its capacity to influence the European policies of employers’ organisations, national governments and of course European institutions, strengthening also its means of taking action and mobilisation.

Many thanks for their help in tracing some of the background documents go to Jacqueline Rotty of the Documentation Centre of the European Trade Union Institute, Brussels, and Sabina Huppertz of the Archive of the Friedrich Ebert Foundation in Bonn-Bad Godesberg. Valuable hints concerning reference documents were also provided by Wolfgang Kowalsky, ETUC policy advisor. Special thanks are due to Catherine Boeckx from the EPSU Secretariat. She provided invaluable support to cross-check web references, ensure proper lay-out and to generally get this book into proper shape for publication. The author of the book was EPSU General Secretary from 1996 until the last EPSU Congress of 21–23 May 2014. She has followed and influenced the developments of EPSU over the past 25 years.

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Foreword

You have a unique book in your hands - the first to describe in detail the development of a European trade union federation. It has been written from the knowledge but also with the critical eye that comes from first-hand experience by Carola Fischbach-Pyttel, EPSU’s first General Secretary who led the Federation for two and a half decades.

Following EPSU’s last Congress in June 2014, Carola and I discussed what she was going to do next, as she was not standing for re-election and still had some months until retirement. I suggested she write EPSU’s history. It was a unique opportunity to tell the story of EPSU and of European trade union cooperation between public service unions and thus ensure that all her knowledge and experience would not be lost. Carola agreed to write the book and, true to herself, she said it would take a critical view. ‘Do not expect me to write a hagiography of EPSU’. And that is certainly not the result.

I feel strongly that it is important for workers and unions to know the history of our struggles. We never got anything for free. Many of our rights today, from the right to strike, to holiday and sick pay, from our weekends and working week, to health and safety protection, not to mention our bargaining as well as information and consultation rights, are the result of campaigns, mobilisations and strikes, as well as bargaining and negotiations with employers and governments. We have fought for seats at the table at local, national and, yes, European level. Now that these rights have come under fire in many countries in Europe it is increasingly important that we stand up to defend them.

Today, unions are part of a European and global labour movement that has developed enormously since the seventies and especially over the last three decades. We support each other in struggles with employers and governments. We work together with European and global institutions to advance workers’ interests. That cooperation is not perfect. We sometimes fail to recognise how a local or national conflict between unions and employers or unions and a government can be crucial for all of us. Losing it can have a knock-on effect. While we might sometimes disappoint and fail each other, on other occasions we can rise to great heights of solidarity. This is when individual workers, their local branches and national unions engage in action on behalf of other workers that are more often than not complete strangers in countries they have never visited.
This book is about why this European work is relevant for our day to day union activity. It is about how we work together. It sheds light on our mistakes and about how well we have done as unions at joining together in a common struggle for our members.

Carola and I agreed that the book should be written in the context of the development of EU policy that has affected workers in the public services rather than as a list of people and dates. It is therefore a history of how Member States and the Commission have sought to open up public services to more competition and how unions have positioned themselves in these debates. We have tried different strategies in EPSU, working with a manifesto/charter and with pledges in support of public services in European parliament elections. We have organised demos and joint photo campaigns to make visible to each other our common actions. With the ETUC we started a citizens’ initiative on public services and we lobbied parliament on a framework directive. The Protocol on Services of General Interest of the Lisbon Treaty had some of its origins in that work and now achieves a new relevance in the discussion on the European Pillar of Social Rights. And we are proud of the success of the first-ever European Citizens’ Initiative on the Right to Water and Sanitation.

I would maintain that the ‘no’ votes of a majority of Dutch and French people in the referenda on the Lisbon Treaty, and the rise in Euroscepticism since then, have a lot to do with the failure of the European Union (Member States, Commission and Parliament) to build a positive agenda around advancing workers’ rights and promoting public services to meet people’s interests and needs. Over the past 20 years the EU has been focused on building the Single Market, opening public services and increasing competition, while neglecting the interests of working people, or what we call Social Europe. The Single Market might break down barriers for corporations, but it does nothing to contribute to collective values and rights. Eliminating roaming charges is not something that connects workers and people across borders in a common struggle. Or, to put it differently, no sacrifices are made to achieve this. The Single Market is not the working people’s dream of a better world. It did not provide an answer to the financial, economic, social and democratic crisis following the near collapse of the financial system in 2008. It has been more a project to benefit corporate elites. But people will not put up with being ruled by markets and will fight back.

Are we currently seeing this scenario being played out with the Eurosceptic and extreme right-wing parties? Or can we, as unions working together in Europe, successfully bring about the re-balancing of the EU so that it responds to workers’ needs? As this book goes to press, there is much discussion about an EU pillar of social rights and new initiatives to strengthen workers’ rights. If we succeed it might be a sign that the EU will have become a democratic space that reacts to people’s demands. Our union history teaches us that this will happen if we confront the ruling powers and fight for change.

The fact that this book is not a list of people and dates does not mean that individuals did not play crucial roles. Carola and I were fortunate to work with many union leaders that had a strategic vision and understood that we need to reinforce our work at European level if we want to stand a fighting chance against corporate power and ensure that the voice of our members is heard in the European arena. EU politics is domestic politics. Our challenge is to ensure this is not a one-way street in which business interests determine what we can and can’t discuss at European and national level.

Carola and I are deeply convinced that we have it in us as the European trade union movement to influence European developments at the workplace, sector and national levels and I hope that this emerges clearly from this book. It testifies to a history
in which Europe’s public service unions have refused to accept the one-way traffic from the EU institutions. Carola writes that often we were in a position of reaction and forced to deal with projects which were not ours. Nonetheless we have managed to push some of our policies onto the national and EU agenda. The story of how we did this can help guide us in the future.

The book recounts the changes in EPSU over nearly 40 years as the Federation grew with the expansion of the EU, as well as the changes within the structure of our sister organisation, Public Services International (PSI). We now cover all European countries from Iceland to Turkey and from Central Asian states and Russia to Portugal and the Balkans. This book is therefore a companion to Fritz Keller’s 2007 book Fighting for Public Services, which describes the 100-year history of PSI and adds flavour and content to the developments of our movement in Europe.

A full history of EPSU would have to include the stories of the unions that make up EPSU and how they have influenced the Federation and vice versa. These stories are touched upon; for example, the discussions with Christian trade unions and how some joined the Federation but others did not. However, that more complete history is outside the scope of this book. Many unions, including Carola’s original union, ÖTV, now verdi, and the union I started out in, AbvaKabo, now FNV, have seen profound changes. Structures have changed as have orientations, the role of members, the leadership and the commitments to working together at European level. Sadly, some unions have disappeared, while others have merged and new unions have been set up for workers in growing sectors like child, home and elderly care. It is our task to give these workers a voice and represent their interests when the decisions of employers, governments and European institutions affect them, their families and communities.

Realistic and critical, Carola would be the first to say that for many unions we are marginal to their work. This is reflected in the motions at union congresses, in the articles on European or global developments in the trade union journals, in the social media coverage and in the commitments between unions to fight together, where EPSU is rarely visible. It can be disheartening to see that few unions inform their members of actions in support of demands towards the European institutions and Member States or write letters of protest to governments or employers who are suppressing workers and their unions. This reflects the problems and challenges in building European and global federations across our different industrial relations cultures and systems.

But the glass is half full rather than half empty. Over the years many workers and unions have engaged in European-level action. Ten of thousands have joined our ‘Euro demos’, fought together to end austerity policies and campaigned for the Right2Water. And very recently we saw a particularly active mobilisation to oppose and change the trade treaty between the EU and Canada (CETA). We know we can do better, and that we have to do better. As this book shows, European developments are not marginal. Public services workers need a powerful voice at the workplace, but equally at national, European and global level. I expect this book to contribute to that understanding and reflection. A critical engagement with the book and our struggle is the best present we can give Carola. It is what she would expect from us.

— Jan Willem Goudriaan
EPSU General Secretary
May 2017
Documenting EPSU’s history is important in order to understand our various struggles and some of the internal dynamics. Understanding our history is important in assessing how far we have come.

When I started digging into the archives of the Friedrich Ebert Foundation in Bonn-Bad Godesberg, Germany, I hit upon a series of files on the establishment of the European Public Services Committee (EPSC). These files contain, in the main correspondence, extracts from minutes and reports from the years 1975 to 1978. The following typed comment by the archivist can be found on the cover of the last file: ‘This is the fourth, and final, of the series of files which tell the history of the establishment of the EPSC, a long and difficult history.’

Why was it so difficult? Jon Eric Dølvik explains the conflicts arising over the creation of European Industry Committees (EICs) in terms of the criteria used by the ETUC for recognition, such as the need to
– conform with the ETUC’s scope;
– be open to all industry unions affiliated to ETUC member confederations;
– be independent from the corresponding ITS.

The last principle proved to be very controversial and was frequently deviated from, says Dølvik and I can corroborate this from personal experience. Some EICs seemed to

1. Tribute for this work goes to the late Fred Moss, from the United Kingdom, who during the period when I was working for PSI in the 1980s until the early 1990s compiled reports of activities for PSI and brought order into numerous files. He was assisted by Veronika Tober, who still works as administrative secretary in the PSI Ferney-Voltaire office today.
have the benefit of existing before the foundation of the ETUC in 1973 or simply were not inclined to follow the ETUC rules to the letter.

For the public sector the situation was further compounded as it involved two organisations: the European arm of the Public Services International (PSI) and EUROFEDOP, founded in 1966 as the European public service federation of the World Confederation of Labour (WCL), the Christian-social trade union movement. Together with other International Trade Secretariats (ITSs), now called Global Union Federations (GUFs), PSI was attached to the ICFTU, the International Confederation of Free Trade Unions, whose member organisations defined themselves as ‘free and democratic’, many of them being more closely linked to the socialist/social democratic movement. In contrast to other sectors, the Christian public sector trade unions were able to establish a relatively stronger European federation, with particular strongholds at the time in Belgium and Austria, where the GÖD, representing employees and civil servants in central and regional government within the ÖGB has been governed by a Christian-Democratic majority faction for the past few decades. The European membership of the PSI at the time was approximately half of what it is today, approximately 3.2 million members. EUROFEDOP’s membership was an estimated 350,000 affiliates at that time.

The first European Conference of PSI took place in 1969. This conference adopted an action programme for affiliated unions in the six member states of the European Economic Community. For PSI the decision to apply for the establishment of an Industry Committee within the ETUC was taken at the Third European PSI Conference, and subsequently confirmed by an Executive Committee meeting in Geneva in September 1975. In a letter of 10 March 1976 the ETUC General Secretary of that period, Peer Carlsen, informed the PSI General Secretary, Carl Franken, that the ETUC had received two requests for the establishment of an Industry Committee, namely from EUROFEDOP and PSI. As a possible solution, he suggested the creation of one committee encompassing both organisations. The solution offered gave rise to difficult and occasionally acrimonious discussions within PSI. PSI President Heinz Klunker headed the powerful German Public Service and Transport Union ÖTV. He objected to cooperation with EUROFEDOP as it included non-representative German unions in its membership.

The discussion within PSI centred around three alternatives:

- pressing for a PSI application and seeking support for such a move;
- entering into official discussions with EUROFEDOP and trying to convince them to exclude ‘the participation of the non-genuine German unions’; and
- establishing a combined Industry Committee.

It was the last option that won the day and turned out to be an unhappy and inefficient alliance. The files documenting the early days of the EPSC provide ample evidence of the antagonistic relationship between the founding organisations of the EPSC. The main area of conflict between PSI and Eurofedop was the redaction of the constitution, which had been in place since the inaugural General Assembly of 1981 but apparently was only formally ratified by the General Assembly in February 1985. In article 2, this Constitution laid down that the EPSC should be composed of public service unions in
the countries covered by the ETUC and that are members of ETUC-affiliated national centres. As Eurofedop represented a considerable number of organisations not affiliated to an ETUC national centre, the constitutional provision referred to meant that these would not be accepted to participate in EPSC activities. The issue was even looked into by an ETUC ad hoc working group, which apparently agreed that the EPSC fully conformed to the guidelines on industry committees. The construction chosen did not cater for direct affiliation to the EPSC of trade unions belonging to an ETUC confederation but affiliated to neither PSI nor Eurofedop. This question had been raised already during the debate in the ETUC Executive Committee in 1978 by a representative of the CFDT and the TUC and indeed in 1982 the EPSC was confronted with two requests for membership from the CFDT and the CGIL. This was discussed in the PSI Group to the EPSC Presidium and apparently rejected in these two casesiii. A similar problem arose in relation to unions representing staff in international and/or European organisations. These would of course not be affiliated to a national ETUC centre and thus be ruled out from participation in EPSC work. In a letter to Union des Syndicats, then PSI General Secretary Carl Franken said that no doubt this union would be a member of the Industry Committee at a later stage.

EPSC work was made next to impossible by the permanent quarrels between the two organisations. The Report of Activities 1985–1988, submitted to the Third General Assembly in February 1989, alludes to this problematic relationship in its introduction: ‘At the beginning of the EPSC a lot of efforts made to work constructively were hampered by internal differences on constitutional matters, especially the criteria applying to membership.’

As can be seen in Chapter 1, the association between PSI and Eurofedop continued to be fraught with conflicts. The structural set-up turned out to be unworkable. The organisations involved could not or would not cooperate.

In organisational terms, two major issues thus marked the internal life of the EPSC/EPSU in those early days: the relations to its global federation PSI and to its co-founding organisation EUROFEDOP.iv The alliance with EUROFEDOP was brought to an end in 1994. Historically, we had by that time gone beyond a ‘EURO-PSI’ solution because we had accepted that there were unions that for various reasons would ‘only’ affiliate to the EPSC/EPSU.

The autonomous status of EPSU was also the thorniest issue in the ensuing merger discussion between PSI Europe and EPSU 10 years later. Both PSI’s and EPSU’s governing bodies agreed in 2005 to establish a working group to ‘explore the possibilities of creating a single European public service trade union federation’. This decision was, among other things, inspired by the unification of the International Confederation of Free Trade Unions (ICFTU) and the World Confederation of Labour (WCL), to take place in 2006. One expectation at the time was that INFEDOP/EUROFEDOP, the international and European wing of the WCL of public service unions would become obsolete as well.v As far as EPSU and the European region of PSI were concerned it

iv. Ibid.
v. This expectation has not quite come true, as EUROFEDOP—albeit weakened—still exists and now is a collective member organisation of the Confederation of Independent Unions (CESI). This in turn leads to a further complication, as some of the CESI/EUROFEDOP affiliates are members of ETUC confederations and thus affiliate to an organisation aiming to compete with the ETUC and its trade union federations, that is, in the main EPSU and the ETUCE (European Trade Union Committee for Education). The ‘CESI/EUROFEDOP’ issue also turned out to be a major stumbling block in establishing a social dialogue in the central government area and gave rise to tensions within EPSU. In the end, a pragmatic solution could be found through the creation of a joint,
was felt that integrating PSI project activities in Central and Eastern Europe into EPSU work would be a more rational way forward.

The merger discussions between PSI and EPSU took five years, again a very long and complicated process. It was concluded with further constitutional changes at the EPSU Congress of 2009.

Have we come full circle?

Today EPSU is PSI’s ‘recognised’ regional organisation for Europe and thus is again more closely linked into PSI work. Since 2009, EPSU’s area of organisation comprises the entire European continent, as well as Russia and Central Asia, adding further complexities to the internal life of the Federation. As a trade union federation of the ETUC, EPSU remains autonomous in its internal decision-making, in particular regarding its autonomy in relation to European policy development and social dialogue with European employers’ organisations.

The political framework in Europe and the European Union in particular clearly has an impact on the capacity of EPSU affiliates in defending their members’ interests, the policies of austerity being a prime example of impinging on trade union rights and collective bargaining space. Job cuts in the public sector, privatisation and outsourcing impact on EPSU affiliates but equally on EPSU as a whole. Despite an adverse political environment, making the case for strong and well-functioning public services for all will remain a central EPSU objective.

In 2018, EPSU will celebrate its 40th anniversary. Since November 2015 the logo says ‘EPSU - the European Public Service Union’, a name that represents both the organisation’s mission statement and a key future ambition.
Acknowledgements

Writing EPSU’s history and describing its early phases as the European Public Services Committee was occasionally a trip down memory lane. Many colleagues have contributed to making EPSU the organisation it is today and it is impossible to name all those who have committed time and energy in EPSU’s sectors, regional and constituency work, working groups and social dialogue or as a member of the EPSU Executive Committee. I thank all of them for their valuable contributions and also their critical remarks, whenever they seemed necessary.

My special thanks go to the Belgian EPSU affiliates, who time and again have lent strength to numerous EPSU demonstrations, be they in Brussels, Luxembourg or Strasbourg.

I have been privileged to work for five EPSU Presidents: Derek Gladwin, Rodney Bickerstaffe, Herbert Mai, Anna Salfi and Anne-Marie Perret. They have contributed their political clout as trade union leaders to developing EPSU. I very warmly thank all the full-time EPSU staff, who represent EPSU in various fora, work very hard to advance EPSU and keep the organisation running. I enjoyed working with you, based on our shared values.

I want to acknowledge a number of people in particular who helped me to enter the world of European and international trade unionism or who have accompanied me over the past decades.

Without their support I would have had a hard time tackling the diverse challenges of EPSU work. I would like in particular to thank:

– Monika Wulf-Mathies, former ÖTV President and later European Commissioner for Regional Policy; without her support I might not have been able to enter the trade union world, whether at national or international level;
– Hans Engelberts, former PSI General Secretary and my boss during my PSI years; even though our positions often differed, in the end we were able to work in a spirit of mutual respect;
– Michel Mombeek, former CGSP regional secretary and in charge of international affairs from 1985 to 1997. On one of my first visits to Brussels in 1986, Michel enlightened me about the existence of the EPSC and told me that we needed to do something about it;
– Jan Willem Goudriaan, now EPSU General Secretary, who has loyally supported me since 1992;
– Diane Gassner, EPSU administrative assistant, who has helped me over a long period to keep track of my documents and to put my English into good English;
– Anne-Marie Perret, not only long-time EPSU President but also a personal friend. On all accounts we were able to function well as a duo, including during difficult times.

I have been able to do my job as I have with the support of my husband, Hilmar Pyttel, who has been exceptionally patient and supportive during long years of EPSU work.

— Carola Fischbach-Pyttel
EPSU General Secretary from 1996 to May 2014
Part 1 first of all recalls the very difficult genesis of EPSU’s precursor organisation, the European Public Services Committee, which was recognised as a so-called ‘industry committee’ of the ETUC in 1978. Initially, the EPSC was set up as a ‘liaison committee’, composed of two organisations, namely the European members of Public Services International (PSI) and the European Federation of Public Employees (Eurofedop), regrouping Christian trade unions in the public sector. This construction was chosen arguably to conform with the ETUC’s organisational coverage at the time. By the early 1990s it became clear that this organisational set-up was not sustainable because of endless internal conflicts, counterproductive in light of the political aspiration being pursued of promoting a positive role for public services within the emerging European Union. These organisational obstacles were finally overcome by separation from Eurofedop, allowing direct affiliation to EPSU as of 1994.

A major chapter is dedicated to the development of sectoral EPSU committees and, importantly, the building of sectoral social dialogue structures. This chapter illustrates the difficult and lengthy path towards fully fledged and functioning social dialogue structures, in particular the process of pressing employer organisations to form representative structures at European level. The major breakthrough in the social dialogue in the hospital sector is highlighted, with the negotiation of the framework agreement on the prevention of injuries and infections through medical sharps, implemented as Council Directive 2010/32/EU and marking a culminating point of the sectoral social dialogue.

In the case of the social dialogue in the national and European administration sectors, we look at some of the severe internal conflicts that arose as a result of
having to accommodate other European trade union organisations, which the European Commission considered enhanced representativeness in the sector at the time. In particular, this concerned CESI, the European Confederation of Independent Unions. The internal conflict could be overcome only after lengthy debate. Representatives of the sectoral social dialogue unit in the European Commission facilitated negotiations on a cooperation agreement between EPSU and CESI in 2005, laying the ground for a single EPSU-led trade union delegation, TUNED (Trade Unions’ National and European Administration Delegation). Hence, the progress made in this particular sector in terms of social dialogue outcomes is outstanding, given the initial problems. The most recent achievement is the conclusion of a binding agreement on information and consultation rights, which is still awaiting transposition into a directive, as requested by both social partners in the sector. The chapter also describes advances in the social dialogue in local and regional government and the electricity sector, where the outcomes of the social dialogue have been less spectacular and so far limited to frameworks of action, joint opinions and statements. This chapter is rounded off with a political assessment of the increasingly difficult context of the sectoral dialogue, at both national and European level, under the continuing dominance of austerity policies. The apparent reluctance of the European Commission to provide the necessary political support for negotiated binding agreements at European level seriously undermines the significance and dynamics of the social dialogue. In a 2013 internal evaluation, EPSU affiliates still considered it of key importance to maintain the process of European social dialogue.

The following chapter sets out EPSU’s endeavours to establish an internal framework for the exchange and coordination of collective bargaining, epsucob®, based on a resolution adopted at the 2000 EPSU General Assembly. This resolution was drafted against the background of the emerging Economic and Monetary Union and the single currency. The chapter analyses the difficulties involved in developing and sustaining a real form of collective bargaining coordination. Moving on from mere exchange of information to coordination has not proved successful, due to a variety of hurdles, such as the national diversity in collective bargaining, the time national affiliates are willing and able to dedicate to such work, but also importantly, due to trends towards decentralisation in collective bargaining. Nevertheless, regularly organised collective bargaining conferences provide a useful forum for exchange and information.

Mainly as a result of privatisation, EPSU is also involved in European works councils and the negotiation of transnational company agreements. Again, the question of how to achieve a mandate for negotiations and how to approve agreements was subject to lengthy debate within EPSU. Reference is also made to EPSU’s work defending trade union rights.

Ever since its first adoption in 1993 the Working Time Directive has been an object of EPSU action as it represents an essential health and safety instrument for many groups of workers within EPSU’s remit, especially those working on a 24/7 basis. This section looks at the historical development of the directive and the ineffective, if not corrosive attempts by the European Commission to revise it. Rather than reflect the case law of the European Court of Justice, the Commission gave in to pressures from particular Member States and employers’ organisations. Together with the ETUC, EPSU was involved in a series of campaigns to uphold the standards of the Working Time Directive. Special attention is given in this section to the successful internal coordination work within EPSU, including the establishment of a special advisory group. This group – made up of affiliate representatives – met at regular intervals and proved to be a valuable instrument to agree a common line to be taken by the EPSU
representatives in the ETUC delegation during the 2011–2012 cross-sectoral social partner negotiations. Within the ETUC, this type of cooperation was a fairly unique model for achieving a joint mandate and negotiating position.

From its very beginnings, EPSU has set itself the objective of promoting gender equality. Women represent 68 per cent of the membership in EPSU affiliates. Improving equality between the sexes has therefore become a major trait of EPSU’s work. Integrating the gender perspective into all EPSU policies and actions as a cross-cutting issue is a key element of its work. It is no exaggeration to say that EPSU has been in the vanguard in promoting women into leadership positions as well as engaging men in the cause of equal opportunities. The various aspects of this work are described in Section 1.6. Bringing gender to the mainstream is certainly one of the activities that define EPSU as an equality organisation for women and men. The chapter explains the various steps taken to enhance gender equality within EPSU structures and policies, ranging from constitutional requirements for representation to efforts to tackle the gender pay gap through collective bargaining led by affiliated unions.

Special attention is given to the negotiation of the first transnational company agreement, reached jointly with the IndustriAll sectoral trade union organisation, on gender equality in the company GDF-SUEZ (now ENGIE) in June 2012. EPSU’s established gender equality policies could be marshalled within the framework of this landmark agreement. The agreement aims to remove unjustified differences between men and women to achieve pay equality, taking account of all wage elements.

* * *

1.1 From EPSC to EPSU

The precursor of today’s EPSU, the European Public Services Committee (EPSC), was recognised as an ‘industry committee’ by the Executive Committee of the European Trade Union Confederation (ETUC) at its meeting of 20–21 September 1978 and EPSU officially celebrated its 25th anniversary in 2003. According to the ‘rules for the recognition of industry committees’ adopted by the ETUC Executive Committee of 9–10 February 1978, the EPSC was set up as a ‘liaison committee’. Such Liaison Committees could be recognised after ‘case by case scrutiny’ between ‘two or more organisations within one sector’, provided that their constitutions did not exclude from ‘membership any union affiliated to ETUC member organisations’. The EPSC was composed of European member organisations of the PSI (Public Services International) and EUROFEDOP (European Federation of Public Employees), regrouping Christian trade unions in the public sector. This particular construction arguably was related to the conditions laid down by the ETUC whereby the European Industry Committees had to be open to all unions in their industrial

A number of Eurofedop member organisations have close links with Christian Democratic Parties, for example the majority fraction of the ÖGD, Austria, is aligned to the ÖVP.
sector that were members of an ETUC confederation.\textsuperscript{II} The ETUC was founded in 1973 and by 1974 also counted 12 Christian trade union confederations as member organisations. According to Willy Buschak, ETUC Confedereral Secretary from 1991 to 2003, the then International Trade Secretariats (ITSs, now Global Union Federations) ‘expressed little sympathy for the approaching process of European unification’.\textsuperscript{3} Jon Eric Dølvik,\textsuperscript{4} too, describes the various lines of conflict in setting up and defining the status of the European Industry Committees (EICs). In several EICs the admission of Christian and Communist unions caused resistance.\textsuperscript{5} Ingrid Stöckl\textsuperscript{6} describes the different set-up processes of European Industry Committees, for example EURO-FIET, the European Regional Organisation of the International Federation of Commercial, Clerical, Professional and Technical Employees. After the initial foundation of a European Industry Committee restricted to unions in countries of the European Economic Community in 1962, a regional organisation regrouping all European FIET affiliates was founded in 1972. Only FIET member organisations could also be active in EURO-FIET. This meant that by the 1980s neither member organisations of the Christian unions belonging to the WCL nor member unions of the Italian CGIL were affiliated to EURO-FIET, in clear contradiction of ETUC rules.\textsuperscript{7} None of EURO-FIET’s organisational principles conformed with the ETUC criteria for the recognition of EICs. Unquestionably, it can be reasoned that this was the outcome of decisions taken by the unions in this sector and of course it did not say anything about the effectiveness of EURO-FIET as an organisation. EURO-FIET seemed already to be well connected with relevant European institutions of the time and in this sense enjoyed the advantage of earlier establishment in comparison with the EPSC.

Whereas German, French and Belgian ETUC members wanted to see full integration of the EICs, this position met with strong resistance from the British TUC and the Nordic confederations. Both the TUC and the Nordic unions feared an ‘erosion of the International Trade Secretariats’.\textsuperscript{8} As a compromise the EICs initially obtained only advisory representation in ETUC bodies and voting rights at Congress, except on financial and statutory questions.\textsuperscript{9} Problems also arose with regard to the ‘independence’ of the EICs in relation to their respective ITS.\textsuperscript{10}

The EPSC only started to function from the late 1980s and early 1990s.\textsuperscript{III} Two decisive factors brought about a change:

\begin{footnotes}
\item II. Conversely, it has become apparent over time that not all unions affiliated to an ETUC confederation felt the obligation to join the relevant European Industry Committee, despite efforts to strengthen the ETUC Constitution in this respect. The relevant passage describing the status of the European Industry Committees within the ETUC Constitution in Article 5, called at the time of the ETUC 1999 Congress ‘European Industry Federations’, reads: ‘The European Industry Federations shall be open to national trade union organisations which are affiliated to the ETUC national trade union confederations.’ At the 2003 ETUC Congress held in Prague a further sentence was added: ‘These organisations should be part of the relevant European Industry Federations’. It has not been possible either due to lack of will or political ability to enforce this rule consequently and a number of national unions are still affiliated to the competing organisation CESI (see footnote V in the Prologue).

\item III. The EPSC did not have an office. The postal address was the ETUC office. According to Hans Engelberts, PSI General Secretary during that time, Harry Bachelor, Deputy General Secretary and Colin Humphries, Assistant to the General Secretary attended meetings in Brussels from the PSI head office in Ferney-Voltaire, close to Geneva. But so far it has not been possible to track down the relevant files. CFP: From memory I recall Colin Humphries telling me once something like: ‘Why do you need an office in Brussels? You are supposed to be lobbying people in their offices.’ The fear of losing control to a Brussels office was strong. As described, the desire to ‘keep control’ of the European organisation was present in other sectors. In EURO-FIET, the European Regional Organisation of the International Federation of Commercial, Clerical, Professional and Technical Employees, one of the precursor organisations of UNI Global http://www.uniglobalunion.org/about-us the General Secretary of the global organisation was at the same time ‘Regional Secretary’ of the European organisation. This practice was only changed with the UNI-Europa foundation Congress in 2001. Article 6.4 jj of the UNI Europa Constitution provides for the election of the Regional Secretary by the Regional Conference.
\end{footnotes}
1. On 1 July 1987, the Single European Act was adopted to establish the Internal Market by 31 December 1992. This entailed – among other things – the opening up of public procurement. In order to get an idea of the potential impact of the internal market process the EPSC had commissioned a study paper from the Berlin Science Centre on ‘the role of the public sector in the Internal Market’. At the Presidium meeting in 1990, the author Frieder Naschold presented the paper and pointed out that ‘the Internal Market was mainly geared to deregulation with the essential element of free movement of goods, services and persons. The construction of the economic union was in no way balanced through appropriate social provisions ... Although it was widely recognised that the public sector constituted an essential element of the Internal Market project as an instrument to set standards for harmonization, the definition of the role of the state in the economy was fraught with conflict.’

2. The organisations represented by the EPSC felt the need to play their full role within the ETUC. In introducing the report on activities at the General Assembly of 1989 in Estoril, Portugal, the EPSC Secretary stressed that ‘the main objective had been to reinforce the presence of the EPSC in the permanent committees and working groups of the ETUC’. Several speakers underlined the importance of establishing a good working relationship with European institutions. ‘The General Assembly adopted a general resolution and policy statement, which was introduced by Hans Engelberts, PSI General Secretary, who criticised the reluctance of the Commission to involve itself in serious discussions with the EPSC. The resolution also underlined the importance of public services in the economy and in the labour market and attacked deregulation.’

Source: PSI

IV. Hans Engelberts was General Secretary of the PSI from 1981 to 2007; he died on 12 April 2015, see http://www.world-psi.org/en/psi-mourns-former-general-secretary-hans-engelberts
Following debate at the EPSC General Assembly of 1989, it was felt that the ‘fundamental character of the changes inherent in the Internal Market, and their impact on the public sector made it necessary to review, as a matter of urgency, the working arrangements for the EPSC. The general conclusion was that the influence of the organisation and its constituents on European developments needed to be strengthened and that this would best be achieved by a formal presence in Brussels. V

The decision to establish an office for the EPSC in Brussels was the subject of debate and pressure by affiliated unions of the PSI, as reflected in the minutes of the EPSC Presidium of 10 February 1989: ‘Brother David Prentis, NALGO, announced that his union would make a formal proposal for a permanent presence of the EPSC in Brussels. NALGO’s expectations of such a presence would be to investigate and analyse on-going trends, to co-ordinate the views of European public service unions and to lobby on behalf of EPSC. This could only be done effectively on a full-time basis. … This view was supported by Brother Mombeek, who indicated that on behalf of CGSP he would speak in favour of opening up an office in Brussels by the end of the year at the very latest. The role of this liaison office should be defined within the context of the European Community and 1992. Hans Engelberts, PSI General Secretary at the time, is reported to have pointed out the implications of such a presence in Brussels, as other PSI regions might put forward demands for offices. Dave Prentis recognised the difficulties involved but said ‘that it would not help Third World affiliates if the strong affiliates were to lose out on developments regarding the completion of the Internal Market. That would adversely affect the operation of PSI as a whole.’ Subsequently, a PSI Liaison office was opened on 1 March 1990.

The introduction to the EPSC Activities Report 1989–1991 describes the rationale of the organisation, as well as stressing the need to match the objectives with the necessary means: ‘One principal issue dominated the three years: the drive by the Community to complete the European Internal Market. Our reactions to that endeavour occupy most space in this report and will be the main subject of debate at the General Assembly.

As for the EPSC itself, the organisation has responded well to the problems of an extremely heavy and difficult period but it is clear, and generally accepted, that urgent attention must be given to the structure and the financing of the EPSC if we are successfully to face, and overcome, the challenges of the coming years. The EPSC set itself ambitious objectives in a Public Service Charter published in (probably) 1991.

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V. ‘It was decided that PSI European Regional/Vocational Secretary and EPSC Secretary C. Fischbach-Pyttel should be permanently based at Brussels as Director of the Liaison Office.’ See EPSC Report of Activities 1989–1991, p. 9; to qualify ‘permanent placement’, the Director was still under a French employment contract until 1992 and regularly commuted between Brussels and Ferney-Voltaire, location of the PSI headquarters. She was assisted by a full-time administrative assistant, Eleonora Dufault, as of 1990. Valuable support was provided during that period by a network of European representatives from national unions, including Peter Morris, NUPE, UK; Jan Willem Goudriaan, Abvakabo, Netherlands; Enzo Bernado, FP-CGIL, Italy; Ursula Polzer, ÖTV, Germany; and Frede Gydesen, DKK, Denmark. In 1992, the Brussels team was enlarged with the employment of Jan Willem Goudriaan as policy officer and Frédérique Dupuis, who was seconded by the FG-FO and also worked as policy officer. The Brussels office staff was only gradually enlarged, again in some instances on the basis of secondment arrangements. The EPSU Secretariat was only to evolve into its current size from 2000 onwards. See Appendix 2 of EPSU Report of Activities, January–December 2000 and Appendix VI of EPSU Report of Activities January–December 2004.

VI. Michel Mombeek, Regional Secretary of the CGSP Brussels an in charge of international relations from 1985 – 1997.
This charter aims to:
– unite European public service unions;
– set up a strong European trade union federation and an efficient secretariat, capable of influencing and contributing to the elaboration of legislation in liaison with European institutions and related to public service workers;
– establish appropriate negotiating structures at European level.22

This visionary outlook was not really satisfied by the organisational set-up of the EPSC. Neither PSI nor Eurofedop wanted to give up their respective identities and modes of functioning. The overall numbers and strength represented by PSI member organisations in Europe were significantly higher by then than the relative weight of unions affiliated to EUROFEDOP. Equally, the financial contribution for the functioning of the EPSC came from the PSI European levy and other sources, whereas EUROFEDOP tended to make ‘in-kind’ contributions, such as the partial secondment of staff.

In February 1991, the EPSC Presidium decided to appoint a working party to examine the structure of the EPSC.

The remit of the working party was to draw up proposals for the future operation of the EPSC, taking into account recent developments determining European trade union cooperation, such as the:
– ‘establishment of the European Internal Market and the wider European Economic Area (EEA);
– the need to establish social dialogue and consultation structures with appropriate employers’ organisations and European decision-making bodies;
– the enhanced role of the European industry committees within the ETUC;
– the pressure on public services and the need to present a positive case for the public sector in a coordinated manner.23

The working group’s discussions led to an amendment of the EPSC Constitution24 and an adaptation of the working structures.VII The new working structures provided for the creation of Standing Committees for the main EPSC/EPSU sectors: Local and Regional Government, Health and Social Services, National and European Administrations and Public Utilities. Based on country representation the EPSU Standing Committees constitute the main pillars of EPSU’s sectoral and social dialogue work. The EPSC 1992 Constitution specifies in its Article 3.1. that ‘membership is open to all public service trade unions belonging to the confederations affiliated to the ETUC’.25 Other organisations could also become members if they adhered to a number of principles.26

In spite of this first opening, the exercise had to ‘accommodate the interests of the two founding organisations, PSI and EUROFEDOP, and was to ensure that any amendment did not change the basis on which the EPSC was recognised by the ETUC’.27 PSI General Secretary Hans Engelberts explained the mechanisms of funding EPSC activities in practice prior to the 1992 General Assembly. ‘Apart from EC subsidies, finance and personnel resources were exclusively provided by PSI. The PSI European Voluntary Levy no longer covered the whole of EPSC activities, consequently they had to be met by PSI funds’, said Hans Engelberts. ‘If other organisations were to join the

VII. The EPSC Constitution referred to above mandated the Presidium to set up standing committees and/or ad-hoc working groups with specific guidelines for the running and composition of these bodies. These guidelines have not fundamentally changed.
EPSC only, the affiliation fee would have to amount to 0.30 SFR per member per year to ensure fair treatment with PSI affiliates, he underlined. The Constitution adopted at the Prague General Assembly therefore stipulated in Article 5.4 that ‘member organisations affiliated to the Public Service International (PSI) or the European Organisation of the International Federation of Public Services (EUROFEDOP) will pay their contribution to either of the two international organisations’. There was a safeguard clause in Article 5.5 whereby the Presidium had ‘the power to set a different rate for member organisations not affiliated to PSI or EUROFEDOP, to offset the cost of common services provided by PSI and EUROFEDOP to EPSC’.

The relationship between PSI and EUROFEDOP could best be described as a ‘marriage of convenience’, but with ‘no love lost’ on either side. Both organisations continued to run their own activities independently of each other. PSI had a European Regional Advisory Committee (EURAC), serviced by a European Regional Secretary. A PSI European Regional Conference was held at Berlin in November 1990 and adopted two resolutions on health policies. These resolutions were referred to the EPSC Social and Health Services Committee to assist in the development of a European Health Charter. Equally, the Regional Conference adopted a resolution on fiscal matters and called for the establishment of an ad-hoc working group that would undertake a thorough study of fiscal issues and tax harmonisation.

EUROFEDOP, in turn, engaged in a number of activities, albeit under the EPSC umbrella, directed first and foremost at its own affiliates, such as a conference on conditions of service in prisons and penal institutions in March 1993. The EPSC Report on Activities states somewhat cryptically that problems had arisen in the preparation of the Conference, without spelling out their nature. ‘Unfortunately, the solving of these problems proved to be impossible and they were to dominate the conference.’

This indicates that the EPSC at that period was anything but an ‘autonomous’ organisation. There was certainly confusion as to the ‘ownership’ of the EPSC. In the event, the Presidium of the EPSC agreed on 3 November 1994 ‘to suspend cooperation with EUROFEDOP – one of the founding organisations of the European Public Services Committee – until a further revision of the EPSC Constitution is possible at the General Assembly in May 1996. It further agreed to inform the ETUC, the European Commission and other relevant European bodies of this decision’.

A report was also given to the members of PSI EURAC, where Rodney Bickerstaffe, President of the EPSC and Chair of the PSI EURAC, explained that the ‘decision had been taken on the grounds of non-payment of affiliation fee in 1994 and permanent arguments over internal and external representation. It could not be excluded that the decision could lead to a new alliance of EUROFEDOP–CESI’.

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VIII. The European Advisory Committee (EURAC) was to become the European Regional Executive Committee (EUREC) through a change of the PSI Constitution adopted at its Congress in 2003 in Ottawa.

IX. EPSC Report of Activities October 1992–October 1993, p. 15–16; EUROFEDOP had organised this conference with a major role for its Spanish affiliate, a minority union in the prison sector. This gave rise to conflict with the two majority PSI affiliated unions from UGT (Union General de Trabajadores) and CCOO (Confederación Sindical de Comisiones Obreras); see also http://www.worker-participation.eu/National-Industrial-Relations/Countries/Spain/Trade-Unions

X. Rodney Bickerstaffe was EPSC President from 1991 to 1996. In 1996, he became General Secretary of UNISON, the result of a merger of three unions: NUPE, COHSE and NALGO. See https://en.wikipedia.org/wiki/Rodney_Bickerstaffe
During 1994 and 1995 two related strands of discussion were taking place:
- the relationship between PSI EURAC and EPSC, including the possibility to ‘harmonise’ both structures;\footnote{\textsuperscript{XI}}
- the establishment of a working party to review the EPSC Constitution, following on from a midterm review to assess the achievements and effectiveness of the work undertaken since the 1992 General Assembly.

At the first meeting of the Constitution Working Party the significance of the European integration process for public sector unions was emphasised. ‘This constituted the need for a European Public Sector Trade Union Organisation with political credibility entrusted with a political mandate and democratic structure.’\footnote{\textsuperscript{36}} While there was agreement on the overall objective, views differed on the ways to achieve this. The previous revision of the EPSC Constitution had been based on the idea that the EPSC was in the main made up of collective organisations – PSI-Europe and EUROFEDOP – but had also opened up the possibility of direct affiliation. ‘Experiences in the cooperation with EUROFEDOP had illustrated the flaws of this approach. Other anticipated affiliations – for example, EUROMIL\footnote{\textsuperscript{37}} – had not materialised.’\footnote{\textsuperscript{38}} An overriding consideration was the relationship with PSI, because cooperation with EUROFEDOP was now suspended. These discussions became quite complicated, as shown by the different points of view reflected in a meeting of PSI EURAC of April 1994. The PSI General Secretary Hans Engelberts made the point that ‘PSI has a paid up membership of 9.6 million, almost 7 million of which were European. If the Industry Committee was totally autonomous, a number of European unions might lapse their PSI membership … Activities in the European Union and the European Economic Area were channelled through the Industry Committee.’\footnote{\textsuperscript{39}} Views differed significantly: ‘Making EPSC strong would be a contribution towards strengthening PSI. If new unions were to join EPSC they might, at a later stage, also join PSI.’\footnote{\textsuperscript{40}} EURAC should be the forum for formulating European claims with regard to the world level, whereas the EPSC should deal with European issues, in particular with regard to the development of the European Union.’\footnote{\textsuperscript{41}} The UK/EIRE affiliates did not see the need for a general revision of the EPSC Constitution. ‘They had taken the choice to work internationally through PSI … The British and Irish constituency did feel however that there was a need to enhance the efficiency and relevance of trade union work in Europe.’\footnote{\textsuperscript{42}} A similar approach was supported by the representative of the Dutch union ABVAKABO, who also stressed the need ‘to retain the current links with PSI.’\footnote{\textsuperscript{43}} The Nordic viewpoint was explained as follows: ‘Both a European and an international affiliation were possible, but close links between the levels should be safeguarded. The solution was somewhere between ‘total autonomy and total integration’.\footnote{\textsuperscript{44}} There were also those who rejected the ‘concept of autonomy for the EPSC’.\footnote{\textsuperscript{45}} Others again made the point of not only considering ‘the link between PSI and EPSC but also between EPSC and ETUC’\footnote{\textsuperscript{46}}. The EPSC Constitution Working Party met again, with similar arguments being exchanged: ‘The starting point of all these discussions was harmonization between EURAC/EPSC. No surprise that I am strongly in favour that we put in the EPSC constitution that the EPSC is not only a member of the ETUC but also of PSI. We have been held hostage by 17 EUROFEDOP'}
unions for years ... We now have 140 unions in PSI which should not be taken hostage by two unions XII which are not members of PSI. Decisions about structures and policy to please a minority are unacceptable. The Gordian knot was cut in the end, mainly by proposing to add a preamble to the Constitution, which says that ‘EPSU shall cooperate with the Public Services International (PSI) and support the objectives defined by it’. The preamble further says that ‘EPSU shall maintain its autonomy in implementing all decisions related to its area of activity’. The 1996 EPSU Constitution then defines EPSU in Article 1.2 as a ‘trade union federation of the European Trade Union Confederation (ETUC) and its members affiliated to Public Services International (PSI) constitute the European regional arm of PSI’.

The Fifth EPSC General Assembly took place on 23–24 May 1996 in Vienna. The Assembly adopted the proposed amendments to the Constitution, importantly changing its name to the European Federation of Public Service Unions, EPSU. The changes in the Constitution, the change in name and not least the election of a General Secretary by the Executive Committee (previously called ‘Presidium’) marked an important step in the development of EPSU. It paved the way towards an autonomous EPSU with further important steps to follow at the Sixth EPSU General Assembly in Lisbon in 2000.


Source: EPSU

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XII. See Second EPSC Constitution Working Party Meeting, 26 June 1995, Geneva. One of these unions was the German DAG, the German White Collar Workers Trade Union Federation, later to merge into ver.di; Christian Zahn pointed out that it had not been possible for the DAG to become a PSI member for decades. This was a correct statement as for decades the ÖTV and the DAG had been at loggerheads at national level. The ÖTV would not have accepted them as a PSI member, certainly not under the PSI Presidency of Heinz Klunker. Cooperation only became possible with a rapprochement at national level, allowing also for the DAG to become member of the ETUC in 1990.

XIII. These two principles in the preamble remain unchanged; see EPSU Constitution as adopted by the 9th EPSU Congress in May 2014 at Toulouse.

XIV. At its 1997 Congress PSI adopted a change to its constitution in Article 12.4 c) as follows: In Europe, the PSI works on the basis of a Cooperation Agreement with the European Federation of Public Service Unions (EPSU) which has its own Constitution.
The EPSU Constitution was again revised to provide from then onwards for the election of the General Secretary by Congress with responsibility for the management of EPSU affairs. Membership was defined within ETUC boundaries, which meant that PSI European affiliates outside the ETUC remit could not be EPSU members. The Assembly also considered measures to ensure better representation of women in the governing bodies and in the leadership team. Another innovative measure was the establishment of a Gender Equality Committee, composed of one female and one male member of the Executive Committee per constituency.

The preamble of the revised Constitution states: ‘All affiliates will strive towards the attainment of equal representation of women and men in their own decision-making bodies. EPSU is committed to achieve 50 per cent women’s representation in its own structures.’ A significant change was the organisation of EPSU finances. Membership fees for all unions were directly paid to the EPSU Secretariat, in contrast to the 1996 Constitution whereby ‘member organisations affiliated to PSI will pay their contributions through PSI, and only non-PSI members paid directly to EPSU.’

From 1994 onwards, EPSU acquired a number of direct affiliates, ranging from the DAG (Deutsche Angestelltengewerkschaft which merged to form the Vereinigte Dienstleistungsgewerkschaft or ver.di in 2001), to Danish unions such as the StK, NIPSA in Northern Ireland, the Royal College of Nurses and the Royal College of Midwives, both in the United Kingdom, the Marburger Bund, various CGT federations from the energy sector, public services, civil service, health and social services, the Portuguese STE and STAL. This ‘direct’ membership accounted for 942,187 members by the time of the General Assembly of 2000. The pursuit of an autonomous EPSU remained a bone of contention in the relationship to PSI. At the same time, the status finally achieved by 2000 was the result of in-depth discussion and the expression of will by the EPSU affiliates. One remaining area that was not clear were the responsibilities of EPSU and PSI in relation to unions in Central and Eastern Europe. After the fall of the Berlin Wall and the collapse of the Soviet Union, PSI had started to recruit new member organisations in Central and Eastern Europe and to establish an education programme. Sub-regional offices were established in Prague, Bucharest, Kiev and Moscow. In turn, the imminent enlargement of the European

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XV. See EPSU Constitution, Article 5; the Resolution for a Financially Stable EPSU 2001–2004 foresaw a gradual increase of the affiliation fees from €0.24 per member/year in 2001 to €0.28 per member/year with an annual lump sum of €1000 per organisation. The reasoning given for the increase was that the ‘EPSU financial situation for 1997–2000 can be characterized by constant efforts to just keep afloat. The finances did not match the growing work and it was necessary to create extra-ordinary funds, to request additional funding from PSI and finally to request a loan from affiliates. … The Executive Committee will continue to assess the financial situation annually and consider the possible need for adjustments in the affiliation fee.’ Resolution adopted by EPSU General Assembly of 17–19 April 2000 in Lisbon.

XVI. The EPSU funding situation played an important role in the run-up to the 2000 General Assembly, which adopted a Resolution for a ‘Financially Stable EPSU 2001–2004’. The Assembly agreed to an increase of the EPSU affiliation fee to be phased in by 2004. It was also agreed to establish a reserve fund. See EPSU Report of Activities January–December 2000.

XVII. A letter from Herbert Mai, EPSC President addressed to Messr. Guy Rasneur and Bert van Caelenberg, EUROFEDOP President and General Secretary respectively of 21 September 2000, summarises the EPSU status as follows: ‘EPSU is politically and financially autonomous. Prior to our last General Assembly, we had long and intensive discussions on the organizational structure of EPSU. As always with questions relating to the constitution, compromise solutions were necessary on account of the required 2/3 majority. Although we consider the amendments to the constitution adopted at our last General Assembly to be progress, the elaboration of the constitution will undoubtedly continue to occupy us in the future. EPSU has concluded a cooperation agreement with PSI. This provides for a geopolitical demarcation and a clear division of tasks in relation to PSI. Accordingly, PSI undertakes no tasks in relation to European integration and in particular to the social dialogue. Likewise, we do not consider a separate role for EUROFEDOP in the social dialogue to be acceptable.’

XVIII. Keller F. and Höferl A. (2007) Fighting for public services: better lives, a better world, Ferney-Voltaire, Public Services International (PSI), p. 55; according to the authors, ‘the PSI expansion into Eastern Europe, that
Union by 10 further member states in 2004 also brought with it new responsibilities for EPSU to tackle the challenges involved in improving social standards and industrial relations in these countries and, importantly, warding off social dumping within the enlarged European Union.

The relationship with PSI was revisited with the start of the discussions on the merger between EPSU and PSI Europe in 2005, leading to a more profound revision of the Cooperation Agreement between EPSU and PSI. Again the discussions proved to be extremely complicated, not least as the geographical coverage of the ‘new’ EPSU was to include the entire European Continent. A further substantial set of constitutional amendments was approved by the 2009 EPSU Congress in Brussels to lay the basis for a single European public service trade union federation. The merger between PSI Europe and EPSU can be seen as the completion of the ‘harmonisation’ debate held in the early 1990s. EPSU’s autonomous status was now recognised in the PSI Constitution. The 2014 EPSU Congress did not see any further major changes to the constitution, indicating that a degree of stability had been reached. Congress agreed to re-assess the cooperation with PSI and examine possibilities of strengthening both organisations. This discussion process is ongoing.

1.2 What role for public services in the evolving European Community?

Dutch Prime Minister Ruud Lubbers addressed the ETUC Executive Committee during a meeting in Amsterdam in December 1991. In his speech he touched upon the Economic and Monetary Union and a future common currency, the extension of Community competencies in areas such as industry policy, culture, social policy, public health, foreign and a common security policy, joint policy on immigration and political asylum, and the setting up of a European police force. He designed his vision of a ‘European federation of states’ with maintenance of the cultural identity of the European regions. This vision was certainly a forward looking one, and not unusual in the 1990s and shared in similar ways by leading politicians and also trade unionists. The Norwegian Dølvik, for example, refers to the ‘Euro-optimistic’ expectations of the ETUC leadership at the time. It was against this backdrop that the EPSC tried to define its role and missions. Although the EPSC also voiced very critical positions on the deregulatory effects of the European Internal Market and the ‘sweeping moves to liberalise public procurement contracts in almost all majors sectors’, the need was also felt to define and find support for the positive contribution of public services in the European construction. Members of the EPSC Presidium met Vasso Papandreou, the European Social Affairs Commissioner in September 1989. The group comprised D. Gladwin XIX, EPSC President; Monika Wulf-
Mathies,\textsuperscript{XX} the Senior Vice President of PSI; H. Engelberts,\textsuperscript{58} PSI General Secretary; Jos de Ceulaer,\textsuperscript{59} General Secretary of EUROFEDOP; and C. Fischbach-Pyttel,\textsuperscript{50} EPSC Secretary. The purpose of the meeting was twofold. The EPSC General Assembly had in February [Lisbon 1989] mandated the Presidium to take action in order to establish a formalised social dialogue in the public sector. The EPSC representatives emphasised the urgent need for such a dialogue because public sector workers were affected by EC legislation in areas such as energy and water distribution and customs, as well as at all levels of government. But so far, the employment interests of public sector workers had not been taken into consideration at European level because of lack of adequate structures. The EPSC delegation also presented the Commissioner with the demand to set up a special service unit, which would coordinate public sector issues within the European Commission. The importance of the public sector in ensuring a balanced social and economic development for all regions in the European Community was stressed, especially in the face of unemployment, threats to the environment or the consequences of demographic changes. "The private market could not be expected to meet the enormous needs in these areas. The present tendency of a laissez-faire policy would represent a serious social imbalance in the long run."

The demand for a direct contact point within the European Commission was further pursued and progress is reported in the 1993 Report of Activities. EPSC President Rodney Bickerstaffe and Secretary Carola Fischbach-Pyttel had been received by the President of the European Commission, Jacques Delors. In the course of this meeting Delors committed himself to examining the feasibility of creating a high level contact point for the public sector within the European Commission. The Belgian Commissioner Karel Van Miert,\textsuperscript{64} at the time responsible Commissioner for Competition, was made responsible for this task. With hindsight, one could speculate whether this was a particularly Machiavellian move on the part of the Commission President, but it is fair to say that this particular contact point did not in practice advance any EPSC ideas.

Another attempt to put public services onto the European scene was the own-initiative opinion on the public sector by Kommer de Kneght,\textsuperscript{XXI} member of Group II of the Economic and Social Committee, which was adopted in September 1993. But the opinion was only adopted at a second attempt at the plenary of the Economic and Social Committee after lengthy and controversial debates. This document was seen as the ‘first comprehensive view by a European institution on how the European integration process influences the public services and its workers’. The document obviously did not change much at all with regard to public services in European integration, but it was seen as a useful reference point at the time.

The EPSC leadership during that period certainly also had a critical outlook of the dominant policy measures. The 1993 Report of Activities strongly criticises the economic policy approach taken by most European governments ‘with an almost exclusive focus on price stability, tight money policies together with drastic cuts in public spending further accentuating recession. Public sector unions repeatedly expressed their fear that an orthodox application of the convergence criteria of the Economic and Monetary Union put further pressure on public sector employment.’ This type of criticism

\textsuperscript{XX}. Monika Wulf-Mathies was at the time President of the ÖTV; she became Commissioner for Regional Policy and Cohesion from 1994 to 1999; see https://de.wikipedia.org/wiki/Monika_Wulf-Mathies. She hired the author as a full-time trade union officer at the health policy department of the ÖTV in 1978 and promoted her to become PSI Regional Secretary for Europe in 1986.

\textsuperscript{XXI}. Kommer de Kneght was at the time trade union officer at the Dutch FNV Confederation.
sounds very familiar in the light of the austerity policies and budgetary rigour applied in the European Union over recent years. At the same time there was also a conviction that further European integration would almost necessarily have to be built on a strong role for public services as well. The EPSC Secretariat had to struggle with the dichotomy that public services were considered to be governed by the principle of subsidiarity and that their organisation and financing were the competence of the member states. ‘Even in the foreseeable future there will be no such thing as the European public sector, but certain national responsibilities are very likely to shift to mostly new institutions, for example EUROPOL, customs, the Patents Office, EUROCONTROL.’68 This statement reads almost naïve from today’s perspective.

1.3 Building sectoral work and social dialogue structures: patience and persistence

‘Employers of the public service are absent from social dialogue and have neglected to contribute to the establishment of a Europe of employment and a Social Europe.’69

The establishment of standing committees for key EPSC professional sectors from 1990 onwards therefore was motivated to considerable extent by the need to support the establishment of sectoral social dialogue committees.XXII This was formalised in 1992 by adding ‘guidelines’ for the operation of standing committees to the EPSU Constitution. ‘The standing committees shall be entrusted with the social dialogue … in the branch for which it was established by the Executive Committee. Any agreement resulting from the social dialogue shall be approved by the Executive Committee.’70 The 1992 General Assembly further adopted a statement making the achievement of social dialogue in the public sector a priority. In the follow-up to the General Assembly, discussions focused on the strategy to take to ‘organise’ the employers, that is, in sectoral employers’ organisations and possibly to further develop an ‘employers’ forum’.71 The EPSC Common Agenda for Concerted Action raises the problems encountered in developing social dialogue: the organisations contacted understood themselves as lobby organisations and of course the diverse national industrial relations cultures in the public sector were identified as a major obstacle. The document invites affiliated organisations to systematically address national employers’ organisations and to present them with the common agenda. The EPSC Presidium felt that there were a number of policy developments which needed to be addressed as part of a structured sectoral social dialogue, such as the role of the public sector in Europe, employment, social policy and mobility and training.

These endeavours were backed by developments at European Community level:

The 1991 Social Protocol laid down a legal framework which opened up new scope for dialogue at cross-industry level and importantly also in various sectors. The entry into force of the Maastricht Treaty (and its Social Protocol) resulted in an obligation on the Commission to consult the social partners prior to the adoption of a legislative proposal, and the possibility for them to sign collective agreements which either could be extended erga omnes by means of a Council directive or else be implemented by the social partners themselves at national level.73

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XXII. EPSC also used the ETUC route to reinforce its campaign for the establishment of social dialogue in the public sector by for example submitting a resolution to the 7th Statutory ETUC Congress, which took place in Luxembourg in May 1991. The resolution ‘urges local, regional and national governments and other public sector bodies to organise themselves at the European level in their capacity as public sector employers.’
In 1995, the Single Act introduced a provision recognising the social partners and allowing them to hold a dialogue. With the support of the President of the Commission, Jacques Delors, cross-industry social dialogue between the ETUC, UNICE\textsuperscript{XIII} and the CEEP\textsuperscript{V} was launched.

In 1998, the European Commission published a Communication concerning the establishment of a new framework within which the sectoral dialogue was to continue its development. “This framework will be applicable on the same terms to all sectors wishing to take part in social dialogue and will be easily extendible to new sectors.”\textsuperscript{VII}

In response to these developments, EPSU governing bodies felt it was important to regulate the development of a mandate for both intersectoral and sectoral social dialogue and the ‘Procedures and Mandates for the Social Dialogue’ already approved by the Executive Committee in 1998 were to be joined as appendix VIII to the revised Constitution adopted at the 7\textsuperscript{th} EPSU Congress in 2004 in Stockholm.\textsuperscript{XXIV} Still, as can be seen from the following description, the development of the sectoral social dialogue in the EPSU area was not only a complicated and lengthy process but also put the internal capacity of the organisation to reach a decision over issues of trade union representativity under considerable stress.

1.3.1 Social dialogue in local and regional government – a challenge calling for patience

In an interview with the CGIL-FP magazine in 2004, the EPSU General Secretary was able to state with some satisfaction that EPSU had managed to develop a formal social dialogue structure for local and regional government.

“EPSU is the most representative European public services union. This is now reflected in the composition of the sectoral social dialogue committee for local and regional government, which was formally established between EPSU and the Employers’ Platform of the CEMR in January this year. This is the second area, after electricity, in which EPSU is involved in a formal social dialogue. EPSU and the CEMR engaged in discussions on a European dialogue already in 1994. So it “only” took us ten years to formalise this sectoral dialogue ... The process was hampered by representativity problems on both the employers’ side and the trade union side. But we got there in the end. From the EPSU point of view, we even got there very elegantly, because the trade union delegation is led by EPSU. We have accommodated non-EPSU affiliates on our side. But these unions belong to an ETUC-affiliated confederation. So we have achieved an in-house, ETUC-tailored solution.”\textsuperscript{VII}

The EPSC Standing Committee for Local and Regional Government (LRG) met for the first time in May 1993 in Rome. The meeting was addressed by Ole Andersen, mayor of Gladsaxe and vice chair of the Danish Association of Local Authorities and of its collective bargaining committee. He informed LRG members that the Council of European Municipalities and Regions (CEMR) was about to establish an employers’ platform.\textsuperscript{VII} In 1994 members of the Standing Committee were updated on the developments in respect of the employers’ platform that the CEMR\textsuperscript{XXVII} intended to set

\textsuperscript{XIII} Now called Business Europe, see history of the organisation at http://www.businesseurope.eu/Content/Default.aspx?PageID=601

\textsuperscript{XXIV} EPSU Constitution 2004, Appendix VIII: the document lays down proceedings to be followed for participation in the intersectoral social dialogue and the sectoral social dialogue.
The discussion focused on the need to deal with ‘real employers and the issues that would also be of interest for employers’. The EPSC Secretariat was given the task of exploring the role CEMR wanted to play, and in particular whether CEMR saw themselves as a local government employers’ organisation. The possibility of organising a joint seminar to ‘discuss modernization of public services could be considered’. As a basis for discussion the EPSC had agreed to a ‘European charter of Local and Regional Authorities – Direct Democracy’, setting out the basic principles of ‘autonomous territorial authorities, the decentralization of power, and its exercise by authorities closest to the citizens’. The Charter stresses that the ‘territorial authorities must have sufficient financial resources in order to carry out their tasks... The territorial authorities should be in a position to call on competent employees who are properly paid and receive suitable continuing vocational training and whose working conditions are laid down in agreements negotiated with trade union organisations representative of the employees of these authorities.

In December 1998 both the CEMR Employers Platform (EP) and EPSU agreed to seek the establishment of a sectoral social dialogue committee, following their mutual recognition as social partners in 1996. The LRG Standing Committee made the formalization of the social dialogue a priority by the General Assembly 2000. In 1999, EPSU and the CEMR-EP agreed a joint statement on ‘Equal Opportunities’, building on earlier joint statements on the ‘Modernization of Public Services’ in November 1996 and ‘Employment’ in November 1997. In the statement on equal opportunities the Social Partners emphasise the role of the local government sector as a major employer of women. ‘We are committed to a cooperative approach.’

The social partners commit to promoting positive action, supporting the development of flexible training measures, combating sexual harassment and promoting family-friendly employment policies and practices. The social partners endorse the principle of ‘equal pay for work of equal value’ and commit to apply a ‘gender perspective throughout the process of modernising public services.’ In a further statement on employment CEMR-EP and EPSU express support for the ‘full employment objective as stated by the European Union in the conclusions of
the Lisbon Council, as well as the necessity to integrate economic, social and employment policies’. Importantly, CEMR-EP and EPSU call upon the Council and the Commission ‘to give recognition to the CEMR-EP and EPSU sectoral social dialogue joint committee. This committee would provide the necessary basis to ensure proper action of the social partners at local and regional government level. We urge the Commission to respond positively to the joint request of the social partners to create this Committee.’

The first formal meeting of the Sectoral Social Dialogue Committee took place in January 2004. Both CEMR-EP and EPSU emphasised the Committee’s aim of strengthening the possibilities of the social partners to shape future developments in the local and regional government sector. One task the Committee set itself in view of the enlargement of the EU was the development of social dialogue in the new member states in local and regional government.

It should also be noted that EPSC/EPSU in this period established and maintained contacts also with CEEP. The motivation for exchange with CEEP was also to sound out the ‘CEEP perspective as employers’ organisation’ as it had set up a local government section.

EPSU and the CEMR-EP have since 2004 agreed on a variety of joint statements. In their joint project in 2011 ‘The future of work in local and regional government’, the social partners agreed that action is necessary in areas such as continuous and fair funding, migration, skill development, sustainable development, gender equality, recruitment and retention. The European social partners committed to implementing the objectives jointly with a first evaluation at the end of 2013. These recommendations served as foundation for the work programme of the Social Dialogue Committee for 2014–2016.

One interesting feature of this social dialogue committee is that it picked up issues well before other sectors in EPSU and in general the social dialogues in other sectors. One recent example is migration.

The employers and trade unions in the local government social dialogue committee agreed joint guidelines on how best to tackle migration and to strengthen anti-discrimination. The social partners see this within the framework of a broader policy of social inclusion and diversity, with particular emphasis on strengthening the inclusion of migrants in the workplace. They see a role for employers and unions in promoting workplace strategies and employment for migrant workers and combating racism, discrimination and xenophobia towards migrant workers. In their joint statement they emphasise that: ‘Migration offers major benefits to local and regional governments and cities: not only in terms of economic and demographic effects but also by enriching them culturally and opening them up to the world. Local authorities, regions and cities become more and more diverse due to increased migration. The diversity can be characterised in terms of nationality, ethnic origin, religious belief and culture.’ Migrant workers play a role in innovation, and not integrating migrants in work and society would harm the development of cities. The local authorities as employers commit to work with the unions to promote the integration of migrant workers at the workplace.

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XIV. EPSU Report of Activities, January–December 1998, p. 16. The CEEP’s attempts to develop into an umbrella organisation for public sector employers have been partially successful with the later establishment of HOSPEEM, EFEE and EBU, employers’ federations for the hospital, education and broadcasting sectors. See http://www.ceep.eu/secoral-federations

CEEP has established a Public Services Employers’ Forum, including CEMR, Eurelectric, HOSPEEM in February 2012 see http://www.ceep.eu/change-in-public-services. CEEP did not manage to set up an employers’ structure for the central government area. EUPAE is not part of the Public Services Employers’ Forum, which has not really played a role in the European Social Dialogue.
This particular social dialogue in the local and regional government sector now looks back on a decade of joint activities. It seems to be solidly embedded, but it is also true that EPSU had higher hopes as to the possible outcomes of the dialogue in terms of achieving binding agreements for the sector.

1.3.2 Establishing social dialogue in the utilities sector – not a straightforward affair

Joint meetings with energy employers were organised in the course of 1991, firstly with the European Committee of Electricity Supply Undertakings, EURELECTRIC. The latter organisation shared EPSC concerns about the European Commission’s approach to the Internal Energy Market. A number of other areas of common interest were identified with the prospect of issuing joint statements. Initial contacts were also established with EUROGAS, an organisation representing gas employers at European level.93

The EPSC Standing Committee Public Utilities (PUT) held its first meeting in June 1993 in Brussels. ‘The two main items on the agenda were a future strategy for contacts with employers’ organisations in the field of energy ... The Standing Committee made clear that it wanted to pursue the social dialogue on several fronts simultaneously, such as EURELECTRIC94, EUROGAS95, EUREAU96 and CEEP.97 It was above all the imminent introduction of the Internal Market for Gas and Electricity – with fears of more than 250,000 job losses – that underlined the appeal for ‘Social dialogue on European energy policies NOW98 coming from an EPSC Gas and Electricity Conference in June 1994. ‘The recent changes in the gas and electricity sector, initiated at a European level by the European Commission and Council, call for a dialogue between employers and trade unions along the lines of the consultative structures as embodied in the European Community Steel and Coal. ... Trade unions and employers need to discuss the consequences of the Commission proposals and European energy policy, so that the changes take place in a socially equitable manner for both citizens and workers’, the President of the PUT Standing Committee of the time, Branko Rakidzija, is reported to have demanded.99

EPSC was able to spearhead the process and numerous contacts were made in order to promote the sectoral social dialogue.

The EPSC Water Conference of September 1994 in Brussels was also addressed by the General Secretary of EUREAU (Union of European Water Supply Associations), Mr Rillaerts. He made it very clear that EUREAU did not see themselves as an employers’ organisation, ‘but this might change when the Commission puts forward social directives which are relevant for water services. EUREAU is concerned that the Commission is seeking to open up concessions to competition.’100 An EPSC delegation met with EUROGAS to exchange views on possible cooperation, whereas the contacts with EUREAU had been maintained at secretariat level.

A breakthrough in the relationship with EURELECTRIC was achieved as a result of high level meetings with representatives from both organisations. It was possible to agree on draft terms of reference for a joint taskforce.101 Indeed, in 1996 EPSU and EURELECTRIC agreed a statement on health and safety and training that was signed in the presence of Employment Commissioner Pádraig Flynn.102

The 1997 EPSU Activities Reports notes that ‘social dialogue issues under discussion with EURELECTRIC include: health and safety (joint discussion document/compilation of best practice); new technologies and new forms of work organisation;
equality between women and men (feasibility study); vocational education and training (framework document). Progress with EURELECTRIC is slow at the moment because of internal restructuring. At a meeting in April 1997 EURELECTRIC representatives stated that ‘due to merger discussions between UNIPEDE and EURELECTRIC, as well as an ongoing discussion on the role of the sectoral vs. the intersectoral dialogue it would not commit to any new work.’ EUROLECTRIC asked for a ‘time out’ to be able to resolve its internal discussions.

The deadlock was overcome by 1998 and New Terms of Reference and a work programme with EURELECTRIC were recommended for approval by the EPSU Executive Committee in 1998. In December 1999, a joint trade union delegation was formed by EPSU/EMCEF and the employers represented in EURELECTRIC submitted their request for the establishment of a Sectoral Social Dialogue Committee in the electricity sector to the European Commission.

Attempts continued to come to a social dialogue with EUROGAS, but these only took a formal nature in 2007, with the first meeting of the European Gas Social Dialogue Committee taking place on 15 March in Brussels. The social partners used this
occasion to express their shared concern regarding the lack of a social dimension of the European Energy Package. The social dialogue in the gas sector came to a standstill in 2012, however, and remains suspended for the time being due to a lack of engagement on the employers’ side.

Various efforts have been made over time to extend the social dialogue to other utilities. The 2001 EPSU Report of Activities makes reference to ongoing discussions with EUREAU on the effects of the Framework Directive on the water industry and the issue of water pricing; employment prospects for the sector; future skills and competencies; and health and safety. In February 2001 a joint seminar was held with FEAD, the waste employers’ organisation in Europe. Issues for discussion included health and safety.

The social dialogue with EURELECTRIC has over time addressed issues such as the social implications of the Internal Electricity Market, a joint statement on skill needs and a study on Equality and Diversity, which led to the adoption of a toolkit on equality and diversity. Work has been undertaken also on corporate social responsibility. The electricity social partners engaged at an early stage to consider the social implications of energy liberalisation for the applicant countries. A joint conference was organised in Budapest in September 2002, which approved a Joint Statement: ‘Enlargement is a major issue for the social partners in the electricity sector ... The candidate countries and the European Union face the twofold challenge of profound economic and social reform, which is currently taking place in almost all candidate countries. The tasks to be fulfilled require active participation by social partners who must fully live up to their responsibilities’. Following on from this statement three regional seminars were organised for social partners from different areas in the new member states in 2003. The social partners were also involved in pushing for the inclusion of social aspects in the South East Europe Energy Community. In September 2013, the Electricity Social Partners addressed a joint proposal to establish a working group on ‘promoting social dialogue in the countries of the Energy Community’.

The electricity social dialogue is well established. A multitude of joint statements were elaborated and projects undertaken to address the social consequences of liberalisation of the electricity market, including the unbundling of service production and delivery, the enlargement of the European Union and hence the enlargement and restructuring of European Energy Market. The electricity social partners have more recently started to look at the social implications of the climate change agenda and to insist on fair transition measures to be agreed at European level. They managed to include a reference to the importance of ‘just transition’ in the 2050 EU Energy Roadmap. So far the proposals of the European Commission do not address the possible consequences for workers of the measures anticipated. The impact assessments underline that there can be a positive job effect, especially if there are binding targets at member state level for renewables and energy efficiency. But there are also potential shifts in employment between and in sectors which need to be addressed.

1.3.3 From HOPE to HOSPEEM – identifying and ‘organising’ representative employers for the social dialogue in the health and hospital sector

In July/August 2006 both HOSPEEM (the European Hospital and Healthcare Employers’ Association) and EPSU received a letter from the European Commission stating that they had been recognised as representative social partners in the hospital sector.
sector. This cleared the way for HOSPEEM and EPSU to set up a social dialogue committee, to be launched in September 2006. As in other EPSU sectors this was the culmination of years of effort to identify the suitable European employers’ organisation for the hospital sector and, what is more, in providing assistance in the formation of representative employers’ structures. Jane Lethbridge, Greenwich University and PSIRU (Public Services International Research Unit), has described the six-year process of informal social dialogue which started in 2000 and led to the establishment of a formal social dialogue committee for the hospital sector.

The first attempts to get a social dialogue for the hospital sector up and running go back to the early 1990s. The first joint working meeting between delegations of the Hospital Committee of the European Community (HOPE) and the Health and Social Services Committee of the EPSC was held at the EPSC office in Brussels in December 1992. ‘The objective of this first meeting was for the partners to inform each other of their objectives, their activities and to seek the domains for possible cooperation.’

‘The partners underlined the common view with regard to the role the health and social services have in the European construction and the importance the social dialogue should have, in particular in the hospital sector.’ The Health and Social Services Committee (HSS) of the EPSC agreed to further explore the terms of reference for a social dialogue with HOPE, as a priority for future work, particularly in view of a Joint Seminar to be held in January 1994 in Nantes, France.

‘Hope in HOPE’ was dampened after the seminar, which according to EPSC participants had been poorly organised and the sessions had not been concrete enough. Despite the disappointing outcome the HSS chairs agreed to contact HOPE and to propose concrete themes for joint discussion. In its internal debate the HSS Standing Committee identified the following challenges to be addressed with policymakers and employers in an EPSU Policy Statement on European Public Health Policy: ‘the creation of the internal market constitutes a major challenge for policy makers, employers, workers and their trade unions in social and health care services. The freedom of movement of goods, services and persons establishes a deregulated space impacting also on the organisation of social and health care systems. Given the financial problems encountered in most European social and health care systems the further introduction of market elements and the expansion of private funding of social and health services is likely to accelerate.’ The statement ends with an appeal to public sector employers to ‘organise themselves in a suitable form to further a social dialogue and industrial relations at European level on matters affecting conditions of service and employment of social and health care workers.’

Establishing the social dialogue had not advanced by the EPSU Lisbon General Assembly of 2000, the interest among HOPE members was low. In fact, HOPE had taken a majority decision against acting as employers’ organisation, even though some of its members would have been open to such a move. The EPSU Policy Statement: ‘Public Services for People in Europe’ acknowledged that ‘representative employers’ organisations have not yet been established in health and social care at the European level. Efforts to identify employers and put pressure for a social dialogue will primarily be explored with municipal organisations and public hospital authorities that constitute the employers for large sections of health care workers.’

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XXVIII. According to Jane Lethbridge HOPE played a role in promoting social dialogue among its members. 'but because it was not a representative organisation it did not feel that it could take an active part in negotiations between social partners.'
The Congress recommendation was followed up by the organisation of a social dialogue conference facilitated by the Danish social partners in May 2000. The phase between 2000 and 2002 is described by Jane Lethbridge as the ‘introductory phase’, in which conferences organised by a joint committee comprising both trade union and employers’ organisations played a significant role.

This was followed by the ‘informal social dialogue structure’ from 2002 to 2004, starting with a conference on ‘Developing the social dialogue in the European Hospital Sector’ organised in February 2002, with the participation of CEMR-EP and CEEP. The conference conclusions endorse that ‘the parties ... set up a joint representative task force to take the necessary steps to formulate a working programme as a basis for the future social dialogue’. The task force was asked to come forward with a joint statement on free movement of health workers, a work programme for the task force for 2002 and 2003, as well as proposing a subject for the next social dialogue conference.

Issues of common interest emerging from this discussion process, such as free movement of health personnel, recruitment and retention, skill needs, ageing and the hospital workforce, migration/cross-border mobility, later also featured in the joint social partner work programme. Between 2000 and 2006, the employers’ interests were represented by several organisations, although by 2004 the CEEP was the only active organisation in the employers’ camp. Representativity on the employers’ side remained an issue, but in autumn 2004 a breakthrough was reached with CEEP launching the process of establishing an employers’ representation for the hospital sector. CEEP had been given sufficient time to have a thorough internal debate to define their strategy. This discussion process at last came to fruition with the possibility to establish a European Hospital Employers’ Association (HOSPEEM), subject to ratification by the participant CEEP organisations in September 2005. ‘The decision to set up a formal employers’ organisation, specifically for the sector, was the most significant decision in this informal process of social dialogue and facilitated the setting up of the formal European Committee. It was a decision that could only be taken by the employers’ side.’ HOSPEEM also cleared up its relationship with HOPE by granting this organisation observer status in a memorandum of understanding between the organisations.

The newly launched Social Dialogue Committee formally adopted a Work Programme for 2006–2007, which included such items as:

- recruitment and retention;
- the ageing workforce;
- new skills needs; and
- strengthening industrial relations in the new member states.

Awareness of the differences between levels of social dialogue in new and old member states already surfaced during the informal social dialogue phase. This was taken up in the formal Social Dialogue Committee in a research project covering the Czech and Slovak Republics in 2007. This was followed by a joint social dialogue project in the Baltic region in 2010 and 2011, ‘effectively integrating members from across the region, with different experiences of social dialogue’. The first significant achievement of the hospital social dialogue was the agreement on a Joint Code of Conduct on Ethical Cross-border Recruitment in December 2007 and published on World Health Day, 7 April 2008. The declared objective of this Code is to ‘promote and to stop unethical practices in cross-border recruitment of health workers.’ A series of ‘key principles and commitments’ engage particularly the employers in workforce planning, ensuring a
balance between demand and supply, open and transparent information about hospital vacancies across the EU, proper induction and support with housing, equal rights and non-discrimination.

‘Employers should commit to continuous promotion of ethical recruitment practices. Only agencies with demonstrated ethical recruitment should be used.’ The code also recognises the freedom of association for workers. A survey on the use and implementation of the Code of Conduct (CoC) was published in 2012. Fifteen members of HOSPEEM and/or EPSU replied to the enquiry and indicated the CoC was seen as a useful tool in both receiving and sending countries. Only in six countries was the CoC not used due to other priorities or factors. The European Social Partner CoC was echoed at global level by the WHO Global Code of Practice on International Recruitment of Health Personnel, signed in 2010. The ‘Green Paper on the health workforce’ published by the European Commission in 2008 mentioned the ‘Code of Conduct and follow-up on ethical cross-border recruitment and retention’ developed by the European Social Dialogue Committee. Lethbridge takes this as an indication of the recognition of the hospital social partners in wider health care issues. Ethical recruitment and non-discrimination remain topical issues, as can be seen by recent bad practice. The German Society for Intensive Care, GIP, is a specialised private health care provider and employs qualified nurses – in the case in question from Spain – among other things to work in intensive care at the homes of patients in Germany. A TV documentary revealed that these Spanish nurses are not paid according to the collective agreement applicable to nurses in public and private hospital services. This is a clear case of discrimination and unethical employment practice.

What does this tell us about the effectiveness of the EPSU–HOSPEEM Code of Conduct on Ethical Recruitment? Clearly, it is not an instrument to regulate and prohibit discriminatory employment practices in the health care sector, nor was it meant to be. But it constitutes a useful framework of reference which can be used by EPSU affiliates to ‘name and shame’ bad employers.

The most remarkable breakthrough for the hospital social dialogue was the conclusion of the framework agreement on medical sharps, implemented as Council Directive 2010/32/EU in 2010. The agreement was signed by Karen Jennings, Chair of the EPSU HSS Standing Committee, and Godfrey Pereira, Secretary General of HOSPEEM, in the presence of Employment and Social Affairs Commissioner Vladimir Špidla and EPSU President Anne-Marie Perret. Both organisations had endorsed the agreement and its signature successfully concluded six months of negotiations. The rapid and above all very satisfactory conclusion vindicated all those in EPSU who, against external and internal opposition, spoke in support of a negotiated solution. Some Members of the European Parliament at the time were frustrated, considering that their campaigning issue had been ‘stolen’ and hence voiced concerns that a ‘social partner solution’ would produce a weak result. There were also other organisations who had made the question of ‘safe needles’ a lobbying campaign, supported also by relevant actors of the medical industry.

Within the HSS Standing Committee as well, there were members who were not in favour of a negotiated solution. The discussion within the HSS Committee had become necessary following the concrete offer by HOSPEEM to start negotiations for a

XXIX. In an effort to ‘embrace’ the issue EPSU participated in meetings with other stakeholders, for example conferences organised by the European Biosafety Network: www.epsu.org/article/epsu-and-hospeem-contribution-prevention-sharps-injuries-2nd-european-biosafety-summit
Framework Agreement on the prevention from sharp injuries in the hospital and health care sector under Article 139 of the EC Treaty (now Article 153 TFEU).

This offer was sent to EPSU just a few days before the Hospital Sector Social Dialogue Committee meeting on 23 June 2008. The EPSU representatives at the Social Dialogue Committee decided then that – given the circumstances and the previous positions taken – EPSU should not respond immediately, but that the HOSPEEM letter would be sent to the Health and Social Services Standing Committee meeting for further consideration. ‘Intensive debate’ evolved in the Committee around this subject weighing the ‘pros and cons’ of the different options available. Some representatives expressed doubts about the willingness of HOSPEEM to work towards a positive result and preferred the legislative approach. Questions were also raised about the coverage of the agreement and the representativeness of HOSPEEM. A majority of the members, however, decided that the proposal by HOSPEEM created a unique opportunity for EPSU, as it would give social partners the possibility to take matters into their own hands and to even create legislation themselves through an implementation process by Council decision. On condition that HOSPEEM shared these aims concerning the implementation of an agreement, the Standing Committee agreed to start negotiations on the prevention of sharps injuries with HOSPEEM.

The rest is history, one is inclined to say. Not only was the agreement concluded in record time, but it was its contents above all that soothed most of the critical voices. One last hurdle still to be overcome was the discussion process in the relevant council working group, during which social partner representatives were given the opportunity to explain certain concepts contained in the directive. This exercise resembled very much a ‘grilling’ exercise because the government representatives asked critical questions on the interpretation of certain clauses. It also became apparent that some government spokespersons resented the fact that they were outside – as they saw it – the legislative process.

As it happened HOSPEEM made a U-turn from earlier opposition to any type of legislation on ‘needle sticks’. Seemingly they could live with the broader concept of medical sharps and were motivated to enter negotiations under the ‘threat’ of imminent legislation. In the HSS Minutes of 28 March 2008, agenda item 7, the background for decision-making is explained: in December 2007, the European Commission launched the Second Stage Consultation of the European social partners on the prevention of needle sticks injuries. The European Commission also organized with the social partners a technical seminar on this subject on 7 February 2008. The European Commission wanted clarification from HOSPEEM and EPSU on whether they wanted to start negotiations on this subject or whether the European Commission should itself develop legislative initiatives in this area. No joint conclusions were reached at the technical seminar on 7 February. For this reason the Commission decided to proceed in their preparations for legislation, including an extensive impact assessment study. It also requested HOSPEEM and EPSU to reply jointly or separately to the 2nd Stage Consultation.

As HOSPEEM was not ready to commit to a joint positive action on needle sticks injuries and was still very much opposed to any form of legislation, the EPSU secretariat presented to the HSS Committee a draft EPSU reply to the consultation. The secretariat proposed that the Committee call for general and specific legislative measures to prevent the incidence of injuries with medical sharps. It also proposed to include in its reply an offer to HOSPEEM to jointly explore the development of supportive instruments in order to encourage the implementation of existing and future legislation in the hospital sector. The Committee decided that EPSU had to continue its lobby for better legislation on issues such as prevention, training and safe work equipment and to send its reply to the Commission. Furthermore, it stated that social partner actions could support legislative measures, but not replace them.

The agreement takes a holistic approach, making the link between risk exposure/assessment and the work environment, stressing the importance of a well resourced and organised working environment. Importantly, it wants to eliminate the unnecessary use of medical sharps.

This resentment against negotiated legislation turned into fully fledged opposition in the case of the European Framework Agreement on the Protection of Occupational Health and Safety in the Hairdressing Sector from 26 April 2012, concluded between Coiffure EU and UNI Europa Hair & Beauty, presenting respectively the 400,000 salons and one million hairdressing workers in Europe. In this case, too, the sectoral social
The directive entered into force on 10 May 2010 and member states had to bring into force laws, regulations and administrative provisions necessary to comply with the directive or to ensure that social partners introduced necessary measures by agreement by 11 May 2013 at the latest.\textsuperscript{XXXIII}

In 2012 and 2013 EPSU ran a joint project with HOSPEEM to survey the state of implementation of the directive into national law or collective agreements. Implementation at the workplace is obviously key to the effectiveness of the directive. Accomplishing this directive remains an outstanding feat, ‘a success story’ for both EPSU and HOSPEEM.\textsuperscript{149} The directive provides a common social standard binding on all EU member states, but it can also give inspiration for similar legislative initiatives in other parts of Europe and the world.

1.3.4 Social dialogue in central administrations – aspirations versus speedy progress

The EPSC General Assembly of 1989 already mandated the EPSC Presidium to take action in order to establish a formalised social dialogue in the public sector.\textsuperscript{150} The suggestion was advanced that contacts should be made with ministers of public administration of the Community countries. A number of EPSC organisations had already established such contacts, for example CGSP Belgium, FP-CISL Italy and FO France. Three of the twelve ministers expressed interest in the idea of opening a social dialogue at European level. The matter was raised at an informal meeting of ministers in July 1990 in Luxembourg, but the outcome was described as ‘inconclusive’. The Presidium concluded that it would be necessary to launch a systematic campaign.\textsuperscript{151}

The first attempts to set up a structured dialogue took place in 1994. The Directors General of the civil services from 12 member states met an EPSC delegation. The latter pointed to the fact that the creation of the internal market had not been adequately backed by an appropriate administrative capacity. ‘Exchanges of civil servants had been slow and inadequate.’\textsuperscript{152} In the field of taxation, for example, this left opportunities for fraud.\textsuperscript{153} A high level EPSC delegation met with the French minister for the civil service André Rossinot\textsuperscript{154} in March 1995. According to Rossinot, the ‘principle of the implementation of social dialogue was adopted at the Ministers’ meeting on 17 February 1995’.\textsuperscript{155} In the course of this exchange, the ‘CESI issue was discussed. The minister said that this issue had the effect of blocking the process of social dialogue and that a decision had to be taken before going any further. EPSC needed to ask the European Commission to examine this issue seriously with a view to arriving to a decision.’\textsuperscript{156} This assessment of the situation regarding CESI turned out to be extremely pertinent in the light of later developments.

EPSU took a very proactive view on the extension of the principle of free movement of workers to employment in the public sector and argued for the abolition of obstacles
based on nationality for the employment of civil servants. At its meeting of 29 May 1997, the EPSU Standing Committee on National and European Administration appealed to the Social Affairs Council meeting of 12 June 1997, and to the Heads of State meeting at the Intergovernmental Conference in the Hague on 16 June 1997, to take active steps for the opening up of the civil services. ‘Today mobility is prevented where it could be beneficial. In the cases of police, tax and customs authorities and employment services, interchangeability would be very useful to fulfil the general mission of these functions. A well-working internal market would benefit from efficient and effective civil services with a convergence of aims and objectives, which at the same time respect national differences in structure.’

EPSU also expressed concerns about the fact that civil servants and persons treated as such fell outside the scope of coordination in Regulation 1408/71. It was EPSU’s opinion that the ‘opening of the civil services and the securement of the rights of civil servants depend on convergence of the different national structures’. This was a vanguard position, inspired by this feeling of ‘Euro-Optimism’ referred to before and certainly a strong sense that the Internal Market could not work without a system of ‘checks and balances’ of well-working public administrations.

Various informal meetings between EPSU and the Directors General of public administrations took place between 1994 and 1999. Throughout the year 2000, intensive meeting activity was undertaken by the EPSU Secretariat and Standing Committee members in order to advance with the ‘establishment and consolidation of a sectoral social dialogue committee’. During a Forum on the European Social Dialogue in November 2000, the Belgian presidency indicated its willingness to move forward in the social dialogue, but ‘insisted on the Belgian tradition of trade union pluralism’. In closing the Forum, French Minister for Public Administration Michel Sapin stated that he would ‘welcome a regular social dialogue between the Directors General and the trade unions, and urged the Directors General and the Commission to make rapid progress in clarifying representativity’. In the course of 2001 it became clear that no progress would be possible in moving forward in establishing the social dialogue committee without a compromise on the composition of the trade union delegation; that is, a form of accommodation of CESI and/or EUROFEDOP. The question of representativeness was an issue mainly but not exclusively in the sector of national administration.

Both organisations had written to the European Commission with a request to be included in the social dialogue in the local government sector. In subsequent contacts with Commission representatives in July 2000, it became clear that they linked a ‘solution for the national administration social dialogue’ and the recognition of the local government social dialogue. EPSU was asked to take the first step in unblocking the social dialogue in national administration. This gave rise to serious internal conflict within EPSU’s decision-making structures about the value of a sectoral social dialogue, which at that stage was only about to be conceived.

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XXXIV. The position was not shared either by other competing European trade union organisations, such as Eurofedop.

XXXV. Similar problems of representation on the trade union side were also encountered in the establishment of a sectoral social dialogue committee in local and regional government, see next chapter.

XXXVI. EPSU Activities Report, January–December 2000, p. 11. Although the EPSU representatives stated that the joint EPSU/CEMR-EP letter had to be considered on its own merits, the Commission’s response was that ‘they could not endorse a Social Dialogue that risked being legally and politically challenged. Only if EPSU accommodated EUROFEDOP and CESI would the Commission give the green light for the establishment of the Sectoral Social Dialogue Committee in Local Government.’ Note to the EPSU Executive Committee of 15 November 2000, agenda item 6.3.

XXXVII. The year 2000 also marked a change in the EPSU leadership. Herbert Mai, re-elected as President at the EPSU General Assembly in April 2000, stepped down from his position on the EPSU Executive Committee.
The debate on whether EPSU should participate in any meetings with the Directors General together with competing organisations continued to spark off internal controversy. On several occasions the Executive Committee decided that EPSU would not attend such meetings, a deeply frustrating situation, considerably testing the moderating capacities of the EPSU Presidency of the time. The EPSU activity reports of 2002 and 2003 illustrate these problems. ‘The difficulties encountered have again triggered off a debate about the “added value” of the social dialogue in general’, the EPSU General Secretary stated in the oral report to the 2004 EPSU Congress in Stockholm.\(^\text{163}\)

The resolution prepared for the 2004 EPSU Congress at Stockholm entitled ‘Public Services – Europe’s Strength’ re-emphasised, however, in its section on National and European Administration the objective of ‘setting-up an autonomous, strong and representative social dialogue in the EU state sector with a view to establishing social standards in the EU and improving the delivery and quality of services through the involvement of workers and the wider electorate, at both EU and national levels. This will mean solving the trade union representativity issue while pressing employers to become organised at the EU level.’\(^\text{164}\)

The publication of the long-awaited representativity study undertaken by the University of Leuven on behalf of the European Commission was delayed but the draft available in 2004 confirmed that EPSU was overwhelmingly, but not exclusively representative in the sector. Both CESI and EUROFEDOP were attributed a degree of representativity, most notably in Germany, Luxembourg and Austria. EPSU turned out to be the only organisation with members in all 15 EU member states.\(^\text{165}\)

The deadlock was overcome with the endorsement of the EPSU/CESI agreement of 2 February 2005, laying the ground for a single, EPSU-led trade union delegation, called TUNED (Trade Unions’ National and European Administration Delegation). The agreement provided that the titular seats for Germany and Luxembourg were allocated to CESI and a limited number of national seats were allocated to EUROFEDOP, namely Austria, Hungary and Slovakia along the lines of a solution found in the area of local and regional government. The EPSU/CESI agreement led to the immediate relaunch of the informal social dialogue with the so-called Troika of Directors General (DGs) for public administration. Whereas the problems of trade union representation seemed to be resolved, strong divergences now emerged on the employers’ side.\(^\text{166}\) ‘Some DGs expressed opposition to a formal dialogue as it would increase EU interference in public administration matters, while others expressed strong support to strengthen social partners in this sector vis-à-vis the Commission.’\(^\text{167}\) There were two important membership developments which enhanced EPSU representativity at this point of time. In 2004, both the CSC (Centrale Chrétienne des Services Publics) and the Syndicat Libre de la Fonction Publique (SLFP) became EPSU member organisations.\(^\text{XXXVIII}\)

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\(\text{XXXVIII.}\) These two affiliations from Belgium made EPSU representative of the main strands of the trade union movement in this country, namely the Socialist, the Christian and the Liberal trade unions.
After a two year test phase of ‘informal social dialogue’ during 2008–2009, the Belgian federal public service representatives took the initiative to set up an employers’ platform, the EU Public Administration Employers, in short EUPAE. The Social Dialogue Committee was finally launched on 17 December 2010. On the TUNED side, 25 delegates attended the launch and on the employers’ side representatives from nine countries (plus two observers). XXXIX This formal launch marked beyond any doubt the successful conclusion of a long-winded, extremely complicated process and was hailed as ‘huge achievement’.168 In the meantime, the representativity of the EUPAE employers platform significantly improved.169 The dynamics instilled by this achievement largely inspired the early days of the process of formal social dialogue in central government administrations and culminated in the conclusion of a European Framework Agreement for a Quality Service in Central Government Administrations170 in December 2012. Since June 2012, the so-called informal social dialogue with the EU public administration Directors General (EUPAN) has been abandoned as indeed it created confusion with the EU Social Dialogue Committee and was used by some employers as an excuse not to participate in the formal dialogue. A TUNED delegation is nevertheless still attending DGs’ sessions to provide briefings on social dialogue developments.

XXXIX. EUPAE initially covered employers in Belgium, Czech Republic, France, Greece, Italy, Luxembourg, Romania, Spain and the UK, meanwhile Lithuania and the Slovak Republic have become full members as well. Austria, Germany, Hungary Portugal and Malta participate in an observer capacity.
Meanwhile, it cannot be denied that the social dialogue and industrial relations have deteriorated in the public administration sector at national level in a number of countries as a result of unilaterally imposed austerity policies. This is most notably the case in Greece, Ireland, Spain and Italy. Hence a TUNED delegation took the opportunity at a meeting with the EU public administration Directors General in December 2014 to underline ‘the human cost of EU-coordinated austerity with millions of job and pay cuts in central government, with long lasting consequences on the morale of public employers. Many countries where becoming seriously under-administered, incapable of tackling social, economic and ecological challenges and corporate tax avoidance. Unlike the early 1990s when the Italian administration put social dialogue centre stage to successfully tackle massive inflation, today’s government, like many others, had opted to sideline collective bargaining on pay.’

Under these circumstances, it was quite remarkable that the Social Partners for Central Government started to sound out the possibility of reaching an agreement on information and consultation. ‘French Deputy Director General Thierry Legoff said on behalf of EUPAE “that reaching an Agreement would be desirable but the first step was to agree a common text. Britta Lejon, on behalf of TUNED, added that information and consultation rights were essential for a good quality administration”. The Directive 2002/14 EC on information and consultation rights is considered not to cover ‘bodies exercising powers that typically are those of a public authority’, according to jurisprudence of the European Court of Justice.

The Directive 2002/14 EC on information and consultation rights is considered not to cover ‘bodies exercising powers that typically are those of a public authority’, according to jurisprudence of the European Court of Justice.

The prospect of negotiations became more concrete on 2 June 2015, with the Social Dialogue Committee for Central Government adopting a joint response to the European Commission Consultation on a possible consolidation of the three EU directives dealing with workers’ rights to information and consultation at the workplace. ‘In the absence of EU common minimum standards on information and consultation rights for EU central government employees, TUNED, the trade union delegation, and EUPAE, the employers’ platform, confirm to the Commission that they are currently negotiating a legally binding text with a view to secure a common definition of information and consultation notably on restructuring. … The Commission’s Consultation underlines that minimum standards on information and consultation rights enshrined in a number of EU directives do not apply to public administrations. Yet since the start of the crisis, austerity measures have led to unprecedented restructuring in central government causing more than 1 million job losses, pay cuts and weakening of trade union rights. Most restructuring has been imposed with little information and consultation of workers’ trade union representatives, let alone negotiations. In addition, public administrations have become central to EC country recommendations of the European Semester.

After months of tough negotiations the European Social Partners TUNED (Trade Union’s National and European Delegation) and EUPAE (European Public Administration Employers) reached agreement on information on information and consultation rights in central government. ‘This is good news for millions of government employers who have so far been excluded from the EU information and consultation legal framework. … the agreement fills in a legal vacuum at EU level by providing minimum requirements for the employers to inform and consult trade unions on restructuring, health and safety, working time and work–life balance policy.’

Looking at the difficult development of this particular social dialogue, this is a major breakthrough and the deal reached is rightfully described as a landmark agreement. This qualification is further justified by the fact that central government administrations had hitherto been excluded from the EU directive on information and consultation rights. ‘It
shows that against all criticism, social dialogue can work at EU level.¹⁷⁷ This is a good boost for the Social Dialogue, which European Commission President Jean-Claude Juncker has pledged to relaunch during his mandate, and it is proof that structured negotiation between employees, trade unions and employers can bring real results for workers.¹⁷⁸

The agreement reached will now have to pass the scrutiny of the relevant Council working group in order to be transposed into a binding directive. This will be an interesting test case for the viability of the European Social Dialogue.

1.3.5 EPSU and social dialogue – any conclusions to be drawn?

The development of social dialogue in the EPSU area still forms a major pillar of the work done by the organisation. Working towards establishing sectoral social dialogue committees has not exclusively, but very largely stimulated the work in EPSU’s Standing Committees. There are of course other important elements to EPSU’s work at both cross-cutting and sectoral levels, such as lobbying and campaigning on various subjects, but engagement with European employers’ organisations remains a defining feature, also with regard to its recognition at European level. As can be seen from the previous chapters, getting onto four fully fledged social dialogue committees was a very long and complicated process. It has on occasion required compromise solutions to set up a joint trade union delegation, which in the case of the National and European Administration Sector have seriously tested EPSU’s internal cohesion. Officials of the European Commission’s social dialogue unit have on various occasions been very helpful in supporting the establishment of a social dialogue committee or have accompanied crucial negotiating processes.¹¹ The conclusion of binding agreements in health and social services and central government administrations in particular constitute significant value added achieved through the European social dialogue.

Nevertheless, it cannot be ignored that social dialogue at both European and national levels is under considerable pressure. For one thing, austerity policies have had a very negative impact on social dialogue and industrial relations in a number of member states, especially in the Troika countries Greece, Cyprus, Portugal and Ireland, but also in other countries such as Spain, Romania, Hungary and the Baltic states, where cuts in pay and jobs have been unilaterally pushed through by governments, often without any form of consultation.¹⁷⁹

The absence of a European Commission programme on social policies and of a continued engagement for health and safety seriously undermines the dynamics of social dialogue also at sectoral level, as well as the motivation of employers in particular to ‘negotiate in the shadow of imminent legislation’.

It is also noticeable that the social dialogue unit of the European Commission is being undermined politically and that resources in terms of meeting facilities to support the social dialogue are being cut.

Given this context and considering the considerable investment in resources required to maintain and develop social dialogue, EPSU decided to evaluate its results and relevance for its members resulting from a commitment taken at the 2009 Congress.¹¹¹

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¹¹. Jacky Morin facilitated the negotiations between EPSU and CESI which laid the foundation of the joint trade union delegation TUNED. François Ziegler has assisted the social dialogue in the EPSU areas in the past few years and has been instrumental in accompanying the negotiations of medical sharps.

¹¹¹. The survey naturally does not take account of recent agreements in the central government sector.
The aim of the evaluation was to provide EPSU with an indication of the views of affiliates on the work of the sectoral social dialogue committees in which EPSU is involved.

The survey was undertaken in 2013 with a total of 123 responses from 61 affiliates in 28 countries. In sectoral terms, it is only in the health sector that a majority of respondents (60 per cent) report an impact on working conditions. This is no doubt the result of the agreement dealing with sharps injuries. Respondents singled out ‘health and safety’ as the most important issue for EPSU to tackle in the social dialogue. Overall, there was a resounding ‘yes’ to the question of whether the commitment to the European Sectoral Social Dialogue should be continued.

The respondents were given the opportunity to make supporting statements; the comments included the following:

– there is no alternative, the European sectoral social dialogue (ESSD) is in the interest of all parties;
– it is essential to have a forum to exchange information, best practices and collective bargaining successes; it contributes to better health practices and standards across Europe;
– it has a positive influence on social dialogue at national level;
– there is a need to invest in ESSD to deal with regulations coming from the EU;
– it is important for a mutual exchange between member states;
– it is important to have a forum for discussions with employers, particularly in light of increasing EU influence over government budgets and economic policy; and
– it is useful for the dissemination of good practice.

In conclusion, a representative part of EPSU affiliates consider the continued commitment in the sectoral social dialogue as a useful, if not an indispensable investment. This is reflected in the EPSU 2014 Congress resolution 3, ‘Strengthening workers’ rights and employment in Europe through collective bargaining, social dialogue and industrial action’.

One of the action points comes back to the results of the evaluation and stipulates the following:

– work with affiliates on better implementation of agreed texts and support affiliates in capacity building at national level;
– improve the participation of both trade union and employers organisations;
– improve coordination across sectors and ensure an exchange of good practice between sectors;
– also explore with affiliates how to extend social dialogue to other priority areas and address resource implications.

In relation to the last point, EPSU remains involved in the ‘PESSIS 2’ Project, which is aimed at developing a further social dialogue area for non-profit social services. It is difficult to foresee at this stage whether the objective of establishing social dialogue for this sector will be successful, how long it might take until it is formalised and what shape it will take.

XLII These included 51 responses to the general questionnaire and then the following for each sector: 23 for hospitals, 11 for central government administrations; 13 for local and regional government; 16 for electricity and 9 for gas. Of the 51, 28 were from Central and Eastern Europe (55%) and of these 8 from outside the EU (16% of total); see Summary report on the survey evaluation of the European Sectoral Social Dialogue presented to the EPSU Executive Committee meeting of April 2013.
1.4 A European framework for the exchange and coordination of collective bargaining – epsucob@

In 2000, EPSU’s then General Assembly adopted a policy statement on ‘Public Service Trade Unions and Collective Bargaining in a European Environment’. The statement explained the perceived need for coordination of collective bargaining policies among EPSU affiliates.

‘Europe’s public service trade unions are faced with a series of factors influencing their way of operating’:

- the Economic and Monetary Union and the single currency;
- the European Central Bank with its role in setting macroeconomic parameters oriented towards low inflation and stability;
- the Employment and Social Chapter within the Amsterdam Treaty;
- the Stability and Growth Pact, which constrains public budgets.

Hands off our collective bargaining rights,
one of EPSU’s campaign ‘No to austerity’ logos.
Source: EPSU

The European Metalworkers Federation (EMF), now IndustriAll, was the first European trade union federation to develop a policy for sectoral coordination of collective bargaining in 1997. The ETUC, too, set up a committee for the coordination of collective bargaining in 1999 with three objectives: (1) to provide trade unions at European level with a general indication of wage bargaining developments in response to the European Commission’s broad economic policy guidelines and the European Central Bank guidelines, as well as to influence the macroeconomic dialogue at European level; (2) to avoid situations leading to social and wage dumping; (3) to coordinate wage claims in Europe, especially in countries that form part of the eurozone and to promote upward convergence of living standards in the EU. See EurWork (2013) Coordination of collective bargaining, European Observatory of Working Life, http://www.eurofound.europa.eu/observatories/eurwork/industrial-relations-dictionary/coordination-of-collective-bargaining
Against this backdrop EPSU’s policy was to try to coordinate wage policy objectives across Europe. “The aim of coordination is to establish some common and/or minimum standards in public services across Europe. A coordinated strategy should ensure that collective agreements converge upwards and do not undermine each other.” This approach did not aim at having EPSU policy replace that of affiliated unions. As stated clearly in the policy statement at the 2000 General Assembly: ‘EPSU affiliates are autonomous in collective bargaining.’ This last sentence suggests that there were reservations about attempts at European coordination, particularly in the area of wage bargaining. Although there certainly continues to be a rationale for such coordination there have been considerable challenges in the international monitoring and analysis of pay and conditions, as well as questions about how this work fits in with the needs and priorities of national affiliates.

Following the adoption of the policy statement in 2000, the EPSU Executive Committee approved the formation of a European network for the exchange and possible coordination of collective bargaining, epsucob@, following the example of the then European Metalworkers Union’s EUCOB@ network.

Epsucob@ is a network of national correspondents whose aim is to make available updated information on national collective bargaining negotiations, industrial action and other important developments with regard to the pay and conditions of workers in public services across Europe.

The main mechanism for exchange, since 2004, has been the electronic newsletter which is circulated around 20 times a year and includes news on the latest collective bargaining and developments in pay and conditions, particularly in the public services, but also including important news from other sectors. Since February 2008, the European Trade Union Institute (ETUI) has followed this initiative and began to publish a general collective bargaining newsletter covering all sectors.

The other regular forum for exchange of information has been provided by collective bargaining conferences, organised 11 times in the 13 years up to 2015. This has proved a popular format among EPSU affiliates, regularly attracting more than hundred participants from 20 or more countries and covering all EPSU sectors. The conferences offer the opportunity for discussion with researchers, to exchange information on the latest collective bargaining trends and debate strategic areas of collective bargaining policy.

Each conference has included an overview of collective bargaining and developments with regard to pay and conditions in the public services. From 2009, that has been in the context of austerity and from 2011 in the framework of the European Semester, the system of economic policy coordination developed by the European Commission, which has had important implications for collective bargaining in general and the development of public sector pay in particular. Along with these important themes, the conferences have allowed EPSU affiliates to have detailed exchanges, often over a number of years, on other key policy areas, particularly outsourcing, equal pay, working time and minimum wages, but also the ageing workforce and demographic change, precarious employment and decent work and low pay and minimum wages.

Discussions on outsourcing, for example, featured at several conferences over the years and contributed to the drafting and publication of a checklist for negotiators (see below). The debates on equal pay (see below), working time and minimum wages have also helped further policy discussions on these issues within the Gender and Women’s Equality Committee and Executive Committee.
1.4.1 Outsourcing

A checklist was developed in 2006 with key requirements, for instance on training and qualifications, pay and conditions and the possibility to bring services back. The 2012 Collective Bargaining Conference ran a special workshop on outsourcing and procurement. It was stressed that outsourcing was leading to a fragmentation of collective bargaining and even in countries with high collective bargaining coverage, outsourcing often involved a gradual erosion of employment conditions. The need for social rules in public procurement was underlined and their attainment played a major role in EPSU’s lobbying on the revision of the public procurement directives.

1.4.2 Equal pay and the gender pay gap

Pay equality remains high on EPSU’s list of priorities, following on from two resolutions adopted at the 2009 Congress. EPSU has carried out a survey of affiliates, aiming to find out the size of the gender pay gap in EPSU’s sectors across Europe. This policy area will be described in more detail in a separate chapter.

1.4.3 EPSU Collective Bargaining Network

The objective of the collective bargaining network, the conferences and newsletter remains to assist unions to better prepare and respond to the biased use by employers, governments and the European institutions of European comparisons of pay and conditions to justify ‘structural reforms for competitiveness’. Often indicators are taken out of context, with exaggerated claims about pay trends in the public sector compared with the private sector.

More challenging, however, is moving from this to a real form of collective bargaining coordination and even to a sustained and structured exchange of pay and conditions data. Coordination across EPSU’s four broad sectors poses some difficulties but even attempts to get affiliates working more closely within sectors has not proved very successful so far.

Between 2009 and 2011, EPSU brought together representatives of energy unions in six countries – Austria, Belgium, France, Germany, Luxembourg and the Netherlands. The logic was that energy trade unions in these countries were facing similar challenges in terms of market trends and multinational employers. Participants found the meetings a useful way of keeping in touch with colleagues, particularly those dealing with the same multinational companies.

However, moving from this exchange towards coordination was more difficult. There were several discussions about ways of comparing pay across countries, looking at specific occupations and different sources. This debate lead in 2011 to the WISUTIL project, funded by the European Commission and supported by the researchers at the University of Amsterdam and the Wage Indicator international online system of pay surveys.

Neither the six-country energy network nor the WISUTIL project proved sustainable. The network depended in particular on the individual commitment of participants and this was often difficult to maintain along with their other responsibilities and when individual members moved on to other jobs. Meanwhile, the WISUTIL project
required individual workers in the energy sector to complete detailed questionnaires and while this generated a good level of responses in a small number of countries, it did not achieve adequate support across the majority of EPSU affiliates in the sector. There was a similar outcome when EPSU attempted a project focusing on the social services sector in 2013–2014 (WICARE\textsuperscript{194}).

Both projects highlighted some of the basic challenges in international comparisons of pay. Not only are pay arrangements and structures often very different, but even identifying similar jobs and occupations can pose significant problems. In the WICARE project, for example, EPSU affiliates from one country decided not to take part in the project as what were supposed to be internationally recognised job titles bore very little relevance to the occupational structure in social services in that country.

However, there are other hurdles to overcome when assessing the potential for coordination at a European level. There are the very varied national traditions, structures and processes of collective bargaining in each country, including major differences in the timing of negotiations, length and content of collective agreements and bargaining priorities for national affiliates. There has also been the trend towards decentralisation and so even where there may be a sectoral agreement setting some basic pay and conditions, there is an increased role for local trade union organisations in negotiating additional elements of pay and many other conditions. This does not preclude possible coordination on some of the broader themes but may complicate the process of consultation with a large number of local union branches and workplace organisations.

\section*{1.4.4 Transnational company agreements}

Transnational company agreements are the outcome of negotiations between trade unions organising workers in the same company in different countries and the central management of such companies.\textsuperscript{195} That this is an important discussion for EPSU may be surprising. Due to privatisation the membership of public service trade unions in private companies has grown since the early 1990s. The privatised companies were often taken over by multinationals. Some of these employed hundreds of thousands of workers in EPSU sectors, ranging from the various forms of French companies, such as Companie Générale des Eaux (later Vivendi, now Veolia) and Lyonnaise des Eaux (then Suez, GDF Suez, now ENGIE and Suez Environment) to the EDF energy company, and from German energy companies, such as EON and RWE to the Swedish health care company Capio.\textsuperscript{194,197}

The affiliated unions in the sector continued organising workers in these companies and hence EPSU became involved in establishing European Works Councils. Soon, management of some of the companies found it opportune to have agreements on certain topics that covered the whole workforce. They looked for the most appropriate bargaining partner. On the trade union side as well, there was an interest in such agreements. But before entering any negotiations on transnational company agreements difficult internal debates on the role of EPSU in this process had to take place. Questions of mandates, approval of agreements and signing the final results had to be settled. The discussions to achieve a coherent policy framework took three years in

\textsuperscript{XLI}.

During the revision of the EWC Directive (2007–2009), EWCs with EPSU involvement issued a statement on 9 June 2008 to demand urgent action on the revision representing over 1 million workers, a substantial number of the overall number of workers covered by an EWC agreement at that time www.epsu.org/article/one-million-workers-ewe-say-commission-act-now-revision-directive
EPSU. Ultimately the procedures were very close to those of the EMF (European Metal Workers Federation now IndustriAll-Europe), which pioneered this work. The EPSU Executive Committee finally adopted the procedure for negotiations at multinational company level in November 2009.\textsuperscript{196}

The agreements EPSU has been involved in cover issues of corporate social responsibility, health and safety and well-being at work, profit-sharing, social guarantees in the case of mergers and restructuring, training and equality. Chapter 6.4 on Bringing Gender to the Mainstream details the GdFSuez transnational company equality agreement. A further strengthening of this work was the establishment by EPSU of a legal assistance fund so that the Federation could contribute to the costs related to disputes with multinational managements.\textsuperscript{197}

Transnational company agreements and sectoral social dialogue agreements are for the moment the most pronounced and successful examples of coordination. But they do not involve pay, working time or other terms and conditions.

1.4.5 Supporting trade union rights

EPSU responds to many demands by affiliates when employers of local and especially transnational companies violate workers’ rights. Some notable examples include the support for strike action of the Hungarian electricity union VdszSz in 2007–2008. In a dispute over pay and cuts in rights, EPSU brought representatives of CGT-FNME (France) and SDE (Slovenia) to Budapest to make the point that strikes in the electricity sector must be possible.\textsuperscript{198} Both the employers and government understood the message and agreed to settle the dispute.

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Carola Fischbach-Pyttel, EPSU General Secretary from 1996 to May 2014, speaking at the Kesk trial, Ankara, January 2014.

Source: EPSU
EPSU and other unions have repeatedly attended trials of Turkish unionists jailed on charges of supposedly supporting (Kurdish) terrorist organisations. The participation in these trials demonstrated to the authorities that these workers were not forgotten and deserved a fair trial. All of the incriminated trade unionists were released. This type of coordinated solidarity action by EPSU and its affiliates shows to employers and governments that national unions under attack can rely on the support of an extensive network of contacts and support. The experience shows that coordinated and publicised action by the European and global trade union family can make a difference.

1.5. Defending the Working Time Directive - time well spent!

The Working Time Directive is an essential health and safety legislative instrument for many groups of workers within the EPSU remit. This is true in particular in all sectors operating on a 24/7 basis, such as health and social services, fire and emergency services or control and surveillance services in the utilities. The Working Time Directive lays down basic principles concerning maximum weekly working hours, daily rest time, breaks, weekly rest times, annual holiday and the duration of night work.

The Working Time Directive was first adopted in 1993 and revised in 2000 and 2003. It is probably one of the most controversial pieces of EU legislation, leading to the infamous British opt-out under John Major in 1993, supposedly meant to be temporary. There were further attempts by the European Commission to revise the Working Time Directive as of 2004. In particular, the implementation of European Court of Justice (ECJ) case law on the consideration of on-call duty at the workplace as working time turned out to be very contentious.

In response to the rulings in the cases of SIMAP and Jaeger, to be confirmed in 2005 in the Dellas case regarding the treatment of on-call duty at the workplace, the then Employment and Social Affairs Commissioner Stavros Dimas came out with a controversial proposal to revise the WTD, leaving it to member states to decide whether ‘inactive time spent “on-call”, notably in the health sector was to count as working time’. He thus deliberately chose to ignore the very clear reasoning of the ECJ in relation to being on-call at the workplace as working time. This political move has no doubt contributed to devaluing the Working Time Directive, as pointed out by the ETUC in a press release at the time: ‘The proposal to only define the active part of on-call working time as working time will deprive workers in many sectors (and not only health care) of the right to appropriate and compensatory rest periods after long hours of work, very often in situations where a full day of work has been followed up by an on-call night shift.’

John Monks, then ETUC General Secretary, expressed his disapproval with the Commission’s course of action in no uncertain terms, stating that the Commission had ‘largely caved in to pressure from certain member states and employers’ lobbies on key issues like making the individual opt-out more widely available, giving employers a unilateral right to organise working-time over 12 months, and practically ending protection for on-call workers. …The Commission has sided with the general employers’ offensive on working time.’ This policy line taken by the Commission should prejudice any further attempts for a more positive interpretation of the Working Time Directive in the following years. It explains its reluctance to take infringement proceedings against member states in violation of the Working Time Directive or, for that matter, to publish regular transposition reports.
A call to ‘save the working time directive’ was to mobilise national EPSU affiliates to lobby their governments for positive amendments and to muster support for an ETUC demonstration in Strasbourg on 16 December 2008.210

On 17 December 2008, the European Parliament voted by an absolute majority to scrap the notion of an opt-out from the Working Time Directive and to enforce an EU-wide maximum working week of 48 hours. The Parliament’s position also foresaw that any period of on-call work must count as working time in line with ECJ rulings, whereas governments and the European Commission had favoured a concept of ‘active’ on-call time (a period during which the worker must be available at the workplace, in order to work when required by the employer and ‘inactive’ on-call time (a period when a worker is on-call by being required by his employer to work).211

Rapporteur Alejandro Cercas, a socialist MEP from Spain, led a very courageous battle to enforce the provisions of the directive. He said: ‘This is a triumph for all political groups in the European Parliament – for the whole Parliament. It is a victory for the two million doctors and medical students across the EU. I would like to congratulate the ETUC. This is an opportunity for the Council to engage with the citizens’ agenda and to have a constructive conciliation. I call on the Commission to stop supporting the Council and play the role of an arbitrator.’212 Unfortunately, the European Commission did not live up to this expectation and no agreement was reached in conciliation in April 2009.213

A further round of revision was kicked off by the European Commission in 2010 and again it did not give the impression of really wanting to ensure proper implementation of its erstwhile legislation. In EPSU’s response concern is expressed that ‘the Working Time Directive has not functioned properly because inadequate action has been taken to ensure that it has been fully transposed and implemented at national level. It would also have provided greater legal clarity if the Directive had been amended to take account of the European Court of Justice rulings on on-call time at work, sending out a clear message to national governments and the social partners that they should not put off tackling this issue.’214

Representatives from EPSU affiliated unions met in February 2011 to discuss the second phase of the European Commission’s consultation over the Working Time Directive. The meeting was held to assist EPSU in preparing its response to the European Commission. “The meeting was clear on a number of fundamental points. Firstly, the European Commission’s proposals came at a time of unprecedented pressure on the public services combined with calls from the European Union for more flexibility in the labour markets. In this context EPSU thinks that it is all the more important to defend the minimum standards of the Directive.”215

Within the ETUC, views differed widely as to the appropriateness of entering into negotiations with the employers at intersectoral level on the review of the Working Time Directive.

The ETUC Steering Committee of September 2011 in the end agreed on the main lines of a mandate which included the following main issues:

– ending or phasing-out the individual opt-out in the near future;
– keeping the status quo concerning reference periods;
– ensuring compliance with judgments of the ECJ on on-call time and compensatory rest;
– specifying that limitations on working time apply per worker and not per contract.216
The mandate was endorsed in its broad outlines by the ETUC Executive Committee of October 2011. Some member organisations – notably the DGB, the CGT and UNI Europa – voiced strong reservations about the gains to be made through negotiations during the debate of the ETUC Executive.

In November 2011, the EPSU Executive Committee mandated the General Secretary to represent EPSU in any cross-sectoral negotiations on the Working Time Directive and to be part of the smaller negotiating group, should the need arise. When agreeing the negotiating mandate in November 2011, the EPSU Executive Committee also approved the formal setting up of a Working Time Advisory Group (WTAG) that would meet during the negotiations and provide the opportunity for EPSU affiliates to discuss progress in the main negotiations, as well as feed in and react to discussions in the ETUC drafting group.

The WTAG discussed, in some detail, ways of tackling the central issues of on-call time and the opt-out, looking also into possible areas of trade-offs. The discussion on possible compromise areas remained inconclusive, however, with a general affirmation of the treatment of on-call duty at the workplace as working time and the objective of restricting the time-limited use of the opt-out to a limited number of sectors. While there were divergent views on occasion, the group was able to elaborate a series of joint proposals and as such represents one of the good examples within EPSU of elaborating agreed negotiating principles.

The negotiations started in December 2011. There were altogether nine formal meetings between the employers’ side, consisting of representatives from Business Europe, UAPME and the CEEP and the ETUC. EPSU was a member of the ETUC delegation and was also represented in the drafting group. September 2012 marked the end of the official nine-month period for negotiations, but in fact it was only in September that both parties started to address the substantial points. As might be expected, the main sticking points during the negotiations were the definition of working time and the refusal of the employers to agree to an eventual phasing out of the opt-out.

The employers argued that the opt-out was used by many sectors and not restricted to areas where on-call is being undertaken. Whether private, public, large or small companies, they all needed the opt-out as a ‘general option’. The employers frequently made the argument that any final agreement would have to meet the scrutiny of the Council, implying that the social partners were not free to negotiate autonomously. They time and again referred to the need for ‘legal certainty’ and that a revised directive should not give rise to further challenges. It was therefore necessary to introduce a definition of inactive on-call time. It was crucial to end ‘absurd situations where workers on on-call could sleep for 10 hours’.

The latter point was countered by the ETUC, proposing to look at particular circumstances in areas where a 24-hour service was required for objective reasons, for example public security or health. The ETUC equally stressed the need for legal certainty, referring in particular to the EU legal acquis in Article 31 of the Charter of Fundamental Rights (CFR), whereby the EU and member states have to ensure that ‘every worker has a right to limitation of his working hours’ and ‘to progressively reduce working hours, while improvements are being maintained (Article 151 TFEU). Moreover the Working Time Directive was aimed at the ‘improvement of workers’ safety and health at work, an objective which should not be subordinated to purely economic considerations’.

In the event, the negotiations ended in stalemate. ‘Following long and heated debates lasting almost a year, the ETUC Executive Committee decided that the “final offer” from the employers was not sufficiently balanced and consequently did not make
it possible to continue the negotiations as such.’221 The employers had been unwilling to take on board any suggestion of closer monitoring or further restriction of the individual opt-out, let alone full abolition. It had also become clear that they were not interested in addressing the on-call issue apart from the introduction of definitions of active and inactive working time.222

‘One of the most high-profile setbacks of the intersectoral social dialogue was the failure of the social partners to agree on a revision of the Working Time Directive.’223 This statement by an outside analyst does not take account of the unfavourable circumstances under which the negotiations took place, certainly from a trade union perspective. The European Commission had since the early 2000s shown little political will to proactively pursue a health and safety agenda.

The overall political direction of the European Commission led by José Manuel Barroso until 2014 has, with its next to exclusive focus on the internal market, competitiveness and labour market reforms, very seriously undermined the concept of Social Europe and Social Partnership. His Commission echoed calls from Business Europe, the European private sector employers organisation224 for a more ‘competitive’ European Union.225

A prime example of this deregulatory approach was developed with the Communication of the European Commission of 2 October 2013 concerning the REFIT programme – ‘Regulatory Fitness and Performance’.XLV Literally on the verge of leaving

XLV. REFIT was not only used as pretext to withdraw a number of legislative proposals in the area of health and safety that had been in the pipeline for some time, such as a Directive on musculoskeletal disorders and the revision of the Carcinogens directive, but has also served as reason not submit social partner agreements for
office, the Barroso Commission commissioned two studies, a procedure considered inappropriate by EPSU and potentially prejudicial to the incoming Juncker Commission. The studies covered a survey of the public health sector in eight countries and a broader survey of different sectors covering 10 countries. The Commission had also approached all governments and social partners to ask their views about the implementation of the directive. The EPSU WTAG at their meeting of September 2014 expressed concern about the way these studies had been carried out, with much more focus on costs and administrative ‘burdens’ than on health and safety.

EPSU affiliates were encouraged to address these issues at national level by writing to their respective governments. The EPSU Secretariat in turn addressed a letter to Commissioner President Juncker and Social Affairs Commissioner Thyssen in November 2014 that emphasises the importance EPSU affiliates attribute to the Working Time Directive. ‘Our affiliates regard working time as a priority issue with many of their members facing either excessive working hours or the stress and unpredictability of zero-hours. This was discussed at our Executive Committee yesterday with a clear call for the Directive to be strengthened to provide better protection. We fear, however, that the studies and therefore any proposals arising from them will focus more on what are claimed to be the administrative “burdens” of the legislation. Such an approach would generate widespread opposition from the European trade union movement and mark a very inauspicious start to the Commission’s work on social policy.’

A note submitted to the ETUC Executive Committee on the review of the Working Time Directive of March 2015 remarks that ‘The review of the WTD was not taken up by the Commission in its work programme 2015, which indicates that it is not one of the top priorities of the new Commission and that this will not be a speedy dossier, but it does not mean that this topic is off the agenda.’ More than one year later, in May 2016, it would appear that the Working Time Directive still does not feature among the immediate priorities of the European Commission and no further initiative has been taken to pick the issue up again.

Overly long working hours and the risks these entail for service users, such as patients under treatment in hospitals, remain on the trade union agenda, as demonstrated in the United Kingdom. On 9 February 2016, junior doctors organised by the British Medical Association (BMA) took industrial action in their campaign to defend their working conditions and patients’ safety. Among the main issues to be addressed by the strike action was the removal of strong financial sanctions on health service employers who break the rules on working time limits. The strike was supported by EPSU affiliate UNISON, with its General Secretary Dave Prentis joining the picket line at one of the hospitals. This industrial conflict illustrated that the regulation of working time and the reduction of excessively long working hours remain of crucial importance.

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XLVI. Conspicuously in line with the REFIT programme aiming ‘to cut red tape, remove regulatory burdens, simplify and improve the design and quality of legislation so that the policy objectives are achieved ... at the lowest cost and with a minimum of administrative burden’, see Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions - Regulatory Fitness and Performance (REFIT): state of play and outlook, COM(2014) 368 final, p. 2, http://ec.europa.eu/smart-regulation/docs/com2014_368_en.pdf

XLVII. For background, see British Medical Association, http://www.bma.org.uk/iafaq; the BMA is not an EPSU member but EPSU affiliate UNISON has collaborative relations with the BMA, see endnote 29; also article...
1.6 Bringing gender into the mainstream

The preamble of the EPSU Constitution reads: ‘The promotion of equal rights and opportunities principles is central to EPSU work. ... All affiliates will strive towards the attainment of equal representation of women and men in their own decision making bodies. EPSU is committed to achieve 50 per cent women’s representation in its own structures.’

Women represent 68 per cent of the membership in EPSU affiliates. Improving equality between the sexes has therefore become a major trait of EPSU work. Integrating the gender perspective into all EPSU policies and actions as a cross-cutting issue is a key element of EPSU activities. It is no exaggeration to say that EPSU has been in the vanguard in promoting women to leadership positions, as well as engaging men for the cause of equal opportunities.

1.6.1 Going back to the beginnings

‘EPSU has a long tradition of working for the achievement of gender equality. Gender equality is a core objective of EPSU’s Constitution and is anchored in EPSU’s policy framework (Executive and Congress policies). As a result it underpins the work of the organisation and has been integrated in varying ways into its core work, campaigning and activities at the sectoral level. As well as engaging in targeted gender equality actions through the Women’s and Gender Equality Committee, EPSU has also sought to bring gender equality into its work and representative structures.’ This was the conclusion of a gender mainstreaming audit in 2010.

Where did it all start? The representation of women, the articulation of their problems and their integration into the main, often male dominated, trade union agenda has been a key issue for EPSU since its early days. The question of how this should be done has been subject to intensive discussion over the past two decades. The key issues include: women’s rights, women’s empowerment, quotas for the representation of women, women’s committees or gender equality committees, gender stereotypes, gender mainstreaming and overcoming the gender pay gap.

In 1994, women trade unionists, equal opportunities officers and other key multipliers for equal opportunities in public sector unions from France, Italy, Spain, Portugal, Greece and Cyprus came together in Florence.


Women’s empowerment refers to strengthening women’s social, economic and educational capacities. It refers to an environment in which there is no gender bias and women have equal rights in the community, society and workplaces. See: http://www.importantindia.com/19047/short-paragraph-on-women-empowerment

The introduction of quotas is one of several methods of increasing the participation of women; for example, women’s representation in a committee is set at a minimum which can either be fixed or proportional. See Dean H. (2006) Women in trade unions: methods and good practices for gender mainstreaming, Brussels, ETUI, p. 17, http://www.etui.org/Publications2/Reports/Women-in-trade-unions

Gender mainstreaming is the public policy concept of assessing the different implications for women and men of any planned policy action, including legislation and programmes, in all areas and levels. ... the concept of gender mainstreaming was first proposed at the 1985 Third World Conference on Women in Nairobi, Kenya, promoted by the United Nations development community. The idea was formally introduced at the 1995 Fourth World Conference on Women in Beijing, China, and was cited in the final conference document, the Beijing Platform for Action. See https://en.wikipedia.org/wiki/Gender_mainstreaming
The following list of demands was developed for reference for the affiliates, the EPSC, the PSI World Women’s Committee, the ETUC and other European institutions in order to guarantee the:

- right to a stable job;
- purchasing power of wages and abolition of wage discrimination;
- equal access to all jobs and positions, particularly those generally reserved for men;
- transposition of Community legislation in the area of health and safety into national law;
- recognition of maternity as a responsibility of society; its protection through improved legal or contractual standards; maternity should not give rise to discrimination against women workers; a revision of the maternity directive was felt to be necessary;
- improvement of public services in the areas of child care, the elderly and disabled people so that both men and women can pursue their professional duties.
- equitable representation of women in trade union bodies at all levels, better reflecting the levels of female organisation;
- elaboration of a European charter for women public sector trade unionists;
- establishment of an information and contact network among women trade unionists in the Mediterranean area;
- establishment and up-dating of statistical data illustrating the degree of unionisation of men and women in affiliated unions.

The seminar also pronounced itself against the deregulation and privatisation of public services.\(^{237}\)

A further EPSU seminar addressed the gender gap in pay, reflecting on occupational segregation and the fact that ‘women’s’ jobs tend to have low status. The demand for a job evaluation system was formulated to develop a common trade union strategy at European level. Other important issues identified were parental leave and childcare, sexual harassment, the need to change prevailing attitudes and the need for training of trade union officials to handle sexual harassment cases. These issues were seen as areas in which the European social partners should act.\(^{238}\)

A Women’s Coordination Group was formalised by the EPSU Executive Committee in May 1998 to coordinate gender equality issues for input to the Executive and Steering Committees. It consisted of the seven European representatives of the PSI World Women’s Committee (EWOC) of whom five had seats on the EPSU Executive Committee. The group was active in discussing EPSU policy issues (mainstreaming), monitoring the development of the nomination of women in EPSU bodies and considering pertinent EU matters.\(^{239}\)

The group was instrumental in drafting a policy statement on Gender Equality for the General Assembly 2000\(^{240}\) and also contributed to the revision of the EPSU constitution to include more women in active positions and the nomination of more women representatives to EPSU bodies.\(^{241}\)

An important change in approach got under way with the EPSU/PSI Gender Equality Conference in Budapest in November 1999. This conference replaced the traditional women’s conference held immediately before EPSU General Assemblies. ‘The conference almost succeeded in the aim of having an equal number of women and men participants. The purpose of the conference was to achieve the objective of reaching 50 per cent representation on governing bodies, and it was designed to provide a forum for affiliates to consider concrete ways to implement these commitments.’\(^{242}\)
As a result of a revision of the EPSU Constitution, the Women’s Coordination Group ceased to function. A Gender Equality Committee (GEC) was set up after the General Assembly.\(^{243}\)

The approach to women’s representation within trade union organisations was the subject of intense debate and the idea of gender mainstreaming was not universally accepted. There were those who favoured the approach of a women’s committee as opposed to a gender equality committee. There was, however, a prevailing view that women’s structures carried the risk of being perpetually marginalised. Importantly, it was felt that equal opportunities for women should not be treated as being exclusively about women’s problems, but be considered an integral part of all trade union policies. A survey on women in ETUC member unions quotes an EPSU representative: ‘It is essential not to distance equal opportunities questions from the realm of decision making’, thus summarising the arguments for opting for a gender equality committee rather than a women’s committee.\(^{244}\) It is important that male trade unionists be involved in the discussion of equality policies. This clearly was not only a question of a committee’s composition and remit, but rather the setting up of a gender equality committee was part of an overall gender mainstreaming concept.

To create acceptance for this policy concept the EPSU Executive Committee held a half-day seminar on gender mainstreaming in November 2002, organised in plenary and workshop sessions. Resistance had to be overcome to actually hold such a session\(^{11}\) and it also showed that ‘the gender-mainstreaming concept has not yet met with full acceptance. Information and awareness-raising measures are necessary to ensure broad implementation’\(^{245}\).

Consequently, the Gender Equality Committee action plan 2004–2009 aimed at ‘developing a more subsectoral approach to equality, to be carried out in close cooperation with EPSU’s Standing Committees. New themes would include gender budgeting and the use of equality funds to rectify the pay gaps.’\(^{246}\)

\(^{11}\) The fact that the session took place thus involving presidents and general secretaries of national affiliates was an achievement in itself.
The dichotomy in approach resurfaced in the course of the merger discussions between EPSU and PSI Europe, starting in 2005. The PSI Europe Region had a European Women’s Committee in contrast to the EPSU Gender Equality Committee. While there was clarity that gender equality and gender mainstreaming work needed to continue as an integral part of the future organisation, the question was, how should this be done? The 2006 EPSU Report of Activities notes with regard to the PSI Europe-EPSU merger discussions, that the Gender Equality Committee ‘recommended that content and objective should dictate the structure and not the other way around. Its preference was clearly to keep a gender equality committee composed of both women and men but it was also important to reach a consensus with members of PSI’s EWOC’. A compromise formula was agreed in 2007 and the Committee was renamed the ‘Women’s and Gender Equality Committee’. The participation of men in the actual work of the Gender Equality Committee has gone down over the years. In 2004, 62.5 per cent of the Committee’s titular members were women, whereas in 2013 women’s participation in the Committee was 83 per cent. (EPSU regularly monitors the gender breakdown of participation in its main committees.) According to the Committee’s nomination list of January 2015 there were three men out of a total of 18 nominated titular members. This dwindling involvement of men in the work of the Committee may be regretted, but it is perhaps more important to look at the impact of EPSU’s gender equality work on the overall organisation. Here it is fair to say that the Committee has helped to prioritise gender equality in EPSU and an important body of work has been established. ‘While women’s representation in EPSU structures has a good record, more action is needed to achieve gender parity in line with the Federation’s constitution.’

1.6.2  Representation of women in EPSU and its affiliates

A report on the ‘representation of women in EPSU and its affiliates’ was undertaken by the Swedish member organisation SKTF (now called Vision). The report was presented and approved by the EPSU Executive Committee on November 2009. ‘On the basis of 47 responses from EPSU affiliates, representing 9.8 million members, it was found that 68.5 per cent of EPSU’s members are women (in the post-merger affiliates it is almost 80 per cent), compared with 40 per cent in the ETUC.’ A majority of leaders of the affiliated unions are men, with the exception of the Nordic constituency, where a majority are women. In the post-merger affiliates leadership is fairly distributed between men and women. Women’s share in affiliates’ Congresses and highest decision-making bodies has also increased, often as a result of binding gender parity and/or proportionality provisions. However, in the EPSU Executive Committee and sectoral committees, women’s representation remains below our constitutional requirements for gender parity and proportionate representation, respectively. In sectoral committees, women’s membership does not reflect the affiliates’ reported female membership. Where there are some good practices the general picture can be much improved, which will require pro-active measures both at national and European levels. The report is quite stark in its assessment of the representation of women in EPSU bodies. ‘To achieve gender parity, or proportionality, EPSU needs to put gender equality on the agenda as

11. Vision is the Union of Local Government Officers organising white-collar workers employed by municipalities and county councils (or companies owned by them) and the church. See http://www.tco.se/Om-TCO/Detta-ar-TCO/This-is-TCO/The-TCO-Unions
a fundamental trade union right, and not only pursue it out of bad conscience. Today gender equality seems to be regarded as a luxury problem and the democratic deficit is rarely mentioned.\textsuperscript{257} The Executive Committee mandated the EPSU secretariat to draft an action plan to help improve representation of women in EPSU bodies. The situation of women’s representation was reviewed in 2014. On the whole, women’s representation has improved. Women made up on average 52 per cent of affiliates’ congress delegates in 2014, compared with 49 per cent in 2009. The improvements do not, however, necessarily filter through to the EPSU decision-making bodies; for instance, the Executive Committee, on which women’s representation has remained constant at around 40 per cent.\textsuperscript{258} The problem is picked up in point 29 of the 2009 EPSU Congress Resolution on Equal Pay, reiterating the need to ‘improve women’s participation in the Executive Committee and Standing Committees and in all its activities to reach gender parity and/or proportional representation, depending on the sector, and to improve men’s participation in the Gender Equality Committee.’\textsuperscript{259} The 2014 Congress again reinforced the principle of gender parity to be achieved in EPSU structures.\textsuperscript{260} The issue is not (yet) explicitly addressed in the 2014–2019 EPSU work programme as presented to the EPSU Executive Committee of November 2014. It remains to be seen whether this could be addressed through a more rigorous quota system, including titular and substitute membership of EPSU Committees. The EPSU Gender Mainstreaming Report delivered in 2010 to the EPSU Executive Committee called for a ‘renewed commitment from the EPSU Executive and Standing Committees setting out objectives to improve gender representation’.\textsuperscript{261}  

1.6.3 Closing the gender pay gap

‘The European Public Service Union (EPSU) has carried out ... extensive work to overcome the gender pay gap, based on its 2009 Congress Resolution on equal pay, which drew attention to some of the reasons why women earned less than men and reaffirmed a target for its affiliates “of reducing the gender pay gap by, at least, 5 per cent by 2014”’.\textsuperscript{262}  

The gender pay gap is described as a ‘loose concept’, but mostly understood ‘as the difference between the average pay level of male and female employees’.\textsuperscript{263}
The 2009 EPSU Congress Resolution succinctly addresses the main causes behind the gender pay gap and low pay for women. These are the ‘undervaluation of women’s work, skills and competence, “motherhood penalty”, and the disparities between full-time and part-time workers. This leads to general segregation – in terms of occupation, sector and working patterns – and reinforces unequal distribution of working and domestic time, gender stereotypical attitudes and expectations, and unequal distribution of wealth.’ The resolution recognises the European Commission’s commitment and actions to closing the gender pay gap as laid down in Directive 2006/54/EC.

‘Equality between men and women is a fundamental principle of Community law under Articles 2 and 3 (2) of the Treaty and the case-law of the Court of Justice. Those Treaty provisions proclaim equality between men and women as a “task” and an “aim” of the Community and impose a positive obligation to promote it in all activities.’ Directive 2006/54 makes the principle of equal pay for work of equal value binding law for all EU member states. But the valuable measures covered by the EU equality agenda tend to be overridden by its market-driven policy on public services and the European Central Bank’s calls for wage moderation.

The austerity policies promoted by the European Commission in recent years have had a further major impact on the provision on public services across Europe at the risk of widening inequalities and discrimination. This was recognised by Iratxe Garcia Perez, MEP and Chair of the Committee for Women’s Rights and Gender Equality at a Forum organised by the European Commission in 2015 on the future of Gender Equality: ‘The economic crisis has affected many vulnerable sectors of the economy and society, as well as public services. This has had a severe impact on women, who are forced back into traditional roles limiting their participation in social and economic activities. Gender equality needs to be brought back to the forefront, and policies and legislations need to be coordinated to address the challenges.’ EPSU has repeatedly highlighted the conflicting policy objectives of measures to achieve gender equality and the orthodox application of austerity policies, for instance in an open letter of July 2010.

‘The EU has been a driving force in improving equality between men and women. But it stops at the doorstep of economic and financial affairs. As the guardian of the Treaties, it is urgent the Commission carries out a gender equality impact assessment of the ongoing cuts in public services. As a human right, for the benefit of all, achieving gender equality should supersede short-term financial gains for the few. The Commission’s own funded research concludes that keeping gender equality central to the responses to the crisis can make a huge difference for jobs and growth. Why isn’t the Commission making good use of its own research funded by taxpayers?’

The views of the Commission are sought on the following topics:
- integration of gender equality in EU responses to the crisis in line with Article 8 of the TFEU on gender mainstreaming of all EU policy areas;
- relationship between cuts in public jobs and the EU 2020 strategy for more jobs and growth;
- relationship between cuts in public services and fighting poverty;
- relationship between the Commission’s strategy to close the 17 per cent gender pay gap in the EU and freezes and/or cuts in public service wages;
- compliance with EU obligations on social dialogue;
- guidance to member states on compliance with EU directive 2004 on equal treatment between women and men in access to and supply of goods and services.
The EPSU Report of Activities qualifies the Commission’s answer as ‘unhelpful’.270

But the letter made clear that gender equality objectives cannot be considered in isolation. As Jill Rubery saliently pointed out earlier on, employment policies promoted by the EU and its member states have an impact on gender equality, but do not automatically go hand in hand. The 2002 Barcelona Council’s quantitative targets for the provision of childcare were a positive policy move for more gender equality. To the extent, however, that for some member states women’s role as primary carer remains a given, then policies are primarily geared to facilitate and not to question women’s dual role. This in turn does not change men’s attitude to take on responsibility for child rearing as well.271 Certain member states continue to see no incompatibility with the partial integration of women in the labour market, as is the case in the Netherlands, which has adopted a ‘one and a half’ earner model. The United Kingdom has promoted the concept of ‘diversity of working hours’ as a positive foundation for equal opportunities, when in fact it contributes to the polarisation between ‘men’s long and women’s short hours.’272 ‘Policy objectives promoted, such as closing the gender pay gap do not include quantitative targets [such as the EPSU target to reduce the gender pay gap by 5 per cent] in contrast to measures to raise employment ... and are therefore less likely to attract the same attention from member states.’273

It was as early as 2002 that an EPSU Collective Bargaining Conference described the reduction of the gender pay gap as a priority objective.274

The resolution lays out the following key measures to reduce the gender pay gap:

– ensure that bargaining strategies give sufficient attention to employment conditions in female-dominated jobs;
– ensure proportional representation in collective bargaining committees and negotiating teams;
– assess and monitor the gender wage gap through reliable statistics on wage differentials by gender and sector, occupation and working time;
– review job evaluation/work value schemes to pinpoint and eliminate discriminatory grading schemes;
– bargain for rises in minimum wages/low pay grades;
– promote family-friendly working time policies and improved child care facilities;
– make sure that part-time workers enjoy the same rights as full-time workers and are not discriminated against;
– review indirect discrimination due to in-kind benefits, as well as overtime benefits;
– improve training possibilities and career development for women;
– provide training in pay equity matters for members of negotiating teams.275

EPSU has launched surveys on equal pay and the gender pay gap, summarised and published as reports, the first in 2010276 and more recent ones in 2013277 and 2015.278

‘Governments have a key role in promoting gender equality in all policies and in public services...’279 The role of government in actively promoting gender equality is also reflected in the following statement: ‘Public administration is at the foundation of government and plays an integral part in creating national policies and programmes. Ideally, public administration is directed by principles of justice, equality, fairness and non-discrimination. If public administration can lead the way in removing gender-based barriers and allow the benefits and rewards of men and women leading and participating equally to be showcased, it will serve as a working example for the rest of the world.’280 A very ambitious claim, but still yet to pass a reality check.
‘There is a certain expectation that the gender pay gap will be smaller in the public sector. This is in part because the public sector should be more influenced by overall public policies in favour of greater gender equality.’ Is the situation really much better in public services? According to Eurostat, in 2014 the majority of the EU countries recorded a higher gender pay gap in the private sector than in the public sector. This is explained through higher collective agreement coverage in the public sector. But as in the rest of the economy, women are often overrepresented in sectors, occupations or positions in which pay tends to be moderate. ‘Even within sectors, women are concentrated in particular roles. In health care, a much higher proportion of women are nurses and paid less than doctors, a profession where, in contrast, men predominate. In industries such as water services or energy, women work primarily in clerical or support areas, while men are found in the (better paid) craft and skilled maintenance services.’ Thus occupational segregation, employment patterns, such as part-time work but also career breaks for reasons of maternity or parental leave contribute to the gender pay gap.

‘We will not eliminate the pay gap until we break down labour market and workplace segregation; value jobs traditionally done by women in the same way as those traditionally done by men; enable all employees (male and female) to balance work and family life, and achieve an equal split of the responsibilities for care and domestic work...’

A majority of EPSU affiliates are increasingly aware of the root causes of the gender pay gap and have taken a variety of actions to address the issue, for instance assembling data, conducting job evaluations, negotiating new payment structures, providing better opportunities to change from part-time to full-time work or measures to attenuate the negative impacts of maternity or parental leave taken by women. A number of affiliates have taken action to draw attention to the persisting gender pay gap; one of the most thought provoking is a video from the Swedish municipal workers union Kommunal on ‘how to get a pay rise in 47 seconds?’ The video’s conclusion is ‘be a man’. The same union, Kommunal, recently negotiated a three-year agreement covering the welfare sector that includes a real pay increase for all. As part of the union’s strategy to tackle the gender pay gap the agreement provides for a higher pay increase for skilled nurses. Overcoming the gender pay gap is also used for making the case for unionisation, such as the British TUC, ‘who would like to see more women joining a union and organising in the workplace to improve their pay and conditions. ... Unionised women earn on average 30 per cent more than non-unionised women.’

Increased female unionisation – the argument is – could contribute to more and better pay deals and thus decrease the gender pay gap.

1.6.4 Gender equality and social dialogue

Discussions with employers on equality issues as part of a nascent social dialogue can be traced back to the 1990s. Major impetus initially came from two cross-sectoral agreements on parental leave (1995) and part-time work (1997). Both agreements have a direct bearing on issues of work–life balance and have been transposed into binding directives. The directive on parental leave was revised in 2009, increasing the duration of parental leave from three to four months. ‘At least one of the four months is non-transferable between parents in order to encourage a more equal take-up.’ The EPSU Report of Activities 2009 describes this as a ‘modest advance’ as the text fails to provide legally binding provisions on issues, such as payment of parental leave. ‘As a
result, it will be important to maximise the use of the soft references in the agreement to the role of income in increasing take-up of parental leave..."²⁹⁴

‘The Commission Decision of 20 May 1998 on the Establishment of Sectoral Social Dialogue Committees emphasises that the aim should be to ensure that the membership and activities of the Committee contribute to the promotion of gender equality.²⁹⁵ Weiler makes the point that women tend to be underrepresented in social dialogue delegations in relation to their weight in the sectors involved. Nevertheless, a number of sectoral social dialogue committees have agreed texts and initiated projects on gender equality in the labour market.²⁹⁶ This is true also for the sectors represented by EPSU and thus a sizeable body of joint texts has been elaborated although mostly non-binding in nature.

Local and regional government

EPSU and the CEMR Employers’ Platform (EP) approved a joint work programme in 1997 covering, among other things, equality between women and men.²⁹⁷ ‘In considering employment, special measures need to be taken to ensure equality. One of these measures is mainstreaming."²⁹⁸
EPSU and the CEMR-EP organised an Equality Conference on 8 March 1999, at which an equality agreement was adopted. ‘Importantly, the social partners agree that equality is also a matter of democracy at the work place. Women and men should have the same formal and practical possibilities to take part in and have responsibilities for decision at work. ... The social partners agree that equal opportunities are a vital issue for the local and regional government sector, in relation to the composition of the workforce and the role of authorities as employers. As such equality of opportunity should be an integral part of the general human resources management of the workforce.’

In 2007, the sectoral social partners in local and regional government adopted ‘Guidelines to Drawing Up Gender Equality Action Plans’. While recognising the importance of equality in all spheres of public life, the key role of local and regional authorities in promoting gender equality in their communities, both as employers and service providers is emphasised. The joint document lists a number of areas that can be addressed in equality plans, such as the collection of sex disaggregated data, equal pay and job evaluation and the effects of performance-related pay and promotion, restructuring, public procurement and equality criteria.

In their Joint Framework of Action EPSU and CEMR-EP commit to monitor the impact of public spending cuts. This point also features in the ongoing joint work programme for the Social Dialogue Committee Local and Regional Government 2015–2017: ‘EPSU and CEMR will look at the impact of the crisis in the area of employment and look more specifically at the impact on gender equality.’

Electricity

Similarly, the social partners in the electricity sector, Eurelectric and EPSU/EMCEF, agreed to a joint declaration in which they state their common objective to ‘contribute to the achievement of equality of opportunity between women and men’.

In a further statement on lifelong learning in the electricity sector, the social partners conclude that: ‘The industrial electricity sector is marked by a very low level of female employment and this rate does not seem to have changed for several years. The professional sector is still heavily based on the inequality of the sexes, women being employed mainly in HR management, administration, secretarial and sales. The facts show that men still have easier access than women to internal and external training in many companies in the sector; there is a growing awareness that the underrepresentation of female employees could adversely affect the performance of the industry, particularly as in the near future, electricity companies will be faced with a growing need to adapt to the increasing pressure of competition when it comes to recruitment.’ (This particular phenomenon should be picked up in an agreement covering the European multinational GdF-Suez and will be referred to in more detail below.)

Following on from the intersectoral framework agreement on harassment and violence at work the electricity social partners agreed to contribute to its implementation and recognised that the problem of violence at work constitutes a concern in the electricity sector.
GDF-SUEZ Transnational Company Gender Equality Agreement

The first transnational company agreement on gender equality was negotiated in the company GDF-SUEZ in June 2012. Although not negotiating the agreement exclusively, EPSU’s established gender equality policies could be brought into play within the framework of this landmark agreement. The agreement aims to remove unjustified differences between men and women to achieve pay equality, taking account of all wage elements. The agreement is further aimed at contributing to a better balance between work and family life.

The main issues covered by the agreement are:

– equal pay for the same job or jobs of equal value, pay transparency, identified pay gaps have to be closed within 3 months maximum;
– recruitment, positive action to increase the share of women in the total workforce to 30 per cent by 2015;
– access to decision-making positions should be increased to 25 per cent by 2015;
– career development;
– maternity and parental leave to be considered as a ‘neutral period’;
– work–life balance;
– part-time – promotion of access to full-time jobs;
– training;
– sexual harassment;
– application of agreement to subcontractors;
– reorganisation should not have a disproportionately negative impact on women.

The 2012 agreement was transposed to the SUEZ Environment Group with some improvements compared with the initial agreement, in stipulating for instance that all group companies will have to commit to establish action plans promoting gender equality.

Multi-sectoral guidelines to tackle third-party violence and harassment related to work

Several European sectoral social partners in the health care, education, local and regional government, commerce and private security sectors agreed on Multisectoral Guidelines to tackle third-party violence and harassment related to work on 30 September 2010. These guidelines are aimed at complementing the Framework Agreement on Harassment and Violence at Work concluded at cross-sectoral level in 2007. The Guidelines focus on third-party violence and harassment in the sectors covered.

Health

The Framework Agreement on Prevention from Sharp Injuries agreed by EPSU and HOSPEEM has a major impact on women’s working conditions because of the high proportion of women working in the sector.

In the European Union at least 80 per cent of employees in the health care sector are women. Even though staff shortages and the demand for care workers are expected to grow governments and employers have failed to improve the attractiveness of this...
sector. ‘The gender dimension is self-evident.’314 The sector is female dominated and characterised by occupational segregation. Staff shortages and problems in recruiting and retaining staff, combined with new demands from an ageing population, pose significant challenges for the sector.315

In 2010 EPSU and HOSPEEM agreed on a Framework of Actions (FoA) on Retention and Recruitment of Staff which in its major parts recognises the gender dimension of the issue for negotiation. In the FoA the Social Partners underline the need to ‘value health care staff. ... The majority of health care staff are women, a significant number of whom also currently have caring responsibilities. In order to facilitate the full participation of men and women in the health care labour market, health employers and social partners should take measures and develop policies which will improve the work–life balance of workers. Action is necessary to gender balance the health care sector and to attract more men to take up employment in the health care sector.’316 The FoA was evaluated in February 2016 and an extensive report on the main themes of the agreement was compiled.317

Central government administrations

In a joint statement on equal pay between women and men the social partners in central government administrations address the ‘lack of detailed European comparative data in central government administrations’, which they identify as the cause of the difficulties experienced in providing a precise assessment of the situation.

The partners take on the following commitments:
– ‘As an immediate action, the Committee will apply the principle of transparency of pay as an essential prerequisite to closing the pay gap.
– The Committee will collect, on a regular basis, gendered data on remuneration of civil servants and employers at all grades in the sector, including all existing complementary advantages (such as bonuses, performance-related pay, complementary pensions or insurances).
– On the basis of a common template and methodology that will be developed, gendered data will be provided by the members of the Committee and made publicly available in an appropriate way.’318

The Committee further calls on the Commission to:
– ensure that gendered pay data and systems are monitored in the framework of Eurostat;
– step up the process of analysing the aspects and causes of the gender pay gap and of identifying measures to correct the situation;
– agree a quantitative target to reduce the gender pay gap.319

These commitments are surprisingly precise and far-reaching, although in the context of a joint statement with the need for follow-up action. In contrast, the cross-sectoral employers’ organisations do not consider the collective bargaining route ‘as a central instrument of the social partners to tackle the gender pay gap and gender-biased pay structures’.320 In a letter addressed to the European Commission, BusinessEurope argues that ‘the main underlying reason behind the gender pay gap is gender segregation. The focal point for future policy and action has to be better understanding the reasons
for segmentation and addressing them through better informed education and career choices for both women and men. This relegates responsibility for the gender pay gap to other actors, including women themselves, who only have to opt for different professional career paths in order not to be discriminated against.

What prospects for a European work–life balance package?

The key issues covered by the European Social Dialogue, both at cross-sectoral and sectoral levels, are related to reconciliation of professional and private life, gender segregation, the gender pay gap, violence and harassment at work. The sectoral level has been supplementary in action, albeit in most instances the outcomes have been joint statements or frameworks of actions and thus are not of a binding nature. ‘There have been important achievements in the cross-sectoral and sectoral European social dialogue. ... However, despite the efforts of the European social partners at the cross-sectoral and sectoral levels and the policies of the European Union, gender inequality continues to exist. Regardless of the increase in female activity and employment rates and remarkable improvements in the educational levels of women, gender segregation in occupations and economic sectors and the gender pay gap persist. In fact, statistical data reveal a widening of the gender gap.’

More recently, the European Commission embarked on a consultation of the social partners on the subject of ‘work–life balance’. In its position paper of December 2015, the ETUC expresses its willingness to start discussions and negotiations with employers’ organisations about possible ways and methods to modernise EU legislation, such as maternity leave and address the shortcomings, or lack of legislation in areas such as paternity or carers’ leave. The ETUC further supports a review of the Social Partners Agreement on Parental Leave to address income protection and to promote the uptake of parental leave. The ETUC position also calls for a sound investment in public services. The absence of such investments would only acerbate already existing inequalities between men and women. Austerity measures implemented by member states have ‘negatively impacted the organisation of work, the quantity and quality of care and public services in general of which women are the prime users’.

In contrast, not all cross-sectoral employers’ organisations – BusinessEurope (private industry), UEAPME (small and medium size enterprises) and the CEEP (public sector) – expressed themselves in support of changes to the legislative framework or to negotiations with the ETUC on the issue. The Commission meanwhile has announced that ‘proposals for action on both policy and legislation could be expected soon to allow enough time for a second-stage consultation’. In its response to the first-stage consultation, BusinessEurope states that ‘the Commission has rightly decided to withdraw the pregnant workers directive as part of its better regulation programme REFIT. Despite this, the Commission in this consultation once again focusses essentially on EU legislative measures. Launching a narrow debate on EU legislative action is the wrong approach for a useful EU initiative.’ Indeed, the European employers’ organisations have been given an easy ride, as the long debated maternity leave proposal had scandalously fallen victim to the Better Regulation Agenda ‘REFIT’ and was withdrawn by Equality Commissioner Vera Jouvara in 2015, despite protests from the European Trade Union movement. Former ETUC General Secretary Bernadette Segol had strongly criticised this withdrawal, saying that ‘18 weeks maternity leave is an international standard, but EU governments have totally failed to agree to it.'
Spending unimaginable amounts of money to save the euro has not been as difficult for them as improving women’s rights. It says a lot about the values of today’s European governments.’331 The withdrawal of the maternity directive by the Commission also caused havoc with members of the European Parliament. The shadow rapporteur on the directive, MEP Inês Zuber, GUE/NGL, said that ‘the decision to withdraw this directive is scandalous and represents a huge backlash for women’s rights and gender equality in the EU’.332

Against this backdrop, it remains to be seen whether the European Commission has sufficient stamina and political will to bring forward a binding, progressive policy instrument on work–life balance.
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Part 2
EPSU and the internal market

Summary

Part two of this historical account of EPSU’s development focusses on the impact of the various stages of internal market development and subsequent rounds of so-called ‘liberalisation’ of different types of public services. Chapter 1 starts with an excursion into the history of the establishment of the single market, a development which was considered by many to serve as a suitable vehicle also for further political integration. This turned out to be a misconception, however. Chapters 1 and 2 analyse the tensions between the drive for a single market and the apparently ‘irritating’ role of public services within that concept.

Chapter 2 seeks to evaluate the terminology that evolved to depict public services. The latter are referred to in European Union language as ‘services of general interest’ or ‘services of general economic interest’, concepts first used by the European Commission in a Communication of 1986. Both ETUC and EPSU initially accepted this terminology. The choice of language was supposedly motivated by a desire to show ‘neutrality of ownership’, based ultimately on the claim that ownership does not matter in the end, but also driven by the assumption that public services would usually be contracted out at some point. The section concludes that the term ‘services of general interest’ has led into a dead-end because the notion of ‘services of general economic interest’ has been broadened to such an extent that ‘services of general interest’ have come to be considered a remnant mass of services related to the execution of ‘sovereign tasks’.

Chapter 3 is dedicated to describing the fierce political battle over the Services Directive, one of the most contested pieces of European legislation in the past two decades. The section describes the major mobilisation campaign
organised by the ETUC and EPSU, with major Euro-demonstrations being organised in both Brussels and Strasbourg in 2005 and 2006, respectively. The section also gives a flavour of some of the difficult internal debates within the ETUC, namely the degree of support, scepticism and opposition which played a role in the positioning of ETUC member organisations in the course of lobbying and campaigning. Crucially for EPSU, health care and some social services were excluded from the scope of the directive. Nevertheless, at the end of the lengthy review process in 2006, EPSU expressed fears about the potential impact of the directive on other public services. Pertinently, the Services Directive uses a ‘negative list’ approach, meaning all that is not excluded is covered, and later on became a model for the negotiations of international trade deals, such as CETA (Comprehensive Economic Trade Agreement) and TTIP (Transatlantic Trade and Investment Partnership).

In Chapter 4, the various efforts to legally secure services of general interest are described. These go back to the 1990s when both the ETUC and the CEEP developed a Charter for Services of General Interest with the prospect of legally enshrining these services in both primary and secondary law; in other words, seeking a guarantee in the EU Treaty and/or framework directive. In 2005, the EPSU Executive Committee adopted a paper entitled ‘Five reasons why action is needed to promote public services in Europe’. This paper also set out the arguments for a positive EU legal framework on public services. This was followed up by an EPSU Campaign on ‘Quality Public Services – Quality for Life’ which aimed to serve as a counterpoint to the Services Directive, which was being discussed within the European institutions at the same time. A central point in all of these discussions was the value of a horizontal legal framework on Services of General Interest, which were also upheld in the European Parliament, backed by various reports, notably the Herzog Report in 2004 and the Rapkay Report in 2006. Here clear political dividing lines emerged between the political groups in the European Parliament, with the Socialist, Greens and United Left calling for a legal framework, whereas the Conservatives and Liberals favoured what they called ‘targeted solutions’.

In November 2006, the ETUC agreed to launch a petition campaign in support of a legal framework for Services of General Interest and to collect over 1 million signatures from citizens in all EU/EEA Member States. The petition did not reach its target, however, and the chapter describes at some length the internal and external reasons for failure. The discussion on a legal framework subsequently petered out and was overtaken by other political developments, such as warding off the worst fall-out of the European Court of Justice rulings in the cases of Viking, Laval and Rüffert. Although the Lisbon Treaty, entering into force in December 2009, provided a legal basis for framework legislation on Services of General Interest the issue did not move forward in the way expected in EPSU and ETUC circles and this meant a disappointing end to a long struggle.

From 2006 to 2011 a debate on so-called ‘social services of general interest’ developed in the European Institutions, as depicted in chapter 5. This debate turned out to be as long-drawn-out as the one on the legal framework on Services of General Interest. The outcome of the discussion was equally frustrating as it ended with de facto confirmation that the internal market legislative framework applied to social services. Similarly, the adoption of the Directive on the Application of Patients’ Rights in Cross-Border Care was the outcome of a protracted policy process. The section illustrates this lengthy process, highlighting again some inter-trade union and political conflicts concerning the political assessment of the proposed directive. The review process was finalised with a Council decision in 2011, that is, three years after its introduction by the European Commission. EPSU and its affiliated unions had contributed to an extensive overhaul of the directive through
intensive lobbying. The section ends with a tentative outlook on the possible impacts of the Cross-Border Patients’ Rights Directive and calls for the elaboration of EPSU requirements for a European Social and Health Services Policy.

The last two sections of Part two provide two case studies on internal market-induced ‘liberalisation’: first, the opening up of the electricity and gas market and second, the opening up of the public procurement market. EPSU has been closely concerned with both issues since its early EPSC days. One could even go so far as saying that the necessity of dealing with these two major topics has in many ways contributed to the building of EPSU as an organisation. Organisation-building is understood here as the capacity to develop and represent a joint position on behalf of the membership, to exert pressure through protest actions and to form alliances with other organisations for lobbying purposes and to enhance political influence.

Since the early 1990s the implications of the creation of an internal market for electricity and gas featured high on the agenda of the EPSC Committee, later to become the EPSU Standing Committee for Public Utilities. EPSC criticised the absence of a European Union energy policy as opposed to a mere ‘market’-based approach. The impact on jobs was the prime concern for the organisation. The fear of mass job losses led to the organisation of the first ever European demonstration in the electricity and gas sector in 1995 in Luxembourg. Further protest actions were to follow in 1997, 1999 and 2005. There were also concerns that outsourcing and privatisation might lead to a reduction of investment in training and skills with serious consequences for security of supply. The chapter also looks at the evolution of the South East European Energy Policy, illustrating trade union endeavours to develop a platform to address social issues, as established in a Memorandum of Understanding in 2005. EPSU had raised similar concerns in the context of the EU–Russia Energy Dialogue in 2006. The chapter looks into the links between ‘liberalisation’ pressures and the electricity blackouts that occurred in the early 2000s. The chapter further addresses increasing fuel poverty; EPSU has linked up with the European Anti-Poverty Network to tackle this problem. EPSU has maintained its critical stance towards the internal market for electricity and gas throughout the various attempts to repair the shortcomings of the ‘liberalised’ market. Three legislative packages produced over a 20-year period have not been able to deal adequately with the challenges of safe energy supply, investment, just transition and climate change.

The last chapter of Part Two deals with the ‘liberalisation’ of public procurement markets, also considered one of the key objectives of the establishment of the internal market. Together with the Services Directive, the public procurement directives can be seen as the most direct attempt to restructure public services through European policies. The chapter illustrates the historical development of the policy issues involved and demonstrates the increasing maturity of EPSU in developing adequate influence, especially through alliance-building. Both in 2003 and again in 2010 EPSU was an active partner in a broad coalition of social movements. While in 2003 the Coalition for Green and Social Procurement did not fully achieve its objective of obtaining recognition for social and green award criteria, the cooperation within the Coalition was described as an effective network of different organisations, at the centre of which EPSU organised regular meetings for information and coordination. Reference is made to a set of EPSU Executive Committee minutes in which it is said that ‘our joint lobbying needs to be strengthened.’ And in fact, a special session on lobbying was held at the November 2004 session of the EPSU Executive Committee. Most of the 2003 coalition partners revived their cooperation in 2009 and became part of the ‘Spring Alliance’ and later on as the Network for sustainable development in public procurement (NSDPP).
EPSU has pursued two key objectives with its lobbying activities during over 20 years of public procurement legislation:
1. the integration of social and environmental clauses in public procurement contracts; and
2. the right to in-house provision of public services.

The chapter addresses the key issues involved in the public procurement debate over the years, such as the controversy concerning the concept of the ‘lowest price or the cheapest bid’ and argues in support of wider policy objectives to be achieved through adopting a socially responsible procurement policy. Special attention is given to EPSU’s endeavours to obtain recognition for ILO Convention No. 94 on labour clauses in the public procurement regime. This particular objective, regrettably, was not attained in the campaign. But importantly, the right of public authorities to provide and organise their services was approved and concepts such as ‘in-house’ and ‘public–public cooperation’ have been defined. The revision of public procurement, which came to an end in 2014, has been described as ‘the biggest shake up of public procurement in a decade’, a success story in which EPSU can claim an important role.

* * *

2.1 Public services and the internal market – an irreconcilable contradiction?

‘Since the nineties, the place of public services within the single market has been a persistent irritant in the European Public Debate … In fact, while initially the European debate focused on the macro-issue posed by the liberalisation of network industries, the focus of the debate today has shifted to social and local public services.’

For EPSU, the tension between public service and internal market objectives has been and certainly is more than an ‘irritant’.

Part 1, Section 2 of this publication describes some of the early efforts of the EPSC to design a positive role for public services in the evolving European Community as part of a possible ‘future federalist system’. But as Pierre Bauby says, ‘for the founders of

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1. Mario Monti: A New Strategy for the Single Market, at the service of Europe’s Economy and Society; Report to the President of the European Commission José Manuel Barroso, 9 May 2010, p. 73; Barroso had charged Monti to write this report and in a mission letter he writes, among other things: ‘The recent crisis has shown that there remains a strong temptation, particularly when times are hard, to roll back the Single Market and seek refuge in forms of economic nationalism. The Commission has been, and will continue to be, a determined defender of the Single Market through the full use of its enforcement powers, particularly in the areas of the Internal Market and Competition policy, including State-aid control.’ See mission letter at the beginning of the Monti Report quoted.
Europe, the economy was only a way of integration that served a political objective with a federal nature. Direct political integration seemed impossible in the short term: instead, governments decided to follow the way of a progressive economic integration, starting with the construction of a “Common market”. Experience with close to 30 years of liberalisation puts a major question mark against the validity of this approach. But then hindsight admittedly yields better insights.

The Single European Act (SEA) provided for majority voting on directives related to the internal market. This was seen as institutional progress, but then, Article 16 of the SEA also states the following objective: ‘It [the Council] shall endeavour to attain the highest possible degree of liberalisation.’ The former President of the European Commission, Jacques Delors, recognised that ‘economic and social cohesion, without which the negative aspects of the large market – the concentration of poles of decisions and wealth – would for some countries and regions cancel out the positive repercussions;... The large market is not just for European businessmen, it has to service the people too.’ His countryman Jacques Fournier, President of the CEEP between 1988 to 1994, described the process distinctly: ‘It is at the end of the 1980s, together with the adoption of the Single Act in 1996, that the wind of liberalism is starting to blow. It is then decided to extend the common market to services. A deadline is fixed for application, namely 1992. Correspondingly, measures can be taken on the basis of majority decision by member states.

As a result, the Commission embarks on a policy direction that it shall strictly pursue in the following, namely the:
– opening to competition of the network industries, previously organised as public monopolies, notably in the area of telecommunications, energy, air transport, rail transport and post;
– commoditisation of public enterprises. They may remain in public ownership, but they will be increasingly pushed to behave like ordinary companies.

The bigger question about the underlying concept for the European Union today remains even more acute: Can the single market be the sole driver of European integration? ‘Cross-border trade in goods and services can deliver growth, employment and cohesion, but only if it is in a broader framework: stimulating through competition, strengthening through cooperation and uniting through solidarity.’

To refer back to Jacques Fournier. According to him, the European Union regards public services as ‘trouble makers in a harmonious concert it wishes to organise through competition in the market,’ thus seemingly in line with the comparison used by Mario Monti at the beginning of this chapter. But Fournier obviously comes from a very different perspective, being a strong supporter of a mixed economy, with a clear and defined role for public services.

The tense if not conflictual relationship between public services or, in European jargon, ‘services of general interest/services of general economic interest (SGI/SGEI)’ and the internal market has manifested itself over the past two decades in a series of Commission communications, a Green Paper and White Paper and again Communications on Services of General Interest, as well as Social Services of General Interest.

EPSU, other European Trade Union Federations, the ETUC and the CEEP have struggled to obtain a clear legal basis in the EU Treaties on which it would be possible to base secondary legislation in support of services of general interest.
Intensive lobbying efforts were brought to bear on reports by MEPs to define the role of SGI/SGEI within the emerging European Union in early 2000, firstly with a critical analysis of the initially one-sided pro-market Werner Langen Report of 2001, then a fierce parliamentary skirmish to achieve progress in the report by Philippe Herzog in 2003 to 2004, to be followed by the Rapkay Report in 2005, which unfortunately in the light of political majorities backtracked on some of the gains obtained in the Herzog Report.

EPSU has been a key player in trying to advance public services as ‘a core feature of the European social model’, as phrased by a resolution of the EPSU Executive Committee of 2003. ‘Water, energy, health care, social services, education, research, culture, information, transport represent essential public infrastructures and services. Citizens, communities as well as companies have to be able to rely on stable and efficient public services. As services of general interest (SGI) and services of general economic interest (SGEI) they are recognised as a core feature of the European Social Model ... SGI can therefore not be seen as a mere component of the Internal Market but rather as the necessary counterweight in a social market economy.’

Intensive battles had to be fought to prevent the worst fall-outs of liberalisation policies.

- The Services Directive, also named after its instigator the ‘Bolkestein’ Directive, constituted a major onslaught on the concept of a Social Europe, including public services. Hence it was of the utmost importance for EPSU to ward off major damage.
- The liberalisation of the energy sector has pre-occupied EPSU for the past two decades, with its negative consequences in terms of job losses, concentration and public service obligations.
- The notion of ‘social services of general interest’ was established by the Commission at EU level in a Communication of 2006, opening up the possibility to carve out ‘economic’ social services for competition and internal market purposes.
- Cross-border patient mobility in the health care sector was a variation of the continuous attempts by the European Commission to open up competition in the health sector.
- Mayor lobbying activities were necessary, in particular to preserve the right of ‘in-house’ service delivery, as well as the right to apply social criteria throughout the tendering process during several rounds of revision of the public procurement directives since the early 1990s. EPSU was part of a broader coalition of trade unions and European networks of nongovernmental organisations from the social, environmental and fair trade sector that achieved success with the revised public procurement directives adopted in early 2014.
- EPSU has further fought to ensure that public services were excluded from trade agreements like GATS and more recently from series of trade agreements such as between the EU and Canada, the EU and the United States and from TISA, a plurilateral agreement.

These fights have brought about a number of notable victories for EPSU, but the overall dominant policy paradigm of the supremacy of the internal market and liberalisation policies has not changed. Recent economic governance policy measures, on the contrary, have promoted budget austerity, cuts in public services and jobs in many countries of the European Union to the detriment of citizens at large, seriously undermining public service provision and in some countries destroying public services.
2.2 Public services or services of general interest (SGIs) - why terminology matters

A number of researchers have addressed the question of why ‘public services’ in European language are referred to as ‘services of general interest’ or ‘services of general economic interest’. One explanation provided refers to different concepts existing at member state level or in 23 official languages of the EU. ‘We cannot establish a univocal glossary setting up the exact equivalent of “public services” in all 23 official languages of the EU and each member state ... Each language refers to national histories.’

These conceptual differences cannot be denied. It is certainly also true that ‘patterns of state intervention in society differ widely. Governments in some countries deliver services that would elsewhere not be seen as falling with the remit of government.” An example of such specificity is the Swedish ‘Systembolaget’, a government alcohol retailing monopoly.

‘The term “services of general interest” or SGI is neither found in the EC Treaty itself, nor in secondary legislation. It is derived in Community practice from the term “services of general economic interest” (SGEI), which is used in Articles 16 and 86(2) of the Treaty. It is broader than the term ‘services of general economic interest’ and covers both market and non-market services which the public authorities class as being of general interest and subject to specific public service obligations. “The concept (of services of general interest) came truly to the fore of Community law when the Commission adopted its Communication on Services of General Interest in 1996 and further in 2000, when the Commission held that the concept “services of general interest” may be viewed as including both “services of general economic interest” and “non-economic services of general interest”, hereby indicating their role as subgroups of the concept of “services of general interest”.

Both the ETUC and EPSU, as well as other organisations ‘bought’ into the terminology in use. ‘A service of general interest is a service created, organised or regulated by a public authority to ensure that the service is supplied in the manner which it considers necessary to satisfy society’s needs ... Among SGI, services of general economic interest are services which are designed to be profit-making but which fulfil missions of general interest and as such must satisfy specific obligations imposed by the public authorities ... SGI would thus cover all services, the purpose of which is to ensure the exercise of fundamental rights ... and the satisfaction of social needs in all the sectors which contribute to the quality of life and sustainable development, and more specifically health, culture, education, transport, communication, information, energy, water, food safety, the environment and housing, without prejudice to any revision of this list, subject to changes in social needs.”
Already in its Communication on Services of General Interest from 1996, the European Commission claims that ‘public service is an ambiguous term since it may refer either to the actual body providing the services or to the general interest role assigned to the body concerned. It is with a view to promoting or facilitating the performance of the general interest that specific public services obligations may be imposed by the public authorities on the body rendering the services … There is often confusion between the term “public service”, which relates to the vocation to render a service to the public ... and the term “public sector” (including the civil service), which relates to the legal status of those providing the services in terms of who owns the service.’ Like its successors, the 1996 Communication makes declarations on services of general interest ‘playing an important role as social cement over and above simple practical considerations. They also have a symbolic value, reflecting a sense of community that people can identify with. They form part of the cultural identity of everyday life in all European countries.’

Like its successors, the 1996 Communication makes declarations on services of general interest ‘playing an important role as social cement over and above simple practical considerations. They also have a symbolic value, reflecting a sense of community that people can identify with. They form part of the cultural identity of everyday life in all European countries.’ The text then goes on to say that ‘European policy is concerned with general interest, with what services are provided and on what terms, not with the status of the body providing them.’ This statement very much tallies with modernisation concepts advanced during the 1990s by various government bodies and organisations, such as the OECD, who ‘expected reforms to produce in the decades to come, a well performing public sector that will be radically different in appearance and behaviour and which, typically, will be less involved in direct service provision.’

‘Though the EC (European Commission) claimed it was motivated to show its neutrality on ownership, cynics tended to interpret this new terminology as a means of attempting to clear the way for the privatisation of public enterprises, on the road to establishing European champions. With the word “public” removed from discussion of “public services” two new terms were introduced: services of general interest, and services of general economic interest. … Though these new terms were introduced … to eradicate the ambiguity of “public services” … they are not only cumbersome, they are more confusing than the original term.’

The Commission’s reasoning did not change in the course of the following years. The year 2000 saw the publication of a further Communication on Services of General Interest in Europe. This Communication did not, in EPSU’s view, ‘provide concrete proposals to achieve a better balance, between the provision of services of general interest and the facilitation of an internal market’. The Communication confirms the role of services of general interest as ‘a key element in the European model of society’. Based on Article 16 of the European Treaty their place is declared to be among ‘the shared values of the European Union in promoting social and territorial cohesion’. This initial line of argumentation is, however, not followed throughout the text. The fourth paragraph of the Executive Summary of the Communication encapsulates the general philosophy of the text when it states that ‘experience gained so far also confirms the full compatibility of the Treaty rules on competition and the internal market with high standards in the provision of services of general interest’. This position is a recurrent theme in the main body of the text, culminating in statements ‘that in many cases the market will be the best way for providing these services’. The Communication underlines the Treaty requirement of ‘neutrality’ as regards the public or private ownership of companies. ‘The Commission’, the Communication states, ‘does not require privatisation of public undertakings’. ‘Certain services do not lend themselves to a plurality of providers’. In these cases, the Communication maintains, ‘public authorities will usually grant exclusive and special rights for providing the
services of general interest by awarding concessions through a tendering process. The Communication concludes that ‘competition at the moment of the award of the tender is meant to ensure that the missions assigned to services of general interest are met at least public cost.’

This statement inadvertently assumes that services of general interest will ‘usually’ be contracted out. As it turned out in the years to come this way of thinking became the general leitmotif for the treatment of services of general interest. Equally, the concept of ‘least public cost’ proved very difficult to overcome in the context of the revision of the public procurement directives.


The White Paper on Services of General Interest of 2004 did make the point that ‘the performance of a general interest task prevails, in case of tension over the application of Treaty rules’. On the whole, however, this particular White Paper ‘offers little more than was already known before its actual publication and is therefore overall disappointing as the outcome of a long discussion process’. The Commission consistently stretches the concept of “services of general economic interest” as part of its internal market strategy beyond the idea of removing obstacles to free movement by regulating trade. Rather than providing protection of services of general interest there is a race to apply internal market rules to every conceivable area, which has actually altered the capability of local and regional authorities executing self-administration.

The 2004 White Paper should be followed by a Communication on Social Services of General Interest in 2006, and lastly a Quality Framework for Services of General Interest in 2011. This process will be further explained in Chapter 2.5. It had similarities with the race between the hare and the hedgehog in Grimms’ fairy tale. Unfortunately, though, as has become clear in recent years, the question is not one of ‘longer legs’ versus ‘more wit’, but of the rigorous resolve of the promoters of the neoliberal policy agenda. The latter have been able to turn around the worst crisis of the finance and banking system into one of state debt and ‘too much bureaucracy’. It has to be said therefore that the notion of ‘services of general interest’ as a broader concept has turned out to be a dead-end, as the concept of ‘services of general economic interest’ has been broadened to such an extent that ‘services of general interest’ have come to be considered as remnant mass of those services related to the execution of ‘sovereign’ tasks. Indeed, as early as in 2005, EPSU qualified the distinction between SGEI and SGI as unhelpful. This was in what followed also reflected in ETUC statements, for example from March 2007, referring to ‘Public Services – known in European jargon as services of general interest (SGIs) or services of general economic interest (SGEIs) fulfil people’s daily needs and are vital to their wellbeing’.

Differences in concepts and terminology have been used or even abused to follow an exclusive market or liberalisation logic. This has triggered the acute risk of losing sight of the objectives to be pursued by public services, namely to foster more social justice and social inclusion, to facilitate a degree of income redistribution and to guarantee equal opportunities for all citizens, independently of their financial means.

The difficulty with terminology is not ultimately resolved, as shown in the following chapter on the services directive. It is also a topical issue in the context of the ongoing debates on the inclusion or exclusion of public services in international trade agreements.
2.3 The battle over the Services Directive

One of the most contested pieces of EU legislation of the past decade was the Services Directive, also named the Bolkestein Directive, after its inceptor, Frits Bolkestein. Bolkestein was a member of the European Commission from 1999 to 2004 and a member of the Dutch right-wing liberal party VVD. He took an extremely liberal view of European integration, identifying ‘three core tasks’ for the EU, namely ‘removing obstacles’ to economic activity, ‘solving cross-border problems’ and ‘utilising economies of scale’. (For more on the attempts of Bolkestein to open the European water sector to competition see Section 3 on the Right2water campaign). The idea of a common market for services was not new, as already the Commission’s White Paper on the completion of the Internal Market of 1985 stated that ‘in the Commission’s view, it is no exaggeration to see the establishment of a common market in services as one of the main preconditions for a return to economic prosperity. ... The Commission considers that swift action should be taken to open up the whole market for services.'

The proposal for an EU Directive on Services in the Single Market was published on 14 January 2004. The initial directive was supposed to cover all services in member states provided on a ‘remunerated basis’. This broad definition virtually included all public services as these are generally paid for one way or the other. All basic services – for example, water, electricity, waste disposal or even healthcare and social services – were to be covered by the directive according to the original proposal. The 2004 EPSU Congress reacted by adopting an emergency resolution entitled ‘Europe has to be more than an Internal Market!’ EPSU also produced a campaigning leaflet with ‘10 reasons why EPSU says NO to the [Services] Directive’. In point 7 the argument is made that whether a service is ‘economic or non-economic is not the point’.

The fierceness of the battle to come is illustrated by the following. In May 2004, the Belgian trade unions issued pamphlets against the Directive with the slogan ‘The Bolkestein Directive: No!’. They considered the proposed legislation as ultra-liberal, promoting privatisation and undermining the European social model. The spokesperson of Commissioner Bolkestein reacted on Belgian radio, referring to Belgian unions as ‘liars’ and described the pamphlets as ‘scribbles’, comparing these with the position of ‘racist, virulently nationalist parties’. The ETUC Executive Committee of 9–10 June condemned these comments and expressed its opposition to the draft directive as it stood.

The debate on the Services Directive no doubt also had an impact on the referenda on the Draft Constitutional Treaty in France and in the Netherlands in 2005.

II. In fact, the dossier was not seen through by Bolkestein; Charles McCreevy became European Commissioner in charge of the Internal Market and Services in 2004, see: http://en.wikipedia.org/wiki/Charlie_McCreevy

III. The Commission’s argument to include health care in the scope of the directive was based on relevant jurisprudence of the European Court of Justice regarding the assumption of health care costs in case of cross-border treatment of patients. See Explanatory Note from the Commission Services on the provisions of the Proposed Directive on services in the internal market related to the assumption of healthcare costs incurred in another Member State with a particular emphasis on the relationship with Regulation No. 1408/71; in note 11570/04 from the General Secretariat of the Council to the Working Party on Competitiveness and Growth of 16 July 2004.

IV. The main point of controversy in the initial draft directive was the so-called ‘country of origin principle’ under which service companies in each of the 25 EU member states would have been able to provide services solely in accordance with the law of their country of origin, not the country where the services would be provided.
where it triggered fears of, among other things, deregulation and loss of rights within the Internal Market in the absence of a proper balance through social regulation.

The EPSU Steering Committee of February 2005 had agreed the general approach to be pursued, namely 'to continue to oppose the Directive but also to be prepared to amend the Directive'.

As far as possible amendments were concerned two main objectives were set:
1. to ensure that the directive does not cover, or impact, on SGI/SGEI; and
2. to ensure that the directive does not affect labour law, freedom of association or collective bargaining.

These two objectives were seen as closely linked to the main trade union objective for changing the directive, the country of origin principle.

Throughout 2005, EPSU had intensive discussions on the general approach towards the Services Directive and participated in numerous hearings and meetings organised by different committees of the European Parliament and of the political groups in the Parliament. In these discussions, EPSU stressed the need for clear and well drafted legislation and a proper impact assessment to avoid unintended side-effects. EPSU urged for the full exclusion of SGI and SGEI from the scope of the proposal.

EPSU organised meetings with other European trade union federations to prepare amendments on areas of interest and also participated in the ETUC working group set up to follow the Services Directive. Under the auspices of the ETUC, the aim was to ensure a coordinated position of the European trade union movement. This was not always easy. To illustrate some of the complications, reference is made to a joint statement concluded between EURO Commerce and UNI EUROPA Commerce of July 2005. In the statement the social partners agree ‘that creating the conditions for companies and their workers to better benefit from the European single market and from the achievement of its major objectives lead to economic development and thus job creation. In particular, EURO Commerce and UNI Europa Commerce both consider that cutting red tape, improving legal certainty for companies and reducing unnecessary costs are the kind of objectives that a Directive on Services in the Internal Market should serve.’

In internal debates the EPSU General Secretary voiced concern over this statement, describing it as untimely, if not counterproductive at that particular time, especially in its reference to ‘cutting red tape’.

The EPSU Executive Committee of November 2005 came out against the draft directive. ‘EPSU strongly condemns the decision of 21 November in the European Parliament’s IMCO Committee to include Services of General Economic Interest (SGEI) within the scope of the Directive. ... The EPSU EC expresses its continued opposition to the Services Directive as it stands.’

It was the degree of support, scepticism or even opposition that played a role in the positioning of organisations towards the Services Directive in the course of the lobbying process. The controversy over the Services Directive is being used by confirmed opponents of the internal market and protectionists to attempt to completely torpedo what is, in fact an important project. The frequently raised question of whether or not the Services Directive represents a massive “deregulation project” misses the point, as realisation of the Internal Market is only possible through the removal of anachronistic national obstacles and regulations ... with common European regulations that create a new balance.’

This also played a role within the ETUC where EPSU was seen to be among the firm critics of the internal market. But EPSU was not against the Internal (or
Single Market as such. In EPSU’s view though, the Internal Market could not become ‘a prime policy objective as opposed to a means to achieve certain policy objectives’. Despite different internal interpretations within the European trade union movement of the value added of the internal market, it has to be recognised that the ‘battle over the services directive’ was a major campaign for the ETUC and its member organisations. For the first time ever the ETUC has succeeded in ensuring that a draft directive has been brought to the attention of the European public and the media ... The ETUC maintained systematic and multiple contacts on all levels to the European Parliament’s key actors during the whole process.

The ETUC organised major Euro-demonstrations to say “No to the Bolkestein Directive” – the first assembled more than 75,000 people on 19 March 2005 in Brussels – in parallel to the deliberations in the European Parliament. Mobilisation against the draft directive was massive, with slogans such as ‘Bolkestein = Frankenstein’ seeking to project the possible horror scenarios. The movement was stirred by the fear that the directive as proposed would have ‘accelerated deregulation, seriously eroded workers’ rights and protection and damaged the supply of essential services to European citizens.’

EPSU was certainly also very much concerned with the possible deregulatory effects but for obvious reasons of its membership concentrated on the possible impact of public services. This explains why there were divergent views on when the opportune moment might be for acceptance or not of possible compromises.

On the EPSU website the following statement can be found: ‘Never has a draft directive caused so much confusion. Following on 22 and 23 March many believe that the fight to “dump the services directive” may have been won. However, this is not the case. The trade union demonstration in Brussels on 19 March was very successful. However, the Council did not demand that the Commission withdraw the Directive, only added its weight to the statements coming from Commissioner McCreevy and President Barroso in recent weeks on the need to review the most controversial aspects. The liberalisation of services remains an essential element of the Lisbon Strategy. Critics of the directive are still labelled “reactionary”. So, for all the commotion, the EPSU position remains unchanged: we still think the approach taken in the draft directive is wrong and that it should be withdrawn. And we do not think that this is a reactionary position, far from it: it is the logical consequence of having to work on a “politically and technically unworkable piece of legislation”. During a meeting with Commissioner McCreevy, the successor of Bolkestein, members of an EPSU delegation voiced concern about the impact of the directive on public services and workers’ rights.

A second major Euro-demonstration took place on 13 February 2006 in Strasbourg, one day before the first reading of the directive in the European Parliament. This proved to be a decisive moment. EPSU and its General Secretary had tried through various ways – for example, media interviews – to put pressure for a clearer exclusion of public services from the scope of the directive. This was not well received within the ETUC Secretariat at the time, who feared – rightly or not – that the compromise in reach might be jeopardised.

However, the trade unions in the public sector, organised in EPSU, were not satisfied. Pointing out that the proposed Services Directive still included water, waste, electricity and gas (metering and billing services and so on), education and culture, it requested a clear exclusion of all public services from the scope of the Directive. EPSU considered it unacceptable that the European Commission may in future block new regulations that a national government introduces to protect the quality and provision of public services covered by the Services Directive.
Indeed, the final text adopted by the European Parliament on 15 November 2006 fairly closely reflected the main lines of consensus reached in February. Crucially, health care was excluded. ‘Social services related to social housing, child care and support of families and persons in need, which are covered by the state or institutions authorised by it are not covered. In line with the language of Article 14 of the proposed Treaty on the Functioning of the EU member states are free to define SGEI and how they are to be financed.’

The EPSU Secretariat pointed to the contradiction in the relationship between ‘the freedom to define Services of General Economic Interest in Article 1 (3) and Article 17 (1) that classifies water, for example, as SGEI.’

The EPSU 2006 Report of Activities concludes that ‘although the EP President Josep Borrell hailed the Services Directive as “a largely consensual and balanced piece of legislation”, this cannot hide the fact that for public services, the potential impact of the directive gives cause for concern.’

In conclusion, ‘when in December 2006 the new Services Directive was signed, the content and method was substantially modified’. The difficult compromise on the Services Directive, however, left ambiguities in the final text. A first review of the implementation of the Services Directive that took place at an ETUC workshop in October 2009 confirmed particular problems regarding the scope of transposition, what is covered and what not. It is also pertinent to draw a parallel to the discussions on Free Trade Agreements such as CETA (Comprehensive Economic Trade Agreement) and TTIP (Transatlantic Trade and Investment Partnership): like the Services Directive, these agreements are based on a ‘negative list’ approach to liberalisation, meaning that anything not expressly excluded is covered.

As illustrated in the next Section the campaigning and lobbying efforts to prevent the worst possible consequences of the Services Directive coincided with attempts to define a legal framework for services of general interest.

### 2.4 In search of ‘legal certainty’ for services of general interest – what type of legal framework?

#### 2.4.1 ETUC–CEEP Joint Charter on Services of General Interest

The efforts by various organisations, such as the ETUC, CEEP, EPSU and other European trade union federations, but also the European Socialist Party to establish a legal framework on Services of General Interest (SGI) have their roots in the late 1990s. The approach taken to ‘legally secure services of general interest’ targeted both primary and secondary law, that is, a guarantee in the EU Treaty or a framework directive. Both the CEEP and the ETUC had developed texts for a Charter for Services of General Interest.

The ETUC organised a conference on public services on 5–6 October 1998, entitled ‘In the Public Interest: Public Services for the People of Europe’. This conference laid the basis for developing an ETUC Public Services Charter, to be adopted by the ETUC Executive Committee in December 1998.

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V. ‘Public Services for People in Europe’ was also the title of a policy statement adopted at the 6th EPSU General Assembly in 2000. It states that the ‘ETUC Public Services Charter and EPSU policies will form the basis for an EPSU Campaign for Public Services for People in Europe’; see also chapter 2 on the semantics of services of general interest vs. public services.
The Charter was conceived as a mobilising document to influence public debate and to campaign on the role of public services in:

- guaranteeing citizens’ rights;
- promoting jobs for all;
- sustaining competitiveness;
- shaping a social market economy;
- promoting cohesion;
- modernising through social dialogue;
- building European public services.

The campaign was geared towards ‘convincing the European Commission to develop and issue a White Book on public services, which could provide a basis for the definition of European quality standards for public service delivery. A European regulatory framework is to counterbalance the deregulation of public services through public procurement rules and through the opening up of markets.’ These debates were echoed at political level in European Council resolutions and led to the ETUC and CEEP agreeing to develop a joint document.

‘Even before the European Councils of Lisbon in March 2000 and Santa Maria da Feira in June 2000 had called on the Commission to bring its 1996 communication on services of general interest up to date, the relevant European social partners (the employers’ association CEEP and the ETUC, together with the European Federation of Public Service Unions, EPSU) had already set about formulating their own ideas regarding the operation and future of services of general interest … CEEP’s 1995 Charter and ETUC’s December 1998 Charter provided the basis for this joint action. … In the summer of 1999 the leadership of the two organisations agreed to draw up a joint Charter in order to endow it with greater political force.’ With the ETUC Executive Committee decision of 15–16 June 2000, preceded by the decision of the CEEP Delegates’ Committee of 22 May, the joint Charter was adopted, ‘with a view to lobbying national governments to address the issue at the Intergovernmental Conference using the Charter as the basis of their discussion of one of the key themes of the European social model’. ETUC and CEEP presented the Joint Charter to Commission President Romano Prodi and requested that the text be integrated into the Treaties as a protocol.

These multiple attempts to coerce the European Commission into taking concrete action did not produce results. On the contrary, as illustrated in Section 2, from 1996 onwards successive Communications were ‘put on the market’: the Communication on services of general interest of September 2000 refers to the CEEP–ETUC Charter as ‘an important contribution to the current debate on the future of services of general interest’. The Charter was, however, not included in the Nice Treaty, which was criticised in an ETUC Executive Committee resolution of December 2000. As a legal basis in the Nice Treaty could not be secured, ETUC and CEEP jointly presented a
demand for a framework directive based on the work done in the Joint Charter. This was a logical move, in so far as the Charter was seen as a basis on which to construct a reference framework. In its Article 12, the Charter spells out: 'It therefore appears essential to adopt an official text which elaborates the concept of the common value expressed in Article 16, explicitly states the principles and conditions enabling services of general interest to fulfil their task and may be used as a reference in achieving balance between the economic and social dimensions.'\textsuperscript{426}

Source: EPSU

2.4.2 Attempts to get support for a framework directive on services of general interest

A public service working group of the Socialist Group in the European Parliament was also working on the issue and put forward a structure for a framework directive in March 2001.\textsuperscript{427} The idea of a general framework for services of general interest initially seemed to garner broad support. The European Parliament in 2001 had called for a Framework Directive on services of general interest and repeated it in January 2004. Even the European Council of Barcelona in March 2002 more or less requested that the European Commission draw up a Framework Directive on services of general interest, as the French government had made its acceptance of further energy liberalisation conditional on the proposal of such a Framework Directive.\textsuperscript{428}

‘At the time of the consultation on the 2003 Green Paper, the majority of the players in the sector (local public authorities, operators representatives of users and NGOs) emphasised that they felt that there was increasing legal uncertainty with regard to the body of EU legal norms to which they were subject in view of their specific features. They stressed that they were part of a “grey area” and this was prejudicial to the accomplishment of the missions entrusted to them.’\textsuperscript{429}
'We want a legal basis which describes SGI and their missions for the European Union and member states in their own right. Experience shows us that this is an uphill battle, the political majorities are not in our favour, even though we can point to countless examples of market failures with resulting higher cost for the economies and societies.'

And an uphill battle it was. On 14 January 2004, the European Parliament adopted a report by MEP Philippe Herzog,VI interestingly on the same day as the publication of the proposal for a Directive on Services in the Internal Market. The Herzog reportVI urges the Commission ‘to draw up a legal framework, by next April, in full respect of the subsidiarity principle. The objective will be to ensure legal certainty for the future of public services and set out common principles, including equality of access, universality, affordability, quality of services, security, transparency, citizens participation, protection of the less-well off social groups. The right of local authorities has also been ascertained. ... A large consensus emerged for a democratic evaluation of the impact of the internal market directives on employment, user needs, security, environment, social cohesion ahead of any further market opening.’VII The call for independent evaluation of the internal market directives reflected doubts about the predicted outcomes of liberalisation. ‘If we are to believe the ultra-liberals, opening all services up to competition would be proof of competition and growth for European citizens. However, liberalisation has been going on for ten years without achieving the desired effect, and the Lisbon Strategy is not working.’ In a similar vein, EPSU pointed to ‘recent electricity blackouts and disruptions of the railway systems in a number of countries’. They had demonstrated ‘the need for public control. ... EPSU’s own analysis shows that some 300,000 jobs have been lost as a result of liberalisation, restructuring and market concentration in the electricity and gas sectors.’

The Herzog Report not only had difficult moments surviving the various readings in the European Parliament towards final adoption in January 2004, but the simultaneous publication of the Services Directive also held the risk that intensive trade union lobbying efforts could be lost. This was related in particular to the elements calling for a positive legal framework. The initial demand of the rapporteur for a directive on SGI (as called for by the ETUC) could not gather enough support (be it from the Socialist or the PPE groups). As a compromise, the final report refers to an EU legal framework on SGI, to be drawn up under the co-decision rule.

It was felt important at the time:

- ‘To ensure that all Services of General Interest, including Services of General Economic Interest, are exempted from the Draft Services in the Internal Market Directive;
- to change the exclusive internal market logic and to elaborate key principles of solidarity, equality, risk sharing, territorial cohesion and safeguarding subsidiarity principles.'

VI. Philippe Herzog was former MEP of the United Left, is co-founder of the think-tank Confrontation and in the recent Barroso Commission acted as special advisor to Internal Market Commissioner Michel Barnier. The following interview seems to indicate a bit of a political shift, http://www.euractiv.com/enterprise-jobs/herzog-talking-about-internal-market-will-make-it-sexy-interview-499376

Similarly, in a joint letter the ETUC, EPSU, UNI Europa, ETUCE (European Trade Union Committee for Education) and the ETF (European Transport Federation) expressed their concern that the idea of a legal framework to set out common public service principles would be undermined, in particular by the Draft Services Directive. ‘Although all its implications for SGI remain to be further analysed, it is clear that it will narrow further the space left for promoting public services.’

“We are demanding a legislative standstill until a framework directive on Services of General Interest is delivered. Protect public services first is our call, our campaign.”

It is against this backdrop that the EPSU Executive Committee adopted a paper called ‘Five reasons why action is needed now to promote quality public services in Europe’, in June 2005. This paper sets out the arguments in support of a positive EU legal framework on public services. There were voices of scepticism against such a framework within EPSU. Speakers from the Nordic trade unions referred ‘to the difficulty of carrying out an in-depth analysis of the consequences of a legal framework on the national, local and regional levels at this time’. Such objections reflected general reservations about extending the competences of the EU in the area of public services on the grounds of subsidiarity. This internal debate was mirrored in the EPSU General Secretary’s oral presentation of the Report of Activities at the 2004 EPSU Congress. The following extract reflects the discussion of the time: ‘One of the main problems we had internally was to achieve clarity among ourselves on the type of European regulation required for Services of General Interest. What should it cover, what should it not cover, should it be horizontal or sectoral, or both? What competences, if any, should the Commission have in this area? … We have not been able to completely reconcile some of the conflicting views inside EPSU. … There are those among us who maintain that services such as the provision of health and social services, for example, should strictly remain within the remit of the member states. The Commission should not have any responsibility and should not be allowed to interfere. The subsidiarity principle should apply. The other position argues: health and social services, their organisation and funding is the responsibility of member states, but this responsibility is slowly but surely being eroded by a wide range of internal market policies, by the mobility of persons and services. The draft Services Directive is an illustration of this. There might even be the risk that those advocating “subsidiarity” support, albeit unwillingly, the political objectives of the free marketeers.’

Even if these reservations were not shared by most EPSU members, they were perhaps brushed over too readily with a view to gaining the overall support of the EPSU Executive Committee for the proposed campaign on a legal framework on Services of General Interest. The report of the EPSU Ad Hoc Working Group on Services of General Interest of 11 July 2005 reads: ‘The EPSU campaign has to fit into the “what kind of Europe?” discussion. In this respect, “subsidiarity” and legal arguments about who is to do what should take the back seat.’ While these type of reservations ‘took the back seat’, so to speak, they might explain, among others, why the support for the ETUC petition on a framework directive, to be launched a year later, was insufficient.

‘It has long been argued, within EPSU circles, that an EU legal framework on public services is the primary objective of EPSU in campaigning terms. We have established that, due to the exponential influence of internal market regulations and subsequent pressures, unless a clearly identified “protected space” for public services is identified at EU level, the incremental creep of market influence will continue. In essence EPSU as an organisation has accepted that it is better to call for positive change collectively at the EU level rather than individually act defensively at national level. However the question remains as to why concrete progress on an EU legal framework has yet to be achieved. The contrast between the Services of General Interest (SGI) debate and the Services Directive debate is stark. The former attempted to follow a very rigid agenda (Green paper, White paper, European Parliament consultation) and has not yet resulted in a concrete proposal. The latter,
EPSU launched its campaign on ‘Quality Public Services – Quality of Life’ with a major conference, hosted by the Austrian EPSU affiliate GdG, under the Austrian Presidency in April 2006. Importantly, the EPSU campaign aimed – among other things – to be a counterpoint to the Directive on Services in the Internal Market. The campaign was based on a series of national and European events and was to focus in the main on lobbying the European Parliament ‘that was expected to call on the European Commission to produce a draft framework directive within the year’. There was, however, also a fear that the support for such a framework could fizzle out, given that the referenda on the Draft Constitutional Treaty were negative in France and in the Netherlands.

‘We want political recognition of public services in the further construction of the European Union. This is why the members of our Executive Committee agreed to launch a major campaign on “Quality Public Services in Europe – Quality of Life”. We want an alternative to the current agenda of liberalisation and deregulation with this campaign. Our aim is to provide a European platform for ongoing national campaigns. We demand a political and legal guarantee for public services within the EU and we will forge alliances in this campaign with organisations supporting the objective of quality public services for Europe’s citizens. The success of our campaign will depend on the support of the affiliated unions. This major initiative will only be successful if you are committed to be actively engaged. The timetable of our campaign will allow us to apply pressure in the European Parliament this spring, as it considers its response to the White Paper on Services of General Interest.’

A significant number of national campaign events took place in the second half of 2006 with a major conference on quality public services in the EU on 4–5 December held in Brussels.

The EPSU campaign had been launched in a context of dense political activity at EU level, first and foremost the debate on the draft services directive, but also the Commission proposals on so-called ‘social services of general interest’ and on the Communication on health, and of course the debate on the European Parliament’s report on the White Paper of the European Commission on Services of General Interest by Bernhard Rapkay. A central question in all of these debates was the added value of a horizontal legal framework on services of general interest as opposed to the sectoral approach favoured by the European Commission. EPSU together with ETUC and the CEEP maintained the position of ‘horizontal first’ before moving to any further sectoral

however, was presented almost as a fait accompli and in the resulting backlash EPSU was part of a very strong mobilising effort to minimise the risks posed by the services directive. This is the challenge for our campaign. The Services Directive debate illustrated that it is still relatively simple to mobilise AGAINST something, but when we look to put our alternatives on the table (in this case an EU framework for Public Services) our focus and strength dissolves. Extract from ‘Quality public services in Europe – quality of life’, EPSU Campaign for a legal framework on Public Services, document presented to the 24th Meeting of the EPSU Executive Committee of 29–30 November 2005, Brussels, Item 5.2.

ix. See http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52006DC0177&from=EN. On 26 April 2006, the European Commission published its Communication on Social Services of General Interest (SSGI), (COM(2006) 177 final). The Commission had been working on this paper for several years. The Communication reaches the conclusion that internal market regulation should always be followed and ‘that there is no need, at this point, to develop any legislation in which the general interest aspect of social services would be protected’. In: EPSU analysis on European Commission Communication on Implementing the Community Lisbon programme: Social Services of General Interest, adopted by the EPSU Executive Committee of 9 June 2006.

x. See http://ec.europa.eu/health/ph_overview/co_operation/mobility/docs/comm_health_services_comm2006_en.pdf. The Health Services Consultation as published by the European Commission, published on 26 September 2006 addressed in the main the issue of ‘legal certainty regarding the application of the European Court of Justice Rulings on free movement of patients, professionals and health services’; see EPSU Critical Analysis regarding Community action on health services, adopted by the EPSU Executive Committee, 20–21 November 2006. In this analysis, the EPSU Executive Committee reiterated its position that ‘general principles like accessibility and continuity could underpin the call for a general framework in the EU on SGEI, including health care services’.
initiatives in the area of services of general interest to prevent a fragmentation of these services and their liberalisation. This was not an easy position to maintain as part of the NGO movement, for example members of the Social Platform, opted for a dual approach, asking for a horizontal legal framework as well as sectoral legislation.

In September 2006, the European Parliament’s Report and Resolution on the Commission’s White Paper[452] no longer explicitly retains the idea of a framework directive.[453] The debate on the so-called Rapkay Report in September 2006 showed political division. The spokesman of the PES Group and rapporteur Rapkay said: ‘A legal framework for public services is long overdue. It is unacceptable for the ECJ to have to rule, on a case-by-case basis whenever breaches of competition law occur.’[454] EPP-ED spokesman Gunnar Hökmark, for example, is said to have welcomed the fact that the Economic Committee [of the European Parliament] rejected the call for a general framework directive. ‘It is still in the interest of consumers, taxpayers and employers that services of general interest can be open to competition, entrepreneurship and freedom of choice. The achievements of the internal market in areas such as telecoms and airlines are examples of how European economies, citizens and taxpayers have benefited from competition and development at the same time as new jobs have emerged in these areas.’[455] Sophie in’t Veld, ALDE member and shadow rapporteur said: ‘This is a clear signal to the Commission not to come forward with a framework directive. Brussels does not need to define public services or decide on the way they are organised and financed. Leave that to the local authorities and member states. If the application of market rules creates problems for the provision of public services, targeted solutions in the form of sectoral arrangements are preferable.’[456]

Against these odds, the Party of European Socialists (PES) had launched a proposal for a framework directive on Services of General Interest[457] on 19 September 2006, during a major conference. [458] The PES felt it was time to ‘call its bluff’ and demonstrate that it was possible to produce a framework directive ‘as an answer to the logic of public interest, not of the free market’,[459] ‘The truth is that the present Commission is in thrall to a narrow, neoliberal agenda: their difficulty with services of general interest is that they have no interest in legislation which sets limits to the sway of markets. Public services are not their priority.’[460] ETUC and EPSU very much welcome the initiative of the PES to come forward with a concrete legislative proposal on services of general interest. … What is important here is the demonstration that it is possible to legislate on SGIs on the current Treaty basis.’[461]

Nevertheless, this could not hide the fact that support for a general framework directive in the European Parliament had shrunk. The resolution of the European Parliament of 26 September now only called on the Commission to come forward with appropriate legal initiatives.[462] ‘Indeed, in those years there was no consensus on the need for a legal framework, neither in the European Parliament (Christian Democrats, liberals and others openly rejected the idea, nor among governments (the Dutch government, for instance, was opposed to it) nor among the social partners (Business Europe did not like the idea).’[463]

2.4.3 The last attempt? ETUC petition on services of general interest

In an attempt to still turn things around, the ETUC Executive Committee agreed to launch a campaign in support of a legal framework for public services on 19/20 October 2006.[464] This followed on the adoption by the ETUC of a resolution in June and proposal
for a legal framework in September. ‘ETUC and CEEP had attempted in the first half of 2006 to reach agreement on a joint text for a Draft European framework on services of general interest, following on from the joint charter on services of general interest in 2000. ... It materialised, however, that the CEEP ... faced stronger internal opposition to the draft text.\footnote{XI} In the end it was not possible to reach agreement on a text which still reflected sufficient substance.\footnote{A joint statement was issued in February 2007 in which ETUC and CEEP underline their view that a \textit{general framework} [the reference to a framework \textit{directive} was dropped] on services of general interest is necessary to clarify general principles ... before further sectoral initiatives are proposed.}\footnote{465} A joint statement was issued in February 2007 in which ETUC and CEEP underline their view that a \textit{general framework} is necessary to clarify general principles ... before further sectoral initiatives are proposed.\footnote{465}

The main element of the ETUC campaign was a petition to collect over 1 million signatures from citizens in all EU/EEA member states, launched in November.\footnote{467} ‘The overall objective is to push the European Commission to come up with a framework directive on public services or a similar appropriate legislative horizontal instrument. This is in order to ensure that the general interest prevails over internal market rules and that the rules of the European single market are not used to undermine key public services.’\footnote{468} The EPSU Executive Committee endorsed the idea of an ETUC petition on public services at its meeting of 20–21 November. ‘As EPSU had not been consulted on this initiative before putting the petition to the ETUC Executive Committee agenda of 19–20 October, the Executive Committee underlined the need for practical coordination of the petition campaign through the ETUC.’\footnote{469} EPSU, nevertheless, supported this initiative to the best of its abilities.

The ETUC’s approach focused on persuading the Commission to propose a horizontal legal framework. The ETUC petition had the support of three political groups in the European Parliament: the European Socialist Group, the Group of the Greens/EFA and the United Left and Nordic Green Left.\footnote{470} Former EU Commission President Jacques Delors declared his support and stated that it was a mistake to go for the adoption of the Services Directive without proper guarantees for public services. Both public and private services were important for the EU. The petition was also backed by NGOs, most notably those represented by the European Social Platform. A major achievement no doubt was to have gained the support of ten mayors of capital cities: Brussels, Paris, London, Luxembourg, Lisbon, Sofia, Amsterdam, Tallinn, Vienna and Nicosia. ‘On the eve of publication of the European Commission’s new strategy for the internal market, the ETUC and the mayors of European capitals warn against following the route of privatisation alone. ... In opposition to this neoliberal approach, the mayors who have signed the declaration, together with the ETUC, propose a European framework directive to guarantee services and support their prime mission of cohesion and solidarity, as well as making them affordable to all.’\footnote{XII} May Day 2007 was also used to collect signatures.\footnote{471} Efforts were made to galvanise support in the run-up to the ETUC Seville Congress.

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\footnote{XI. The Deutsche Städtetag, the German Federation of Cities, maintained opposition to a uniform instrument, such as a framework directive, as this would not take sufficiently account of national specificities and thus could not destroy the successful operation of services of general interest. The Deutsche Städtetag therefore favoured sectoral legal instruments. In: Diskussionsgrundlage zur 37. Ordentlichen Hauptversammlung des Deutschen Städtetages vom 23.-25. April 2013; Daseinsvorsorge in Europa–Vielfalt sicher Lebensqualität, p. 7.}

\footnote{XII. See http://www.etuc.org/press/mayors-ten-european-capital-sign-declaration-support-public-services#.VOTKEXoziIU; the petition was not signed by Klaus Wowereit, the Social Democratic mayor of Berlin, despite several attempts to convince him. Armandine Crespy sees this as a reflection of the attitude of the German cities and regions, focusing on subsidiarity at local and regional level, in: ‘The vanishing promise of a more ‘social’ Europe: public services before and the debt crisis, prepared for the Conference of the Council for European Studies, Washington DC, March 2014, p. 7, see also footnote 121.}
from 21–24 May. Indeed, a major session during that Congress also aimed at mobilising support by the affiliated unions. On 17 November 2007 the ETUC handed over more than half a million signatures to Commission President Barroso, who politely received both the ETUC and EPSU General Secretaries, but clearly was not too impressed. The petition had unfortunately not reached its target. It was the first initiative for the ETUC of this nature and while it had a degree of political backing, it also had many opponents. Regrettably, a number of the ETUC affiliated unions were not in a capacity or were not willing to bring this campaign to a success. The largest number of signatures for the petition came from Romania, followed by Belgium and France. The resources contributed to the campaign were also insufficient, both in staffing and financial terms. The ETUC petition campaign was brought to an end in November 2007. The ETUC conclusion was that the ETUC campaign had contributed a step forward through the inclusion of a protocol in the EU Reform Treaty said to ‘recognise the primacy of services of general interest. This was achieved primarily by the Dutch government but it lines up with the ETUC Campaign which has been strongly supported by the mayors of capital cities and many in civil society.

John Monks, ETUC General Secretary declared: ‘So our conclusion today is disappointment that the Commission has missed an opportunity to ensure that public services are sufficiently respected. The EU Reform Treaty, if ratified, could well help us achieve the same objectives. Nonetheless, a more detailed Framework Directive would have clarified the necessarily general intentions of the EU Reform Treaty and the Commission have seized the moment, and not ducked it.’ In 2007, the idea of horizontal regulation had been clearly abandoned and the debates exclusively focused on social SIG.

The European Commission presented its proposals for a new phase of the Internal Market on 20 November 2007, including a further Communication on Services of General Interest, including Social Services of General Interest. The latter was described as a ‘companion document’, illustrating the political focus. The Commission further held the view that the Protocol to the Lisbon Treaty on Services of General Interest provides sufficient legal clarity for the operation of public services and hence a further general legal instrument is not required. In response to this Communication the ETUC was a little less affirmative in demanding ‘horizontal’ before ‘sectoral’. While still confirming the need for a horizontal approach towards existing and future sector-specific directives, ‘the sector-specific and transversal actions should be considered complementary, not opposing.’

According to the conclusions of the ETUC Lisbon Conference on Services of General Interest ‘a framework directive is no longer possible; and the Treaty of Lisbon can and shall be used to give new momentum to the debate on the future of public services’. At that particular stage, the ETUC and the majority of its member organisations were more concerned with the fall-out of the European Court of Justice rulings in the cases Viking, Laval and Rüffert, in terms of the perceived primacy of competition rules as compared with workers’ and trade union rights. Still, all of the organisations that had campaigned for a framework directive on services of general interest, various academic and legal experts held the conviction that the Lisbon Treaty, which entered into force on 1 December 2009, had provided a more positive basis than previously for the future treatment of SGI, firstly by new Article 14, secondly by various provisions in the Charter of Fundamental Rights and thirdly through Protocol 26, defining key values for SGIs, such as quality, user rights, safety and affordability, equal treatment and universal access.
Article 14 of the Treaty on the Functioning of the European Union ... is an explicit legal basis for secondary law ... subject to the co-decision of the Council and the Parliament ... it also indicates that the legal tool for legislation should be regulations, which are immediately and directly applicable in national law. The Treaty of Lisbon clarifies the situation ... The following sentence will be added to the current wording of Article 16 EC: “The European Parliament and the Council, acting by means of regulations in accordance with the ordinary legislative procedure, shall establish these principles and set these conditions without prejudice to the competence of the member states, in compliance with the Treaties, to provide, to commission and to fund such services.” This new provision will be an uncontested legal foundation for the common and transversal rules for the accomplishment of the tasks of SGEI.

EPSU, too, well felt that with the adoption of the Lisbon Treaty, the EU’s legal framework for public services had taken a decisive step forward and that there was now a clear obligation for the European Union to act in the area of public services. In EPSU’s view ‘the Protocol (and Charter of Fundamental Rights) could become an “umbrella” under which we could work towards a more coherent EU approach towards public services and the public sector’, one which acknowledges their social, economic and political role. The Protocol could, for example, be used to benchmark different EU policies affecting public services, with the aim of promoting ‘a high level of quality, safety and affordability, equal treatment and the promotion of universal access and of user rights.’

And yet it was not be: on 20 December 2011, the European Commission again published a Communication entitled ‘A Quality Framework for Services of General Interest (SGI)’. The Communication was accompanied by proposals for a revision of the public procurement Directives and a new proposal for a Directive on concession contracts. The actual text of the Communication certainly did not meet the expectations that its title might have suggested. An EPSU background note states: the Communication is not an ‘enabling framework’. It continues to reflect the prevailing view that more competition makes non-liberalised public services more efficient. ‘Missing from the Communication is any reference to citizens, fundamental rights (for example, the Charter of Fundamental Rights) or the need for evaluation ... The Communication is a setback, in that the Commission does not even deem it relevant to reaffirm that in case of conflict with competition rules the general interest shall prevail’, as still stipulated in the 2004 White Paper on SGI. The EPSU assessment concludes that ‘in this sense the Communication can be seen as a “market framework”.’ Attempts to create a legal counterbalance to the Services Directive with a legal framework on services of general interest were not successful. The vote on the Rapkay Report was already an indication of the general policy direction, which ultimately means that the Services Directive provides the general legal framework for services in the internal market.

This was no doubt a very disappointing end to a long struggle for a clear horizontal legal framework for public services. A European Commission reflecting a different type of political leaning than the one led by Manuel Barroso might have (hypothetically) acted differently. The legal option – at least – would have been available based on the new provisions of the Lisbon Treaty, but politically this did not pass.

From 2009 onwards the effects of the Economic and Financial Crisis unfolded fully. It meant that large groups of public sector workers were threatened with job losses, wage freezes or even wage cuts. It meant different priorities for the EPSU affiliates, trying to ward off the worst consequences of austerity programmes. EPSU initiated various protest actions and was actively involved in the ETUC’s ‘No to Austerity’ campaign.
Also EPSU tried to put the focus on the necessary evaluation of the liberalisation of public services. The EPSU Tax Justice Charter, of May 2010, was meant to be part of the responses to the one-sided austerity agenda. The main focus was to get a tax on financial transactions, the FTT, off the ground. EPSU further tried to direct public attention to the reversal of privatisations, failed privatisations or re-communalisation and strengthened cooperation with other Brussels-based organisations active on public service issues.

Starting with the 2006 Communication of the European Commission on Social Services of General Interest, EPSU also specifically contributed to the debate on the role of ‘social services of general interest’ and ‘social services of general economic interest’ and their status in relation to the internal market. Between 2008 and 2011, EPSU, in concert with its affiliates and other organisations, successfully pursued its efforts to change the general direction of the Council Directive on the application of patients’ rights in cross-border health care. Both issues will be explored in the following section.

### 2.5 Health and social services within the internal market – a fundamental mismatch

#### 2.5.1 Social Services of General Interest

‘On 26 April 2006, the European Commission published its long awaited Communication of Social Services of General Interest (SSGI). The Commission has been working on this paper for several years. Nonetheless, the quality and content of the paper falls far short of EPSU’s expectations. The European Commission has not developed any new policy
on the issues of SSGI. Worse, it is of the opinion that internal market regulations should always be followed and that there is no need, at this point, to develop any legislation in which the general interest aspect of social services would be protected. In EPSU’s opinion the Communication as a whole lacks genuine concern for the solidarity and public service aspect of social services. For this reason EPSU calls on the European Commission, but also the European Parliament and Council to refocus attention on the need for a framework directive on all services of general interest.494 This rather damning assessment of EPSU at the time has to be seen in the context of the major campaigning efforts to obtain a general legal framework on Services of General Interest. Such a general instrument was supposed to ensure that the general interest would prevail over market rules. More specific provisions on SSGI therefore seemed to be counterproductive. ‘A sectoral approach would force the member states to define their public services of general interest according to standards and characteristics of a particular sector, set out by European legislation.’495 According to Stéphane Rodrigues ‘the European Commission aroused some disappointment among those in charge of services of general interest (SGEI) and more particularly of social services of general interest’.496

The Communication on SSGI had been announced in the 2004 White Paper on services of general interest.497 ‘In the White Paper, the Commission stressed that the personal nature of many social and health services leads to requirements that are significantly different from those in networked industries (such as the distribution of gas, electricity, postal services, telecommunications). The Commission argued for a systematic approach in order to identify and recognise the specific characteristics of social and health services of general interest, and to clarify the framework in which they operate and can be modernised.’498 As Rita Baeten points out, ‘the publication of the Commission’s Communication was delayed several times. It seems that it proved extremely difficult to reach an agreement between the Commission’s different DGs on the content of the Communication’.499 Baeten moreover contends that ‘the European Commission awaited the outcome of the first reading of the services directive in the European Parliament and in particular the decision on the Directive’s scope of application. If health and social services had not been excluded from the services directive, this might have removed some important arguments in favour of a specific approach for this sector’.500 Baeten raises the question of why the Communication does not deal with health services. ‘This is rather surprising, since for two years it had been announced as a Communication on health and social services.’501 Baeten concludes that ‘apparently the decision to exclude healthcare services was the result of last-minute negotiations within the European Commission and is linked to the fact that the Commission intends to bring forward a specific legal proposal on health services.’502

The EPSU 2006 position paper also questions the concept developed by the European Commission, ‘which includes and excludes some specific services with a general interest and a social character’.503

Accordingly, two main categories of social services are identified:
1. statutory and complementary social security schemes covering the main risks of life;
2. other essential services provided directly to the person.

EPSU challenged this definition, which it considered restrictive, because not all social services are provided to the person, the services addressed are ‘social care and support services’. EPSU also noted that ‘education and health services’ were not covered by the
Communication and also made the link with the still ongoing discussion on the Services Directive adopted only in December 2006. The latter directive excludes ‘social services related to social housing, child care and support of families and persons in need, which are covered by the state or institutions authorised by it’. This narrow approach begged the question of the extent to which other social services could be excluded from the internal market rules. The EPSU analysis consequently points out that the European Commission does not aim to define a distinct rationale for social services but rather to make them compatible with internal market rules. This conclusion is based on the modernisation instruments recommended, covering, among other things, outsourcing and Public-Private Partnerships.  

The status of social services within the internal market and the value of a specific legal instrument to secure the particular mission was also debated within the NGO community representing a variety of social service providers at European level, for example at the First Forum on Social Services of General Interest in September 2007 in Lisbon, under the auspices of the European Parliament and supported by the Portuguese Presidency. The conclusions from this conference reflect the different views in referring to ‘unclarities and uncertainties related to the legal framework at Community level’. ‘Coherence of Community policy and rules is not improved by using terms such as “SSGI” in an inconsistent way in different documents and policy processes. This already becomes evident if only considering the two main elements subsumed to this term in the Communication of 26 April 2006, obligatory and complementary social insurance schemes on the one hand and personal social services on the other. Not distinguishing at least between these two major elements – for which a different set of Community rules apply – will hardly bring about legal certainty. Even more confusion is raised by the fact that health services are often considered and treated as sub-category of “social services”.’ Many participants of the First SSGI Forum are reported to share the assessment that health services in general have the same characteristics and objectives as social services. ‘This is why participants at the Forum reiterated their position that there is a clear need to develop a concept/common understanding of general interest objectives/concerns.’ Participants were said to caution against a narrow definition of SSGI focussing only on the most needy or vulnerable groups. The universal dimension of the SSGI was underlined as an expression of fundamental rights of both member states and the EU. Whereas a ‘considerable share of participants held that an EC framework related to SSGI would be useful to take into account their specificities, but also to guarantee the effectiveness of the subsidiarity principle ... a considerable number of participants expressed their refusal of further regulation in the field of SSGI at Community level and questioned their possible added value.’  

The SSGI Communication did not make a specific recommendation for a legislative proposal for social services. It seems that DG Employment and Social Affairs, which has the lead over initiatives concerning social services of general interest, did not receive the endorsement from the College of Commissioners to start preparing a legal framework. At a conference organised by the Austrian presidency, only few days before the draft Communication was discussed and approved by the College of Commissioners, Commissioner Spidla launched the idea of a legal framework. This suggests that he proposed the establishment of a legal framework to the College of Commissioners but did not get backing.
2.5.2 European Parliament calling for a specific instrument for SSGI

The failure to come forward with a specific instrument for SSGI was criticised in the European Parliament during the debate on the Report by Joel Hasse Ferreira in March 2007. The report deplores that the Communication of the Commission ‘does not provide sufficient clarification about the classification and definition of SSGIs and defers any decision on the legal framework which should apply to them.’ ‘It would be a mistake to adopt an approach to SSGIs which sets up a false opposition between rules on competition, public aid and the market on the one hand, and concepts of public service, general interest and social cohesion on the other.’ The Parliament’s Report further states that ‘on the contrary ... it is necessary to reconcile them by promoting positive synergies between the economic and social aspects.’ It warns, however, that ‘in the case of SSGIs, the rules on competition, public aid and the internal market must be compatible with public service requirements, and not the other way round.’

A similarly controversial debate to the one on the Rapkay Report of 2006 on Services of General Interest ensued in the Plenary Debate of the European Parliament of 12 March 2007. Here follow some of the contributions to give a flavour of the discussion. Sophia in’t Veld from the ALDE Group declared, ‘I am ... getting the impression that we have gone over the same ground a thousand times and that each time, the same arguments are dredged up. ... We are of one mind where the importance of the social services of general interest is concerned. That much is beyond dispute. I do not, however, share the automatic conclusion that is drawn that, because something has the label ‘social’, market rules should not apply. ... I am not in favour of legislation where it is not needed. ... There is no need for a general call, which I have been hearing for years in this House, for a legislative framework and sector directive.’

Jean Lambert, Greens/European Free Alliance Group Group, in contrast argues: ‘Many of the users of social services are people in particular social need and therefore that is why we look at social services as having a different mission, and possibly a different organisation, to general consumption. It is one of the reasons why we took these services out of the Services Directive because we did not consider that they operated to the same market rules as travel agencies, construction companies and anything else in the general services sector.’

Anne van Lancker, PES (Party of European Socialists) said: ‘it is because of this House that a wide range of social services have been excluded from the Services Directive, the reason being that for a majority in this House it is inconceivable that social services should be put on the same footing as commercial ones. Social services guarantee citizens’ fundamental rights ... That is why it is good ... that the Commission should recognise this specific trait of social services, although ... this recognition is not enough ... In order to create legal certainty and to determine the extent to which the internal market rules could apply to this broad area, we need a sector specific directive which ... protects subsidiarity and safeguards the communal tasks of these social services.’

2.5.3 Economic vs non-economic – the ‘social’ nature of social services is not sufficient to exclude them from internal market rules

In its Second Biennial Report on Social Services of General Interest, the European Commission refers to calls for a ‘legal framework specific to the SSGI’, but states that ‘its content and value added compared with the existing rules have yet to be made
clear’. These ‘calls’ met with deaf ears; on the contrary, the Commission did not even acknowledge a problem or felt misinterpreted. ‘The Commission’s commitment to promote social services quality is complemented by its work aimed at clarifying the application of EU rules to SSGI. Several public authorities – mainly local authorities (which are most often in charge of social services) – and service providers active in the social field have reported difficulties in understanding and applying the relevant EU rules. They often perceive them as an obstacle to organising and financing high-quality social services or misinterpret them. For instance, it is sometimes wrongly assumed that EU rules entail liberalisation, privatisation or deregulation of the social services sector, that they oblige public authorities to select the cheapest provider at the expense of the quality of the services or that they do not allow public authorities to finance service provision adequately.’

Our health is not for sale, European Action Day, 7 April 2016. From left to right: L. Snape, assistant to the General Secretary, UNISON & President TUC; J. Corbyn, leader British Labour Party; W. Nichols, President UNISON; D. Prentis, UNISON General Secretary and President PSI
Source: UNISON

The Commission document goes on to say that the correct application of EU rules on state aid and public procurement can help to organise and finance good quality, cost-effective social services. ‘These rules can facilitate the emergence of new service providers who might propose new, innovative, better quality services, responding to changing needs. Public procurement rules also allow the selection of the most cost-effective service provider, all the more important in times of budgetary constraints.’ ‘The Services directive, which in any event only applies to certain social services, has not changed this approach.’ ‘It is worth noting that those social services to which the Services directive does not apply still fall in the field of application of the internal market rules’ [emphasis by the author]. In referring to the Monti Report on a ‘New strategy for the single market at the service of Europe’s economy and society’ the Commission declares that it will pick up the proposals made in relation to social services; that is, to ensure that where EU rules apply to social services, the
rules are predictable and proportionate.\textsuperscript{527} ‘The main relevant criteria to pave the way towards an exception or an exclusion of the EU rules is not the social nature of the service, but the economic or non-economic nature of such services.’\textsuperscript{528}

The role to be attributed to social services was discussed in depth at the Third Forum on SSGI, organised by the Belgian Presidency in October 2010. What was their relationship within the internal market? In her opening speech, Laurette Onkelinx stated on behalf on the Presidency: ‘It seems quite clear to me that the European social market economy that we are currently building, such an internal market cannot function properly and serve everybody’s interests, without a strong social dimension and without being accepted by European citizens. Allow me to remind you that the internal market is not an end in itself. If you read the treaties carefully you will see that the internal market was conceived as an instrument to contribute to the economic and social wellbeing of European citizens.’\textsuperscript{529}

The European Parliament’s rapporteur on SSGI, Proinsias De Rossa, in 2011 recognised the political difficulties in obtaining a legislative proposal on social services. ‘The challenge is to delineate and provide a secure and flexible framework for SSGI, using all the instruments available to us, to ensure that the social objectives of the Union are supported rather than impeded by rules intended to regulate commercial enterprises.’\textsuperscript{530} In his view ‘a reform package should include a Framework Regulation for SGEI (services of general economic interest)’\textsuperscript{531} and thus pick up an earlier proposal of the Socialist Group presented in 2007 for a framework directive. Such a framework regulation would use Article 14 TFEU ‘to define services of general interest and delimit the impact of single market rules’,\textsuperscript{532} ‘The Regulation could distinguish between economic and non-economic SGI’,\textsuperscript{XIII} but this latter position did not overly convince EPSU, as ‘there is a real risk that further EU clarification on “non-economic” versus “economic” SSGI will only result in a further narrowing of the scope of SSGI to include only those areas that are non-profitable, namely services provided to the poorest and most vulnerable in our communities.’\textsuperscript{533} This particular argument notwithstanding, the De Rossa Report makes a number of valid contributions, for example, emphasising ‘that it is for member states and local authorities freely to decide how SSGI are funded and delivered, whether directly or otherwise, using all available options, including alternatives to tendering, so as to ensure that their social objectives are achieved and are not hampered by the application of market rules to non-market services’.\textsuperscript{534} De Rossa comes to the conclusion that ‘the political configuration of the Council and the Commission makes it unlikely that such legislation can be adopted in the near future and solutions are required now’.\textsuperscript{535} He proposes a ‘Reform Programme’ for SSGI, including proposals such as the establishment of a ‘High Level Multi-Stakeholder Taskforce’.\textsuperscript{XIV}

The taskforce was to have a two-year mandate and to come forward with a report to a Fourth Biennial Forum on SSGI, also proposed in the report. The taskforce was not set up subsequently and as far as EPSU was concerned a further instrument of soft governance

\textsuperscript{XIII} In contradiction to this proposal, the report actually recalls in point 45 ‘that the key issue is not to distinguish between economic and non-economic SGI, including SSGI, but rather to establish clearly the responsibility of public authorities, in procuring a service, to ensure that particular general interest tasks which have been assigned to undertakings entrusted with the operation of such services are carried out’. See De Rossa report on the future of social services of general interest, p. 13.

\textsuperscript{XIV} ‘The Taskforce mandate would be to seek a broad consensus on the various proposals, including those of the European Parliament, the Commission, the SPC (Social Protection Committee), the Social Partners and representative bodies of providers and users; identifying the policy and legal adaptations necessary to establish high quality standards and the legal certainty necessary to ensure full realisation of the social and economic role which SSGI can play in European society.’ Ibid.
was not particularly helpful. The report, as well as the final resolution advocate the organisation of a Fourth Biennial Forum on SSGI. This proposal has not been followed up either, even though in its 2011 Communication the European Commission does express its commitment ‘to support future rotating Presidencies of the Council to organise the 4th European Forum on Social Services of General Interest in around twelve months’ time’. The Communication acknowledges that the Forums have been ‘essential in sharing information and promoting dialogue and better understanding of the rules among stakeholders ... At this time, the question which presidency will take up the initiative to organise the next forum is not yet solved.’

Those showing interest in having a next forum, expressed the view that organising a forum feeds into a continued process of discussions.

The ‘quality framework for services of general interest’ referred to in the Communication consists of a proposed legislative package to review both the state aid rules and the public procurement directives. Regarding state aid, the Communication announces a review to allow for a larger number of social services to be exempted from the ex-ante notification and assessment process by the Commission, irrespective of the amount of compensation. It is suggested that the list of exemptions should, ‘in addition to hospitals and social housing, further include services of general economic interest meeting social needs as regards health and long-term care, childcare, access to and reintegration into the labour market, and the care and social inclusion of vulnerable groups’. On public procurement, the text promises ‘specific treatment for social and health services. ... They will be subject to higher thresholds ... In addition, in order to encourage a quality approach, the reform promotes the use of the economically most advantageous tender criterion which means that member states do not have to award such services on the basis of the lowest price alone.’ Reluctantly, one is tempted to say, the Communication states ‘the new rules will ensure that the application of public procurement rules will not interfere with the freedom of public authorities to decide how to organise and carry out their public service tasks’.

2.5.4 Disappointing outcome of a longwinded debate

The debate on Social Services of General Interest and the efforts to safeguard their particular social missions in secondary legislation were nearly as longwinded as the ones on a legal framework for Services of General Interest in the preceding years. The outcome was equally disappointing as it ended with a de facto political confirmation that the internal market framework had to be applied. This pro-market bias was referred to in an EPSU note as ‘compliance mania’. The attempt to protect social services by concentrating on a legal instrument for SSGIs ‘only’ and thus developing a non-market rationale for social services was not successful. It is also fair to say that among the stakeholders – that is, the trade union movement and social service providers – there were divergent views on whether to favour a general legal framework as opposed to a specific legal framework for social services.

An ETUC Resolution calling for a ‘New impetus for public services’ from June 2010 uses strong language to coerce the European Commission to take action: ‘The ETUC is convinced that the new article 14 together with the new protocol is an obligation to act. It is unacceptable that the Commission continues to abstain from any action. The ETUC asks the Commission to come up with a legislative proposal on the basis of the new
article 14. The previous demand for a “framework directive” ... is from now on replaced by the new demand for regulation(s). 

Social Services are part of a “grey area”, which is prejudicial to the accomplishment of the missions entrusted to them. They are faced with an increasing level of legal insecurity ... Therefore, regulations on health and social services should take the new treaty provisions fully into account. ... The creeping precarisation of public services must be reversed.

The position taken by the EPSU officer during a meeting of the Trade Union Intergroup in March 2011 caused some queries at the EPSU Executive Committee meeting in April. While compliments were made on the quality of the background material provided by the Secretariat, the stance taken by the Secretariat on a ‘framework directive for social services’ was questioned.

It was clarified in response that the EPSU representative had also spoken on behalf of the ETUC at the meeting in question and that ‘for different reasons EPSU and ETUC are no longer advocating a framework directive on SGEI/SGI, but ask for regulations according to article 14 TFEU. Both organisations call for making full use of article 14 TFEU and Protocol No. 26 when shaping the legal, policy and quality frameworks for social and health services, as highlighted in the document prepared for the meeting of the European Parliament’s Trade Union Intergroup.

Indeed, both in the trade union movement and among the organisations of service providers there continued to be those who were opposed to any legal instrument, be it on services of general interest or social services of general interest. This did not help to lend political strength and conviction to the argument.

Consequently, the 2011 Communication concludes that ‘various public consultations and an ongoing dialogue with stakeholders will continue to examine the need for legislation based on Article 14 TFEU. The consensus at this stage seems to be that this is not an immediate priority’ [emphasis by the author: the sentence is a direct quote of point 48 in the Resolution of the European Parliament of 5 July 2011 on the future of social services of general interest]. The Commission takes the view that a sectoral approach, where tailor-made solutions can be found to concrete and specific problems in different sectors, is more appropriate at this stage.

It can be assumed that one such example of a tailor-made solution was the proposal on a Directive on the Application of Patients’ Rights in Cross-Border Healthcare.

2.5.5 European Voluntary Quality Framework – an interesting by-product

Nevertheless, quite an interesting by-product was generated as a result of the discussion, namely the development of a ‘European Voluntary Quality Framework (VQF)’, worked out in the Social Protection Committee. Initially received with scepticism by EPSU, it turned out to be the only concrete result of the entire debate, albeit obviously non-binding. The VQF underlines the universal objectives and principles fundamental to the organisation of social services. The VQF further stresses the important role played by social services in providing for prevention and social cohesion and addressed to the whole population, independently of wealth or income. Crucially, the importance of ‘good working conditions and work environment is recognised’.

‘Social services should be provided by skilled and competent workers under decent and stable working conditions and according to a manageable workload.’ The VQF also commits to ‘promoting social dialogue at all levels with a view to encourage workers and trade unions to actively participate in the development, delivery and evaluation of services, involving volunteers as appropriate’. While the commitment to social dialogue was welcomed
by EPSU, the simultaneous references to volunteers were viewed more critically. In EPSU’s view, ‘volunteers cannot substitute for a professional workforce’. In contrast, EPSU advocated the professionalisation of the social services workforce. ‘We call for a strengthening or development of social dialogue and collective bargaining in the health and social services sector both within member states and at European level as this would facilitate addressing and negotiating relevant issues related to qualifications and training, professional standards, decent work and pay conditions.’

EPSU’s participation and involvement in the Third Forum on Social Services in 2010, as well as subsequent networking and contacts with social NGOs active at European level, representing non-profit employers at national level helped to forge the idea of a social dialogue in the social services sector. This has taken more concrete shape through two major projects, ‘Promoting Employers’ Social Services Organisations in Social Dialogue’ (PESSIS). PESSIS I and II were to provide a detailed understanding of how social dialogue is organised and structured (or not) in the social services sector in Europe. ‘As a labour intensive sector, in a period of rising unemployment, the social services sector is making a significant contribution to employment provision as well as value added activities. The social services sector has a high proportion of women workers. In some countries over 90 per cent of workers are women, many working part-time ... Many countries have problems with recruitment and retention of workers.’

The recognition of the importance of the social services labour market and its inherent problems have underpinned a move by employers in the social services sector to get organised at European level. Social Services Europe, a platform set up mainly for not-for-profit health and social service providers, aiming among other things at ‘promoting employers’ social services organisation in social dialogue’. ‘It is key to organise ourselves as employers if we wish to further our impact on European and national policy-making processes.’ The PESSIS project is seen as a step in a longer term process aimed at establishing a representative platform for employers in the social services sector at European level. While clearly there is not an immediate opening for a formal social dialogue in the social services sector, no doubt the building of the Social Services Europe Platform is one of the most important outcomes of the debate on SSGI from an EPSU perspective.
2.5.6 Patients' rights in cross-border care – is patient mobility a good thing?

‘Free movement of patients – or patient mobility, as it is commonly referred to – involves people accessing health care services outside their home state. ... Patients' readiness to travel for care, especially across borders, is determined by a mix of factors linked to the specific situation of the patient, to the specific medical needs and the availability of care at home and abroad.’

The Directive on the Application of Patients’ Rights in Cross-Border Healthcare entered into force on 9 March 2011. The adoption of the Directive was the outcome of a protracted policy process. It was to find an adequate response to a series of rulings of the European Court of Justice dealing with the reimbursement of cost for health care incurred by patients in another member state of the EU. What led to this process?

When 75-year-old Yvonne Watts applied in October 2002 to the UK National Health System for authorisation to undergo hip replacement surgery abroad under the E112 scheme, she was at that time listed for surgery within a year. At her re-examination in January 2003 she was scheduled for surgery within 3 to 4 months. So Mrs Watts decided in March 2003 to have her hip operation in France, paying almost 4,000 pounds. Her claim for reimbursement was dismissed by the UK High Court and the case was finally decided in May 2006 by the European Court of Justice. The ECJ found that in view of the waiting time the patient had to experience in the United Kingdom it was within the scope of the provisions on the freedom to provide services to seek treatment in another member state. Consequently, competent authorities of a national health service, such as the NHS, must provide mechanisms for the reimbursement of the cost of hospital treatment in another member state to patients not provided with treatment within a medically acceptable period. Even where treatment of patients was provided free of charge at the point of use – as is the case in the NHS – the competent authority had the duty to make funds available to reimburse health care treatment in another member state.

The Watts case was probably the most notorious in a series of European cases starting with the Kohl and Decker rulings in 1998. The Amsterdam Treaty of 1999 still stipulated that ‘health systems were a matter for national governments. It was recognised that freedom of movement of people within Europe required that those people who travelled could obtain health care, should an emergency arise, and this had been taken care of by Council Regulation (EEC) No. 1408/71, to become Regulation 883/2004, which had established the E111 system. It was also recognised that there may sometimes be benefits to health systems from collaboration across borders, for example to avoid the need to duplicate specialised facilities.’ But generally speaking, patient mobility was seen by the member states as an exception to the general rule of seeking treatment at home, that is, in the closer living environment of patients.

But already the Kohl and Decker decisions could be seen as a clear signal that just because a particular policy falls primarily within the remit of member states it could not be seen as immune to the influence of internal market policies. And indeed, ‘one of the most controversial aspects of the initial proposal for a Directive on Services in the Internal Market was its scope, applying general rules on the free movement of services and the freedom of establishment without any distinction, to services of general (economic) interest and more specifically to social and health services, just as any commercial service. It soon became clear that there was no public and political support to keep health services in the Directive. ‘In 2006, health and [to a more limited extent – remark by the author] social services were withdrawn from the scope of the
application of the services directive. However, in spite of this withdrawal, and probably also due to the initial inclusion of these services in the directive, stakeholders became aware, more than ever, that these services are not sheltered from the application of the internal market rules.\textsuperscript{571}

2.5.7 Codifying European case law in the health sector – the Services Directive revived?

After health care had been removed from the scope of the Services directive, the European Commission announced that it would come forward with a separate legal initiative on health services. This was to follow on from the conclusions of the 25 EU Health Ministers of 1–2 June 2006, stating: ‘We believe there is a particular value in any appropriate initiative on health services ensuring clarity for European citizens about their rights and entitlements when they move from one EU member state to another and in enshrining these values and principles in a legal framework in order to ensure legal certainty.’\textsuperscript{572}

But what should such an ‘appropriate’ initiative look like, what should be the legal basis for this legal instrument? This again was material for intense political arguments until 2011.

The European Commission published its proposal for a Directive on the application of patients’ right in cross-border health care in July 2008.\textsuperscript{573} This text was presented as a mere codification exercise of the European Court of Justice case law on cross-border mobility. The European Commission claimed that the proposals would only cover situations of cross-border care. But rather than only presenting a legal basis for patient mobility the Commission’s initial proposal also referred to the need ‘to ensure free movement of health services’.\textsuperscript{574}

For EPSU, this was a stark reminder of the debate on the Services Directive. EPSU’s fear that the issue of ‘patient mobility’ could be turned into a debate on ‘free movement of health services’ was seen by many as exaggerated, if not totally unfounded. This view was held by some representatives within the European trade union movement and was also present within the Socialists and Democrats Group of the European Parliament, who considered the right of patients to be treated in another EU country as social progress. EPSU certainly also felt that health care should be provided without undue delay and that long waiting lists for medical surgery within a given country were a problem.

There were several types of tension with the proposed legislation that caused controversy, such as that:

– Between free movement provisions within an internal market and, on the other hand, the primary responsibility of member states in the area of health care. This also translated into controversy about the legal basis of the draft directive, namely that it should be public health (Article 152 of the EU Treaty, now Article 168 TFEU) and not just the Internal Market (article 95 EU Treaty, now Article 114 TFEU) ‘Universal health care and access to quality health services are fundamental to a social Europe. This should be the guiding principle of the EU health care debate. Unfortunately the European Commission sees health care primarily in market terms.’\textsuperscript{575}

– There is also tension between free movement of patients and the principle of proximity of health care provision. Is the answer to long waiting lists for surgery and other forms of complex medical care that patients explore treatment possibilities
outside their own country? EU-wide accessibility to good health care for all citizens was not to be confused with patient mobility. For EPSU the idea of proximity of health care delivery and universal access were overriding considerations.

– Related to this were considerations of equity, patient tourism only for those who could afford it. This worry was articulated, for example, by the then rapporteur of the European Affairs Committee of the French Senate, Roland Ries. He felt that the Commission had failed to undertake a study of the possible impacts of the proposed directive [on patients rights in cross-border treatment] some 15 years down the road.\textsuperscript{XV} ‘Patient mobility is often sold under the banner of increased choice of provider and of treatment on a European-wide scale. In reality, it might well be an advantage for members of already privileged social strata.’\textsuperscript{576}

That the promotion of cross-border treatment of patients might have been motivated by other reasons than mere codification of the European Court of Justice rulings is also illustrated by following extract from a study for the European Parliament’s Economic and Scientific Policy Department: ‘Modern healthcare systems are facing particularly severe challenges ... an ageing population, an increasing demand for services and the advancement of technology are all contributing to the expansion of healthcare spending and thus posing serious questions of sustainability ... Within this context, cross-border healthcare can offer patients a further chance to receive appropriate care. ... The Community is working to encourage open and easily accessible opportunities for citizens to move around the Union for educational, professional, healthcare or other purposes.’\textsuperscript{577}

2.5.8 EPSU launches lobbying campaign

From the outset, EPSU took a very critical stance towards the proposed legislation. The EPSU Executive Committee of November 2008 agreed a policy orientation to be taken towards the draft directive and commended this orientation to national affiliates, national trade union centres, national health policymakers, national organisations active in the health care policy area, national representatives of COREPER and national representatives in relevant EU institutions.\textsuperscript{578} ‘While there was recognition of some positive aspects in the Draft Directive, comments were in the main critical.’\textsuperscript{579}

In these EPSU comments\textsuperscript{580} the following points are underlined. The European Commission had based the draft directive on internal market rules (Article 95 of the EU treaty now Article 114 TFEU). ‘The Commission uses market principles as the starting point for its position. The focus of the proposals is therefore on issues such as free choice, non-discrimination and more implicitly, individual responsibility.’\textsuperscript{581} The EPSU position also underlines that ‘the right to freely choose your provider is actually not the same as the right to receive the necessary treatment abroad ... On one hand there are the principles of free movement of people and universal access to health care within the borders of the European Union; on the other hand there is the question of the open EU market without barriers and borders where health services compete with each other to receive (paying/insured) patients.’\textsuperscript{582} Crucially, the EPSU position points out that the

\textsuperscript{XV} Roland Ries, Report to the European Affairs Committee of the French Senate of 18 February 2009: ‘Les services publics ... ne peuvent pas être considérés comme des produits comme les autres ... la proposition de directive porte sur ce qui existe aujourd'hui en matière de soins de santé transfrontaliers, et non sur la projection de ce que pourrait être le nomadisme ou le tourisme médicaux dans les 15 ans à venir.’
The proposed directive is about ‘the right to be reimbursed, not about the right to receive healthcare’.

As the draft directive only intends to regulate the reimbursement for the costs of care and not the cost of accommodation and travel, it will enable only those with sufficient funds to cover these costs to actually go abroad.

The principle of choice for treatment abroad would thus only apply to wealthier citizens, especially where cross-border treatment required up-front cash payments.

The situation would even be worse for patients from the eastern and southern parts of Europe, as ‘according to article 6 of the proposed Directive, patients only receive reimbursement up to the level of what they would receive if the care was provided in their own country. Citizens from countries with relatively low-priced health care services, such as Bulgaria or Latvia would therefore not have access to care services in countries such as the United Kingdom or Germany.’

On the point of equal treatment between patients from abroad and national patients, the paper argues that patients from abroad are likely to be able to directly pay for the costs of their treatment. A foreign patient would therefore offer an additional source of income for health care providers which would not be the case for local patients covered by local insurance/health care system. ‘It would be difficult to imagine how this unequal situation could lead to equal treatment of patients.’

The EPSU position paper concludes that ‘the Commission proposals will extend far beyond its direct purpose, namely to regulate cross-border mobility. ... We also question the necessity and proportionality of this directive in relation to patient mobility. As the European Community already facilitates cross-border patient mobility through its legislation on the coordination of social security schemes, in particular Regulations 1408/71 and 883/2004, it would be more logical to amend these regulations and support member states with Community quality and cooperation programmes instead of developing a completely new system and bureaucracy around cross-border care. Considering the fact that only 1 per cent of the public healthcare budgets is spent on cross-border care, the proposed directive seems to be disproportionate.’

The coordinated interventions from EPSU affiliates within their national confederations were effective with regard to the positioning of the ETUC. Thus, there was a lengthy debate in the ETUC Executive Committee of December 2008 on the proposed ETUC Secretariat text. During the discussion in the ETUC Executive Committee ‘the tone of the document was questioned as too positive’. A number of speakers ‘noted that the Commission’s proposal seems disproportionate to the objective sought and that some of its recommendations undermine the subsidiarity principle’. The consumerist approach of the proposal was denounced, ‘which could well create a challenge to the solidarity on which national healthcare systems are built’. Other speakers equally criticised the “commercial” approach and the emphasis placed on mobility which could lead to the establishment of multi-tier European health care systems with the poorest excluded and/or penalised.


For EPSU it was paramount that all member states should retain the responsibility to further develop the quality of their respective health care systems and take action to reduce waiting times for certain treatments. On no account should the proposed directive be abused to purchase healthcare services on the basis of lower cost in another member state. This was seen to be of particular importance against the backdrop of the consequences of the economic crisis, where a number of member states had already reduced or planned to drastically reduce their healthcare budgets with, in some cases,
devastating consequences for patients’ care. The EPSU Health Strategy Group at their meeting of 25 February 2009\textsuperscript{xvi} underlined the following facts: ‘It is already the case that over 25 per cent of people feel that they are too far from a doctor or a hospital. Only 3 per cent of Europeans now take the opportunity to travel abroad for care; 97 per cent stay at home and rely on the healthcare facilities in their country. Priority should thus be given to local and accessible care facilities. Especially in this time of economic crisis, investment in qualified health care staff and adequate infrastructures are of prime importance. Now is not the time for another deregulation project by the Commission.’\textsuperscript{594}

The capacity of member states to plan for existing and anticipated needs within their respective systems was equally underlined in an EPSU briefing to members of the ENVI Committee of the European Parliament before the second reading of the draft Directive: ‘We draw attention to the recent ruling of the European Court of Justice dealing mainly with prior authorization and the question of whether various rulings, inter alia Watts, can be transposed to the context of medical treatment calling for the use of major medical equipment outside hospital infrastructures, having regard to the very high costs of that equipment and to its impact on the budget of social security systems’ (Case C-512/08 of 5 October 2010).\textsuperscript{595}

Together with HOSPEEM, the European Hospital Employers Organisation, EPSU once again pointed to the need to maintain a system of prior authorisation also as a means for counselling patients. ‘Both HOSPEEM and EPSU consider the equal access to health care as a fundamental human right, which must be facilitated – to the extent possible – in the proximity of patients’ living surroundings. With this in mind, we welcome the wording adopted in the European Parliament draft recommendation for a second reading, whereby the proposed directive should not in any way encourage patients to go to another member state to obtain healthcare. … The procedure of prior authorisation should in our view not be perceived as a bureaucratic mechanism to deny patients the required treatment. The majority of patients will not be in a position to make informed decisions on their own. They need counselling and guidance to access cross-border healthcare, including for the diagnostic and treatment of rare diseases. Such detailed and personalised counselling can only be made available through a prior authorisation process.’\textsuperscript{596}

2.5.9 Controversy in the European Parliament with a satisfactory outcome

During the second reading in the ENVI Committee the different positions of MEPs highlighted the broad range of approaches to the issue of patient mobility. Françoise Grossetête, European Peoples Party\textsuperscript{xvi} rapporteur on the dossier stated: ‘The idea is not of course to encourage any sort of medical tourism, as social security systems, their organisation and their management remain the full responsibility of the member states. Patients will now be able to receive all the health care to which they are entitled at home in another member state and be reimbursed up to the level of costs assumed by their own system.’\textsuperscript{597} Dagmar Roth-Berendt, Socialists and Democrats Group, said: ‘In an ideal

\textsuperscript{xvi} The Health Strategy Group consisted of representatives from EPSU health affiliates and also included representatives from other organisations, such as HOSPEEM, the European Public Health Alliance, the Social Platform, the European Federation of Nurses Associations. There was also close cooperation with the European Social Observatory (OSE).

\textsuperscript{xvii} Grossetête replaced John Bovis as main rapporteur. Bovis could not follow through the dossier because of a health problem.
world, patients would receive the best health care most quickly in the country of their birth or the country where they live. The fact that we are discussing this today ... is indicative of a cynical approach among the member states. It means that the member states have not recognised what they owe to their citizens ... rapid, effective and high quality health care. Jean Lambert, from the Greens/European Free Alliance Group, made the point: ‘Many in this House will remember, at the first reading, this was an extremely hot topic ... There were concerns about whether market forces would win out over services of general interest, and that people who were concerned about patients’ rights, to choose, and to travel, were being pitted against those who were asking which patients would actually exercise that choice.’

In contrast is the position of Milan Cabrnoch, European Conservatives and Reformists Group: ‘It is now clear what a huge mistake it was to leave health services out of the Services Directive. We must not forget that the agreed directive addresses only the rights of patients, and the issue of the free movement of health services in the EU remains unresolved.’

A completely different perspective comes from Kartika Tamara Liotard, European United Left/Nordic Green Left Group: ‘Insurers will be only too happy to send patients across the borders if there is a cheaper treatment option there. That will decrease the supply of care in the patients’ countries of origin. Any treatments that are no longer profitable will no longer be offered in the more expensive regions. Far from giving them more rights, that will leave patients with no choice and they will have to travel across the border.’ Gilles Pargneaux, S&D, argued: ‘We should not ... confuse patient mobility with the medical tourism that has developed over recent years. The latter is becoming organised and, unfortunately, is proving to be increasingly profitable. Health is gradually becoming a competitive market.’

This assessment could be seen in reaction to the lobbying efforts of the European Union of Private Hospitals, which unsurprisingly ‘supports patient mobility and the liberalisation of the services in the internal market’, predicting for the future of health care in Europe that ‘European nations [will] privatise all of health care, including its funding.’

Notwithstanding such views, ahead of the vote in the European Parliament’s plenary on the draft directive on patient’s rights in cross-border health care on 19 January, EPSU qualified the compromise achieved as ‘reasonable’. ‘We are satisfied that some of our major concerns with the initial draft directive have been addressed. Member states retain the responsibility for providing safe, high quality, efficient and quantitatively adequate health care to citizens on their territory. That is an important outcome of the discussion process ... The transposition of the Directive into national legislation and its application should not result in patients being encouraged to receive treatment outside their member state of affiliation. The compromise further recognises that the vast majority of EU patients receive health care in their own country and prefer to do so. In certain circumstances patients may seek some forms of health care to be provided abroad. It is important for us that the Directive should not undermine Regulation No. 883/2004 and this has been made clear in article 7 in particular.’ The emphasis on the overarching values of universality, access to good quality care, equity and solidarity as determinant factors for health care provision in the EU were particularly welcomed. ‘We have come some way with this Directive considering the initial approaches, from a fairly crude market approach to an overall much more balanced text.’

The European Council finally approved the text on 28 February 2011, although Austria, Poland, Portugal and Romania voted against and the Slovak Republic abstained. This terminated a long discussion process as a result of which the Council agreed a heavily amended version of the initially proposed text. The first draft of the directive was put forward by the European Commission in June 2008 and was debated at its first
reading in the European Parliament in April 2009. Within the Council, a succession of five presidencies – namely the French, Czech, Swedish, Spanish and Belgian – negotiated the proposal. As the debates in the European Parliament illustrated, the draft directive was considered a very ‘hot issue’. While most MEPs were in agreement with the basic principle of the draft directive – that is, to regulate patients’ rights in cross-border health care – it was clear from the more than 1,000 amendments tabled that the Parliament took a very critical view of some of the fundamental issues.

EPSU, in liaison with its affiliated unions and other civil society groups in the health policy field, managed to contribute to this quite substantive overhaul.

The main points addressed were:

– The scope of the directive, which in the beginning was to cover both the mobility of patients and the delivery of health care. This entailed the risk that provisions of the Services Directive were to be transferred to the healthcare system.
– The legal basis of the ‘internal market’ – that is, the extension of freedom of competition to health care – as the sole legal basis, with no consideration of the legal basis of ‘public health’.
– The Commission’s right to define rules and measures – for example, with regard to the financing of services, the definition of medical conditions, the formulation of quality and safety standards, and payment of costs – that went far beyond coordination and intruded on the power of the national states to organise their own healthcare systems.
– Issues of the proportionality of requirements (for example, in relation to qualifications, quality and safety) and services in implementation.
– Issues relating to the financing of service provision, not only in connection with the delivery of non-hospital and in-patient health care but also in relation to the prescribing of drugs and telemedicine services.606

Jan Willem Goudriaan, EPSU General Secretary since May 2014 and Ivan Kokalov, EPSU Executive Committee member and Vice-President of CITUB, Bulgaria, assisting health workers fighting illegal dismissal at Maltepe Hospital, Turkey, 3 December 2012.
Source: Devrim Saglik-Is, Turkey
2.5.10 Some key achievements

The scope of the directive\(^{607}\) is now defined as in its title, namely to secure patients’ rights in cross-border health care. It provides the rules to facilitate patients’ access to (safe and high-quality) health care abroad and the necessary framework conditions, which involve issues of transparency, information, quality of service provision, safety and liability.

The Directive also seeks to promote cooperation between member states in matters of health, as well as to clarify the existing rules on health care abroad, especially Regulation 883/2004 on the coordination of social security systems, which regulates healthcare provision for people who fall ill abroad.

The mobility of healthcare services or service providers has been removed from the scope of the Directive. This means that the possibility of the provision of health care in the patient’s home country by a doctor and other professional groups from a foreign health service is no longer part of the debate.

The legal basis of the Directive has been changed. The Directive now has a double legal basis, namely the internal market article (Article 114, former Article 95) and the public health article (Article 168, former Article 152). The latter was added under political pressure to not only approach the issue from an (internal) market perspective, but to complement this by health policy objectives. Furthermore, the Public Health legal basis was needed for the provisions encouraging cooperation between member states.\(^{608}\)

Regarding the provision of healthcare services EPSU had called for a delimitation between health and care services. ‘Services in the field of long-term care, the allocation of and access to organs for the purpose of organ transplants and public vaccination programmes against infectious diseases are excluded from the scope of the Directive.’\(^{609}\)


In summary, the Directive establishes the right to automatic cost reimbursement of non-hospital care. Here patients who receive treatment abroad will in future have a right to reimbursement of the treatment costs at the rates applicable in the country in which they are insured. For hospital treatment there is a restricted cost reimbursement scheme. However, the insurance providers may not refuse in-patient treatment abroad without good reason.

EU citizens’ right to information has been strengthened; they are to be better informed about services and entitlements in the event of treatment errors abroad. In this respect the EU member states are obliged to set up national coordination centres to provide information on financing, quality and liability in relation to treatment abroad.

EPSU contracted a first impact analysis on the possible consequences of the Directive of Patients’ Rights in Cross-Border Health Care published in 2012, undertaken by Rita Baeten from the European Social Observatory.\(^{610}\) The document provides for an analysis of different aspects pertaining to the management of national health care systems, such as the capacity of health authorities to steer the system and also provides a number of country case studies to describe the national impact of the application of the Directive. The first results of the study were presented at the EPSU European Health Conference which took place from 18–19 October 2011 in Bucharest.\(^{611}\)

The analysis of the potential impact on the health system focused on the regulatory powers of the health authorities under the free movement principles and the way in which the Directive succeeds in preserving these powers. ‘Indeed, healthcare systems are
characterised by extensive regulation aiming to address the important market failures in this sector and to ensure the most cost-effective use of the limited public financial means. These regulatory frameworks risk coming under pressure through the application of the EU principles of the free movement of services.\textsuperscript{612} ‘The Directive succeeds in providing legal certainty on the interpretation of important aspects of the Court rulings with regard to patient mobility. ... However, the Directive carefully avoids addressing the application of the free movement principles beyond the issue of patient mobility.’\textsuperscript{613} It is this latter aspect with regard to which EPSU can claim to have played a significant role in warding off a further attempt at liberalising the provision of health care after the initial inclusion of health in the Services Directive. Whether this state of affairs can be safeguarded in the future remains to be seen.

The EPSU background paper\textsuperscript{614} on SSGI from October 2010 very aptly summarised the EU policy on social and health services and public services in general, in stating that this policy has been driven by two issues:

1. ‘Internal Market questions about the application – or not – of competition policy to public service providers; and
2. financial concerns about levels of public spending.’\textsuperscript{615}

Indeed, these two issues ‘have overshadowed questions about how to develop high quality services to the benefit for all citizens’.\textsuperscript{616}

2.5.11 Putting the debate on patient mobility into perspective

It should be emphasised that the debate on the Directive on patients’ mobility took place against the background of the financial crisis, with severe cuts in public expenditure. This has had severe consequences for the sustainability and actual functioning of health systems in a number of European countries, Greece being one particularly acute example,\textsuperscript{XVIII} but other countries have also been badly affected, such as Latvia.\textsuperscript{617} The focus on patients’ mobility therefore appeared to blatantly miss the ‘central political point’, namely to address a major social crisis arising from the financial crisis.\textsuperscript{XIX} It also eclipsed another aspect, related to the mobility of health care staff. Christina Iftimescu, at the time Vice President of the Sanitas trade union of Romania, provided an alarming testimony at the 2011 EPSU Health Conference: ‘In our country the health reform meant hospital closures, low wages and the departure of thousands of health workers each year. In 2011 so far more than 16,000 have already left the country. Mobility on such a basis will be a disaster for Romanian people and the health of the country.’\textsuperscript{618}

\textsuperscript{XVIII} In Greece, health spending has been reduced to 6 per cent of GDP as a result of austerity measures. The city of Athens is reported to have tried to cut health spending from 10.6 billion Euros to 7 billion in 2012, in the middle of an HIV outbreak, a massive increase of homelessness, and a rise in suicide among other problems; see Stuckler D. and Basus S. (2013) The body economic: why austerity kills, London, Allen lane; book review: www.epsu.org/article/austerity-seriously-bad-your-health

\textsuperscript{XIX} EPSU has – together with LVSADA, the trade union of health and social care, repeatedly pointed to the extremely severe situation in the Latvian health care system. It was claimed that under these circumstances ‘it would not be an appropriate signal to both EU citizens and the EU institutions if Latvia was to assume its responsibilities for the EU Council Presidency in the first half of 2015. The main deficits identified concern the continued non-respect of fundamental human and social rights enjoyed by all EU citizens, in particular the right to access to health services as enshrined in Article 35 of the Charter of Fundamental Rights, www.epsu.org/article/latvian-workers-protesting-against-continued-dismantling-health-care-and-social-services
In a call to an international symposium on ‘cross-border health care in Europe – promoting equal access to quality care’ of 1 July 2015, the Commissioner for Health, Vytenis Andriukaitis, said: ‘I fully support patient empowerment, and believe that improving the lives of patients goes hand-in-hand with efficient health care systems. Empowering patients means ensuring that they are fully informed and in own control of their own health care. This is a key principle of the EU Directive on patients’ rights in cross-border health care, and I will continue to ensure that member states deliver on their commitments in this regard.’

Several concepts are mingled together here that are not necessarily interlinked: the suggestion is that ‘cross-border health care will promote equal access to quality care’. This, however, is certainly not an automatic given. ‘There is currently no such thing as a single European health area. Europe’s health systems represent the greatest collective commitment to health anywhere in the world. Yet, though European health systems are all trying to do similar things, they do them in very different ways. This makes Europe a giant “natural laboratory” for health systems, with enormous potential for countries to learn from each other.’

Obviously, it would be beneficial to facilitate the transfer of expertise and to promote greater efficiency through cross-border cooperation. But this should be based on a well-defined public policy base and not on a purely market and deregulatory approach. Moreover, it does not seem to be appropriate to burden the ‘informed health care consumer’ with the responsibility of controlling their own health care. ‘The volume of patient mobility within the European Union remains relatively low as people are frequently unwilling to travel to other countries for care.’ However, this should not be considered a problem to the extent that patients can receive adequate and timely health care in their own country.

This has to be underlined in particular as ‘cross-border care can also have adverse effects on access. In less densely populated areas, with little health care supply, large outflows of patients can provoke closures in the domestic health infrastructure. ... Cross-border care can also reduce access to care in the receiving country, when large inflows provoke capacity problems, or when providers in the host health care system have a financial interest in giving priority to foreign patients.’ As DG Health of the European Commission further points out, ‘a number of factors are making health policies and health systems across the European Union increasingly interconnected.’ Patients obtain health care across the EU and health professionals are working in different EU countries. It is this movement of patients and health professionals that would require mechanisms for better coordination of health systems and policies across the EU.

We can no doubt already see the development of structural imbalances in the supply of health services and the availability of health care staff in the European Union within and between member states. There are some examples also where purchasers have contracted health care abroad at a cheaper price than the domestic tariffs; for example, German hospitals have been contracted by the Southern Jutland Health Committee in Denmark, as they are 10 per cent cheaper than the Danish rates. Rehabilitation care facilities in the Czech Republic have been contracted by German purchasers as they tend to be cheaper by 30—40 per cent than comparable services in Germany.

Such trends might be anecdotal for the time being, but they indicate the risk that health care and other social services are increasingly being marketised. In the absence of a general legal framework on public services, consideration might have to be given (again) by EPSU to the definition of requirements of a European social and health services policy from a trade union perspective. A proposal of that nature was
presented at the January 2011 hearing in the Employment Committee of the European Parliament, where EPSU suggested giving priority to the elaboration of specific sectoral policies with tangible goals, for example, EU action plans on elderly/long-term care, care for people with disabilities, mental health or child care ‘in order to illustrate the potential EU added value of joint work and common quality frameworks at EU-level around SSGI.’\textsuperscript{XX} A purely defensive position based on subsidiarity principles may prove to be insufficient to defend and promote public health systems accessible to all citizens.

It is equally pertinent to draw a parallel with the ongoing secretive negotiations on a Trade in Services Agreement (TiSA). Here, the Global Services Coalition\textsuperscript{627} formulates the following demands in a letter to Commissioner de Gucht from September 2013: ‘There is an urgent need to update the rules for services to reflect the realities of today’s world. The member businesses represented by the Global Services Coalition strongly support the efforts of nearly a third of the WTO members to negotiate an ambitious Trade in Services Agreement. ... Our members are looking for real market access gains across all services sectors.’\textsuperscript{628} A recent concept paper on health care services in the framework of the negotiations on TISA argues that there is huge untapped potential for the globalization of health care services mainly because ‘health services are funded and provided by state or welfare organisations. Due to the lack of a market-oriented scope for activity, there is virtually no interest for foreign competitors.’\textsuperscript{629}

A proposal put forward by Turkey discussed in September 2014 in Geneva is aimed at commodifying health services on a global level, as well as promoting health tourism for patients by off-shoring medical treatment into more competitive – ‘cheaper’ – regions of the world. The proposal would raise health care costs in developing countries and lower quality in developed countries in Europe, North America, Australia and elsewhere.\textsuperscript{630} ‘The proposal presumes a transition in the dominant model of health care from an integrated public and social service to a market-oriented system in which citizens are consumers in a globalised market place.’\textsuperscript{631}

Political awareness and mobilisation, both at internal and European level, against such attempts thus remain of the utmost importance, as again demonstrated by a statement made by Commissioner Andriukaitis, according to which ‘he envisaged a single market for health services, mirroring the logic of the EU internal market for energy’.\textsuperscript{632} ‘And if the comparison with energy is anything to go by, member states and the Commission had better think twice.’\textsuperscript{633}

\section{2.6 Opening up the electricity and gas markets – what have been the consequences?}

\subsection*{2.6.1 Extending the Single European Market to energy}

At a joint meeting of the ETUC and the Commission in March 1989, ‘several trade union representatives expressed concern that the internal market in energy would turn out to be little more than the introduction of a free market situation in which the overriding factor would be the reduction of production costs. ... The Commission representatives explained that their intention was to balance market forces with appropriate controls. Security of supply would remain an important policy aspect, although there should be a

\textsuperscript{XX} See SSGI in the EU context – EPSU reflections, requests and recommendations, Brussels 20 January 2011, point 5.

\textsuperscript{627} See SSGI in the EU context – EPSU reflections, requests and recommendations, Brussels 20 January 2011, point 5.

\textsuperscript{628} See SSGI in the EU context – EPSU reflections, requests and recommendations, Brussels 20 January 2011, point 5.

\textsuperscript{629} See SSGI in the EU context – EPSU reflections, requests and recommendations, Brussels 20 January 2011, point 5.

\textsuperscript{630} See SSGI in the EU context – EPSU reflections, requests and recommendations, Brussels 20 January 2011, point 5.

\textsuperscript{631} See SSGI in the EU context – EPSU reflections, requests and recommendations, Brussels 20 January 2011, point 5.

\textsuperscript{632} See SSGI in the EU context – EPSU reflections, requests and recommendations, Brussels 20 January 2011, point 5.

\textsuperscript{633} See SSGI in the EU context – EPSU reflections, requests and recommendations, Brussels 20 January 2011, point 5.
move away from the idea that energy resources were national: in future they should be regarded as Community resources.  

The Treaty of Rome considered the network industries as having limited interest for trans-border competition, because they were seen as highly sensitive to the political priorities of the member states. This changed in the 1980s when the overarching policy objective of the European Commission became the creation of a single internal market for those services previously excluded. A Commission working document issued in 1988 committed to a more competition-oriented approach to energy market integration by the progressive removal of the existing obstacles. It included the electricity and gas sectors for the first time in the discussion of a Community energy market.

Source: EPSU

‘A key factor of change was the European Commission’s pursuit of its integrationist agenda through the means of the market as a norm. The advocates of European level liberalisation appealed to this norm by saying that energy supply was economically “inefficient” As a normative model, the market is first and foremost a promise of superior efficiency.  

Indeed, with the Single European Act of 1987, the foundation was laid to establish an internal market by the end of 1992 and ‘more importantly, Article 100a removed unanimity regarding related legislation and adopted instead qualified majority in cooperation with the European Parliament.  

‘During the 1990s, the Commission began to challenge the existence of monopolies and exclusive rights, first in the telecommunications industry and then in the gas and the electricity sectors, on the grounds that they made the existence of a European market – an integrated market – for these goods impossible. The Commission further argued that ‘monopoly rights were contrary to the Treaty requirements on the free movement of

goods and establishment where they could not be justified on the grounds of public service obligations. ... It further alleged that monopolies were not even necessary to achieve essential public service objectives.\footnote{643}

The construction of a Europe-wide electricity market accelerated significantly with the adoption of the Treaty on European Union, signed in Maastricht in 1992. Among the various Communities activities ‘measures in the spheres of energy’\footnote{644} are listed for the first time.

Ever since the early 1990s the implications of the creation of an internal market for electricity and gas have featured high on the agenda of the EPSC\footnote{XXII} (from 1996 to become the EPSU) Standing Committee for Public Utilities (PUT).

The EPSC regards the supply of gas and electricity at the highest standard to Europe’s citizens as a fundamental public service. This basic right needs to be protected in European Union member states and beyond. Democratic control and accountability are indispensable to this public responsibility.\footnote{645} In its paper ‘Basic Points for the Internal Market for Gas and Electricity’ the EPSC criticises the lack of a European Union energy policy as opposed to a mere market approach. The EPSC ‘stresses that the supreme principle for the energy market must be cooperation.’\footnote{646} In EPSC’s view this is necessary ‘to achieve security of supply and better energy services which will sustain employment, economic growth and development with minimal effects on the environment. ... The EPSC will continue to work along these lines to convince the Commission and Council of the need to change its proposals.’\footnote{647} Already at this stage, the EPSC is anticipating that the role of public utilities to provide secure and affordable energy supplies with continuous provision of gas and electricity of a defined quality could be put in jeopardy within a liberalised and deregulated European energy market. The rapid internationalisation of the industry, reinforced by the European Commission’s policy proposals, could lead to dominance by big powerful companies.

The EPSC Standing Committee on Public Utilities meeting in Budapest of March 1995 declared, in referring to its ‘Basic Points for the European Internal Market for Gas and Electricity’ that ‘competition should not be understood as a goal in itself in the cable-based and pipe-based European electricity economy. ... A policy of small steps is better than radical reforms with uncertain outcomes. In view of the variety of energy policies which exist at national level, the EPSC Standing Committee requests the EU Commission to harmonise the future conditions for an integrated common energy market in the European Union through comprehensive legislation as soon as possible. This is the only way to prevent employment suffering because of distortions of competition.’\footnote{XXIII}

The EPSC ‘basic points paper’ was to provide the framework for future discussions, with special attention to be given to:

\footnote{XXII} The European Public Services Committee (EPSC) changed its name as part of a constitutional overhaul at the 5th General Assembly in May 1996 in Vienna to become EPSU--the European Federation of Public Service Unions, see Part One, Section 1; EPSU organises workers in public and private companies in all parts of the electricity and gas sector, including generation, renewables, transmission, distribution and supply. EPSU represents several hundred thousand workers in many utilities across Europe.

\footnote{XXIII} The Internal Market for Energy, Budapest Statement, in European Public Services Committee Activities Report, General Assembly, Vienna 1996, p. 73. The original European Coal and Steel Community (ECSC) and European Treaties were designed, among other things, to foster a cooperative approach to the handling of the traditional ‘backbone’ of energy supply (coal) and the ‘fuel of the future’ (nuclear power); see McGowan F. (2008) Can the European Union’s market liberalism ensure energy security in a time of economic nationalism?, Journal of Contemporary European Research, 4 (2), 90-106, www.jcer.net/index.php/jcer/article/download/114/102
– public service missions\textsuperscript{XXIV} and exchange of information on the regulators and pricing structures;
– environment, energy and jobs;
– building relationships with environmental/consumer organisations.

On 17 November 1993, the European Parliament issued its report on a Commission proposal for common rules for the gas and electricity sector. This was the first report based on the co-decision procedure introduced by the Maastricht Treaty.

The negotiation of the first electricity directive turned out to be a very difficult and lengthy process, especially over the concepts of ‘mandatory’ third Party Access (TPA)\textsuperscript{648} or negotiated TPA. The French government did not want to accept any form of TPA and put forward the alternative of the Single Buyer System,\textsuperscript{649} in particular to safeguard public service obligations. In an attempt to influence the Council negotiations, independent studies from the UK and France were published. The UK study considered that the Single Buyer and TPA were economically and legally incompatible. ‘The French industrial policy consultant APIS took a different approach and tried to show that liberalisation in the UK was not as desirable as the UK had suggested. It found that overall average prices to the consumer in the UK were barely below what they were prior to liberalisation, that prices to domestic consumers had increased more quickly than inflation, and that the regulator was becoming increasingly involved in the operation of business.’ Under pressure from France and with support from other governments the Single Buyer concept was introduced into the text of the Directive, but tied to a number of conditions.\textsuperscript{650}

EPSC representatives had been part of an ETUC delegation to meet Mr Claude Desama, chairman of the European Parliament’s Committee on Energy, Research and Technology, to explain and pledge support for the trade union position, arguing in support of security of supply and better energy services to sustain employment, economic growth and development, with minimal effects on the environment. Desama also addressed an EPSC Conference in June 1994 to talk about the various proposals on the table.\textsuperscript{651}

Discussions in the European Parliament proved very difficult as well. A group of members argued that the ‘fragility of a Council compromise was no reason not to use the European Parliament’s co-decision powers’.\textsuperscript{652} Socialist MEP Claude Desama, the EP rapporteur on this dossier,\textsuperscript{653} in the end made the point that ‘Parliament cannot take the risk of killing off the Directive’.\textsuperscript{654}

The Commission amended its proposals, taking into account a number of amendments proposed by the Parliament but not all. It rejected a Community-wide definition of the content of a public service obligation but instead proposed that member states may impose public service obligations.\textsuperscript{655}

‘The Single European Act, the Maastricht Treaty and the decision of the ECJ [European Court of Justice] mostly contributed to political spillover in which European institutional actors exploited and defined their competences that, however, were not written down in the Treaties within a new institutional framework. External forces such as global privatisation and liberalisation that spilled over from technologically advanced sectors, such as telecommunications, into public utilities, as well as the adoption of

\textsuperscript{XXIV.} Electricity cannot be substituted by another commodity. As modern economies depend on a constant supply of electricity, this is considered a general interest task. The constant supply of electricity is therefore considered to be subject to universal service obligations, such as the provision of minimal services, good quality services at an affordable price and uniform prices across regions or consumer groups. See Merino R. (2013) Liberalisation of the electricity industry in the European Union, Haskoli Islands University, p. 8.
comprehensive electricity market reform in Great Britain and the Nordic countries advanced policy-making at the EU level.\textsuperscript{656}

Subsequently, upon pressure from the French government a new provision was inserted into the general principles of the first part of the Amsterdam Treaty, recognising the ‘place occupied by services of general economic interest in the shared values of the Union, as well as their role in promoting social and territorial cohesion’.\textsuperscript{657}

2.6.2 The prospects for jobs and the social dimension

The concern about the employment situation preoccupied EPSC/EPSU. It was feared that jobs would be threatened through restructuring within a liberalised energy market. EPSC research showed a loss of over 150,000 jobs in 10 countries in the period 1990–1994, with a further 250,000 job losses predicted in the medium to long term.\textsuperscript{658}

On 1 June 1995, the first European demonstration in the energy and gas sector took place in Luxembourg and was supported by unions from the Netherlands, Belgium, France, Germany and Luxembourg. They were also joined by delegations from other countries.

The more than 1,000 workers demanded high quality public energy services and secure jobs. ‘They said “no” to the present proposals of the Commission for the liberalization of the internal market for electricity and gas.’\textsuperscript{659} An EPSC delegation was received by representatives of the Council and the Commission.

EPSC demands included:

– that the Council refer present proposals regarding the Internal Market for Electricity, the Working Paper on the Single Buyer system and the system of negotiated Third Party Access\textsuperscript{XXV} back to the Commission;
– that the objective should be to develop ‘balanced energy systems in Europe which do not lead to distortions in competition, but make high ecological standards possible, contribute to the unfolding of new energy services and ensure secure jobs in the European energy sector’.\textsuperscript{660}

The press release notes that the Commissioner in charge of European energy policy agreed to meet the EPSC again in order to continue discussions on the internal market for electricity and gas, the employment situation as well as the need for social dialogue in the sector.\textsuperscript{661}

A series of protest actions were to follow throughout the 1990s into the early part of the new millennium.

On 3 February 1996, an action day was organised in Bologna to put pressure on the Italian Presidency to deal with the worries about job losses in the energy sector.\textsuperscript{662} EPSU suggested the establishment of an Electricity Employment Fund that would assist employers and trade unions in taking initiatives to open up new areas of employment or to support retraining and re-employment measures. The Fund should be managed with the social partners in the electricity industry. They would be in charge of evaluating the proposals and ensuring broad application of positive experience.\textsuperscript{663}

\textsuperscript{XXV}. The Internal Market Directives envisage the third-party access right as a crucial element of organisation of access to the energy infrastructure system and as a main instrument for opening the Internal Energy Market to competition, see more detail: http://en.wikipedia.org/wiki/Third-party_access
"Trade Unionist, EPSU Deputy General Secretary Jan Willem Goudriaan ran into Dutch Economic Affairs Minister Wijers and senior civil servants at the central square in Bologna, Italy, 3 February 1996. The Minister was there to consider the Directive with his ministerial colleagues. He was seen as somewhat of a hard-liner, expressing the view that the markets should be open for competition. EPSU was present to draw attention to the possible employment effects. ... The trade unionist had been a student of the Minister and they briefly exchanged views on their respective positions in the debate. ... While the trade unionist expressed his concerns about the consequences for the people working the industry ... the Minister argued that the macroeconomic benefits and the possibility that jobs would be maintained in high-intensity industries facing a severe competitive situation, justified opening the markets. This Pavlovian reaction of politicians to concerns expressed over jobs would be encountered frequently over the years to come.

EPSU members from the energy sector again protested in The Hague in 1997 and presented a petition to the representative of the Dutch Presidency to underline their demands for a Social Europe and well working public services also in the energy sector. Attention was drawn as well to the need to involve the Central and Eastern European social partners in the energy area to discuss the construction of the Internal Market for Electricity and Gas as it would also have to be adopted by the new applicant countries. EPSU called on European Commissioner Papoutsis, responsible for energy policy, to organise a Round Table with the social partners concerned to ensure that the burden of adjustment would not fall on workers and citizens.

EPSU recalled the rapid decline in employment. Between 1990 and 1995 more than 200,000 jobs had been lost. The negative effects of the Internal Market for Electricity on employment of women in the sector was highlighted. Their share in employment had declined from 19.6 per cent in 1993 to 18.6 per cent in 1995. Already at that early stage of the Internal Market for Electricity and Gas a clear trend towards ownership concentration was discernible, leaving the control of electricity and gas supplies in the hands of a limited number of transnational companies.

A European Day of Action for Jobs and Public Services in the European Energy Sector was organised on 11 May 1999 in Brussels. The EPSU Activities Report refers to the ‘largest [European] energy workers demonstration ever’. Delegations from all European countries participated with more than 5,000 energy and other public service workers demonstrating for ‘Jobs and Public Services’. A delegation headed by EPSU President Herbert Mai was received by the German Presidency of the European Council. The need for concrete measures to alleviate the impact of liberalisation and deregulation on jobs and public services was stressed yet again.

To put pressure on the following Portuguese and French Council Presidencies more than 40,000 signatures were collected by energy workers from all European countries and presented to the Portuguese Presidency to again highlight the urgency of addressing the employment situation in the liberalised electricity and gas sectors.

The employment impacts of the Internal Market for Electricity and Gas were also addressed within the framework of the social dialogue with EURELECTRIC. During a Joint Workshop the social partners agreed on the need to consider these developments together. The meeting called on the Commission to come forward with compensatory measures.

XXVI. The development of the sectoral social dialogue in the electricity sector is described in more detail in section 1.3.2. of this EPSU history; information on Eurelectric, the European Committee of Electricity Supply Undertakings, see: http://www.eurelectric.org/about-us/
measures to offset the negative impact for jobs. The concern was also raised that the expected changes might be used to drive down pay and working conditions.\textsuperscript{669}

In 2000, EURELECTRIC, EMCEF and EPSU issued a joint declaration on the ECOTEC Study for the European Commission on the social implications of the Internal Electricity Market.\textsuperscript{670} In this declaration the social partners express their commitment to jointly explore ways to address changes related to the Internal Electricity market with a view of minimising the social consequences of restructuring.\textsuperscript{671}

‘The social partners therefore agree that:

– the Commission should support measures for training, re-training and re-employment of workers;

– where companies receive funds from the Structural Funds, full information on the funds received should be given to the social partners in the relevant company;

– the social partners should be consulted by the European Commission when developing its proposals for acceleration of the Internal Market for Electricity, including with regard to the benchmarking the Commission intends to undertake for public services;

– the social dimension needs to be integrated in the assistance given to the countries of Central and Eastern Europe when they prepare to enter the Internal Market. Special consideration should be given to the unfavourable situation of the electricity companies in the accession countries in the process of accelerating the liberalization of the electricity sector;

– the social consequences arising from mergers and acquisitions in the sector should be considered at the relevant level, including where appropriate in the European Works Councils;

– they will approach the Commission to examine the impact of imports and exports to or from countries beyond the EU, EEA and applicant countries of electricity on employment.’\textsuperscript{672}
A Position Paper presented to the EPSU Public Utilities Standing Committee of October 2005, again draws attention to the dramatic employment impact of the internal market for electricity. The paper pungently makes the point that 300,000 to 330,000 jobs had been destroyed over the preceding 10 years. Reductions in labour costs have come about by, among other things, outsourcing, more flexibility and insecurity for workers. It has equally affected training, research and development, leading to skill shortages and technological stagnation. A similar point was made in a letter from the British Trade Union Congress (TUC) in 2003, stating that ‘the introduction of the private sector into the provision of public utilities has also reduced the level of investment in the skills of the workforce to the extent that there are significant shortages in a number of areas. For example, the shortage of engineers and craft trained staff in the energy distribution and supply industries is a matter of considerable concern, particularly when power supplies are interrupted.’ A report by Ecotec Consulting undertaken for the European Commission at the request of the electricity social partners in 2007 ‘revealed a shift in job patterns with a decline in technical and maintenance staff (often through outsourcing) and an increase in legal, marketing and sales staff as companies devote more resources to winning customers from other companies’. The effect on employment was, however, not recognised appropriately by the European Commission who maintained that ‘initial fears that market opening would have a negative impact on employment levels ... have so far proved unfounded’. This statement clearly did not correspond to the reality of 300,000 jobs or more lost over the previous decade. The dwindling numbers of adequately qualified staff proved to be one of the decisive factors behind the electricity black-outs taking place in the early 2000s.

In the wake of a major European energy conference, EPSU organised a further demonstration on 1 December 2005 in Brussels, coinciding with a meeting of the Council for Energy discussing the internal energy market, as well as a European Commission progress report. Over 1,500 workers from several countries gathered in Brussels. Their demands included measures to improve the employment situation.

The demonstration also drew attention to the lack of a social pillar in the South-East European Energy Treaty. In fact ever since 1997, EPSU highlighted the need to ‘discuss with the trade unions and citizen groups the conditions for investment in the energy sector in Central and Eastern Europe and give guarantees that the programmes will not cause unemployment and hardship.’

Employers in Central and Eastern Europe were urged to:
- cooperate with the trade unions to build functioning industrial relations for collective bargaining;
- get involved in the European social dialogue.

The Treaty on the South East European Energy Community that obliged the countries of the Balkan to implement the acquis on the electricity market was signed on 25 October 2005. EPSU campaigned for the inclusion of a social dimension and achieved this with the signing of the Memorandum of Understanding on Social Issues, 18 October 2007, Vienna. It constituted a breakthrough in acknowledging, among other things, that 'economic and social progress are mutually supportive and should go hand in hand. ... The Signatories recognise the necessity to monitor the working conditions and the
social and employment impact of the Treaty establishing the Energy Community.’ Still, in response to a public consultation in 2014, EPSU deplores that the social aspects of the Energy Treaty are the least developed and urges an integration of the Memorandum of Understanding in the Treaty to give it a binding nature. This point was raised again by all Social Partners in the Electricity Sector in April 2015, who stress in a joint statement that ‘the Memorandum of Understanding (MoU) on the Social Aspects of the Energy Community is to be fully integrated in a revised Treaty. We also insist that the Energy Community should promote a regional dialogue, just like the European Union promotes a European social dialogue’. On 4 October 2011, the Prime Minister of Moldova and the Ukrainian Deputy Minister for Fuels signed the MoU at the Social Forum in the Moldovan capital Chisinau, in reaction to concerted trade union pressure.

Similar concerns were also raised by EPSU with regard to the EU–Russia Energy Dialogue. To quote from a 2006 EurActiv article: ‘EPSU recognises the growing dependence of the EU on oil and gas from countries outside the EU, especially Russia. But EPSU regrets the absence of a social dimension to the EU–Russia dialogue. “The energy dialogue should be accompanied by a dialogue or series of dialogues including all stakeholders, such as trade unions, environmental groups and others. A European energy community is more than a playground for a large multinational companies. It requires the equal involvement of companies and trade unions”, stated Jan Willem Goudriaan, EPSU Deputy General Secretary.’ ‘EPSU therefore regrets the absence of a social dimension to the EU–Russia dialogue.’ As a result of the Russia–Ukraine conflict, the EU–Russia Energy Dialogue ‘has been largely put on hold. Its gradual, selective and conditional relaunch could be considered provided the overall geopolitical situation linked to Ukraine allows it; that is, if and when the Minsk Declaration of 12 February is duly implemented.’ It seems difficult meanwhile to consider energy cooperation in isolation from foreign and security policies. The particular geo-political situation notwithstanding, EPSU continues to support its Russian affiliates in the energy sector. In November 2012, EPSU addressed a message of solidarity to the All-Russian Electric Trade Union in their demands for improved wage and conditions of employment in the Russian electricity industry. ‘It is workers that deliver the essential services, not the shareholders. We do not agree with the policies of management that focus solely on increasing the company’s profits while ignoring the interests of workers.’ The growing tension between the EU and Russia over the situation in Eastern Ukraine stopped the energy dialogue.

2.6.3 The main liberalisation stages – the construction of an imperfect market

‘An imperfect market is better than a perfect regulator’, the late Kenneth Lay, ex-CEO of ENRON, the fraudulent US energy corporation that collapsed spectacularly in 2001, is reported to have said. ‘The European quest for electricity liberalisation is not one loaded with success stories. Compelled by the Commission, member states slowly overcame their reluctance towards opening their energy industry and restructured the sector so as to introduce competition with the aim of achieving cheaper electricity and improving the
to other members, such as Ukraine and Moldova, joining the energy community in 2010, and Georgia (2016). The Social Forum brings together employers, trade unions, governments, regulators and representatives of countries which provide funding.
efficiency of the public services. However, at the end of the day, it is clear that liberalisation
is not delivering the results expected. Moreover, it is in increasing tension with other
Community objectives, such as sustainable development and the fundamental freedoms
of the internal market. In this regard, it is doubtful to what extent liberalisation is the
appropriate system to organise such a complex commodity as electricity.\textsuperscript{691}

The internal market in electricity and gas was initially brought on its the way
by Council Directives 96/92 EC\textsuperscript{692} and 98/30 EC,\textsuperscript{693} respectively. These directives
represent an important step towards the creation of an internal market in these sectors.
They entered into force in February 1999 for electricity and in August 2000 for gas.

In what follows we concentrate on selected aspects of the launch of the EU
internal market for electricity.\textsuperscript{XXIX} We further present the EPSU assessment of the
construction of this market and illustrate its shortcomings in the course of its evolution.

The year 1996 saw the adoption of Directive 96/92/ EC concerning common rules
for the internal market in electricity.\textsuperscript{694} This piece of legislation defines the ‘completion
of a competitive electricity market as an important step towards completion of the
internal energy market’.\textsuperscript{695} The 1996 Electricity Directive ‘established rules in four
areas: generation; retail supply; transmission and distribution; and regulations. It also
had potentially significant implications for ownership and international trade.’\textsuperscript{696}

The key elements of the Directive are as follows:

- **Generation**: member states had two options for the construction of new power
  plants, tendering and authorisation. Under the tendering scheme, the electricity
  systems would continue to be centrally planned. An official body would determine
  the amount of capacity required and the specifications bidders would have to
  meet. The body would call for tenders, with the lowest bid winning. Although not
  elaborated in the Directive, winning bidders would be given a long-term power
  purchase agreement (PPA), providing guarantees of volume and price of sales so
  that finance for the construction of the plant could be obtained.

- **Transmission and distribution**: for generators and retailers to deliver their power to
  final consumers the following instruments were to ensure that all competitors would
  be able to get non-discriminatory access to the network. There were three options:
  negotiated third-party access (TPA); regulated TPA; and single buyer’s access.
  Negotiated TPA provided for retailers and generators to negotiate with the network
  owners for access to the network. Network operators could refuse access to networks
  on the ground of lack of capacity and indicative prices had to be published, with
  actual prices being subject to negotiation. Network operators were not obliged to
  build new capacity in order to respond to a request for access in case of insufficient
  capacity. Negotiated access to the network had to be granted at published tariffs.
  Here as well, the network owner could refuse access because of lack of capacity, but
  it was unclear whether the network owner had to build new capacity to respond to a
  request for access. ‘The Single Buyer\textsuperscript{XXX} provisions were muddled and it is not clear
  how the Single Buyer option would have worked in practice.’\textsuperscript{697}

\textsuperscript{XXIX}. The Gas Directive was adopted in 1998 and is comparable to the Electricity Directive in imposing
responsibilities on the construction of major gas facilities, transmission, distribution, unbundling and
regulation. Because of the specific nature of gas production, determined by resource location, neither a
tendering procedure for new production facilities was foreseen nor was there an equivalent to the Single Buyer
option.

\textsuperscript{XXX}. The Directive stated in Article 2 (22) that ‘the single buyer is responsible for the unified management of the
transmission systems and/or for centralized electricity purchasing and selling.’
- Unbundling: this process required integrated companies to separate network and retail/generation activities. Unbundling was conceived as a safeguard to prevent integrated companies from using their ownership of the network to give advantage to their generation and/or retail businesses. The directive required the establishment of transmission and distribution system operators (TSOs and DSOs). These operators had the task of determining access to the networks. This construction seems to be one of the flaws of the directive, as ‘the TSOs and DSOs could be part of companies with other interests in the electricity sector, for example as generators or retailers but had to operate on objective and non-discriminatory procedures that did not favour, for example, power plants owned by them. Network companies had to prepare separate accounts for their network activities to demonstrate that any generation of retail activities were not being unfairly subsidised by their network activities.’

- Regulation: the first directive did not require the appointment of a regulator to, for instance, resolve disputes of companies in the sector on network access or to supervise tariff setting. The directive only spells out general objectives to be achieved, without stipulating how these were to be attained. The Directive contains, for example, a general obligation not to discriminate and obligations to preserve confidentiality of commercially sensitive information, to negotiate in good faith and to submit any dispute to a commonly agreed dispute settlement authority.

- Ownership: the European Commission has no competence in questions of ownership. This is based on Article 345 TFEU (before Article 295 EC or Article 222 EEC). The application of Article 345 TFEU provides a limit to the development of the Internal Market. The limitation exists in the fact that European law does not apply to the decision to nationalise or not to nationalise an undertaking. The same reasoning, one could deduce, would apply to the privatisation of undertakings. The Directive 96/92 EC in fact remains silent on the ownership of companies after the market opening. However, the Directive meant that countries with dominant national ownership would inevitably have to move to privatisation. In France, Italy, Ireland and Greece, the electricity industry was dominated by a single nationally-owned company and if the spirit of the Directive was to be followed, and competitive markets introduced into retail and generation and network functions unbundled, new private companies would have to come in. With the Electricity Directive of 1996 no company would retain a dominant position, if markets were to be truly competitive. Under these circumstances any remaining nationally-owned company could have a market share of no more than 25 per cent. This presented less of a problem for countries with a high level of local public ownership, such as Sweden. Here privatisation was not seen to be an inevitable consequence. Electricity deregulation and privatisation is referred to as “liberalisation” by its advocates who use the term to disguise what is in essence a massive shift of ownership and control of electricity from public to private hands, in the name of economic efficiency and in the cause of private profits.

- International trade: the Directive permitted a country to deny access to companies from countries with retail markets that were not as open. ‘The provisions were confusing and it is not clear how enforceable they were.’

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XXXI. ‘The Treaties shall in no way prejudice the rules in Member States governing the system of property ownership.’
In its second report to the Council and the European Parliament on Harmonisation Requirements, the Commission seems to recognise some of the shortcomings related to the implementation of the Directive. The report underlines ‘the need to ensure that implementation of the electricity directive does not result in 15 liberalised but separate and rather isolated electricity markets, thereby failing to create one common market. It is the creation of one common market which is expected to produce the benefits from synergies, scale economies and shared resources throughout the EU.’

The report further states: ‘Evidently, the issue of cross-border electricity trade does not only concern electricity exchanges between member states, but also electricity trade with third countries. A harmonised approach to access rules for electricity from third countries is of key importance in light of the common commercial policy and the related international obligations of the EU. The issue deserves careful and urgent clarification, as important non-EU potential electricity exporters and transit countries are already engaged in electricity commerce with the EU and may, in due course, request full and non-discriminatory market access, including the right to directly supply eligible customers through network access, introduced by the electricity directive.’

In 1999, EPSU published a study entitled ‘New Era or a Dark Age?’, suggestive of the critical stance taken by EPSU on the opening up of the electricity market. ‘The authors of this study believe that the reasoning behind the Electricity Directive is flawed. The European Commission and several of Europe’s governments have been taken hostage by the narrow interests of a small group of large industrial electricity consumers ... and of neoliberal wishful thinking.’

The impact of restructuring and privatisation in the gas and electricity sectors was the subject of consideration also at international level during an ILO Tripartite Meeting in 1999, where the PSI General Secretary pointed out that the ‘restructuring and privatisation of energy often resulted in job losses, trade union derecognition, higher prices, excessive rates of return on capital to maximise dividends and had placed an unacceptable burden on workers and consumers. The use of privatisation proceeds to reduce taxation or debt levels, thus introducing hidden taxation and obscuring the true costs, required that better data on the full impact of privatisation on public finances be produced. PSI felt that the World Bank and other bodies financing development should ensure that there was no discrimination against public sector options.’

The European Commission continued to drive a strongly market-based approach in the EU electricity sector (and other network industries), in which public sector options are considered to be a nuisance factor. ‘Two neoliberal principles have underpinned the Commission’s vision of the EU electricity sector. The first principle draws on the neoliberal idea that markets are natural and prior. This manifests itself in the belief that markets and competition should be maximised and possible market failures, such as environmental damage and inadequate security of supply, be considered after a competitive market has been established. The second neoliberal principle, international free trade, is manifested in the electricity sector in the endeavour to maximise the trading of electricity across the European continent. Since the single market initiative in electricity in the late 1980s this has been at the heart of the Commission’s ambitions: the belief is that a true single market will lead

XXXII. Hans Engelberts was PSI General Secretary 1981–2007. He died on 13 April 2015, see www.epsu.org/announcement/hans-engelberts

XXXIII. See Section 1, where reference is made to the Monti Report, in which the place of public services within the single market is described as a ‘consistent irritant in the European Public Debate’.
to significant efficiencies and price falls, and increased cross-border interconnections will enhance security of supply.710

‘When the European Commission presented its first proposals for market opening EPSU’s main points of criticism were as follows:

– The internal market will destroy jobs in the electricity industry.
– Provisions are missing from the European directives that would ensure the maintenance of the high social and health and safety standards in the industry and harmonise these at the highest level.
– Respect for environmental standards and the possibilities to promote a sustainable energy policy through the development of renewable energy resources, energy efficiency and energy savings is weakly developed. The internal market dynamics will conflict with environmental protection.
– Fair and balanced energy systems which respect established structures in the member states are endangered in favour of multinational companies and concentration of power in the hands of few.
– Public service obligations ensuring a secure and continuous supply of energy, and affordable prices are not clearly defined and the market cannot be relied on to guarantee these.’711

In a speech to the International Energy Agency (IEA) Regulatory Forum in 2002, Jan Willem Goudriaan makes the point: ‘We argued that liberalisation would be a bad deal for Europe’s citizens and especially the more vulnerable groups in society. We believe citizens, and for that matter small-medium sized businesses were not very well protected. And my colleagues the world over, in the US, in Australia and New Zealand, in countries such as Brazil and Argentina have taken similar positions. On all of these points we have been proven right. Liberalisation is not a good deal for citizens. Competition does not safeguard the public service.’712

In 2003, two further Directives were passed with deadlines for the full opening up of the EU energy market: 1 July 2004 for business customers and 1 July 2007 for households. The Directives were expected to benefit customers through lower prices generated by greater competition. It was also expected that a reduction of energy prices would lead to the preservation and further creation of employment in sectors heavily dependent on energy use for production, though there were also serious concerns that greater competition would result in job losses and poorer working conditions in the energy business.73 Contrasting with this gloomier forecast, a more upbeat perspective is given on the website ‘Gas in Focus’: ‘Achieving a genuine internal energy market is a priority goal for the European Union. The internal energy market is made up of the European gas and electricity markets. It has been the subject of several successive sets of directives and regulations, grouped into legislative packages. ... The purpose of these directives is to create a truly competitive internal market in the European Union. The opening up of the market is closely linked with objectives for quality of service, universal services obligation, consumer protection and security of supply.’714 The last sentence would suggest that the objectives listed go hand in hand with the opening up of the energy market, an assertion which is highly questionable in view of some of the experiences since 1996.

In 2007, the European Commission envisaged a number of further steps to increase competition and effective regulation, the so-called Third Energy Package. The most contentious measure was the proposal that ‘vertically integrated gas and electricity
utilities should be “unbundled” into separately owned companies responsible for the functions of production and transmission.” As described earlier, the ‘unbundling’ of certain business activities was already foreseen in the 1996 Electricity Directive, but clearly did not have the intended effects. An EPSU commissioned study points out: ‘The three dominant companies, E.ON, EDF and RWE have maintained or strengthened their positions, EDF through its acquisition of British Energy, E.ON through the assets it bought from ENEL and Endesa, and RWE through its acquisition of the Dutch utility Essent. These three companies have been joined by two companies, ENEL and GDF Suez, who through a takeover and a merger, respectively, are now of comparable size. The European Union’s policy to force EDF, E.ON and RWE to sell their transmission network may, far from increasing competition as it was designed to do, reduce it further. The proceeds from selling these networks will be used to buy up more assets in Europe in the competitive activities in energy, making already limited markets even more concentrated.”

2.6.4 Electricity blackouts: Do liberalisation and privatisation increase the risk?

‘The traditional, publicly owned, monopoly system [of energy generation; inserted by author] was generally effective at meeting the required security standard. ... This system was criticised as being inefficient because there was no profit-driven motive to minimise costs: any savings the company made were passed on to consumers. The liberalised model addresses the problem by making generation a competitive activity and by introducing incentive regulation for the monopoly network. Under incentive regulation, companies can keep cost savings as extra profit. It was assumed that a combination of market forces for generation and regulated performance targets for networks would be sufficient to prevent deterioration in system reliability. There are serious grounds to suggest this will not be the case. Activities in the electricity industry are now being bought and sold frequently and there must be a risk of a “take the money and run” philosophy. Cutting back on maintenance may not be reflected in poorer performance for several years, by which time, ownership of the facility could have changed more than once.

The flaws of the electricity market construct manifested themselves dramatically in the early 2000s when a series a major electricity blackouts occurred in North America and several European countries. ‘Power systems, part of the inner workings of modern society, suddenly took centre stage during the late summer of 2003, due to a series of dramatic power outages. These served to remind us how vulnerable to and reliant upon technology we have become. The first wake-up call hit the United States and Canada on 14 August 2003, when large parts of the country experienced the biggest electricity blackout recorded. In what appears to have been a technical failure, three power transmission lines collapsed, depriving some 50 million Americans and Canadians of electricity for up to 36 hours. A frequent reaction in Europe to these events was to assert that the problem lay with the US electricity system and was highly unlikely

XXXIV. Elsberg M. (2013) Blackout: Morgen ist es zu spät, München, Blanvalet. Blackout is fiction. The book gives a frightening account of the consequences of a terrorist cyber attack on the smart grid system in Sweden and Italy with chain effects across European countries and the US. The book gives a vivid description of the consequences of a longer blackout on our accustomed lifestyles, with public life coming to a complete standstill, no lighting, heating, no water, no transport, major threats to health, general hygiene, internal and external security, the living environment, including the possibility of major accidents in nuclear power stations.
to occur on this continent. A statement by the European Commission published on 14 August stated that the “European electricity market is much more integrated in terms of organisations, regulations, market liberalisation and cooperation between network operators. Although the possibility of a significant power cut cannot be ruled out, the European electricity market appears to be better equipped to deal with such situations.” This affirmation proved to be an overstatement as a series of large power cuts across Europe immobilised several countries in the following weeks. On 28 August 2003 London was hit by a major outage, which left about 410,000 homes and businesses without electricity. Thousands of passengers were stranded during rush hour as 1,800 trains were halted and 60 per cent of the underground network became inoperative. Two million consumers in southern Sweden and 1.8 million in Copenhagen experienced a massive power cut on 23 September 2003. In Italy, following several planned power pauses over the summer in order to cope with the record high temperatures, the worst black-out in Europe since World War II occurred on 28 September – leaving 50 million people (almost the entire population) without power for up to 18 hours and causing several fatalities. Major incidents were also reported on the Austrian-Czech power line, in Spain and in Portugal, and a critical situation of a near black-out was recorded on the power line between Hungary and Austria.

In launching the ‘Study on black-outs’ produced by PSIRU of December 2003, an EPSU Press Release highlights the human factor of so-called ‘liberalisation’ as one of the possible causes of network failure. Job losses and the process of contracting-out of key maintenance tasks have had an impact on the ability of companies to maintain security of networks and to react to emergencies. The study further points out that the sector is likely to face skill shortages and a lack of qualified staff. ‘The Commission forgets that ensuring security and reliability is not just a matter of more investment in lines and plants or stricter rules. It is also a question of having sufficient and qualified
staff. Neglecting the human factor is detrimental to the provision of a high quality service. We welcome the study’s recommendations to strengthen the public interest. The internal market and commercial interests will not safeguard this.

In an attempt to ‘fix’ the problems encountered the European Commission put forward a ‘Security of supply directive’ in 2003 coming into force in 2005 with a view to ensuring the functioning of the internal energy market, the largest competitive market for electricity and gas in the world, the European Union (EU) establishes obligations to safeguard security of electricity supply and undertake significant investment in electricity networks. Blackouts in both the EU and the US have highlighted the need to define clear operational standards for transmission networks and for correct maintenance and development of the network. The European Commission was clearly disturbed by the blackouts of 2003 which were a poor advert for electricity liberalisation. A Commission Staff Paper reads: ‘If the internal market is undermined either through a lack of cross-border competition, or through the political problems caused by security of supply concerns, the losers will be European consumers and business which, instead of seeing the benefit of competition in terms of lower prices and a higher level of service, will instead risk seeing the opposite.’ Whether this draft Directive is a direct effort to reduce the risk of such occurrences or whether this is an opportunistic attempt to push through previously planned measures, which give the Commission greater control over the industry playing on public fears about blackouts is not clear. ... Overall, the draft Directive does not reconcile the conflicts between security of supply (public interest) and commercial objectives as exemplified by the Internal Market.

And indeed the Security of Supply (SoS) Directive did not do the trick expected of it. A further blackout occurred in 2006, ‘one of the worst and most dramatic power failures in three decades plunged millions of Europeans into darkness over the weekend, halting trains, trapping dozens in lifts and prompting calls for a central European power authority. The blackouts, which originated in north-western Germany, also struck Paris and 15 French regions, and its effects were felt in Austria, Belgium, Italy and Spain. ... Romano Prodi, the Italian premier said from his native city of Bologna that the incident suggested that Europe needed to strengthen its coordination of power supplies.’ Meanwhile, the weekend’s energy blackout – the worst pan-European power loss in 30 years – is likely to strengthen Brussels’ hand on energy reforms. The European Commission is pushing to have an open EU energy market by mid-next year, arguing that this is the answer to Europe’s energy security problems. However, it is facing stiff resistance from member states reluctant to allow foreign takeovers of their national energy utilities or to bow to an EU-level regulator on power grids. ‘The security of supply directive was a quick fix in response to European and North-American black-outs. It recognised that the market will not provide, among other things, for investment in peak capacity and grids. ... The lack of investment in networks and generation capacity, the lack of investment in training, research and development and qualified staff. These factors, alone, or in combination with each other, bring risks to a reliable, safe and affordable public service.’

Overall, it can obviously be argued to what extent or whether at all, public policy objectives, such as ‘security of supply’ can be reconciled with market liberalisation. ‘Critics of the latter tended to argue that greater competition would undermine the long-term investment horizons which had traditionally characterised energy policy decisions. In response, the Commission has argued that liberalisation was not only compatible with supply security but would reinforce it.’ As regards security of supply the proposals stressed the importance of not only achieving a better energy balance (...) and improving network integration, but also of developing better relations with energy...
suppliers from outside the EU. While various mechanisms designed to achieve these objectives were envisioned, they were not independent of market liberalisation, which continued to remain central to the overall policy objectives.\textsuperscript{732}

2.6.5 Testing the merits of the internal energy market – does it work?

In contrast to other public services, such as health care and social services ‘the liberalisation of sectors such as gas and electricity ... has generally been accepted as a means to improve the quality of service and to lower prices for consumers’.\textsuperscript{733} The truth of this statement is debatable as European citizens did not have much of a chance to voice their opinion on the internal market for electricity and gas. EPSU had continuously criticised the lack of any effective control allowing citizens to influence decisions.\textsuperscript{XXXV} In those instances, where citizens were asked via referenda in EU member states on liberalisation and privatisation of public services, there are a number of examples where such measures were rejected. In Germany, in May 2001 a proposal to privatise Düsseldorf’s energy utility was rejected by 90 per cent of the voters. In Latvia, in 2000 the government had to reverse its policy of privatising the electricity company Latverergo in the light of public opposition. In Switzerland, a proposal to liberalise electricity markets was refused by the electorate through referendum in 2002.\textsuperscript{734}

The Commission’s practice of ‘self-assessment’ was repeatedly denounced by EPSU and a series of critiques were undertaken by David Hall, PSIRU.\textsuperscript{735} ‘In 2002, the Commission promised that the evaluations would include “a permanent mechanism for the monitoring of citizens’ opinion and their evolution”, the consultation of stakeholders, including the social partners, and a great expansion of public participation. But the EC has never conducted these evaluations through a public and democratic framework, and has simply published an annual evaluation as a technical report – the document is not addressed to any of the EU’s democratic institutions, but simply designated as a “Commission Staff working document”. No actors outside the Commission are involved in the production of the reports; no process is created for assessment of the issues through the democratic institutions of the EU and its member states; and the reports are published only in English, indicating that widespread debate was neither expected nor desired. The only element of public discussion has been two meetings with the European Economic and Social Committee, which took place after the evaluations of 2005 and 2006 were published.\textsuperscript{XXXVI} None of the Commission’s assessment reports foresee the possibility to review policies in the light of evidence. ‘The reports set out ... beliefs behind liberalisation, including the expectation that competition will allow consumers choices and that this will drive down prices and increase efficiency.’\textsuperscript{736}

The stubborn Commission course on liberalisation was also described as moving in the opposite direction to the global trend. ‘Against this background of a world-wide


\textsuperscript{XXXVI}. Hall D. (2007) Self-assessment or public debate? Evaluating the liberalization of network services in the EU and USA, Report commissioned by the European Federation of Public Service Unions (EPSU), p. 2–3. An analysis from 7 European universities, led by Professor Massimo Florio, concludes that the policy of privatisation, vertical disintegration and liberalisation in electricity, gas and telecoms has had next to no impact on prices and consumer satisfaction. See www.epsu.org/article/ownership-unbundling-and-its-negative-impact-epsu-asks-council-act
slow-down in the pace of electricity reform, the centrally driven effort by the European Commission has been the main force ... in keeping the programme on course. ... Given the strategic position of the electricity industry in national politics, in the absence of policy at the level of the European Union (EU), the pace of reform in many member states would have been considerably slower.

In the USA ... the emerging trend is to reverse, halt, or slow down the process of liberalisation – in sharp contrast to the European Commission’s insistence that the solution to any problem must involve an acceleration of market opening.

EPSU maintained its critical stance towards the internal market for electricity and gas. ‘It is clear to all observers that the internal market for electricity and gas, contrary to claims made for it, is providing benefits neither to Europe’s large industrial users, nor to domestic households. ... The PSIRU Report describes the problematic nature of different wholesale markets, increased concentration and low levels of switching of domestic users. ... The report also notes that in markets that are claimed to be working, such as the Nordic and UK ones, major snags are evident. ... The market produces results that are sub-optimal from a macroeconomic perspective and even negative considering it does not contribute to more social equity and a redistribution of wealth that benefits low income households. We can muddle through, or we can discuss whether there are other ways to achieving safe, reliable and affordable energy services delivered under democratic control. We believe this discussion should be carried out on the basis of empirical analysis rather than ideological rhetoric.

The EPSU Standing Committee on Public Utilities of 7 October 2005 adopted a position paper on the Progress Report on the Internal Market for Electricity and Gas, ‘arguing that what the sectors needed and need are not more competition, but cooperation. ... Cooperation, public ownership and monopolies were a tested recipe in many countries that contributed to Europe’s growth and competitiveness during many decades. It was based on solid economic theory that recognised the specific characteristics of the electricity and gas utilities, including the importance of the laws of physics, the long-term nature of its investments and most importantly that electricity, in particular, is a social good and not a purely commercial one. This concept has been challenged and replaced by the notion that competition will deliver better results on the above objectives.

The paper also calls for an independent evaluation to assess the impact on:
- employment, equality, environment, social and territorial cohesion;
- other policy objectives to be pursued, such as CO2 emissions;
- the distributional dimension.

The paper further demands a:
- strengthening of democratic control;
- focus on the social and public services dimension;
- reassessment of the market opening for domestic users in 2007;
- a prudent approach to unbundling.

The paper refers, among other things, to statements by UCTE (the Union for the Coordination of Transmission of Electricity) who argue that ‘a stable regulatory framework with a long-term perspective and a security philosophy is urgently needed. Or in other words: the current internal market lacks a long-term perspective, a security philosophy and a stable framework. How more devastating can the evaluation of the internal market
be? In the note, EPSU recognises, however, that 'there is currently no majority to [support] a more cooperative approach which would be based on long-term planning and investment, focusing the energy of the electricity and gas industry and its users on addressing global warming, reliability and security of supply issues. What is needed is a uniting of forces around a major European programme to reduce dependence on fossil fuels, and move Europe towards sustainable development and reduced emissions, for example, based on a Hydrogen Economy, as Europe’s political parties advocate.

The EPSU Position Paper further calls for a legislative standstill and advocates that 'no new initiatives to promote the internal market in the electricity and gas sector’ should be undertaken.

Within the ETUC, too, EPSU had strongly argued for a legislative standstill on liberalisation policies, as reflected in an ETUC Executive Committee Resolution:

‘ETUC is very concerned that practical preparations are under way to speed up the liberalization and deregulation of several sectors, such as telecommunications, postal services, energy and transport without a serious pluralistic assessment of the consequences of these processes for service delivery, quality and quantity of jobs, equal access to services and service choice. In contrast to the assertions of Commission DG Competition, it is a fact that liberalisation has led to massive market concentration and job losses. Competitive pressure very often means that companies reduce investments in maintenance and repair, in training of staff, in research and development. ETUC therefore pleads for a thorough pluralistic impact evaluation of the liberalisation processes to date that should not be confused with the routine measurement of the implementation of the directives. The parameters for the impact evaluation and labour market equality and environmental data with economic ones. The reluctance to present a proposal for a framework directive while speeding up the liberalisation process is totally unacceptable. If the Commission is not able to deliver, it would be logical to come to a legislative standstill (moratorium) concerning liberalisation until the Commission is able to deliver a framework proposal.

The EPSU Position Paper continues its line of argumentation as follows: ‘The implementation of the Directives needs to be completed and further experience gained, including how different Directives interact with each other. ... A number of opt-outs should be possible.

- The market for domestic users should remain closed for those countries that wish to continue to operate a regulated tariff for domestic users and with regulatory oversight, also after 1 July 2007.
- Countries should be allowed to opt out of the internal market, based on democratic decisions of their populations, for example through a referendum.
- Member states should be able to opt out of the 10 per cent target by which there should be a certain percentage of cross-border trade ... of electricity compared with installed capacity.

XXXVII. EPSU Contribution to the Progress Report on the Internal Market for Electricity and Gas; State of Play – Steps for the Future; Putting quality, reliability and security centre-stage or how to bolster economic growth and competitiveness; adopted by the EPSU Standing Committee on Public Utilities of 7 October 2005; www.epsu.org/article/epsu-contribution-progress-report-internal-market-electricity-and-gas; a comment in the 2005 EPSU Report of Activities would suggest that Members of the European Parliament in turn did not necessarily listen to EPSU input, see following comment on p. 22 of the Report ‘European Energy Policy. Various issues were considered such as the Security of Supply Directive. A series of amendments has been proposed and ignored by Members of the EP.'
These opt-outs are needed to ensure the democratic nature of the EU. Europe’s citizens must be able to change decisions, especially if these are seen to have negative consequences.\textsuperscript{747}

The paper also formulates demands for targets, such as to:

- define adequate levels of sufficient and well-trained staff to be able to fulfill their functions;
- support research and development, training;
- invest in maintenance and repair.\textsuperscript{748}

The above points were re-emphasised in the EPSU contribution to the European Commission’s Green Paper on a ‘European Strategy for Sustainable, Competitive and Secure Energy in 2006. EPSU’s critical stance was again expressed in strong terms: ‘EPSU questions the basic assumption that security and sustainability can only be achieved within what is referred to as a truly competitive market which, incidentally, the Green Paper fails to define. The European Commission has missed an opportunity to address the internal market for electricity and gas critically.’\textsuperscript{749} ‘EPSU questions the internal market for gas and electricity as it has a negative impact on security of supply and sustainable development. The internal market will not stimulate investment or at the wrong time and in the wrong technologies.’\textsuperscript{750}

Clearly the stark EPSU criticism did not tally with the assessment of the then European Energy Commissioner Andris Piebalgs, who stated in the European Parliament: ‘It is clear that the main added value of this Green Paper lies in this common approach where we stress that security of supply, competitiveness and sustainability cannot be separated in our energy policy. All three interact.’\textsuperscript{751} It would also appear that a majority in the European Parliament did not essentially query the policy direction taken. MEP Claude Turmes (Greens/European Free Alliance Group), was rapporteur for the ITRE (Industry, External Trade, Research and Energy) Committee in 2000.\textsuperscript{XXXVIII} ‘His report concluded that: the Internal Market in electricity can offer advantages to renewables, through its potential for transparency. … The Internal Market does not yet function, though this weakness is not overtly mentioned by the Commission. Some important member states do not yet have regulatory authorities in place, or any legislation on terms and conditions for grid access. Also unbundling is not being enforced, and we could even face monopolisation at EU level, as large mergers take place between the utilities.’\textsuperscript{752} ‘Without stricter rules on market dominance and a phase out of the existing market distortion in favour of some big players, the European electricity market will be dominated by a handful of oligopolies. This is a threat to the functioning of the market and the democratic control of a vital public service.’\textsuperscript{753} This is a surprising statement as the Green Euro-Parliamentarian recognises electricity as a public service which, however, he wants to control through tighter market mechanisms. Eikeland makes the point that it was mainly French MEPs from different political groups, with support also from German representatives, who were sceptical or strongly opposed to free market competition.\textsuperscript{XXXIX} ‘Hence, already back in 2002, a great Parliament


\textsuperscript{XXXIX} Ibid., p. 42. Eikeland sees the ‘free-market optimism’ in the European Parliament dampened by 2008, as a parliamentary majority was not prepared to support the ‘trade in guarantees of origin’, ‘an instrument that the Commission saw as necessary to align political support of renewable energy with the internal energy market ideals’, p. 43.
majority, with the notable exception of French representatives, adhered to the belief that full liberalisation would be compatible with reaching environmental and security of supply goals.\textsuperscript{XL} The European Parliament’s resolution on the 2006 Green Paper ‘calls upon member states to recognise that the energy market is still not fully liberalised and that full implementation is imperative; it is of the opinion that a clear and stable political framework and a competitive and fair energy market is needed to establish a high degree of energy independence, long-term stability, efficiency, environmental sensitivity and security of supply.’\textsuperscript{754}

Nevertheless, a number of other critical voices made themselves heard, following the next phase of liberalising the energy sector of 1 July 2007, when the household market for gas and electricity was officially opened up to competition.\textsuperscript{755} A EurActiv article quotes the European Commission as follows: ‘An “open energy market” brings down any legal or administrative barriers for companies to enter the market and to supply gas and electricity to the public’.\textsuperscript{756}

The article contrasts these Commission statements with the following critical comments: Antoine Pellion, from the Schuman Foundation, is reported to have said ‘rising oil and gas prices have meant that liberalisation has not automatically led to the expected price cuts in electricity.’ ‘Presenting liberalisation as a lever to lower prices was undeniably a communication mistake.’ Instead, Pellion recommends that the EU adopt ‘a longer term vision, where energy pricing incorporates the real costs of energy in terms of environmental damage and scarcity of supply. A further critic, Jan Horst Keppler, in a position paper for the French Institute of International Relations, is quoted in saying: ‘that the wish to simultaneously guarantee security of supply, environmental performance and low user prices is “an unsolvable equation” that risks leading to “ineffective responses”.’\textsuperscript{757}

\textbf{Public service workers protesting against austerity measures – electricity sector, Slovenia.}
Source: SDE Slovenije, Slovenia

\textsuperscript{XL} Ibid.
EPSU repeatedly drew attention to the increasing problem of fuel poverty generated by a malfunctioning energy market. ‘A failed internal market for electricity and gas which did not see prices decrease’, as scarcer resources and growing demand lead to higher fuel prices, further compounded by the need to tackle climate change and to invest in infrastructure. The rise in energy prices has had particularly harsh consequences for low income households trying to pay their electricity bills. They are confronted with energy poverty. Debts increase. Families cannot heat their homes or do not have light. Citizens faced with energy poverty often live in lodgings with poor ventilation and high humidity. And with cold and moisture people are more often ill.

Responding to an EPSU and European Anti-Poverty Network campaign, the Third Energy Directive to further open the markets asked member states to address energy poverty in national action plans. ‘Energy poverty is a growing problem in the Community. Member states which are affected and which have not yet done so should therefore develop national action plans or other appropriate frameworks to tackle energy poverty, aimed at decreasing the number of people suffering such situation. In any event, member states should ensure the necessary energy supply for vulnerable customers. In doing so, an integrated approach, such as within the framework of social policy, could be used and measures could include social policies or energy efficiency improvement for housing. At the very least, this Directive should allow national policies in favour of vulnerable customers.’

There is a degree of cynicism in delegating responsibility to member states to deal with the collateral social damage of a European liberalised energy market. Public service requirements are construed to act as a repair shop ‘to make sure that all consumers, especially vulnerable ones, are able to benefit from competition and fair prices’.

In hindsight, it remains difficult to understand how the Commission could get away with this dogged pursuit of the liberalisation dogma or as the French would call it the imposition of ‘la pensée unique’. David Hall explained this phenomenon in terms of a lack of control over the Commission and the absence of public debate at national level. A further plausible explanation might be that during the period under consideration the Commission pushed hard to extend the internal market to other areas, through for example the Services Directive. Under those circumstances, it would have been difficult to see previous liberalisation exercises being questioned, in particular a ‘flagship’ initiative, such as the opening of the network industries. ‘The exercise remains focussed on the single public policy objective of extending the internal market, as epitomised by its conclusion that “Significant milestones have been achieved in opening up network industries supplying services of general economic interest to competition. However, there remain many obstacles to competition and to completing the internal market, which the Commission is taking steps to address.”’

It is also reasonable to believe that the co-drafting by DG TREN and DG Competition of the 2008 proposals intensified the Commission’s market radicalism. This is true in particular of the idea to force through mandatory unbundling, although it seemed clear that this proposal would not achieve a qualified majority vote among member states in the Energy Council. ‘Under the leadership of President Barroso, DG Competition assumed a new prominent role in pushing internal market policies’ other than during the preparation of the first and second policy packages.’

Since 2010 DG TREN (Trade, Research, Energy) of the European Commission is part of Directorate General for Mobility and Transport (DG Move) and Directorate General for Energy (DG Energy), see http://www.transport-research.info/web/programmes/programme_details.cfm?ID=4643. See Eikeland (2008), op cit, p. 31-32. Eikeland sees an ‘important cluster of people’ within the European
the Commission was reflected also in the investigations started against major vertically integrated companies for breaches of EU competition rules and the filing of some of these to the European Court of Justice. This will was strengthened by the clear signals given in advance by a majority of the Parliament that it would support mandatory ownership unbundling.\textsuperscript{XLIII} The idea behind this move was that if DG Competition was successful in pushing large companies or even striking a deal with them, as was the case with the German E.ON,\textsuperscript{XLIV} then these companies would no longer have a reason to lobby at national level against ownership unbundling.\textsuperscript{766}

EPSU was opposed to the unbundling concept. “This is restructuring forced upon workers, not by the vague forces of global finance capital but by an ideologically driven Commission president and Commissioners. They stubbornly continue to ignore all the lessons learned about restructuring and put competition before Social Europe, throwing workers and their families into months of insecurity.”\textsuperscript{767}

After lengthy haggling in Trialogue negotiations the European Parliament gave in on ‘unbundling’ and the final compromise reached under Czech Council Presidency in March 2009 allows member states to choose between three options.\textsuperscript{XLV}

The Commission’s line of argument has not changed in the 20-year history of EU internal market policies in spite of the fact ‘that the three legislative packages from 1996/98, 2003 and 2007 have only been partly transposed by a number of member states’.\textsuperscript{768} In its November 2012 Communication the European Commission is reported to claim in EurActiv ‘that the implementation of the “target model” for the energy and gas market is on track. This “target model” defines how cross-border electricity and gas trade will be organised after 2014 through harmonising certain rules and jointly managing cross-border infrastructure bottlenecks. ... This story of slow-but-steady progress in the face of opposition from some member states just does not ring true. ... Fundamentally, the envisaged market design is in various ways at odds with the physical nature of electricity.’\textsuperscript{769}

A report by the European Parliament of 2010 does even envisage the possibility of a fourth energy package, although previous measures have not been fully implemented yet by member state governments. ‘The third package has not introduced ownership unbundling on a distribution level. The impact assessment accompanying the package, however, contains several arguments for a further unbundling of DSOs.\textsuperscript{XLVI} If the producers of renewable energy continue to experience problems in grid connection in the future, a fourth package might have to address this issue.’\textsuperscript{770}

A 2013 Commission Report on the Internal Market celebrates its achievements in the energy sector: “Through single market legislation introduced over the past decade and a half, in combination with competition enforcement, national markets are no

\textsuperscript{XLIII}.  Ibid., p. 51–52.
\textsuperscript{XLV}.  Ibid.
\textsuperscript{XLVI}.  Distribution System Operators.
longer controlled by state-owned monopolies but are open to suppliers from abroad. As a result, private households and businesses are now free to choose their suppliers. More cross-border trade in the energy sector also helps prevent supply disruptions and power cuts in EU member countries. Several European energy companies are now active in more than one member country, increasing competition among services providers.\textsuperscript{XLVII}

‘The faith of the European Commission that as free a market as is possible is always the best option for organising the electricity industry remains unshakeable despite the failure ... to create anything that looks remotely like an efficient market either in wholesale or retail. ... It is now clear, and probably was when the Electricity Directive was first passed in 1996, that climate change measures will mean that an unconstrained model is not feasible because the cheapest options, fossil-fuel plant must be discouraged in order for greenhouse gas emission targets to be met.’\textsuperscript{771} The carbon trading scheme, the EU ETS, was designed as a market solution to provide incentives to use low-carbon generation sources. It ‘has failed badly after eight years of experience with prices at a small fraction of the real additional cost of reducing carbon emissions.’\textsuperscript{772}

In contrast to the prevailing ‘market ideology’ an interesting counter-trend is developing, namely towards remunicipalisation, especially in the energy sector. This trend is particularly pronounced in Germany, against the backdrop of expiring concessions contracts in 2015/16. This offers the opportunity for many municipalities to take energy supply services back into public ownership.\textsuperscript{773} ‘The most important factors in energy remunicipalisation in Germany were to do with a greater degree of control and effective delivery of public service objectives: over half identified “greater local control” or “effective achievement of public interest” as the key factor in the decision. This is a clear political factor, concerned with specific policy objectives.’\textsuperscript{774} ‘Energy supply was one of the key sectors affected by privatisation of formerly public enterprises. Today energy supply is characterised by oligopolies of private energy suppliers. There is practically no competition on price. The transition to renewable energies is made rather reluctantly and only as a consequence of massive state subsidies and regulatory requirements. The example of Munich shows how the transition process can be sped up if a city owns a utility company. By 2025, our utility company aims to produce so much green energy, that the entire demand of the city can be met. That requires enormous investments – around 9 billion euros by 2025 – and can only be successful if the long-term goal is sustainable economic success rather than short-term profit maximisation.’\textsuperscript{XLVIII}

‘Looking back on 20 years of the EU internal market for electricity and gas, the dogma that we need such a market is still continuously repeated. Almost every European Council and Council of Ministers meeting concludes with statements that we have to

\textsuperscript{XLVII} European Commission (2013) From crisis to opportunity: putting citizens and companies on the path to prosperity, Luxembourg, Publications Office of the European Union, p. 8. Below the paragraph quoted there is a photo of a smiling elderly couple apparently contemplating their energy bill, with the insert: ‘Thanks to single market legislation, households and businesses can now choose their energy supplier.’

\textsuperscript{XLVIII} Dieter Reiter, Welcome address to the 10th Munich Economic Summit, 19–20 May 2011, p. 1, www.epsu.org/article/epsu-local-and-regional-governement-conference-8-9-may. Considering these experiences, it is certainly bitter that Greece needs to proceed with the privatisation of its electricity transmission network operator (ADIME), as part of the latest July 2015 ‘rescue package’. This also foresees a significant privatisation programme which also relates to the energy sector. See http://www.theguardian.com/business/2015/jul/13/greece-bailout-agreement-key-points-grexit. Another interesting case was the city of Hamburg where in September 2013, 50.9 per cent of the citizens expressed themselves in support of a complete remunicipalisation of the energy supply sector, a decision that was taken against the majority position of the parties represented in both the city’s Senate and Parliament and for that matter the works council of the Vattenfall Company on the grounds of employment security. See http://www.spiegel.de/wirtschaft/unternehmen/hamburger-stimmen-fuer-rueckkauf-der-energienetze-a-923811.html
complete the internal market for electricity and gas. Such a market would help the EU to improve its competitiveness, we are told. The countries of the Energy Community (the Western Balkan countries, Georgia, Moldova and Ukraine)\textsuperscript{775} have to follow this model. Just how much the opening up of the electricity and gas markets was part of a neoliberal consensus that extended to the social democratic parties is underlined by the Lisbon Treaty, which incorporates this dominant thinking in the article (194) on energy policy.\textsuperscript{776} It says that European Union energy policy is focused on establishing the internal market. This, rather than addressing climate change or security of supply, becomes the dominant focus. The rest is to take part in that format. And it stresses this market perspective again in the first sub-article: Union energy policy should ensure the functioning of the energy market. Other objectives are ensuring security of energy supply and promoting energy efficiency and energy saving and the development of new and renewable forms of energy; and lastly promoting the interconnection of energy networks. The national prerogative remains as the Treaty says that such measures shall not affect a member state’s right to determine the conditions for exploiting its energy resources, its choice between different energy sources and the general structure of its energy supply.

The internal market for energy is now taken to yet a further stage with the recently proposed Energy Union.\textsuperscript{XLIX} The energy internal market was set up on the assumption that this would provide positive benefits for Europe’s citizens, leading to lower prices and more security of supply as companies would be able to buy electricity and gas in other countries. A further assumption underpinning the opening up of the EU electricity and gas markets is the belief that markets will provide adequate signals to investors, as well as electricity and gas companies to build new capacity and infrastructure, if and when required.

EPSU has always questioned these assumptions. We do not see the positive impact on prices, on employment and growth, on public investment and on Just Transition. It was only through regulating the market further that further major blackouts have been prevented. With new European regulatory mechanisms it can also be said that the European Commission has given itself a pivotal role, one that it continues to build with its proposals for the Energy Union.

We consider that the provision of gas and – especially – of electricity is a public good. A modern European society cannot do without electricity. It would grind to a halt immediately, with serious consequences for the economy, human welfare and personal security. Leaving the provision of electricity to markets therefore remains a dangerous experiment, certainly when considering that our prospering economies until 2000 benefitted from public investment in public infrastructure and in what were predominantly publicly-owned companies.

The internal market is now hindering the development of policies to protect users. The internal market also obstructs investment in technologies to address climate change. There is a small but growing popular movement that seeks a return of electricity into public hands via new municipal companies for renewables, or a return to public ownership of networks. It offers the prospect of democratically controlled energy, something which EPSU supports and promotes. In the 2014 Congress Resolution on the Utilities Sector\textsuperscript{777} we further recognised that we need to deal with the governance of the European energy market. The resolution commits EPSU to monitoring and responding

\textsuperscript{XLIX. The Energy Union is to integrate 28 European energy markets into one Energy Union, more details of Commission’s plans: http://europa.eu/rapid/press-release_MEMO-15-4485_en.htm}
to the growing integration of the electricity and gas markets. We are aware of the increasing importance of the European regulator, ACER, and bodies such as ENTO-E and ENTSO-G, the transmission operators. We need to make sure that the interests of workers and citizens are protected in the process of energy regulation. We also want to develop proposals for a new Energy Treaty and a European Agency to consider demand and supply of energy in Europe.778

2.7 The never-ending story of public procurement

The question of how governments can combine their role as active participant in the market with social or sustainable objectives is not new. ‘The attempts to link social justice issues with procurement mostly originate in the nineteenth century in England and the United States, but also in France. In 1891, a resolution on fair wages was passed by the House of Commons in Britain. This committed government departments to include a stipulation in all contracts with private sector employers that workers must be paid generally accepted rates for the job.’779

For EPSU, the fight for social procurement started in the early 1990s and it took two major revisions of the public procurement regime to achieve recognition of social aspects in public procurement in 2014. This recognition was the result of over two decades of joint lobbying and concerted action by EPSU affiliates and a broader alliance of NGOs. As part of the historical perspective on the subject, it is important to recall that the European Commission had intended to come forward with a proposal for a ‘Community instrument on the introduction of a labour clause in public contracts’.780 Such an instrument was, however, never presented, probably resulting from the influence of neoliberal forces on European Community policy making at that time, as illustrated also by Christopher McCrudden: ‘In the EC context, the Commission’s actions were, from the letter part of the 1980s and during much of the 1990s, hostile to the incorporation of social aspects into procurement. ... Linkage was seen as an exception, as something that needed to be justified, rather than an accepted part of procurement policy.’781

Opening up public procurement markets was one of the key objectives to be achieved by the European Single Act. ‘Among the European Commission’s key legislative proposals for 1992 were sweeping moves to liberalise public procurement contracts in almost all major sectors. The Commission has repeatedly emphasised its view that the overall economic effects of the opening up of public procurement would be positive, but it has remained very vague on regional, industrial and social consequences.’782

Already in its White Paper on the Completion of the Internal Market of June 1985, the Commission plainly makes the point: ‘Public procurement covers a sizeable part of GDP and is still marked by the tendency of the authorities concerned to keep their purchases and contracts within their own country. This continued partitioning of

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individual national markets is one of the most evident barriers to the achievement of a real internal market. ... Community—wide liberalisation of public procurement in the field of public services is vital for the future of the Community economy. 

For EPSU in contrast, the core issue with regard to public procurement is the political room to manoeuvre for local and regional, as well as other public authorities in order to respond democratically to the aspirations of their citizens. 'It is a debate between two schools of thought. On one hand, those who feel that the only issue at stake is how the market can function better: a technocratic view. But hidden behind this view are ideological and big business interests that argue that the market knows what is best for citizens. ... They disguise their ultimate aim by saying that public procurement needs to be transparent and not leave room for any other decisions than the lowest price. And they go further; they argue that municipalities and other public authorities should actually not produce services with their own workers. Municipal companies are a nightmare for them as they produce good, reliable and affordable services with which many private companies cannot compete. Municipal companies also take away market share and opportunities to make a profit.'
The other view is the democratic one. A point of view that believes that, within certain parameters, public authorities must be able to fulfill their citizen’s demands. And if citizens through their elected politicians believe that municipalities should offer local urban transport, water, or waste then this needs to be respected. If citizens prefer that public funds are used for safe and healthy food for school children ... that textiles for protective clothing for municipal workers is not produced with child labour ... then this must be possible. It is a view that believes that the market is not infallible and that parameters need to be set to ensure the outcomes favour social justice and sustainable development. LII

The EC directives on supplies and public works were adopted in 1989784 and a further directive on the so-called excluded sectors (energy, transport, water and telecommunications)785 was agreed by the Council of Ministers on 22 February 1990.

In May 1990, the EPSC Presidium started its deliberations on public procurement of services and discussed a position paper prepared by a small working party. ‘The working party felt that the present text of the directive was a reflection of the political will of some members of the European Commission to completely liberalise the market, irrespective of possible consequences for the regional and social developments in the Community countries and regions. The lack of an adequate social clause, safeguarding legally fixed or negotiated conditions of pay and employment was of particular concern. The working party felt that the Commission had not considered the social dimension of public services and expressed the fear that this directive, if adopted in its present form, would tend to further erode the functioning of public services.’786

EPSU, together with other European trade union federations and the ETUC, has attempted over the years to influence policymaking on public procurement. The Commission Green Paper on public procurement of 27 November 1996787 epitomises the rationale of the European Commission in support of its liberalisation agenda, which it has followed through consistently: ‘Every year, European contracting authorities buy goods and services worth some 720 billion Ecus, representing close to 2,000 Ecus per citizen of the Union. Because of the economic importance of public procurement, making purchasing efficient can lead to significant savings for public authorities, and, consequently, for tax payers. Such considerations are particularly important for fiscal deficit reduction policies, imposed by the Maastricht convergence criteria.’788

In its statement on the 1996 Green Paper, EPSU reiterates its concerns in particular with regard to the:

- ‘bias in the public procurement regime for competition and this against public service considerations;
- lack of clarity on the possibility to use social and environmental standards in contracts;
- narrow technical award criteria leaving little room for more qualitative concerns;
- limited duration for using the public procurement regime to promote employment in less favoured regions.’789

EPSU also uses its comments to call for an evaluation of the effectiveness of the public procurement directives, arguing ‘that studies undertaken to measure the economic

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LII. EPSU Speech note on Public Procurement, neither author nor year indicated. In all likelihood written by Jan Willem Goudriaan, at the time EPSU Deputy General Secretary and covering public procurement issues for some ten years.
impact of the public procurement directives show that there is too little experience to provide any definite answers\textsuperscript{790} as to whether the regime works or not. ‘Before a large-scale overhaul of the existing system, the Commission should provide insight and more careful analysis. The burden of proof to show that the public procurement directives work for suppliers, purchasers, public authorities and citizens alike, rests with the European Commission. EPSU rejects the so-called UK CCT (Compulsory Competitive Tendering)\textsuperscript{LIII} regime of public procurement and also believes that the directive should not cover concessions of public services’.\textsuperscript{791} ‘EPSU believes the UK CCT regime is unacceptable … Imposing such a system goes against local government and public entities’ traditions in the rest of Europe. It does not respect the principle of subsidiarity which allows member states and their public entities to determine the optional solution for providing services to the public, including the in-house provision of services. The imposition of such a system violates the basic principle of democratic decision-making enshrined in the Council of Europe Charter on Local Self-government.’\textsuperscript{792}

An Emergency Resolution on ‘Public Procurement, Concessions and Social Standards’, submitted to the Sixth EPSU General Assembly of March 2000 in Lisbon, noted that the European Summit had decided to develop new rules on public procurement by 2002 and to align EU and government procurement by 2003.\textsuperscript{793} ‘This is the culmination of several years of effort during which the Commission has sought to force the procurement market to open up.’\textsuperscript{794} These different efforts ranged from the Green Paper on Public Procurement in the EU from 1996, to a Communication from the European Commission on Public Procurement in 1998\textsuperscript{795} and a Commission Interpretative Communication on Concessions under Community Law on Public Contracts in 1998.\textsuperscript{796}

In the emergency resolution EPSU confirms its critical assessment of the EU procurement regime and makes the following points:

- ‘Criteria for procurement cannot be applied to public services in the same manner as to supplies and works. Public service and private sector providers have different aims that conflict: respectively, effective and high quality public services for citizens and short-term profit for shareholders.
- Problems such as market dominance, lack of accountability and democratic control and poor quality standards are ignored. This is especially a problem with concessions that are dominated by a handful of transnational companies in areas such as local urban transport, refuse collection, cleaning and catering, water and waste water.
- The power of local and other public authorities to select the best way in which to provide services to citizens is eroded. The Commission’s policies are not neutral towards ownership, favouring private sector ownership over public sector ownership. This is a violation of the Treaty article 295 (old article 222).
- The EU’s procurement regime focuses excessively on lowest price and does not address promoting social and territorial cohesion; equality, social inclusion and employment are not addressed.

\textsuperscript{LIII}. Compulsive competitive tendering was one of the key privatisation measures, introduced by the Thatcher government with the Local Government, Planning and Land Act 1980, initially covering construction, maintenance and highway work. It was extended to other manual services, such as refuse collection and ground maintenance, through the Local Government Act in 1988. It was changed by the ‘New Labour’ government led by Tony Blair in 1997 to develop a ‘best value’ approach, including fair wage considerations. See http://www.eurofound.europa.eu/observatories/eurwork/articles/government-acts-to-relax-compulsory-competitive-tendering
The EU does not deal with corruption and violations of social and environmental standards in an open and forceful way, for example by excluding companies from further contracts and by publishing their names.

The directives ... do not advocate binding legislation that allows social clauses to be included in procurement contracts. The Commission believes this not to be appropriate.”

The resolution finally urges the Commission to come forward with a Communication on social aspects on procurement as soon as possible.

Two further rounds of revision of the procurement directives were to follow: between 2000 and 2004 and then again between 2010 and 2014. Negotiations on the latest package began when the previous set of rules had only been in force for six years and thus had not become fully effective.

It should indeed take 10 years for the Commission to come forward with a Guide to take account of social considerations in public procurement. And it was as recent as 2014 that compliance with obligations in the area of environmental, social and labour law, resulting from laws, regulations, decrees and decisions, both at national and European Union level has finally become compulsory.

The 2000 EPSU emergency resolution further called on the Commission to include guarantees for the autonomy of local and other public authorities to decide on the best way to organise their public services. Again it took 14 years of argument and lobbying to get recognition for the so-called in-house delivery of public services and public-public cooperation.

2.7.1 Reinforce the impact of lobbying for key objectives by forging alliances

‘Next to the Services Directive, the public procurement directives constituted a direct attempt to restructure parts of the public sector by establishing an exclusive focus on price competitiveness in increasing the involvement of the private sector in the provision of public services.” It is appropriate to make this comparison, even though the revision of the public procurement directives in the early 2000s predated the launch of the Services Directive in 2004. In order to best counter this neoliberal onslaught, here in the guise of market opening through public procurement, concerted lobbying activities were necessary and required new forms of alliance building.

There have been two key objectives in EPSU’s lobbying activities in over 20 years of public procurement legislation:
1. the integration of social and environmental clauses in public procurement contracts;
2. the right to in-house provision of public services.

The 2001 EPSU Activities Report encapsulates this general leitmotif: ‘EPSU and ETUC, as well as other non-governmental organisations have lobbied intensively for the inclusion of social and environmental criteria in the revised public procurement directives. Another important point for EPSU was that municipalities should be free to determine how they want to organise their services, that is, opposition to any form of competitive tendering.”

EPSU has pursued its lobbying work as active partner in a broad coalition of social movements, for example the Coalition for Green and Social Procurement in
Forging the Coalition for Green and Social Procurement as an alliance of trade union organisations and social and environmental NGOs was an innovative format ‘to challenge neoliberal restructuring’.\textsuperscript{803} Besides EPSU, the coalition encompassed a broad range of organisations, such as the European Environmental Bureau, the European Disability Forum, the Social Platform, the WWF-European Policy Office, the Climate Action Network European, the social NGO Solidar, as well as the Clean Clothes Campaign. Organisations representing municipalities, for example the Council of European Municipalities and Regions (CEMR) and Eurocities provided support for the demands of the Coalition, especially before the second reading in the European Parliament in July 2003.\textsuperscript{804} The Coalition’s main criticism of the draft Directive was that the ‘principle of the lowest price’ would prevail in most of the awarded contracts. Critically, criteria relating to the production and trading process of a contract would not come into play, since they are not visible in the end-product or service. ‘In the life cycle of production, it is often the PPM [process and production methods] that cause major environmental impact and public purchasers should be permitted to take this into consideration when deciding on their selection criteria but also when awarding the contract.’\textsuperscript{805} The focus on the end product was also seen as problematic from a social perspective and here as well, the process and productions methods were seen as important criteria for the award of contracts. ‘Public authorities must be allowed to take environmental and social criteria, as well as equality, into account when awarding public contracts. This was the strong message after the European Parliament voted by qualified majority on 2 July 2003 on the adoption of the amendments to the legislation on public procurement.’\textsuperscript{806} ‘Hence, the Coalition demanded that the directive should include respect for employment protection provisions and working conditions,\textsuperscript{807} collective as well as individual rights, for example, as laid down in the ILO Convention.’ The lack of reference to labour standards among the criteria was reflected in an email from a Swedish trade unionist to the EPSU Secretariat who underlined the crucial importance of compliance with collective agreements. The email also highlighted the right for public authorities to provide services in-house, through their own companies or departments.\textsuperscript{808}

The final outcome of the lobbying efforts of the Coalition was described as disappointing and having limited impact. This result was due in the main to the conciliation process between the Council of Ministers and the European Parliament in December 2003. A coalition press statement echoes the general sentiment of frustration: ‘Despite the strong support from the European Parliament, the Council continues to block municipalities and other public authorities that seek to award public contracts in a more ethical manner, and thus use public money to promote employment for long term unemployed, sustainable development, ethical trade and equality ... “The Council makes a farce of democracy by ignoring the demands of the municipalities and most significantly the cross-party demand of the European Parliament,” says Jan Willem Goudriaan, Deputy General Secretary of the European Federation of Public Service Unions, speaking on behalf of the Coalition for Green and Social Procurement.’\textsuperscript{809} The Coalition members accepted the outcome, however, as they had at least succeeded in blocking the initial Commission proposals. But the Coalition’s main demands for social and green award criteria were only referred to in the recitals and in a Commission declaration.\textsuperscript{810} According to Andreas Bieler, it would be wrong to conclude that the Coalition had been ineffective. ‘On the contrary, it is a clear example of a tight coordination of a whole range of different organisations at
the European level towards a joint lobbying campaign. At the centre of the organisation was EPSU, which organised the cooperation by regularly combining meetings of its Public Procurement Task Force, consisting of representatives of national affiliates, in the morning with Coalition meetings in the afternoon of the same day, thereby ensuring that internal trade union coordination went hand in hand with Coalition objectives. Bieler makes a further interesting comment on existing tensions within the Coalition. In April 2002, a representative of one of the national EPSU member trade unions apparently criticised the EPSU Secretariat for having privileged cooperation with NGOs at the expense of trade union core business. In reaction to this reproach another EPSU representative is alleged to have responded that unions had exerted influence mainly through the ETUC, whereas EPSU had mainly focused on working with the Coalition. These efforts were seen as mutually supportive. It is to be noted in this context that the EPSU Executive Committee of 23 April 2004 is being presented with a document that among other things states: ‘Our joint lobbying needs to be strengthened.’ The document contains a proposal to devote a special session of the Executive to lobbying the European institutions, ‘with a focus on how to get the EPSU membership active.’ Such a special session of the EPSU Executive Committee was held on 29 November 2004 with a number of similar sessions to follow, for instance a Round Table with representatives of the Health and Social Services Standing Committee and Members of the European Parliament, now planned in 2017.

Interestingly, the ‘Coalition’ made a reappearance, albeit under a different name. Most of the erstwhile coalition organisations became part of the ‘Spring Alliance’, who in their Manifesto of 2009 again called, among other things, for the inclusion of mandatory social and environmental standards in public procurement. EPSU, in cooperation with other Coalition members in 2004 produced a guide called ‘Making the most of public money: a practical guide to implementing and contracting under the revised EU public procurement directives.’

2.7.2 Social Europe – striving for a better balance in public procurement

‘The current rules [of 2004] reflect the half successful efforts by a broad-based coalition to include social and green considerations in directives.’ The late UK labour law expert, qualified the 2004 procurement provision on social clauses and contract performance as a ‘recipe for future conflicts’. In his view, all the provisions contained in the proposed legislation were ‘couched in ambiguous language. It would have been simple to formulate a commitment in unambiguous language to mandatory labour standards.’ But rather than ‘tidying up the mess on a case-by-case-basis’, the European Court of Justice rulings to follow, such as Rüffert and Luxembourg, exacerbated the legal uncertainty in public contracting. In fact, the ECJ created further ‘mess’ in the Rüffert case by transforming the Posted Workers Directive from a legislative provision on minimum standards to one on maximum standards. These rulings juxtapose the Internal Market freedoms of capital, goods, services and people against fundamental rights, namely collective bargaining and collective action. The exercise of these rights is conditional on market freedoms; they are considered an obstacle to the freedom to provide services. Together with the Viking and Laval cases they are referred to as the so-called ‘Laval’ quartet; see study by European Parliament (2010) The impact of the ECJ judgments on Viking, Laval, Rüffert and Luxembourg and the practice of collective bargaining and the effectiveness of social action, http://www.europarl.europa.eu/document/activities/cont/201107/20110718ATT24274/20110718ATT24274EN.pdf
provisions in collective agreements of a member state exceeding the level of protection provided by the Posted Workers Directive as contrary to EU law. The Court held that the application of higher standards than provided by the Posted Workers Directive would undermine the ‘competitive advantage’ of the contractor.\textsuperscript{15} The Rüffert and Luxembourg cases in particular, pushed the ETUC to call for the ‘inclusion in the Treaties of a protocol on social progress which would assert the primacy of fundamental rights over the freedoms of the single market.’\textsuperscript{824} The ‘Laval-Quartet’ case law reinforced the “growing concern that the economic/internal market freedoms and rights related to in the EU are being allowed to carry far more weight than the social rights and freedoms of workers.

and of EU citizens generally. This is alienating people and making the EU increasingly unpopular as a project. The EU Commission needs to act to address the imbalance.825

‘Since 2004, the EU has supported green procurement through the use of targets and other measures.826 An EPSU policy note demands that similar progress be made in the area of social procurement. ‘The EU Treaty now calls for a “social market economy”. This means that social procurement can catch up. Best value does not mean cheapest.827 “We recommend that the European Union develops a public service protocol checklist against which existing or future changes to public services can be assessed using the terms of the protocol on Services of General Interest, annexed to the Lisbon Protocol, namely: ‘a high level of quality, safety and affordability, equal treatment and the promotion of universal access and of user rights’828

The following examples are given in the document:829

- **Gender equality:** The European Commission’s Communication on ‘Tackling the pay gap between women and men’ makes the point that ‘public authorities have a significant part to play in national economies ... They are therefore in a position to encourage their service providers to adopt socially responsible behaviour. To this end, Directives 2004/17/EC and 2004/18/EC stipulate that ‘contracting entities may lay down special conditions relating to the performance of a contract ... [which] may, in particular, concern social and environmental considerations.’830

- **Social cohesion:** The EU social inclusion programme is regarded as another policy area that should be linked with public procurement, as it aims to integrate vulnerable groups, such as people with disabilities, migrants and ethnic minorities, young and older people into the labour market.

- **Equitable wages:** The Commission’s Opinion on equitable wages831 followed up the 1989 Community Charter of Fundamental Social Rights of Workers, stating that all employment shall be fairly remunerated. ‘Equitable’ is interpreted to mean ‘equal pay for work of equal value’. Competition in the internal market should not cause social dumping; it should rather be a driver for the improvement of social standards and conditions. Reference is further made to the Commission’s Communication on Employment and Social Policies,LVII which in turn referred to the 2000 Nice Council conclusions. To meet the challenges of globalisation, enlargement and rapid technological, social and demographic change, the Social Policy agenda ‘must place emphasis on quality in all areas of social policy. Quality of training, quality in work, quality of industrial relations and quality of social policy as a whole are essential factors if the European Union is to achieve the goals it has set itself regarding competitiveness and employment.’LVII Together with the ILO’s ‘decent work concept’,832 adding social protection, these indicators could provide a framework for improving the quality of employment.

- **Collective agreements:** the document demands that the EU should promote collective bargaining at national level as a means of securing good terms and

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LVII. Ibid. The Communication identified 10 ‘dimensions of job quality’ related to job quality, including pay level indicators; skills, training; gender equality; health and safety; flexibility and security; access to the labour market; work organisation and work-life balance; social dialogue and worker involvement (including collective bargaining); non-discrimination; overall work performance.
conditions for workers. Public procurement could contribute to a EU strategy to improve the coverage of collective agreements and member states should be encouraged to ratify ILO Convention No. 94 on labour clauses in public contracts. Importantly, the document sees this as a way to resolve the contradiction between the ECJ judgment in the Rüffert case, ruling that the requirement to comply with collective agreements as part of public procurement obligations would violate the EU Directive on the posting of workers, and the ILO convention.

- Transparency: As public contracts depend on public funding they should therefore be subject to the highest possible public scrutiny. Full transparency needs to be guaranteed at every stage. It is thus not acceptable that the content of public contracts should be kept secret on the grounds of ‘commercial sensitivity’. The public authorities awarding the contract must be under the obligation to publicise the text of contracts in order to allow citizens to scan the conditions of award, the investments involved and the conditions of execution.LVIII

The background note concludes that ‘member states’ public procurement did not always have the economic focus and the competition and market access objectives of the EU directives. It is time for EU’s procurement rules to shift their emphasis towards social Europe. This would underpin the aim stated by Michel Barnier in the European Parliament’s hearings of 2010, ‘I will work to put the internal market at the service of human progress, fight social dumping and protect services of general interest.’834

2.7.3 Pay and other social clauses in European public procurement835

‘Neoliberal politicians maintain that contracting out public services to private companies is more “efficient” because supposedly it is cheaper. In that logic a social procurement policy would become too expensive as funded from tax payers’ money. We, though, ask the question: why should we use public funds to finance the profits of private companies achieved through social dumping? This is particularly true if the negative consequences of such contracts have to be compensated with public money.’836

When the revised EU public procurement directives were adopted in 2004, the then Internal Market Commissioner Frits Bolkestein argued ‘that the directives would “open up all the benefits of the Single Market to guarantee the competitiveness of companies, best value for money for taxpayers and improved quality of public services”’.837 The interpretation of the notion of ‘best value for money for taxpayers’ in particular has been at the core of the controversy over one key concept used for the award of public contracts, namely the ‘lowest price or the cheapest bid’. The idea of reducing public procurement to a mere budgetary exercise was intended to exclude other public policy objectives to be realised through the design of the contract. ‘The achievement of “nominal savings” in public purchasing exercises inevitably leaves a large area of social-economic policies in limbo.’838 The quest for the lowest price ignores the potential benefits to be achieved by a comprehensive vision of ‘best value’ in public contracting. In its response to the Green Paper on Public Procurement, EPSU refers to the ‘considerable

evidence that lowest price public procurement exerts downwards pressures on costs, which in turn impacts on wages and working conditions and ultimately on service quality. This also undermines equal pay for equal work principles.\textsuperscript{839}

A newly established trade union and NGO alliance points to the ‘glaring inconsistencies between internal market policies influencing public procurement and wider social and sustainability policy objectives and commitments of the EU’.\textsuperscript{840} In a joint contribution the organisations stress the need for wider goals for public procurement to be taken into account, such as: decent work, equal pay, gender pay, gender equality, sustainable development, fair trade, social cohesion, social dialogue and promotion of collective agreements, environmental and climate protection, supply chain liability and transparency.\textsuperscript{841}

‘Too often the lowest price reigns, and the interpretation of the most advantageous tender for the contracting authority is far too narrowly interpreted. In the economic and financial crisis budget pressures are pushing even more authorities to award to lowest price rather than assessing wider benefits across the life of the contract and the long-term benefits of adopting a more socially responsible procurement policy. … Going for the lowest price can jeopardise the quality of jobs and services.’\textsuperscript{842} An example by Danish trade union organisations is referred to, who had examined the supposed cost savings of 15–20 per cent achieved by outsourcing local care services. The unions found evidence to show that the contracted firms employed staff with lower training levels, relied more on part-time workers and paid no overtime.\textsuperscript{843} The joint trade union–NGO contribution therefore declares that ‘public money should not be used to support companies undermining and undercutting local labour terms and conditions, standards, and job security, and undermining individual or collective labour rights’.\textsuperscript{844} The joint contribution further demands that the European Commission develop its procurement policy around reinforcing and promoting the adoption of ILO Convention No. 94, not undermining it.\textsuperscript{845}

2.7.4 Inserting ILO Convention No. 94 into EU public procurement – mission impossible?

As the ILO Committee of Experts has saliently pointed out: ‘Today, more than ever before, fierce competition for public contracts constrains tenderers to lower costs and as part of this process to economise on labour costs, including workers’ pay and other costs related to working conditions. The incessant quest for ways to maximise profit by minimising production costs, exacerbated by the forces of globalisation, finds in this Convention the most compelling check. ILO Convention No. 94 on labour clauses in public contracts is an important Convention to support quality employment and services. The [public procurement] directives must recognise the right of any country to ratify Convention 94 and encourage the inclusion of labour clauses in public contracts.’\textsuperscript{846} Contracting authorities should thus be in a position to specify the most favourable collective agreement to be applied, in line with ILO Convention No. 94. According to the ILO Committee of Experts Convention 94 is intended to prevent labour costs from being used ‘as an element of competition among bidders for public contracts, by requiring that all bidders respect as a minimum certain locally established standards’. The Convention is supposed to ensure that workers employed to execute a contract shall receive wages and shall enjoy working conditions that are not less favourable than those established for the same work in the area where the contract is fulfilled.
A Single Market needs a ‘level playing field’ in employment conditions. The EPSU 2012 Report of Activities underlines the importance of obtaining a reference to ILO Convention No. 94. A key demand has not (yet) been achieved, says the Report, namely to secure a reference to the ILO’s labour clause (public contracts) convention. ‘A positive reference would be very helpful as the Convention helps to counter arguments that only “universally” applicable agreements are compatible with the EU’s internal market. This is not only important for EU/EEA countries but also other countries, as the EU plays an important role with the ILO. It also brings its “internal market” logic into trade relations.’

In the EPSU study on pay and other social clauses, the lack of acceptance of pay clauses in public contracts is seen as surprising, because labour costs are often, particularly in services, the most important cost factor. ‘Considering the high importance of workers’ payments it is all the more astonishing that they play only a minor role in the current debates on social procurement criteria. The recently published EU Guide for a socially responsible procurement policy ... mentions “decent pay” only as one sub-bullet point without any further comments or explanations.’ The ratification status of ILO Convention No. 94 is unfortunately limited. Altogether, 62 countries have ratified the Convention. In Europe 15 countries have ratified it, 10 of which are EU member states. Austria is the only European country making an explicit reference to ILO Convention No. 94 in its national procurement law. In Denmark a national decree obliges public authorities at central level to use labour clauses in public contracts. Several Danish municipalities, however, have decided to inscribe the Convention’s provisions in their public procurement strategy. An example is the municipality of Frederiksberg, which has adopted a ‘social clause’ based on ILO C 94. This means that ‘suppliers/bidders must ensure’ that ‘employees (who are employed by the bidder as well as potential subcontractors)’ are granted wages and employment conditions that are ‘no less favourable than the wages and employment conditions applicable to that sector of the region where they work’.

A number of European countries use pay clauses in public procurement, among them countries that have not ratified ILO Convention No. 94. The EPSU Study refers to the cases of Germany and the United Kingdom. The United Kingdom, having denounced Convention 94 in 1982, has seen the development of ‘living wage’ initiatives at local level that aim to set local wage standards above the national statutory minimum wage. Public procurement has been an important lever to obtain those local wage standards that are above the national statutory minimum wage.

In Germany, for instance, the country directly concerned by the Rüffert ruling, a number of federal states have continued the practice of including pay clauses in their regional procurement legislation. These pay clauses, however, refer to universally applicable pay clauses, covering merely the lowest pay levels of the agreements or referring to minimum wages. In the Rüffert case reference was made to locally prevailing – but usually not generally binding – collective agreements.

The authors of the EPSU study consider that the Rüffert judgment totally ignores the different national collective bargaining systems and traditions of industrial relations and has no understanding of the real significance of pay clauses in procurement. ‘If the instrument of pay clauses in procurement should continue to have ... a meaning in Europe, a political clarification is necessary in order to repeal the basic notion of the Rüffert judgment. The obviously most direct way to do this would be an explicit reference to ILO Convention 94 in the European Public Procurement Directive.’ This was an expressed demand in the resolution of the European Parliament of 2011, calling
on the Commission for a statement in the directives ‘that they do not prevent any country from complying with ILO Convention No. 94’. It further urged the Commission ‘to encourage all member states to comply with that Convention’. The Economic and Social Committee argued in a similar vein and stated that ILO Convention No. 94 ‘is currently binding in ten EU member states, though others including Ireland, apply the Convention voluntarily in public contracting. The EESC ... suggests that member states should be encouraged to ratify the Convention and follow its principles.’

A study for the European Commission of 2011 also argued for the removal of ‘legal uncertainty with regard to the scope for member states to include social clauses in public procurement contracts, this issue should be clarified not only in light of the Rüffert judgment, but also taking into account the Public Procurement Directives, which explicitly leave the member states free to decide on how to integrate social policy requirements into public procurement procedures and ILO Convention No. 94. Moreover, it should be clearly established to what extent the obstacle which social clauses may cause to the freedom of services may be justified by imperative requirements of the public interest, taking into account that Convention No. 94 promotes the observance of the universally applicable Fundamental Rights and Principles at Work, which are guaranteed by Article 21 and 28 of the EU Charter of Fundamental Rights.’

The Swedish government as well as governments from the European Economic Area requested the European Commission to clarify that it remains possible to set pay conditions in public contracts in accordance with ILO Convention No. 94, ‘regardless of whether the member state has a statutory minimum wage or has made collective agreements generally applicable. This would make it possible for all member states to fulfil the obligations stemming from ILO 94, without having to make substantial changes to their systems of wage formation’. The ETUC and other European and national trade union organisations of course, have also called for application of Convention 94 in public procurement.

In spite of these various pleas to confirm the compatibility of ILO Convention No. 94 with EU law, ‘the European Commission has failed to address this issue’. Thorsten Schulten points out that the Council of the European Union noted in 2012 ‘that award criteria or contract performance conditions should be applied in accordance with Directive 96/71/EC ... as interpreted by the European Court of Justice and should not be chosen or applied in a way that discriminates directly or indirectly against economic operators from other member states or from third countries’. Eric Van den Abeele in 2012 also holds the view that the lack of references to key ILO Conventions, most notably Convention No. 94, in the proposed public procurement legislation is indicative of the type of balance ‘the Commission wishes to strike as regards respect for the social, environmental and labour dimensions’. He feels that ‘reference to these Conventions would have consolidated the level playing field between the EU and its trading partners’. We can conclude that this is not what the European Commission wanted.

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LIX. The ETUC Executive Committee also called for binding regulations to ensure that all parties in a public procurement procedure are bound by national labour laws and applicable collective agreements, https://www.etuc.org/sites/www.etuc.org/files/EN-EU-Public-procurement-framework_final.pdf
2.7.5 Preserving in-house provision of services – a political must!

In the early 1980s, the government of Margret Thatcher in the United Kingdom embarked on a political agenda to restructure the public sector. Privatisation of public services became a brand name for Thatcherism. The term “privatisation” was used to cover all forms of private involvement, from the sale of national industries to the simple subcontracting or outsourcing of functions such as refuse collection or office cleaning. Privatisation was often seen as a quick fix to fill public coffers. Frequently, it was linked with the promise of better quality at cheaper prices. Eventually, many municipalities came to realise that privatisation rarely improved service quality, but nearly always led to price increases. EPSU affiliate UNISON called for an inquiry into privatisation practice, as a 2012 report revealed serious flaws in the way public sector contracts are sold and run. ‘Public companies are frequently putting their shareholders first and cutting corners at taxpayers’ expense.’

EPSU’s objective has been, among other things, to illustrate the negative impacts of privatisation for citizens and society. To underpin and support the political debate around public services, EPSU collated evidence from all over Europe, most recently in a report on ‘remunicipalising municipal services in Europe’. The report makes the case for ‘insourcing’ as ‘it avoids the costs and problems of dealing with private companies. The process of tendering, and the need to monitor the performance of companies, can add 10 per cent or more to the cost of contracts. Some of the French regions have explicitly quantified the savings from not having to tender or re-tender contracts as a reason for remunicipalisation of transport services. Instead of constant negotiations with private companies to persuade them to deliver the service, municipalities can simply manage the work themselves to achieve their objectives. Several authorities in the UK and Germany have said that this “improved control” or “simplified management” was a key reason for
remunicipalisation. Pragmatic reasons of cost efficiency in waste management have led the German town of Bergkamen to take its waste collection back into municipal ownership, the mayor Roland Schäfer told participants of the EPSU 2012 Local and Regional Government Conference in Riga. The town of Bergkamen has the lowest fees for waste collection in its surrounding district.

There is also extensive case law on ‘in-house delivery’ which under European public procurement law was considered ‘the most discussed exception from the duty to call for tenders’. The legal assessment of ‘in-house’ in European Court of Justice rulings from the Teckal to the Coditel case is considered sustainable and lasting. ‘Applying a general perspective on contracting with an “in-house” entity, the ECJ’s decisions can be summarised as a perpetual attempt to balance the discretion of the member state to organise their procurement activities with the requirements of the Treaty Establishing a European Community. This legal balancing act should normally no longer exist in the same way, since the Lisbon Treaty has in its Article 4.2 explicitly recognised the general principle of ‘local and regional autonomy’. Recent policymaking and practice, however, by the European Commission point in a different direction. EPSU voiced dismay over the ‘market framework’ approach to public services constructed through European policy. ‘European policymakers formally acknowledge the fundamental role of public services in assuring social cohesion, providing a safety net, and supporting the “knowledge economy”; and the European Union (EU) has legal provisions (Charter of Fundamental Rights, Protocol 26 on Services of General Interest (SGI), Article 14) that can be used to underpin this fundamental role. However in practice EU policy is directed towards public services playing a “residual role” in society. The inclusion of statutory social security schemes [author’s emphasis] within the scope of the EC proposals on concessions and public procurement is a further illustration of the extent of this market approach.’

Against this political and legal backdrop, it is thus no exaggeration to say that defending and preserving the right of public authorities to provide services themselves, in-house delivery, has been a major, if not the major driver of EPSU work on public procurement over the past three decades, because it clearly touches on the very existence of public services.

‘EU rules determine how public authorities buy goods and services. Public authorities themselves decide whether or not to buy a particular good or service. EPSU underlines that governments (at all levels) are responsible for funding, organisation, and regulation of public services, according to common principles (public control, universality/equal treatment, transparency, impartiality, participation of users and social partners, proximity). Public authorities should have wide discretion in deciding how services are delivered, namely by the authority itself ‘in-house’, including through a legal entity which it owns or controls and through intercommunal service arrangements. EU legislation in public passenger transport (Regulation EC/1370/2007) offers a wider “in-house” test that could be generalised. Similarly, the CEMR and EPSU in their Joint Statement of June 2010 underline that ‘public procurement is only one way of providing services and that the “in-house” (including public-public cooperation) provision of public services remains a valid option.’

The case for in-house provision was also flagged up by EPSU in a contribution during a European Commission Conference on ‘Modernising Public Procurement’ in June 2011: ‘The “in-house” provision of public services in particular – including public-public cooperation – remains a legitimate and sustainable way of providing public services. We support a broad definition of “in-house” to include all forms of public-public
cooperation, as well as cooperation with non-profit making organisations that serve the public interest. The State Aid rules should not promote public procurement as an “easier” way of complying with EU rules and avoiding challenges of “over-compensation”.  

Hence, preserving a broad-based in-house delivery of public services featured highly on the EPSU lobbying agenda for public procurement. This objective was clearly supported by the organisations forming the NSDPP. In their joint initial contribution the Network criticises the European Commission’s bias towards privatisation and liberalisation of procurement, in particular through promoting the further use of Public–Private Partnerships (PPPs). ‘The EU has no mandate to promote PPPs yet is doing so wilfully despite overwhelming evidence of excessive costs and poor quality service ... The case for the value of promoting in-house provision of works and services needs to be positively restated at EU and member state level.  

The Commission’s initiative to present legislation on ‘concessions’ as part of the public procurement review was a particular matter of concern. ‘In theory the EU is supposed to be neutral on the question of public or private ownership, but direct public service provision is increasingly being challenged. Service concessions are not yet regulated by EU legislation and the EC has been careful in saying that it is up to public authorities to decide whether or not to set up a concession. However, it is clear from the preparatory texts that the aim is indeed to promote the further use of concessions, including Public–Private Partnerships (PPPs). The EC’s Impact Assessment refers explicitly to restraints on public spending as a reason to set up concessions and it claims that competitive tendering of ‘non-externalised’ public tasks can generate efficiency savings of between 10–30 per cent. This, it says ‘gives an idea of the potential losses due to inappropriate choice of organizational arrangements for the provision of public services’. No evidence is provided to substantiate this claim. There is no acknowledgment of research, published for example in EPSU’s Public Services Monitor, that find no efficiency gains from outsourcing public services, or of problems with public money being used to finance the high profits of private companies. EPSU voiced its concern that the Directive might contribute to an increased use of PPPs and consequently to a growth in the number of failed PPPs. ‘The recent failed PPP on the underground in London is an example of how public authorities and citizens end up with having to pick up the pieces, whatever is written in the contract. The Mayor of London, Boris Johnson, was quoted as saying: ‘We are being asked to write a blank cheque in order to prop up failing Tube lines. In other countries this would be called looting, here it is called PPP.’  

EPSU further argues that ‘concessions are complex arrangements that have a significantly longer duration than public procurement contracts. ... EPSU considers that rejection of the EC proposal would be the best outcome, but we also press for safeguards for public services and workers’ rights’.  

EPSU specifically focused on:
- ensuring mandatory and clear rules for the respect for labour law and collective agreements;
- securing the right to ‘in-house’ provision of public services and public-public cooperation;
- improving transparency and public accountability requirements; and
- excluding public services, such as water, health and social services from the scope of the Directive.
These points were also discussed at an EPSU/ver.di workshop in July 2012. The European Commission’s proposal on concessions was seen as very problematic by participants but there was not sufficient support from member states or political groups in the European Parliament to block its progress. Attention therefore concentrated on efforts to narrow the scope of the directive as much as possible.

The workshop report notes the good cooperation among trade unions and NGOs within the Network for Sustainable Development in Public Procurement which had a clear impact on the discussions in the European Parliament. The revision of the Directives presents an important opportunity to reverse problems caused by the dominance of the Internal Market over social and environmental concerns. Many of our concerns have been picked up. We should be ambitious. On 28 May 2013, EPSU co-organised a day of action together with Belgian unions and several other European trade union federations to reinforce the demands regarding the public procurement reform.

2.7.6 A step towards green and social public procurement through persistent lobbying and action

The Public Procurement and Concessions Directives were finally adopted by the European Parliament and Council in early 2014. EPSU had worked with the ETUC, other European trade union federations and national confederations to affect the outcome of the Directives. EPSU played an active role in the broader Network for sustainable development in public procurement (NSDPP). This cooperation was very valuable as well.

The Network considered the new public procurement Directives as a ‘step forward for green and social public procurement’. The Network welcomes the new public procurement Directives approved today by the European parliament as they will allow public authorities in Europe to make true sustainable choices and spend taxpayer’s money wisely. ‘Importantly, the right for public authorities to provide and organise their services was approved and concepts of ‘in-house’ and ‘public-public cooperation’ were defined. Public procurement remains only one of many alternatives ways of providing public services.’

The following provisions are seen as particularly positive: The new legislation confirms that contracting authorities ‘may introduce social and environmental considerations throughout the procurement process as long as these are linked to the subject matter of the contract. Additionally, public authorities can differentiate what they purchase on the basis of the process and production methods that are not visible in the final product. It will be easier for them to rely on labels and certifications as a means to prove compliance with the sustainability criteria they have set. This will allow public authorities to give preference to bidders that offer better working conditions to their workers, favour the integration of disabled and disadvantaged workers, and offer sustainably produced goods. Compliance with environmental, social and labour obligations, including collective agreements, is now enshrined in the principles and tenderers can be excluded in case of non-compliance. It is crucial that this “mandatory social clause” is fully implemented and adhered to, including throughout the supply-chain. The new law makes it easier to identify subcontractors along the supply chain – although it is up to member states to establish their joint liability.’

A contracting authority is now, for instance, obliged to exclude a tenderer who has been found in breach of its duties to payment of taxes or social security contributions.
Regrettably, the European Parliament and Council did not reach agreement to incorporate a reference to ILO Convention No. 94 in the Directives, even though there was considerable cross-party support to do so. The omission implies that the application of collective agreements and other social clauses, such as the concept of ‘living wages’ to posted workers can be contested.\(^\text{893}\)

In implementing the rules, it will be crucial for member states to use their discretion to improve some elements. They can, for instance, prohibit or restrict the ‘use of price only’ criterion, and leave contracting authorities the choice between either assessing other aspects in addition to cost effectiveness, or base their purchasing decisions solely on that criterion.\(^\text{894}\) Unfortunately, the final text of the Directive would still allow the purchase of the cheapest option, despite objections from various organisations.\(^\text{895}\) It is therefore important for the European institutions to take a coherent approach to sustainability in public procurement and to develop a ‘buy socially responsible and sustainable’ strategy with targets and a monitoring and evaluation programme.\(^\text{896}\)

To wrap up, the key elements of the public procurement Directives include the following:\(^\text{897}\)
- the right for public authorities to provide services directly is confirmed and concepts of in-house and public-public cooperation have been clarified;
- all parties and operators of public procurement contracts are obliged to meet national employment and labour laws and collective agreements;
- the ‘Most Economically Advantageous Tender’ (MEAT) is the main basis for contract criteria and no longer cost or price;
- a life-cycle concept is included (it is not clear whether this can cover social elements);
- contracting authorities will be able to include social and environmental factors in contracts, that is, they can now include award criteria (in line with positive ECJ rulings);
- there is more transparency in the supply-chain, the obligation to provide details of sub-contractors, which in turn will make it easier to ensure compliance;
- joint liability for subcontractors and direct payment to sub-contractors by the authority are optional to member states;
- better possibilities to exclude suppliers with poor track record; and
- substantial modifications of contracts will have to be re-tendered.

On the more negative side:
- there is no improvement on transparency for citizens, an area which might be addressed in national transposition;
- no reference to ILO Convention No. 94 and therefore not all collective agreements will be applicable;
- social criteria have not been mentioned in the section on technical specifications (minimum requirements for all tenderers); and
- member states will have the option to allocate contracts for services, such as health and social services, to certain types of social enterprises. This has been identified as a particular concern by EPSU affiliates in the UK, where the British government is said to have pushed through at the eleventh hour an amendment which allows public authorities to reserve contracts for mutuals and social enterprises. ‘In a UK context, this is likely to mean privatisation through the back door.’\(^\text{LX}\)

\(^\text{LX.}\) Procuring a new strategy? Will the recent revision of European directives governing public procurement provide more scope for sustainable growth, or yet more deregulation, Labour Research, 103 (2) 2014, p. 14.
Many of the provisions contained in the Directive on the award of concessions contracts are identical to the provisions on procurement, including the affirmation of the right for public authorities to provide services directly. It will be important, however, to also assess the impact of the Directive on the liberalisation of public services ... In response to concerns of EPSU and other actors voiced in many countries, water was excluded from the scope of the final text. The exclusion of water from the concession directive was the result of the successful EPSU Right2Water Campaign. Commissioner Barnier announced the withdrawal of water in June 2013 when the European Citizens Initiative Right2Water had managed to collect over 1.7 million signatures.

The battle over public water might have to be re-kindled, though, as the European Commission intends to assess the impact of this exclusion three years after the new directive has been transposed into national legislation. Furthermore, many other public services are covered by the Directive and its transposition by member states will be important, especially the use of the in-house principle. The Directive calls for ‘non-confidential’ parts of concession (and public procurement) contracts to be made public. In EPSU’s view stronger requirements are necessary at national level, as well as an obligation to evaluate the performance of concessions after a certain period.

In conclusion, the new public procurement legislation has been described as ‘the biggest shake up of public procurement in a decade’. The most important result of the work is that the co-legislators have taken advantage of the revision of the Directives to include public procurement within sustainable development and to give it a sense of social responsibility and solidarity.

For EPSU this can certainly be described as a successful lobbying campaign with tangible positive outcomes, especially with regard to in-house delivery of public services. EPSU played a key role in the Network for Sustainable Development in Public Procurement (NSDPP). The Network in turn had a better trade union and NGO balance in comparison with the alliance formed in the previous round of public procurement revision of the early 2000s. Importantly, a number of EPSU affiliates were directly engaged in the lobbying and this no doubt has helped to make a difference with contacts with Members of the European Parliament and also with Council representatives. The EPSU Secretariat was able to work closely with the Chief Rapporteur of the European Parliament, Socialist MEP Marc Tarabella and was helped in these contacts through its Belgian affiliate CGSP. In comparison with previous Commissioners in charge of the internal market portfolio, Commissioner Barnier was perhaps less ‘ferocious’ in his attitude to public procurement than his predecessors and access to his cabinet was relatively easy. EPSU also organised a number of meetings on public procurement, not least a major one in the European Parliament to promote the use of ILO Convention No. 94. EPSU did not manage to get the Concessions Directive completely withdrawn. While water was excluded from the Directive other public services are covered. The impact of the Concessions Directive will therefore have to be monitored very closely. Apparently, some commentators are reported to have complained “that the reform implies a “mission drift”, turning public procurement legislation from an instrument to develop the internal market into one for “market closing”.” As with the ‘half full vs half empty glass’ perspective, the opposite view holds that the proposals do not go far enough in terms of ‘market embedding’. If, however, the revision of the Public Procurement Directive has gone some way to correct the exclusive internal market focus of European policymaking to give more space for social and sustainability considerations, then this represents considerable political headway.
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Part Three gives a detailed account of the two landmark campaigns EPSU has run successfully in recent years, namely the European Citizens’ Initiative ‘right2water’ and ‘No to tax fraud – for tax justice’. Both campaigns were high-profile activities for EPSU.

The 2009 EPSU Congress committed EPSU and its affiliated organisations to take the initiative for a petition to obtain a million signatures for the notion of water as a human right. EPSU made its submission for the ECI in April 2012. The chapter describes the multitude of obstacles that had to be overcome in order to launch the petition and then lead it to a successful conclusion. The process of signature collection was a long haul and some of the internal hesitations and fears are mirrored in short extracts from EPSU minutes. At the close of the campaign on 20 December 2013, the Commission had received 1.7 million validated signatures and announced that the public hearing with the European Parliament would be held on 17 February 2014.

The chapter illustrates the factors in the success of the ECI, described as unusually well-prepared, professionally managed and well resourced, as well as attracting a diverse coalition of partners and media attention. The timing of the campaign was also ideal as it coincided with the discussions on the disputed proposal of the European Commission for a concession directive. In a major U-turn Internal Market Commissioner Barnier announced in June 2013 that water would be excluded from the proposed directive, an amazing success.

Right2water went against the zeitgeist of ‘liberalisation’, because water had been identified as a suitable area by the Commission in its Internal Market Strategy of 2003–2006. This plan met with stiff opposition from towns and cities, as well as civil society organisations. The campaign can thus be considered an anti-neoliberal
and anti-'free-market’ movement. The chapter also looks at the arguments put forward by the pro-private water camp, such as the lobbying group of private water providers, AQUAFED. In contrast, the European Parliament report of September 2015 reinforced the arguments of the Right2water campaign. The chapter ends with an assessment of the political impact of the campaign. While the prospect is bleak for binding legislation from the European Commission on the right to water, as demanded by the ECI, the campaign has created a political climate in support of water as a public good. It would be politically next to impossible for the Commission to promote water liberalisation at this stage, without completely devaluing the ECI as an instrument.

The second chapter of Part Two covers EPSU’s ‘No to tax fraud – for tax justice’ campaign. As part of a broader coalition of trade unions and NGOs, EPSU has been instrumental in bringing the tax dodging strategies applied by multinational companies to public attention and the scrutiny of the European Parliament. In 2012, EPSU launched a campaign to close the tax gap in Europe – estimated at €1 trillion per year – as part of a range of key alternatives to austerity measures. The campaign is based on the EPSU tax justice charter, alongside its demands for the introduction of a Financial Transaction Tax.

The chapter also delves into EPSU/EPSC history and highlights earlier attempts to formulate a joint position on combatting tax fraud and tax evasion, such as the EPSU tax charter of 1995. Reference is also made to a statement by Emilio Gabaglio, former ETUC General Secretary, in 2003, according to which unfair tax competition must be stopped and taxation with cross-frontier effects – namely corporation tax, taxation of income from capital and eco-taxes – should be subjected to basic common rules agreed by majority voting at EU level. The European Union is invited to take the lead to achieve binding international agreements on taxation. The EPSU Executive Committee of May 2010 adopted a revised Tax Justice Charter, bringing an earlier version of the Federation’s Tax Charter from 2000 up to date. Among the reasons given to promote this new Tax Charter is the ‘steady decline in top personal and corporate tax rates since 2000’. In 2013, EPSU was selected to occupy a seat for non-governmental organisations in a Tax Platform set up by the European Commission, a token nomination perhaps in a sea of big business and corporate interest representatives, but still conferring recognition.

The chapter takes a look on the state of play of the Financial Transaction Tax (FTT) which gained momentum in 2012, in the wake of the financial crisis. The chapter describes EPSU’s efforts to promote the FTT, for example through a postcard campaign in 2011. In 2012, 11 governments expressed their support for the implementation of an FTT as proposed by the European Commission. These governments agreed to go forward through the mechanism of enhanced cooperation. By the end of 2015, however, the pro-FTT camp had shrunk to 10 Member States, making the future prospects for a European FTT more than uncertain.

A central part of the EPSU Campaign on tax justice has been to expose how public tax administrations have been eroded. The Labour Research Department (LRD) undertook two surveys for EPSU, published in 2013 and 2014, respectively, to look into tax administration staffing levels in EU countries. The results of these studies are detailed in the chapter. The most high-profile aspect of the EPSU tax campaign covers the notorious tax evasion schemes of US fast-food chain McDonald’s. This was revealed in a joint report by an international coalition of trade union organisations, namely EPSU, EFFAT, the European Federation of Food and Agriculture Workers and the US Service Employees International Union, SEIU. This Trans-Atlantic union alliance was supported by two NGOs, namely War on Want and Change to Win.
The section closes with the question of how to combat the anti-social tax behaviour of multinational companies. In 2013 the OECD promised to end international corporate tax avoidance practices. The so-called BEPS (Base Erosion and Profit Shifting) package was criticised by the Tax Justice Network as being ineffective to tackle tax avoidance. While the EU wanted to pioneer the OECD recommendations by putting forward a new Anti-Tax Avoidance Package (ATAP) in January 2016, EPSU assessed the proposed package as lacking ambition and called on the European Commission to take tax reform beyond the OECD’s weak action plan. The chapter illustrates how much influence corporate lobbyists have to dilute and hamper progress on combatting tax fraud at every juncture. Fresh dynamics were instilled in the discussion through the publication of the Panama Papers in November 2016. The chapter illustrates that the fight against tax evasion largely depends on public outrage over the unfair and anti-social tax behaviour of large multi-national companies. A no-tolerance policy on tax havens in Europe and across the globe requires the necessary political willpower to counter such stratagems. At least for the moment this does not seem to exist.

3.1 Right2water: the first European Citizens’ Initiative

‘The supply of drinking water and the disposal of sewage and other contaminated effluents is an essential public service and must be regarded as a fundamental human right by EC member states and other European countries and must not depend on a citizen’s ability to pay.’ This sounds like a current EPSU demand developed in the context of the Right2water campaign, but it is, as a matter of fact, a quote from the EPSC, the EPSU’s precursor organisation, extracted from the text of a European Charter for Water, developed by a European Water Working Group in 1992. This Charter laid the basis for the work of EPSU on water and the first ever successful European Citizens’ Initiative. It underlines how deep-rooted the actions around water have been in EPSU.
The 8th EPSU Congress 2009 at Brussels committed EPSU and its affiliated organisations to:

- develop alliances with networks of water activists promoting public water services;
- maintain a critical analysis of development in Europe’s water services together with PSIRU and other organisations;
- support trade unions in fighting the privatisation of water and waste water utilities;
- oppose European Commission efforts to commercialise water services, for example through a Concession Directive.

The resolution mandates EPSU to take the initiative for a petition to obtain a million signatures for water as a human right ‘inviting other water activist groups to join, setting aside resources for the development of campaign materials, assistance to the EPSU Secretariat and establishing a campaign steering committee’. It was later made more specific and related to the UN right to water and sanitation. ‘Our aim is to achieve the recognition of the fundamental right to water as is recognised by the General Assembly of the United Nations in 2010.’ Demanding this recognition at European level is very important for the effectiveness of fundamental rights. On the question of commons, nobody questions that water should be universally accessible, but the wording leaves too much room to suggest that water is not a common good. Indeed, at European level, in the directive establishing a framework for Community action in the field of water policy, it is said that “water is not a commercial product like any other but rather a heritage which must be protected, defended and treated as such”. Unfortunately, the first paragraph does not start by saying that “water is a common good”, but that it “is not a commercial product like any other”, which means that although it might be submitted to exceptional limitations, it is still kept within the realm of commercial products. And this is precisely our point. Citizens and institutions need to realise that water is not a commodity, but a real common good, a universal good and a universal right.

In April 2012 EPSU made its submission for a European Citizens’ Initiative (ECI) ‘Water is a human right!’ The legislative framework for an ECI had been issued by the European Commission in February 2011. The ECI was supported at European level by Public Services International (PSI) and the European Trade Union Confederation (ETUC), as well as major non-governmental organisations, such as the European Environmental Bureau (EEB), European Anti-Poverty Network (EAPN), European Public Health Alliance (EPHA) and Women in Europe for a Common Future (WECF).

‘There were many difficulties in starting up the water campaign. The initiative was officially accepted by the Commission in May [2012], but we only received permission to start the online collection of signatures in June [2012], and then there appeared to be many problems with the software provided by the Commission that we were obliged to use. We managed to get online signature collection started in September [2012].’ ‘Like other ECIs it [Right2water] struggled with an inadequate online signature collection system, intrusive ID requirements and limited citizen awareness of the ECI.’

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1. EPSU had been active in influencing the framework to prevent from becoming a corporate tool. Submissions were made to the Green Paper and during debates for example to a meeting of the S&D party, www.epsu.org/article/wake-brussels-%E2%80%93-how-million-signatures-can-change-europe
3.1.1 The long haul – reaching the targets required

The following excerpts\(^9\) capture the internal process of discussion accompanying the preparation and actual running of the ECI ‘Right2water’. In the early phases of the campaign, some of the internal hesitations, uncertainties and fear of failure are reflected. When the EPSU Secretariat can at last bring the good news of the successful conclusion of the signature collection, a next to euphoric ‘sigh of relief’ seems to emanate from the note to the EPSU Executive Committee.

**Minutes 32nd PUT of 26 February 2010, item 9**
The water campaign is on hold as far as the collection of signatures is concerned, waiting until the Commission’s Regulation is available. The human right to water is really a common campaigning issue across all unions. It is important to continue work on the draft text for the petition and link up with the World Water Forum at Marseilles, March 2012. Develop key message that water is a public good and needs to be managed publicly.

**Minutes 33rd PUT of 22 September 2010, item 9**
Regulation expected for mid-December 2010. Questions were raised about the Citizens’ Initiative on Water and the appropriateness of the action. The text of the initiative has to be clear and include our demands for keeping water public.

**Minutes 34th PUT of 15 February 2011, item 8**
Successful local referendum on water in Berlin illustrates that water is a privatisation issue.

**Minutes 39th EC of 13–14 April 2011, item 7.3.e**
It is necessary to set up an Organising Committee comprised of at least seven Executive Committee members from at least seven different countries. It was agreed to go beyond that and to establish an Organising Committee of 27 representatives from each EU country and also form supportive groups from non-EU countries. EC decides to launch the campaign on 22 March 2012, World Water Day.

**40th EC of 8–9 November 2011, slide presentation**
EC to agree the three key demands:
1. to keep water out of the internal market – no further attempts at liberalisation;
2. to set out regulations that oblige governments to implement human right to water;
3. to advance universal access to water and sanitation.

**Minutes 36th PUT of 20 March 2012, item 8.1.1.**
Committee notes that the registration of the ECI will be on 1 April and its validation by the Commission is foreseen within two months. The human rights angle is a predominant concern for citizens. Two million people still lack access to safe drinking water in the EU.

**Minutes 37th PUT of 27 September 2012, item 8.1**
The campaign video clip was shown. It was greeted with applause. General appeal to ‘ramp up’ campaign work.

**42nd EC meeting of 8–9 November 2012, document under item 10**
We are far from our targets. ... The current rate of collection of signatures will not even bring up over half a million signatures.
Minutes 38th PUT of 26 February 2013, item 8.1
Several colleagues explain the problems that have been encountered. Reference is made to successes and broad support, including at municipal level. Update on actions being prepared.

Minutes 43rd EC of 16–17 April 2013, item 6
Special thanks to colleagues in Germany who collected 1.2 million signatures. It is crucial to reach the quorum in other countries. More efforts and mobilisation by affiliates are required.

44th EC meeting of 26–27 November 2013, document under item 7.4
The ECI ‘water is a human right’ is an undeniable success in several ways. We needed 1 million signatures with a minimum number (quorum) in at least seven countries; we have achieved nearly 1.9 million signatures and surpassed the quorum in 13 countries. It has been a success with politicians reacting and the Commission arguing that water is a public good and that it will not privatise water services. ... It has been a success for EPSU in terms of recognition, acknowledgement, reputation and visibility with over 3 million people visiting the www.Right2water.eu website. The campaign has obtained much publicity for EPSU. ... We have passed the first hurdle. We now need to ensure it does not go to waste ... Unions are requested to put the water campaign on their agenda.

Minutes 40th PUT of 28 January 2014
The Commission received 1.7 million validated signatures at the close of the campaign on 20/12/2013 and has announced that the public hearing with the European Parliament will be on 17 February 2014.

Quoting Anne-Marie Perret, President of the ECI Right2water
‘When you engage in an ECI, what is more, in the first one ever, you have no idea what obstacles are ahead of you: the ECI is not a simple petition and needless to say the strict rules it must obey will discourage more than once. Working between the national and transnational level is not an easy task, especially when collecting signatures, as the laws are not only complex, but different from one country to another. That is why, in hindsight looking at this nonetheless fabulous experience, we would recommend that these rules be harmonised and simplified for the ECI to stand a chance in the future, an aspect which the Commission did take into consideration during our hearing on 17 February 2014.’

On May 2014, 98 per cent of 280,000 voters in Thessaloniki expressed themselves against the privatisation of their water services

Right2water was awarded the European Democratic Citizenship Prize in the Category ‘Campaign of the Year 2014’!

3.1.2 The factors of success – going against the Zeitgeist of privatisation

‘The first ECI to collect one million validated signatures was started by the European trade union federation EPSU to put the human right to water and sanitation on the EU agenda and to prevent the liberalisation of water services. Although its ultimate impact is uncertain, public support for the campaign led the Commission to remove
water from the EU concessions directive. This unusually well-prepared, professionally managed and well resourced ECI attracted a diverse coalition of partners and major media attention.918

As also summarised in a brochure published by Democracy International and other organisations in 2013: ‘The Right2water initiative was able to pool essential financial, organisational and strategic resources with a fully-fledged user approach ... In addition the timing of this initiative must be termed almost supra-optimal, as the Commission presented its highly contested water privatisation [terminology of the authors, what is meant is the concessions directive] directive exactly at the moment when the Right2water initiative was ready to take off919 ‘We were joined by all kinds of organisations from across the political spectrum: many social and environmental NGOs and development organisations, but also women’s organisations, churches, public water companies and municipalities.920 The ECI was indeed supported by an array of European and national organisations. Twelve personalities from very different walks of life, ranging from politics, churches, trade unions and the NGO movement, academia to sports, as well as entertainment acted as ‘ambassadors’ for the campaign.921

The mayors of Leicester (UK), Moita (Portugal), Paris, Copenhagen, Brussels, Ghent (Belgium), Genoa (Italy), Amsterdam, Naples, Nantes (France) and Vienna came out in support of Right2water. The supporting messages emphasise the different aspects of the campaign, namely the special nature of water for human survival, lack of access to water and sanitation for many people in Europe and around the globe, the need for public management, as well as criticism of the prevailing neoliberal policy. The importance of a European Citizen’s Initiative as an instrument for better democratic participation was also stressed by some ambassadors.
‘Our ECI addresses first and foremost the lack of water and sanitation for so many citizens. We strive for the recognition of water as a human right. Our European citizen’s initiative for water is emblematic of our engagement for quality public services for people. Each and everybody can relate to the need to have access to healthy drinking water and good sanitation. People resent the idea that water should be a simple commodity with which you can make profits.

Our political aim is to change the mind-set within the European Commission from a market-based approach with a focus on competition, to a rights-based approach with a focus on public service. We want to achieve universal access to water and sanitation and to ensure that the necessary measures are taken to safeguard limited public water resources for future generations.’

Andreas Bieler rightfully argues that the Right2water campaign went ‘against the grain’. This is true certainly in respect of the dominant policy paradigm of marketisation as maintained by the European Commission. ‘Liberalisation of the water sector with the EU became a prominent goal of the Commission in its internal market strategy in 2003–2006. The then Internal Market Commissioner Frits Bolkestein repeatedly declared that the Commission wanted to open public sector water services to competition.’ As part of its Internal Market Strategy – Priorities 2003 to 2006, the European Commission stated that ‘one area where new action may be required is the water sector – which remains fragmented and where there are potential gains to be had from modernization’. But the privatisation of water has traditionally been considered a most sensitive political issue, ‘the plans of the Commission were met with stiff opposition from towns and municipalities, as well as a variety of civil society organisations’. Preventing the liberalisation of the water market was undeniably one of the successes of EPSU during those years.

The Right2water campaign can thus be considered an anti-neoliberal and anti-free market movement, against the supposed promises of privatisation, such as more efficiency, higher quality and cost reductions for consumers. Indeed, in many cases water privatisation has led to quite a different scenario of ‘no competition’ and hence soaring water tariffs, chronic lack of investment and poor quality. In a situation of a constant need to expand capitalist relations of production water is considered as an opportunity for growth. ‘A disturbing trend in the water sector is accelerating worldwide. The new “water barons” – the Wall Street Banks and multibillionaires – are buying up water all over the world at an unprecedented pace’. Goldman Sachs advertises water as ‘the petroleum for the next century’. ‘We expect to see further consolidation in the water sector over the next five to ten years that should result in a global water oligopoly, including convergence of water equipment and service business models.’

For years also, access to aid programmes had been made dependent on the involvement of the private sector. Dave Hall and Robin de la Motte have therefore argued for a critical assessment of such policies, based on empirical facts and not on ‘faith. The first is that the consequences of using the private sector in this way are not always beneficial. There are now many well-known cases in which the private sector’s presence has proved both expensive and unreliable. Sometimes, it works badly. ... The World Bank ... acknowledges in its 2003 infrastructure review that ‘the recent decreases in private sector interest in infrastructure show that reliance on the private sector alone will not be sufficient to guarantee a scaling-up of infrastructure service provision’. Private sector involvement in developing countries has fallen, and multinational companies have not achieved sustainable returns on their investments. Privatisation has proved to be widely unpopular and met with political opposition
In May 2002, the city council of Poznan, Poland, voted against a water privatisation proposal. In June 2002, the Paraguayan Parliament took a clear majority vote to suspend indefinitely the privatisation plan for the state-owned water company Corposana. The rejection was hailed by the trade unions as a great victory against the IMF, the World Bank, globalisation and neoliberalism. The decision was upheld in August 2004 when a renewed privatisation attempt was shelved as a result of pressure from protestors.

As a result of public opposition and failure to make sufficiently large profits, multinational water companies have withdrawn from Latin America. In January 2003, SUEZ, the largest operator of private water contracts in Latin America, announced that it would withdraw from operations in developing countries unless the return on capital was at least 13 per cent; in 2007, SUEZ announced that its withdrawal was complete, and that it no longer has any employees in water in Latin America. The public sector has recovered many of the concessions that had been privatised in the 1990s.

The Right2water success story hence can claim to build on a long history of struggles against privatisation of water, such as the one in Cochabamba, Bolivia, in 2000. In this instance, the local population revolted against a hike in water prices following the handover of Cochabamba’s municipal water systems to Aguas del Tunari, a multi-national consortium of private investors, including a subsidiary of the Bechtel Corporation in 1999. The deal was struck in what is described as ‘close-door’ negotiations with the Bolivian government. An initially peaceful demonstration organised by the ‘Coalition for defence of water and life’ turned into a ‘war over water’ as protestors and riot police clashed. In an official referendum, organised by the coalition, 96 per cent of the local population disapproved of water privatisation. After months of pressure the Bolivian government gave in to pressure and agreed to hand over the control of Cochabamba water to the local grassroots movement.

It is against this backdrop that an ETUI Monthly Forum of January 2015 analysed the factors for success of the Right2water ECI. It is not only the large number of signatures which is a sign of success. The ECI, based on a broad alliance of trade unions and social movements, was successful at a time when austerity policies were enforced across the EU member states, including pressures towards further privatisation, especially on the countries on the EU’s periphery, such as Greece and Portugal. It, therefore, went completely against the trend and in opposition to dominant forces pushing for further neoliberal restructuring.

Importantly, Right2water spoke to many different groupings, essentially based on the unique quality of water as a source of life. It allowed grassroots activists, trade unionists, representatives of NGOs, politicians and priests to argue for the same objective. It built on the tradition of working together in opposing privatisation of water services. It benefitted from almost 20 years of research by PSIRU detailing how an ideological agenda sought to bring water under corporate control and how unions and others opposed this the world over.

In an attempt to counter mounting criticism of its liberalisation policy, the Commission came out with a public statement in January 2013, seeing itself ‘accused in some media of wanting to privatise the distribution of water’. This it denies, while it in turn accuses some of its critics as having performed a ‘deliberately erroneous reading of the legislative proposal’. Internal Market Commissioner Barnier was cited as saying to his critics, ‘unfortunately, it is easier to misinform than to tell the truth’. The proposed Directive on Concessions will therefore not lead, under any circumstances to imposed privatisation of water services.
In a major U-turn Commission Barnier announced in June 2013 that water would be withdrawn from the proposed EU concession directive. Barnier came out with a statement that this ‘decision was influenced by the first European Citizens’ Initiative and 1.5 million people signing a petition on water’. AquaFed, a private water lobbying group, reacted abrasively to this withdrawal. ‘Contrary to previous statements and despite evidence that the directive has nothing to do with “privatisation” 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. … The Commissioner has justified this decision by agreeing 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 if they were opposed to this directive. … It is significant to note that close to 80 per cent of signatories (1.3 million) are from Germany, while citizens from other parts of Europe that are most exposed to private management of public water services, namely England, Spain, France and the Czech Republic have never been very interested in this initiative. … Therefore, this Citizens’ Initiative is obviously fuelled by German lobbies. It cannot be considered as representative of European citizens and justify the exclusion of water from the Concession directive. This malicious reference to German lobbying activities finds its explanation in the increase in signatures to support Right2water in the first half of 2013. An amazing mobilisation campaign was initiated by an employee of the Karlsruhe Stadtwerke, Wolfgang Deinlein, who learned about the Right2water campaign at a ver.di water meeting. He decided to engage in the campaign, with the active support of the Stadtwerke Karlsruhe. Among others, Deinlein launched an advert at his own cost in one of Germany’s largest cross-regional newspapers. This triggered a commentary by the chief editor of the very same newspaper and more generally brought the issue of water liberalisation to the national media. The culminating point was the promotion of Right2water by a well-known political satirist on the German TV channel ZDF. This gave the decisive boost to the campaign and contributed to bring Right2water over the 1 million barrier within a short of period of time. It helped to give huge publicity to the campaign in the largest EU member state, but it is clear also that the overall objective of the campaign met with wide support among the population in favour of public governance of water supply and against a market opening of water provision. This AquaFed fails to acknowledge. And in Spain the campaign passed the threshold and continued to grow. Defending water as a public service and remunicipalisation were a major platform for progressive parties. Podemos came to power in several municipalities and towns such as Barcelona, Valencia, Madrid. It has worked to reverse the trend supported by AquaFed.

3.1.3 The opponents’ view

‘Water … is of course the most important raw material we have today in the world … It’s a question of whether we should privatise the normal water supply for the population. And there are two different opinions on the matter. The one opinion, which I think is extreme, is represented by NGOs, who bang on about declaring water a public right. … The other view … says that water is a foodstuff like any other and like any other foodstuff it should have a market value.

AquaFed, the International Federation of Private Water Operators, argues in a different and generally more sophisticated fashion: ‘Since its creation, our Federation
has publicly supported the right to safe drinking water and sanitation. AquaFed’s member companies contribute daily to the implementation of this right as instructed by the public authorities that engage them. It is their core business to do so. This is why our members and our Federation are uniquely knowledgeable on the two distinct topics included in this ECI. A proposal to include the human right to water into the European Charter of Fundamental Rights as they had already proposed to Vice-President Reding in March 2013.

While EPSU would certainly not be opposed to the inclusion of the right to water in the Charter of Fundamental Rights, because of the requirement of unanimity for any Treaty Change, it is clear that this particular proposal aims at stifling any discussion on an immediately operational legal guarantee for access to water. Irrespective of the chances of changing the Treaty, which do not appear very high at the moment, language in primary legislation would risk being considered a value statement and not be directly operational.

AquaFed furthermore calls on the Commission to ‘pay the utmost attention to the potential legal consequences of the ECI request ... on the internal market rules and liberalisation’. Here AquaFed clearly wants to drive home the prevalence of internal market rules over the safeguarding of the human right to water. The AquaFed line of argument, however, is extremely clever. AquaFed pictures itself as a ‘non-for-profit’ federation representing the private operators of water and sanitation services. ‘AquaFed’s members operate public drinking water and sanitation services entrusted to them through public-private partnership contracts or licenses. They are under the instruction and control of the public authorities. Simply put, the private operators are tools public authorities use to implement water policies. Thus, AquaFed members are instruments for public policies.’ This article does not refer to the profit-making motive of the AquaFed member companies and thus AquaFed tries to embrace the ECI Right2water, arguing at the same time that private companies are best placed to implement this human right: ‘the first European Citizens’ Initiative is very welcome. Through it, 1.7 million European citizens, are drawing the attention of EU institutions to these gaps [20 million Europeans not having access to safe water and sanitation] and the need for the EU to take strong action to implement the human right to safe drinking water and sanitation. Human rights are neutral on the ways public services are organised. Polemics about the respective merits of the different types of operators should not hide the urgent need for action to satisfy this human right for the millions of Europeans who aspire to better access to water and sanitation.’

EPSU has closely followed the activities of AquaFed over the past decade. On World Water Day 2006, EPSU together with its Belgian public sector affiliates and a number of NGOs organised a human chain between the AquaFed offices, the European Commission headquarters and the Council building. The idea was to highlight the close proximity, physically, ideologically and strategically between corporate interests in the water sector and European decision-makers. Two main motives stand out to explain why AquaFed was established to intensify the private water industry’s lobbying efforts. Firstly, the serious PR problems which Suez and other water multinationals face now that it is becoming apparent that the high claims made for privatisation have not been fulfilled. Despite the PR budget available to the water corporations, anti-privatisation activists are seen to be winning the public debate. ... Secondly, it is a fact that water multinationals do not have a collective lobbying vehicle specifically aimed at influencing the European Union institutions. ... Eureau, the prime voice of European water operators, includes both public and private sector companies. This means that its positions on issues like water liberalisation with the European Union, in the context of
debates about the Single Market or the ‘Bolkestein’ Services Directive, are not as clear-cut pro-private as Suez would wish. Establishing AquaFed provides the supporters of liberalisation with a more effective lobbying force to influence EU decision-making. 958

3.1.4 ECI Right2water is heard by the European Commission and the European Parliament

The European Commission received the organisers of Right2water on 17 February 2014. The organisers were also given the opportunity to present their initiative at a public hearing in the European Parliament in the afternoon of 17 February. There were high expectations in the NGO world and pro-ECI forces concerning the outcome of this hearing, which was described as an historic event for European democracy. 959 “The entire ECI community ... is carefully observing the outcome of this very first hearing. It is one of the most important moments with the cumbersome ECI procedure and will showcase whether the EU institutions, namely the EU Commission, take the citizens of a successful ECI seriously. ... By 20 March the EU Commission will finally decide if they will take any action.” 960 Erhard Ott, German member of the citizens’ committee took the opportunity of the hearing to explain that, while the ‘concessions directive was not the focal point of the initiative, it had allowed this ECI to get much more public attention and the removal of water from the legislative text had been a first success’. 961 During the hearing, Commissioner Šefčovič did not make any commitment as to whether and how the ECI would lead to a legislative follow-up. 962 He merely indicated that the Commission would react to the points raised by the ECI in a Communication. The scant prospects for binding legislation were expressed by Jonathan Faull, Director General in the European Commission for the Internal Market and Services, 963 when he stated that ‘the EU has no competences to dictate to member states whether water should either be maintained as a public good or should be subject to privatisation’. 964 This point met with sharp criticism as the EU in fact imposes privatisation of water as part of its austerity measures in countries such as Greece. 965

The Communication of the European Commission 966 was published on 19 March 2013. “The reaction of the European Commission lacks any real ambition to respond appropriately to the expectations of 1.9 million people.” 967 “I regret that there is no proposal for legislation recognising the human right to water.” 968 This sentiment of frustration was also echoed in an article of the Green European Journal. “However, the answer remains remarkably vague and unsatisfactory in terms of potential changes in EU law, despite a successful European campaign.” 969 Commissioner Šefčovič is reported to have said that ‘the Commission’s hands were tied by the EU Treaty, which leaves most decisions on water provisions in the hands of local and national governments’. 970 The recognition that water provision is a responsibility of local authorities is considered positive in a Right2water press statement: “This confirms the trend towards remunicipalisation across Europe which according to the Communication is the safest way for water to be kept out of the internal market rules, one of the main demands of the ECI.” 971
3.1.5 Remunicipalisation – a global trendsetter

‘Remunicipalisation refers to the return of previously privatised water supply and sanitation services to public service delivery. More precisely, remunicipalisation is the passage of water services from privatisation in any of its various forms – including private ownership of assets, outsourcing of services and public-private partnerships (PPPs) – to full public ownership, management and democratic control.’ Lobina, Kishimoto and others have compiled the most comprehensive catalogue of water remunicipalisation produced so far. They see remunicipalisation as a global trend that goes against the neoliberal project of privatisation.

‘Flagships of water privatization – from Buenos Aires to Jakarta, from La Paz to Dar es Salaam – have sunk inexorably.’ Whereas in 2000 there were two cases of remunicipalisation in two countries, with fewer than one million people concerned, by March 2015 there were 235 cases of remunicipalised water services in 37 countries covering over 100 million people. In France, the homeland of private water provision, there are now 94 cases of remunicipalisation, including in the capital Paris.

‘Remunicipalisation typically occurs after local governments terminate unsatisfactory private contracts or do not renew them after expiry. ... Remunicipalisation offers opportunities for building socially desirable, environmentally sustainable, quality public water services benefitting present and future generations.’ Remunicipalisation is linked importantly with aspirations of improved democratic governance and better accountability, involving both workers and citizens. It represents an opportunity to re-establish knowledge and expertise in public water companies. Importantly, remunicipalisation offers possibilities to develop collective ideas of development, such as the human right to water. As encapsulated by Anne-Marie Perret at the European Parliament’s public hearing of February 2014: ‘Too many citizens are still excluded from high quality water and sanitation services. ... It is important that citizens should be able to pay rates reflecting their needs, not those of company shareholders. Today they no longer hesitate to cut off the water of families in difficulty.’ The Tribunal d’Instance de Soissons found Lyonnaise des Eaux/Suez Environment on 25 September 2014 guilty of cutting off a single mother with two children, thus violating the fundamental right to water guaranteed in the French Code for Social and Family Action. Similar rulings have been issued by other French courts sanctioning other water companies for illegally
cutting people from access to water. It is these situations that Right2water aims to redress in European legislation.

3.1.6 Taking another hurdle – the own-initiative report of the European Parliament

The adoption of the own-initiative report in the European Parliament on 8 September 2015 is hailed as a ‘victory for citizens and a victory for human right to water’ in an EPSU press release. This victory is for the supporters of the Right to Water and also for democracy in the European Union. This vote also adds support to the 1.9 million signatures collected, backs up what the candidates to the Presidency of the European Commission previously agreed and the report of the Economic and Social Committee as they all call on the Commission to act. The European Commission cannot ignore the demand for concrete legislation. The European Parliament rejected all the amendments that were watering down the spirit of the demands of the ECI. Lynn Boylan, the rapporteur of the European Parliament, addressed the EPSU Executive Committee in November 2015. She criticises the poor response by the European Commission to the ECI. Here the role of the European Parliament’s report is important to lend support to the demand for legislation on the right to water and to keep up the pressure on the Commission to renounce further attempts to liberalise water. Boylan draws attention to the huge risks through the ongoing negotiations on trade deals, such as TTIP. It is pressure from private European companies that are pushing the Commission to keep a pro-liberalisation stance also for the water sector. ‘The European Commission has set their eyes on privatisation of water’, says Boylan, ‘but the Commission needs to listen to people. This is a perfect opportunity to seize for continued pressure for concrete legislative proposals.’

The report on the ‘follow-up to the European Citizens’ Initiative Right2Water’ was adopted on 8 September 2015. The Report makes some key demands for the Commission to act upon.

The Commission is urged:
- to implement the ECI Regulation effectively and proceed with the removal of all administrative burdens encountered by citizens when submitting or supporting an ECI, and urges it to consider implementing a common ECI registration system for all member states. ...
- to maintain and confirm the exclusion of water and sanitation services from the Concessions Directive in any eventual review of this directive. ...
- in line with the primary objective of the Right2Water ECI, to come forward with legislative proposals, and, if appropriate, a revision of the WFD [water framework directive] that would recognise universal access and the human right to water, and consider it regrettable that this has not been done to date.

The Report further stresses that the special character of water and sanitation services, such as production, distribution and treatment, makes it imperative that they be excluded from any trade agreements the EU is negotiating or considering; urges the Commission to grant a legally binding exclusion for water services, sanitation services and wastewater disposal services in the ongoing negotiations for the Transatlantic Trade and Investment Partnership (TTIP) and the Trade in Services Agreement; stresses that all future trade and investment agreements should include clauses on genuine access to drinking water.
for the people of the third country to which the agreement pertains in line with the Union’s long-lasting commitment to sustainable development and human rights.\textsuperscript{985}

‘Another milestone for the Human Right to Water’, an EPSU Press Release celebrates the adoption of the Boylan Report. ‘With today’s vote the European Parliament demands that the European Commission make concrete proposals to recognise the Human Right to water and sanitation as defined by the UN.’\textsuperscript{986}

3.1.7 What has the ECI Right2Water achieved?

This ECI is the first and only successful initiative to collect a sufficient number of signatures in 12 months. For Jan Willem Goudriaan, Vice President of ECI Right2Water, the most important lesson to be learned is that it is doable.\textsuperscript{987}

The organisation and running of the ECI Right2water has been an important test case for EPSU in terms of motivating and mobilising member organisations, the capacity to reach out and join forces with other civil society organisations and political bodies. The campaign was able to attract the attention of media and crucially of course the Initiative has been able to muster the necessary support from the citizens. In this sense, EPSU was able to pass the test.

The Initiative was so successful because it built on widespread grassroots support. The support for the ECI can also be interpreted as public protest against austerity policies, imposed in particular on EU countries under the Institutions regime. One outstanding example is the Greek city of Thessaloniki, where the population pronounced itself very clearly against the privatisation of its water supplies. EPSU has been very supportive of this campaign and affiliates have supported it with funding and staff. The EPSU Deputy General Secretary and Vice-President of the ECI Committee detailed the interlinkage between the ECI, the opposition to austerity and several local campaigns in a series of posts for Andreas Bieler’s blog on restructuring and trade union positions\textsuperscript{988}. They illuminate how local, national and European work build upon each other.

The global trend towards remunicipalisation of water services has certainly also contributed to underpin the validity of the ECI demand to consider water as a common good which should not be subject to market forces. There were amazing contributions from various countries, some resulting from concerted action, such as in Germany. In Hungary, the mayor of Ozd became an ‘involuntary helper’. This mayor decided to stop the water supply via 27 roadside pumps because it was supposedly too expensive. This decision was taken in the middle of a heatwave in August 2013 and hit a poor neighbourhood with a large Roma population.\textsuperscript{989} As a result of local campaigning the signatures in Hungary passed the necessary national threshold within two weeks. Due to large international pressure and the fear of large demonstrations the Hungarian government ordered the mayor to restore the water supplies in question.

Does this mean that the ECI is to become the standard instrument for citizen democracy? As the promoting organisation of Right2Water, EPSU has invested significant human and financial resources. This was a sustained engagement to guarantee input during the follow-up phase to the successful conclusion of signature collection. This means that an ECI requires the backing of a solidly grounded organisation, which in turn can muster sufficient support from its own affiliates, as well as other organisations. EPSU also went through a long process of preparation and internal discussion and the successful outcome was certainly not a given in the early phases of the campaign. The most notable result to date has been the exclusion of the water sector from the
Concessions Directive, even though this was not an expressed demand of the ECI. This undisputed success of the Right2Water campaign has, however, obscured the fact that other public services, such as health or education are not excluded from the Concessions Directive and these services are no doubt equally important for people’s existence and participation in society. ‘The setback for the market-builders, at least for now, is that water (a price-inelastic, near-perfect monopoly good essential for human survival) will be excluded from the project [of the concession directive].

For all the fanfare … about the Commission’s withdrawal constituting a citizens’ victory led by Right2Water – a committee largely formed by representatives of public service trade unions – over the almighty EU, it is a pyrrhic one:
1. The directive as a whole still stands, promising/threatening a ‘real opening up of the market’ in municipal services including but not limited to ‘energy, transport and postal services’;
2. While the campaign demonstrates that it is possible for European Citizens’ Initiatives … to give voice to citizens’ concerns, practical consequences are extremely limited. The success of a Citizens’ Initiative means nothing more than to ‘invite the European Commission to present a piece of legislation’ to the European Parliament and the Council of Ministers.
3. The initiative was about more. Aside from preventing the marketisation of water and sanitation, it was intended to do more to ensure everyone’s access to water in Europe and elsewhere. The Commission’s piecemeal withdrawal from one aspect addresses none of these concerns.990

This is a sobering analysis, bordering perhaps on the cynical. Key promoters have certainly also recognised some of the drawbacks of the successful Right2Water campaign. The response by the European Commission has been described as inadequate by Jan Willem Goudriaan, on several occasions. ‘If this state of affairs should remain, the ECI as a democratic instrument is about to die.’991 ‘The multinationals responsible for water supply and sewage disposal and their powerful lobbies have not backed down. … The counter-offensive is likely to be led by public/private partnerships that receive strong support by the Junker plan for revitalising the European economy.’992

The assessment does not recognise, however, that it is now near impossible for the Commission to liberalise water services in the EU. Four candidates for President of the European Commission signed a pledge to support the ECI during the campaign in 2014.993 In several trade negotiations (such as CETA, the trade agreement with Canada) the Commission is forced to underline that water and other public services are excluded, even though practice might be different. And in several member states the ECI has had an impact leading to discussions on Right2water in national constitutions such as in Lithuania and Slovenia. The Right2water logo and concerns were adopted by the Irish Water Movement to prevent privatisation of the Irish water company and against water charges. The cooperation with the European Water Movement and other actors continues. The cynical point above does not take the power structures into account and is hence easy. The ECI did not have a transformative impact and the Commission continues with its market logic.

One indication of this can be found in a recent European Commission statement on development policy, albeit not directly targeted at water. ‘There is increased recognition of the significant potential of private sector engagement, together with social, traditional and cooperative forms of economy, for poverty reduction and sustainable development.'994
Where does this leave us? Right2water has been successfully spearheaded by EPSU; this remains a success in itself. A broad debate on water as a common good has gained momentum and the free market followers have been put in the defensive, at least for a while. The European Parliament’s Report by Lynn Boylan has added weight to the political debate on the human right to water and the need for the European Commission to bring forward binding legislation on this issue. While this report is not binding on the European Commission it cannot be easily brushed away either. EPSU and the other water groups are aware of the challenges further along the road. There is a review clause in the Concession Directive to assess the exclusion of the water sector, three years after the time due for transposition of the Directive. This can be interpreted to mean that the European Commission might try to have a further go at including water in the concession directive. Equally, all of the ongoing trade negotiations will have to be followed closely and resolute action will no doubt remain necessary.

3.2 EPSU’s campaign for fair taxation – No to tax fraud and yes to tax justice!

Leona Helmsley, an American businesswoman and billionairess, gained notoriety with the remark ‘We don’t pay taxes. Only little people pay taxes.’ She eventually had to serve a 19 month prison sentence, much less than originally demanded by the prosecutor, for tax evasion and tax fraud. Billionaires such as Bill Gates or Mark Zuckerberg are considered philanthropists acting in the public interest when they set up foundations. ‘These foundations are perfectly legal and allow the donors to keep absolute control of all their money and power and accumulate enormous appreciation free of taxation.’

In a book review of Thomas Piketty’s Capital in the 21st Century, Paul Krugman asks why inherited wealth only plays a small role in the current policy debate on fairer income distribution. He points to Piketty’s argument that the very size of inherited fortunes makes them invisible. ‘Wealth is so concentrated that a large segment of society is virtually unaware of its existence, so that some people imagine that it belongs to surreal or mysterious entities.’ More often than not this wealth is shrouded under a veil of offshore secrecy jurisdictions (tax havens). Is it possible to break through this shroud of secrecy by campaigning and applying a naming and shaming strategy? Discussions on the ethics of tax avoidance have become more widespread, whereas a few years back they would have been restricted to debates in activist and campaign group circles. ‘Avoiding tax robs our public services’, Stephen Timms, UK Labour Financial Secretary until 2010, is reported to have said.

As part of a broader coalition of trade unions and NGOs, EPSU has been instrumental in bringing tax dodging strategies applied by multinational companies to public attention and the scrutiny of the European Parliament. There are three main reasons underpinning EPSU’s campaign.

All of them are linked to improving tax and social justice, as well as fairer income distribution:
– Taxes on labour income remains the largest source of revenue contributing nearly half of all receipts, followed by consumption taxes at roughly one-third and capital taxes at around one-fifth.
– An estimated 1 trillion euros is lost every year in EU member states because of tax evasion and tax avoidance; if tax evasion could be stopped, total EU deficits could
be repaired in eight years; enhancing tax justice would be an alternative policy to the still ongoing austerity regime.
– This potential income is lost to the detriment of investment in vital public services, ranging from education, health and social services to social housing and public infrastructure.

3.2.1 We want it back – Europe’s missing 1 trillion euros

‘Every year, billions of euros of public money are lost in the EU due to tax evasion and tax avoidance. As a result, member states suffer a serious loss of revenue, as well as a dent to the efficiency of their tax systems. Businesses find themselves at a competitive disadvantage compared with their counterparts that engage in aggressive tax planning and tax avoidance schemes. And honest citizens carry a heavier burden, in terms of tax hikes and spending cuts, to compensate for the unpaid taxes of evaders. Fighting tax evasion is therefore essential for fairer and more efficient taxation.’

In 2012, EPSU launched a campaign to close the tax gap in Europe estimated at 1 trillion euros per year, as part of key alternatives to austerity measures. ‘EPSU believes that it is essential to tackle tax evasion and corporate tax avoidance and ensure that governments are able to collect the levels of tax that have been democratically agreed to finance public services and redistribute wealth and income.’

The campaign is based on the EPSU tax justice charter alongside its demands for the introduction of a Financial Transaction Tax.

The EPSU precursor organisation, the European Public Services Committee (EPSC), already saw the need to rally its affiliates around a ‘Charter for Fair Taxation’. First proposals for combating tax fraud and evasion in Europe were discussed at a Fiscal Policy Conference in April 1995. In this Charter the EPSC underlines its belief in fair taxation. ‘It recognises the need to combat tax evasion in defence of social and economic justice. Evasion leads to high taxes and economic prejudice against the poorest sections of the European community.’

The EPSC Charter calls upon the European Union and the government of member states to:
– Improve the resourcing of tax collection and compliance;
– Develop better cooperation between tax administrations;
– Share information and intelligence to prevent evasion;
– Legislate to close tax loopholes and deter the use of tax havens;
– Direct tax systems should be based on the ability to pay;
– Provide better training and equipment for tax officials;
– Pursue closer harmonization of VAT;
– Recognise direct taxation as being fairer than indirect taxation.'1009

The following statement from the 1995 EPSC Tax Charter remains one of the basic convictions of EPSU today: ‘The provision of fair and efficient taxation systems is essential for the delivery of effective public services. Fair taxation is vital in a democracy and should be the legitimate expectation of every citizen.'1010

The need for fairer taxation, including the glaring necessity to more effectively tax corporations for the general benefit of society has entered the European trade union agenda in the past decade. Emilio Gabaglio, ETUC General Secretary from 1991 to 2003, explained the ETUC’s basic position on corporate tax reform in the European Union in a speech at a European Commission Conference on Company Taxation by referring to a resolution adopted at the ETUC Congress in 1999: ‘The free circulation of capital, goods and services within the EU, the Europeanisation and internationalization of companies and the globalization of trade and financial markets leads, in the absence of effective transnational tax coordination, to harmful tax competition and risks a dramatic erosion of the tax base and the tax sovereignty of the member states. So far, the stability of the level of total tax revenue has been achieved at the cost of a progressive alteration in the structure of taxation: the tax burden has been shifted to the less mobile tax base – labour – in order to recover the tax lost from the erosion of other more mobile bases. Tax systems have become not only employment-unfriendly but also socially unjust. Unfair tax competition must be stopped and taxation with cross-frontier effects, namely corporation tax, taxation of income from capital, and eco-taxes should be subjected to basic common rules agreed at the level of the EU by majority voting. The European Union should take the lead in seeking to reach binding international agreements on taxation.'1011

The EPSU Executive Committee of May 2010 adopted a revised Tax Justice Charter,1012 bringing an earlier version of the Federation’s Tax Charter from 20001013 up to date. Among the reasons given to promote this new Tax Charter is the ‘steady decline in top personal and corporate tax rates since 2000’.1014 This EU-wide trend must be brought to a halt, it is argued in an accompanying article. Average corporate tax is now below the rates in Japan and the US. ‘This radical reduction of corporate tax rates, especially in the new member states (except Malta), Ireland and Greece, has intensified and increased pressure on other countries. Promotion of growth-focused taxation, at EU and global level ... is a key explanation in an attempt to attract investment and gain a competitive edge. The top tax rate on personal income has also decreased from 47.3 to 37.8 per cent. Over the same period, the tax rate on labour has remained stable at about 34 per cent. Taxation on consumption (VAT and excise duties) which applies to all regardless of ability to pay has been on an uptrend in most EU countries since 2001. In brief, corporate profits and top income earners are increasingly less taxed to the detriment of the low and middle-income earners.'1015

In July 2011, EPSU representatives met with the Cabinet of then Commissioner for Taxation, Šemeta, to raise concerns about taxation trends and requested a discussion on common criteria for fairer and progressive taxation in the EU.1016 After intensive lobbying work, among others in the European Parliament,11 EPSU was selected in
2013 to occupy a seat for non-governmental organisations in the Tax Platform set up by the European Commission. EPSU was the only ETUC member organisation to hold a seat in the Platform for Good Tax Governance, essentially a ‘trade union fig leaf in a sea of big business and corporate interests’. The biased composition and the operating rules of the Tax Platform and other Commission’s Expert Groups were criticised by the NGO and trade union movement at a press conference in November 2013. ‘Nadja Salson, tax justice campaigner with the European Public Services Union and the only workers’ representative on the Commission’s Platform for Tax Good Governance says: “By inviting notorious advocates of tax havens and corporate tax avoidance to an Expert Group charged with tackling that problem, the Commission is making a mockery of its intentions to recoup the 1 trillion euros lost by EU member states every year. It needs to stop listening to corporations and their damaging deregulation agendas and start prioritising the interests of its citizens and workers, not just in its tax Expert Group but across all of them.” ‘In total, the majority of the platform members have no public record on fighting tax fraud, aggressive tax planning or tax havens unless to argue for lower tax on profits, dividends can count as a good record.

3.2.2 It is time for the financial transaction tax – Europe’s valentine for the people

The demand for the introduction of a financial transaction tax gained political momentum in 2012, in the wake of the worst fall-out of the financial crisis. While previously the demand for an FTT was described as totally utopian and radically left-wing it now made its way into the political mainstream. ‘The Financial Transaction Tax has shifted from a radical idea to a realistic proposition considered by the IMF [the International Monetary Fund], the European Commission, the G20 [Group of 20 conferences at various different levels: heads of governments, finance ministers, and central bank governors, employment and labour ministers of the G20 major economies] and a number of national governments. This is an extraordinary turn-around, in no small part due to the campaigning efforts of civil society organisations around the world.’

EPSU had been actively campaigning for the introduction of a Financial Transaction Tax (FTT) since its 2009 Congress. The EPSU 2010 Tax Justice Charter ‘strongly supports the introduction of a Tobin, or Robin Hood tax as a tool to yield substantial revenues and regulate financial transactions, the large majority of which are not re-injected into the real economy. By definition, it should a global tax, but as a first the EU could become the first Tobin Tax zone.’

‘The tax could help recoup the costs of the financial-sector bailout, as well as the costs the financial crisis imposed on the rest of the country [in this case the United States]. Some FTT advocates call it a “Robin Hood Tax” because it would primarily fall on the rich and its revenues could be used to benefit the poor.’ Next to the redistributive effects, the FTT is also supposed to curb speculation by reducing high frequency trading, limit the competitive edge of the very speculative funds and reorient

them towards more long-term investments. By applying an FTT in the EU up to 200 billion euros per year could be collected.

EPSU used the opportunity of the 2011 ETUC Athens Congress to launch a postcard campaign in support of the introduction of the FTT. Hundreds of postcards, signed by trade union leaders, activists and members from around Europe were sent to then Commission President Barroso. The text of the postcard argued: ‘When governments, after bailing out the banks are now short of cash, I [the undersigned] fail to understand why you oppose a tax on financial transactions in Europe. A European Financial Transaction Tax ... would raise 200 billion euros per year and curb speculation.’ In the Manifesto adopted at the Athens Congress, the ETUC calls for the introduction of an FTT.

In September 2011, in a surprising turn, the Commission tabled a proposal for a Council Directive on a common system for an FTT, the revenues of which would be allocated to the general EU budget. The proposed provision aimed at the harmonisation of legislation concerning the taxation of financial transactions to ensure the proper functioning of the internal market for transactions in financial instruments and to avoid distortion of competition. The directive was supposed to ensure at the same time that financial institutions make a fair and substantial contribution to covering the costs of the recent crisis and to create appropriate disincentives for transactions that do not improve the effective operation of financial markets.

During Council meetings of June and July 2012 it had become clear that ‘essential differences in opinion persisted regarding the need to establish a common system of FTT at EU level and that the principle of harmonised tax on financial transactions would not receive unanimous support in the Council within the foreseeable future.’ During the October ECOFIN meeting however, 11 governments expressed support to implement a financial transaction tax using the Enhanced Cooperation Procedure (ECP). This procedure opened the possibility for a group of countries to go forward without the agreement of the entire EU27. EPSU welcomed the political will to launch an FTT in Europe ‘as the best thing that came out of ECOFIN in response to the crisis’. The European Parliament had equally adopted a positive opinion in May and gave its consent to go ahead with enhanced cooperation.

On 22 January 2013, the Council adopted a decision authorising eleven member states to proceed with the introduction of the FTT within a coalition of the willing, namely: Austria, Belgium, Estonia, France, Germany, Greece, Italy, Portugal, Slovakia, Slovenia and Spain. EPSU welcomed the decision although it warned against ‘the development of a Europe à la carte and appealed to affiliates to lobby anti-FTT governments to join the coalition of the willing’. The increased scope of the proposed directive was welcomed as well, as it would now cover businesses’ risk management activities, as well as financial transactions in non-participating member states, related to extra-territoriality.

In order to keep up the pressure, a Global Day of Action was staged by both EPSU and Public Services International (PSI) on 23 June 2013, which saw a diversity of events, bringing together thousands of organisations across five continents: they demonstrated in support of their joint demand for a global FTT in Brussels and New York, in Brazil and Nepal, as well as other places. EPSU among others had been able to issue a joint declaration with the (then) mayor of Nantes Jean-Marc Ayrault and mayor of Brussels Freddy Thielemans to set up a campaign in European towns and cities in favour of an FTT as a means of supporting local public investment.
3.2.3 And then they were ten

 Discussions on the introduction of an FTT have been dragging on since 2011. ‘Big banks and financial companies are doing their best to stop the introduction of a financial transaction tax (FTT) in the European Union. ... The industry has put all its lobbying machinery to work, implementing a scaremongering strategy, to convince member states to reject the tax. There is a real risk that their lobbying will pay off, either by defeating the entire idea of taxing transactions, or by watering down an already timid proposal.’ With Estonia pulling out of the agreement at the end of 2015, the pro-FTT group has now shrunk to ten EU member states. The original group of eleven has found it difficult to reach agreement around the basic scope of the tax, including the question of what type of financial instruments should be taxed, the legal reach of the FTT and a possible exemption for pension funds.

 Finance business consultants appear to be confident that at this stage ‘it is premature to spend management time or incur legal costs planning for the introduction of the FTT when its future remains so uncertain’. Even without British participation, the British Finance Minister has repeatedly voiced opposition to the tax, as it might result in restricting the privileges of the financial centre London. An attempt of the British government to take legal action against the FTT had failed, though. It is interesting to see what a potential ‘Brexit’ might have on further efforts to achieve an agreement on an FTT. Here some commentators acknowledge that ‘not being in the EU would remove the UK’s powers to influence EU level tax matters, such as its ability to

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III. The current Dutch EU Presidency government has announced that they might consider joining provided that they are given guarantees that there are no negative effects on pension’s funds, see http://www.euinside.eu/en/news/a-step-forward-to-ftt-in-some-eu-member-states. At the same time the Belgian finance minister is reported to voice reservations in view of the lacking consensus, http://www.reuters.com/article/eu-ftt-belgium-idUSL8N1592MC
oppose/influence the enhanced cooperation procedure (ECP) financial transaction tax (FTT) proposal, which could be adverse to UK businesses that could suffer [from an] EU FTT.\textsuperscript{1042}

An EPSU press release voiced disappointment at the lack of progress. ‘This delay is bad not only for Europe but also for all those expecting the EU to set a precedent and create momentum for the international FTT.’\textsuperscript{1043} The earlier optimistic outlooks to achieve an FTT through enhanced cooperation now seem dimmed and a forecast of the possible outcome of the further negotiations scheduled for June 2016 would certainly be ‘speculative’\textsuperscript{1044}.

3.2.4 The impact of austerity on tax collection services

A central part of the EPSU campaign on tax justice has been to expose how resources in tax administrations have been eroded. The Labour Research Department (LRD) undertook two surveys for EPSU, published in 2013 and 2014, respectively, to look into staffing levels of tax administration in EU countries. Even though there was growing political recognition of the need to collect taxes in a fair and effective manner, this did not translate into political will to invest the necessary resources. UK Prime Minister Cameron is reported to have said at the 2013 Davos World Economic Forum ‘that tax evasion and tax avoidance was “an issue whose time has come.” After years of abuse people across the planet are rightly calling for more action, and most importantly there is gathering will to actually do something about.’ Cameron was not only referring to tax evasion, which should be subject to the full force of criminal law. He also commented on tax avoidance practices ‘some forms of which have become so aggressive that ... these raise ethical issues, and it is time to call for more responsibility and for government to act accordingly.’\textsuperscript{1045}

Do governments act accordingly? The LRD reports find evidence to the contrary. Figures up to 2011 show very sharp falls in employment in tax administrations, hitting also those jobs charged with the collection of taxes.\textsuperscript{1046} Denmark showed the largest drop and lost more than a quarter of its staff over four years. Other countries have also seen large staff reductions: the UK has lost around one-fifth (19.5 per cent) of its workforce; Latvia (17.5 per cent) and Lithuania (16.9 per cent) have both seen staff cuts of more than a sixth. Portugal (11.6 per cent) and Finland (11.0 per cent) have lost more than one in 10 tax staff in four years.\textsuperscript{1047} Staff cuts have also been seen in Sweden (8.8 per cent), Italy (8.3 per cent), Belgium (7.8 per cent), Estonia (7.5 per cent), France (6.8 per cent) over three years from 2008, while Slovakia (6.4 per cent), the Netherlands (6.3 per cent), the Czech Republic (5.9 per cent) and Slovenia (4.6 per cent) have lost one in 20 jobs. Lower rates of staff losses were recorded for Germany and Norway. Luxembourg and Spain were two countries where tax employment had risen following trade union campaigns in both countries for more staff in tax administrations. However, this trend was reversed for Spain as of 2011.\textsuperscript{1048}

The 2014 LRD report shows a continuation of the general trend, with an indication of overall job losses slowing down.\textsuperscript{1049} Across the EU, however, the negative trend of job losses has not been stopped or reversed. These measures have damaging effects on the ability of tax administrations to provide fair and efficient services. Cuts in overtime in Belgium, for example, make it difficult to undertake checks on bars, hotels and restaurants at weekends. In France, the highest national auditing body, la Cour des Comptes, has found that the controlling function of finance services was
understaffed and therefore cannot deal with complex and international fraud. Tax authorities lose some of their most experienced and skilled staff. Staff morale is being undermined, as for example in the United Kingdom. The chance of a business being audited is now once in every 43 years in the Netherlands. According to the German Bundesrechnungshof, complex and rapidly changing tax laws make it more difficult to implement tax legislation.\(^{1050}\) This regressive personnel policy is counterproductive to effective tax surveillance and prosecution of tax evasion and tax fraud. This is all the more the case as tax authorities generate additional income for the state. The LRD 2013 report provides a number of examples to underpin this point. The Italian tax agency, Agenzia delle Entrate, found in 2011 that ‘for every euro spent on its functioning, the Agency has recovered 3.6 through the fight against tax evasion. The Finnish Pardia trade union estimates that one tax inspector yields 627,000 euros per year. According to the UK tax union PCS, each tax inspector dedicated to compliance brings in the equivalent of 755,000 euros net of staff costs per year. A ‘special investigation unit with the task to go after the most complex cases of tax avoidance has returned 450 times its costs’,\(^{1051}\)

There is evidence in at least one case that a reduction of tax employees can produce a loss in revenue. In the United Kingdom, HMRC (Her Majesty’s Revenue and Customs) cut the number of staff working on compliance and enforcement activity by 3,387 in order to follow the government policy of staff reduction targets. This has resulted in a loss of 1.2 billion euros additional tax revenue. The LRD report quotes the parliamentary committee investigating the matter. In their report they came to the conclusion: ‘We are not convinced that the decision to reduce staff numbers working in this area in the past represented value for money for the taxpayer. The Department has estimated that in shedding more than 3,300 staff, it has lost £1.1 billion in potential tax revenue: about £10 in tax lost for ever £1 in running costs saved.’\(^{1052}\) The 2014 LRD report concludes that on average tax authorities lost around one in ten of their staff in between 2008 and 2012. In many countries this trend is said to continue. ‘Cuts in employment on this scale make it more difficult for the tax authorities to pursue those who deliberately seek to evade and aggressively avoid tax. ... Where deterioration in the service and advice provided to the citizens in the area of taxation is combined with a public belief that others are able to escape their tax obligations – perhaps entirely – the damage to public confidence in the tax system is severe.’\(^{1053}\) So the public assurances by politicians to address tax avoidance are not reflected in the way tax administrations are equipped. This situation creates issues of trust in public action and fairness of treatment.

3.2.5 About tax dodgers and tax havens – the McDonald’s case

Multinational companies dodge billions of euros of tax every year, ‘acting as giant corporate parasites on the countries they operate in, sucking profits out and leaving the rest of society paying the price’.\(^{1054}\) Everything these companies are doing is legal: it is what we call tax avoidance or aggressive tax planning – not evasion. Tax havens play a crucial role in tax avoidance. They are essentially places where you can put your capital in order to escape the rules at home. ‘Half the world’s trade passes through them. They are hiding trillions of dollars on behalf of criminals, dictators, wealthy individuals and multinationals.’\(^{1055}\) The top 10 European tax havens range from the City of London to Jersey, from Luxembourg to Switzerland, Ireland, the Netherlands and Austria...\(^{1056}\)
The extent to which multinational companies use convoluted tax schemes to reduce their tax bills was revealed, among other things, by the LuxLeaks scandal in 2014.\textsuperscript{1057} The International Consortium of Investigative Journalists (ICIJ) revealed information obtained from a whistleblower working in a large multinational accounting firm. The LuxLeaks disclosures attracted international attention on the tax avoidance practices of some 300 large companies, via secret tax rulings struck on their behalf by accounting/tax advising firms, such as Price Waterhouse Cooper, with the Luxembourg authorities. LuxLeaks also put the newly appointed Commission President Jean-Claude Juncker into the limelight as obviously the Luxembourg tax arrangements had been developed during his long period as Prime Minister and Finance Minister of the Grand Duchy. The majority parties of the European Parliament did not want to embarrass Mr Juncker and provided their support for his Presidency. Instead of establishing an investigation committee as called for by EPSU, Parliament set up a Committee on tax rulings.\textsuperscript{1058} Subsequently, the G20 leaders’ meeting in November of 2014 at Brisbane agreed to take actions ‘to ensure the fairness of the international tax system and secure countries revenue bases. Profits should be taxed where economic activities deriving the profits are made and where value is created.’\textsuperscript{1059}

The British NGO War on Want issued a report on the tax avoidance practices of the chemist supermarket chain Boots – which had been taken over by a private equity firm-led consortium – in 2012. They provided examples of how by using tax avoidance strategies Boots had escaped from paying enormous amounts of money that could have been used by the British government.

The accumulated lost tax could have funded:
- the starting salary of more than 78,000 NHS (National Health Service) nurses for a year;
- over 185,000 hip replacements;
- more than 5 million ambulance calls.\textsuperscript{1060}

The fast-food restaurant chain McDonald’s is yet another notorious example, using wide-ranging and complex tax avoidance schemes as revealed in a report published in 2015 by an international coalition of trade union organisations, including EPSU, EFFAT\textsuperscript{1061} and SEIU\textsuperscript{1062} with the support of the NGOs War on Want\textsuperscript{1063} and Change to Win.\textsuperscript{1064}

The Service Employees International Union, PSI affiliate SEIU, took the initiative for joining forces across the Atlantic as part of their long-standing campaign against the McDonald’s business model of union busting and low wages. SEIU is part of the US Fight for Fifteen campaign which seeks to increase the minimum wage in US States to 15 dollars an hour.\textsuperscript{1065} The campaign seeks higher wages for fast-food workers, among others. Hamburger chains are the largest part of that industry and McDonald’s the largest global employer. The campaign aims to use public opinion to pressure McDonald’s so the chain’s management will recognise unions and increase wages. As part of this strategy SEIU approached EPSU, as the leading union organisation in the fight against tax avoidance at EU level to seek partnership in researching and exposing the scale of tax avoidance by McDonald’s in Europe, in cooperation with EFFAT, the ETUC federation representing fast-food workers, among others. The cooperation led to the publication in February 2015 of the report, fittingly entitled ‘Unhappy Meal – 1 Billion Euros in Tax Avoidance on the Menu at McDonald’s’.\textsuperscript{1066}
McDonald’s is one of the world’s most well-known brands, with 36,000 outlets and serving approximately 69 million people per day. McDonald’s employs 1.9 million people and is the second largest private employer in the world. McDonald’s has become the largest food company in Europe and its European division is also a major source of the company’s profits, accounting for nearly 40 per cent of its operating income.\textsuperscript{1067} In 2008 and 2009, McDonald’s underwent two major changes in its European corporate structure ‘which resulted in the aggressive optimization of its tax arrangements in Europe.’\textsuperscript{1068} Firstly, McDonald’s transferred its European intellectual property and franchising rights to a Luxembourg-based subsidiary with branches in Switzerland and the US. In a very short time, this artificial structure became the most profitable subsidiary of McDonald’s receiving the bulk of the company’s royalties made in other EU countries. ‘Despite receiving 833.8 million euros in royalties in 2013, the company had only 13 employees, and provides no indication in its Annual Account of ongoing investment in research and development.’\textsuperscript{1069} Secondly, McDonald’s relocated its European headquarters from London to Geneva. This move was considered in the media as part of an ongoing effort to access lower tax rates.\textsuperscript{1070} The report sees this as part of a broader strategy to limit McDonald’s tax liabilities on foreign earnings. ‘McDonald’s discloses that it retains 12.6 billion euros of undistributed earnings that are considered permanently invested in operations outside the US, for which it does not record tax liabilities, up from 4.9 billion euros in 2008, meaning the company has retained an additional 7.7 billion euros in foreign operations from 2009 through 2013.’\textsuperscript{1071} The report goes on to detail McDonald’s tax evasion stratagems in France, Italy, Spain and the United Kingdom.\textsuperscript{1072} In conclusion, it states that McDonald’s has structured its European business activities in such a way as to pull out billions of euros in royalties. The company has ‘engaged in aggressive and potentially abusive optimisation of its structure which appears to have led to the avoidance of significant amounts of tax’.\textsuperscript{1073} The McDonald’s corporate set-up is estimated to have cost European governments over 1 billion euros in lost tax revenues between 2009 and 2013 if standard corporate tax rates had been applied. The report reveals the likely presence of a tax ruling between the company and Luxembourg authorities as the fast-food leader did not even pay
Luxembourg’s very low tax rate of 5.8 per cent on its royalties but only 1.4 per cent; this is a key revelation for the Commission that at the time was determined to crack down on tax rulings. The authors of the report therefore also challenge the lawfulness of the McDonald’s tax scheme that should be examined by competent authorities at national and European level. This must be ‘backed up by the necessary political will and sufficient investment in human and material conditions in tax enforcement authorities’, 1074 ‘It is shameful to see that a multibillion euro company, that pays low wages to its workforce, still seeks to avoid its responsibility to pay its fair share of much needed taxes to finance public services we all rely on. Rather than supersizing profits and minimising taxes, McDonald’s should change its recipes to ensure that Corporate Citizenship is at the core of its menu’, EPSU General Secretary Jan Willem Goudriaan commented on McDonald’s tax behaviour at the launch of the report. ‘We call on the European Commission and respective national tax authorities, as well as the European’s Parliament’s newly formed special Committee on Tax Rulings, to look closely into McDonald’s tax practices and take appropriate measures.’ 1075

3.2.6 Are serious steps being taken at political level to rein in anti-social tax behaviour?

As could be seen from LuxLeaks, McDonald’s is just one in a long list of multinational companies using a broad range of tax avoidance strategies. If not the legality, the ethics of such conduct has become part of public debate and beyond that sustained public pressure has led to concerted action to put an end to these practices at national, European and international level. ‘In 2013 the OECD, 1076 supported by the G20, promised to bring an end to international corporate tax avoidance, which costs countries around the world billions in tax revenues each year. However, with the recently announced actions against corporate tax dodging, G20 and OECD countries have failed to live up to their promise. Despite some meaningful actions, they have left the fundamentals of a broken tax system intact and failed to curb tax competition and harmful tax practices.’ 1077 This is a critical assessment of the joint multilateral OECD-G20 so-called BEPS [Base Erosion and Profit Shifting] package to ‘tackle aggressive practices which ... artificially shift profits to low or no-tax jurisdictions’. 1078 Following the publication of a 15 point Action Plan in 2013 to address BEPS, OECD and G20 countries released the first set of ‘deliverables’ in September 2014, covering among other things the feasibility of developing a multilateral instrument to facilitate rapid and efficient implementation of the BEPS outcomes. 1079 It can be assumed that the process of reaching BEPS deliverables has encountered difficulties on the way since 2013. TUAC, the Trade Union Advisory Committee 1080 at the OECD described some of the conflicting views on the BEPS action plan. ‘The plan has the ambition to effectively curb aggressive corporate tax planning – but it needs to be effectively implemented. ... Reaction was more measured (if not negative), however, on the part of business and NGOs, although for opposing reasons. For Oxfam, 1081 Christian Aid 1082 and other members of the Tax Justice Network, the BEPS Action Plan does not go far enough. ... On the business side, the tone is also very measured. The British CBI 1083 is reassured by the commitment that ‘administrative and compliance burdens on business’ will be taken on board. Deloitte 1084 stresses that the Action Plan ‘rules out fundamental change to the international tax architecture, such as the adoption of a global unitary tax system’ but flags up ‘potential dangers, such as the possible misuse of confidential information’ should country-by-country reporting to tax authorities become reality.’
The EU should normally be well placed to promote a coordinated implementation of the OECD BEPS actions. The Chair of the ECOFIN Council stated on 8 December 2015 that the EU ‘was, is and will remain a pioneer in the implementation of OECD recommendations’, stressing that the EU had anticipated the BEPS actions following the formal adoption of the Council of the Directive on the automatic exchange of information on tax rulings. The new Anti-Tax Avoidance Package (ATAP) was presented by the Commission on 28 January 2016. In EPSU’s view, the new Package will potentially contribute to making multi-national companies pay more tax, but not yet all the tax they owe.

The Package adopted contains two directives:
- One implements the OECD’s action plan at EU level, with the stated objective of paving the way for a common consolidated corporate tax base in the autumn.
- The other measure requires the automatic exchange between EU tax administrations of essential tax information broken down country by country by large companies; this falls short of a real public country-by-country tax reporting as called for by tax justice campaigners.
- Other non-binding measures cover recommendations on tax havens outside the EU and on good tax governance in developing countries.

‘We welcome that the Commission continues on its tax regulatory path. Governments talk a lot about tax evasion but do very little to stop profitable companies dodging the tax payments’, the EPSU General Secretary, Jan Willem Goudriaan comments. In his view, however, the ‘package fails to live up to ... calls to take tax reform beyond the OECD’s weak action plan. In some cases its recommendations are even weaker than those of the OECD. The Commission rightly condemns the shifting of profits to low tax regimes via excessive interest deductions or bogus intellectual property regimes, as in the case of McDonald’s.’ But the remedies proposed do not go far and deep enough. EPSU, like many other tax justice campaign groups, also deplored that the Commission has delayed proposals to make country-by-country tax information public.

On 8 March 2016, the ECOFIN meeting decided on an automatic information system between tax administrations with regard to tax declarations of multinationals to be officially endorsed in May next. The S&D [Group of the Progressive Alliance of Socialists & Democrats in the European Parliament] considered this a step in the right direction, but the exceptions introduced by the ECOFIN ministers could further undermine an already minimalistic Commission proposal. An S&D press release criticises the ECOFIN decision as not far-reaching enough. ‘They [the Council] had committed the EU to going further than the OECD’s minimum standards, the compromise will allow tax authorities to use commercial secrecy or administrative difficulties to refuse to share information with their partners.’

The discussion process is not finalised on this legislative package, but as with the FTT it would be speculative to predict the final outcome. Plans for a Common Consolidated Corporate Tax Base (CCCTB) were developed in the wake of the financial crisis but have failed to gather sufficient support from the Council of Ministers. As with the FTT, agreement on CCCTB (due to be relaunched in autumn 2016) requires unanimity in the Council. Until the publication of the Panama Papers the political dynamics in support of more far-reaching measures in the area of corporate taxation seemed to have fizzled out. Corporate lobbying activities have borne their fruit in order
to make the proposed measures less stringent. To quote Thomas Piketty: “Tax issues should not be left to those who want to escape taxes.”

The role of the individual EU member states is crucial for the chances of eradicating or at least reducing tax avoidance practices, as long as ‘each country uses its national legislation in conjunction with its tax treaty network to promote itself as a country to invest in, thereby attracting businesses at the expense of partner countries’. Hence cutting through the ‘logics’ of tax competition and tax deals to attract large companies is a major challenge as recognised by the European Parliament’s Special Committee on tax rulings: ‘Some member states tend to have an ambivalent position regarding tax avoidance, complaining, on one hand, about their national tax base erosion, while at the same time being responsible for the design of the current national and international tax systems which made it possible and still impeding any development of their tax systems towards a more coordinated solution.’

Meanwhile the McDonald’s trade union tax shaming campaign continues with some concrete results. In December 2015, the European Commission’s competition services finally launched an investigation into McDonald’s tax arrangements to examine whether these would amount to illegal state aid, in which case it may well be payback time for the profitable company; this means a big step forward for EPSU and its coalition partners. The fast-food leader has also been called to testify at two hearings held by the European Parliament’s TAXE Committee. Equally, it was confirmed by the French Finance Ministry that the French tax administration has opened an investigation into the company. On 26 May 2016 tax fraud police searched McDonald’s French headquarters. The Spanish daily paper El País also recently reported that the Spanish tax services have opened a tax investigation. Outside Europe, a federal prosecutor in Brazil has started a criminal investigation into McDonald’s tax affairs in the country. McDonald’s and its main franchisor in Latin America, Areos Dorados, are accused of using inflated royalty payments to avoid tax. ‘The Big Mac maker’s tax affairs have come under scrutiny amid a global crackdown on tax avoidance.’ One can conclude that thanks also to the trade union coalition, pressure is building up and it is about time that McDonald’s took tax avoidance off its menu.

In the absence of effective measures to expose and tackle corporate tax avoidance such as public country by country reporting by all transnational corporations trade unions, NGOs, investigative journalists, as well as courageous whistleblowers will continue hitting where it hurts most to achieve positive change: companies’ reputations. And of course, the Panama Papers have introduced a fresh round of discussions on individual and corporate tax corporate dodgers.
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4.1 Why write the history of EPSU?

There are several reasons:
- providing a basic understanding of the origins of the organisation;
- understanding the origins of the organisation helps to explain some of the current internal and external tensions;
- providing a summary of past struggles can help to define factors of success and avoid earlier errors;
- giving an insight into how Europe’s public service unions responded to the developing European Union.

This historical review has been written from a perspective of a personal involvement of more than two decades in EPSU and its predecessor organisation EPSC, the European Public Services Committee,

This can be seen as an advantage, as it offers an insider’s view over a long period of time. But it can also be seen as a disadvantage, as being too close or partial. Both of these labels probably hold true: the final ‘product’ represents an inside view of EPSU, reflecting close affinity with the organisation. So yes, this is a partial account of EPSU’s history written by a person that takes pride in having worked for it.

Overall, EPSU’s development can be perceived as a success story and many people have contributed to this success. We have accomplished a long-standing objective of the organisation, namely to establish formal social dialogue committees for all major EPSU sectors. We have successfully run two landmark campaigns on the Right2water and fair taxation. We have developed work in multiple sectors over and beyond the four EPSU Standing Committees. Examples of such activities are prison services and firefighters.
We are active in the very broad area of social services, ranging from child to elderly care, street working to probation. Some of our successes are not visible. We prevented the opening up of the water sector to competition. Water liberalisation was already part of EU Commissioner Bolkestein’s legislative proposal on the Services Directive. Similarly, we have contributed to keeping health services a national competence, as a result of our lobbying campaign on the Directive regarding the application of patients’ rights in cross-border health care.

EPSU is the organisation that represents workers in utilities, such as electricity, gas, water and waste. We are involved in the work of a number of European works councils, mainly in the utilities sector but also in the area of health and social services.

EPSU has championed gender equality. While things are certainly not perfect, EPSU affiliates address gender equality and bring about changes in trade union action and policies. A first equality agreement was negotiated with major input from EPSU in the GDF-SUEZ multinational, now called ENGIE. This was a real breakthrough for gender equality in a traditionally male-dominated environment.

Unions have joined and are joining EPSU because of the access provided to social dialogue, aggregate expertise in various areas and possibilities to influence major policies and decisions.

All those closely involved with EPSU activities will agree that it is worthwhile recording the history of the organisation. Hopefully, readers from a wider audience will take interest in the development of EPSU as well. It is interesting to look at the beginnings, to understand EPSU’s evolution as European trade union federation and its progress as a fully fledged European Social Partner.

It is equally important to understand our position towards liberalisation, what we were able to achieve to safeguard public service provision. Given the concentration of EPSU membership in the public sector in the widest sense, the organisation has frequently found itself at the epicentre of public service liberalisation, ranging from public procurement to the Services Directive, the European Energy Market and recently the negotiations on various international trade deals. Some of these liberalisation attempts could be attenuated in their impact, as in the case of the Services Directive, but the overall pro-liberalisation trend is ongoing. Within the ETUC family I sometimes ran into problems upholding a pro-public sector stance, perceived as too uncompromising and or depicted as ‘loony left’. But taking a strict position on the draft Services Directive during the first reading in the European Parliament has helped to exclude health services and, at least partially, social services from its coverage. As illustrated above we had a difficult time getting support for our critical view of the Patients’ Mobility Directive, with regard to which also some national confederations and Social Democratic MEPs did not share our misgivings with the directive. The final outcome of this particular struggle was the reward for concerted lobbying activities engaging affiliates and other civil society organisations.

There have been setbacks as well, no doubt. While we have been successful in getting recognition of public services in the Lisbon Treaty with the Protocol on Services of General Interest, we have not succeeded obtaining a legal guarantee for public services in secondary legislation through a directive or regulation, as demanded together with the ETUC, CEEP and progressive political parties in the early years of the new century. This despite the fact that the Lisbon Treaty and the Protocol provide a legal basis to act upon. The political majorities in the European Parliament as of 2006 no longer provided sufficient support to achieve this objective. The debate on a horizontal legal framework for ‘services of general interest’ was superseded by debates on the Services Directive.
The efforts in support of a specific legal instrument to protect the special missions of social services against marketisation were not successful either. On the contrary, the debate on a legal framework for social services ended with a political confirmation that the internal market framework would apply, as those services not falling under the scope of the Services Directive would still fall in the field of application of the internal market rules. This pro-market bias has been fittingly described in an EPSU note as ‘compliance mania’.

One of the reasons we did not achieve this objective is that both in the trade union movement and among the organisations of service providers there continued to be those that were opposed to any legal instrument, be it on ‘services of general interest’ or ‘social services of general interest’. This division considerably weakened the political strength of the argument, never mind our ability to successfully promote it.

4.2 Understanding the origins of the EPSU

The early days of the organisation, roughly from 1978 to 1992, its genesis from EPSC (European Public Services Committee) to EPSU were very difficult. The EPSC was formed as a Liaison Committee of two organisations, the European arm of PSI and Eurofedop, supposedly to comply with organisational requirements of the ETUC to also represent unions from the Christian trade union family. With hindsight, it can be said that neither PSI nor Eurofedop really wanted to work together under the same roof of the European Public Services Committee. The EPSC for some years was a mere post box at the ETUC office. It is also fair to say that the relevance of the European unification process was initially less evident for public services, largely considered to be in the remit of member states.

The situation changed in the late 1980s and early 1990s. There were two main factors which brought EPSU to life:

1. The Single European Act was adopted in July 1987 to establish the Internal Market by 1992. This entailed among other things the opening up of public procurement markets; that is, contracts given out to tender by public authorities could no longer be reserved to regional or national providers but had to be issued within the European Internal Market to be established. This Internal Market was mainly geared to deregulation with the essential elements of free movement of goods, services, capital and workers. It was not clear at that time what role would be reserved for the public sector. We foresaw that more markets could be opened up for competition. A strong Federation was needed to defend and promote public services in the EU and at EU level.

2. The second motivation to invigorate EPSC was the perceived need to play a full role within the ETUC and affect ETUC policies. We wanted to get recognition for the role of public services in the economy and in the labour market.

As has been illustrated at some length in the first part of this EPSU review, the particular construction of ‘Liaison Committee’ proved to be inefficient and was a constant source of conflict between the organisations involved. There were problems of ‘ownership’ and ‘identity’ of the EPSC. Aspirations for the role of public services in the emerging European Union were not matched by the EPSC set-up.

The only possible solution to construct a more efficient EPSU was to obtain autonomy in relation to the founding organisations. The formal link between PSI Europe and Eurofedop was brought to an end in 1994. At the same time, membership
was opened up to all unions belonging to an ETUC confederation in the EPSC area of organisation. This proviso was made in order not to contravene ETUC organisational principles, develop the growth of the organisation and thus become more influential and effective. A possible consequence of the break-up was highlighted during a meeting of the European Regional Advisory Committee (EUREC) of the PSI in 1994. Rodney Bickerstaffe, EPSC President and EUREC Chair, made the point that it could not be excluded that the decision to break the link with Eurofedop could lead to a new alliance of Eurofedop and CESI. This prediction showed a lot of foresight as Eurofedop has indeed become a member organisation of CESI, the European Confederation of Independent Unions following the foundation of the ITUC.

As the lengthy debates about a possible ‘harmonisation’ between PSI and EPSC illustrate, a different outcome of this discussion process might have been possible, leading to PSI Europe being recognised as ETUC industry committee. Here the underlying question was very much whether EPSC had stronger links with the ETUC or the PSI. This was quite a fierce debate opposing those favouring a PSI solution against those in support of the ETUC ‘model’. The outcome of the debate indicates that there was overall more support for an ‘ETUC type model’.

While EPSC was formed as a ‘brainchild’ of the ETUC, EPSU has developed into an autonomous Federation. I want to acknowledge here the role of Emilio Gabaglio, ETUC General Secretary 1991–2003. He promoted an ETUC made up of national confederations and strong and autonomous European trade union federations (formerly called European industry committees and then European industry federations). ‘Europe is becoming an increasingly integrated economic area in which thousands of enterprises are operating across traditional national borders. This reality calls for the Europeanisation of the trade unions and a further increase in their capacity to act at European level through the European Trade Union Confederation and the European Industry Federations.’

A similar position was also reflected by John Monks, succeeding Gabaglio in 2003 as ETUC General Secretary in his speech at the founding Congress of the ITUC in 2006. He makes the case for the special status of the ETUC in relation to the newly formed international confederation, arguing why the ETUC could not become a fully-fledged regional organisation of the ITUC.

This facet of EPSU history is important to understand as it paved the way for important constitutional changes, the direct collection of affiliation fees and direct affiliation of numerous trade union organisations coming from very different backgrounds. By the beginning of the millennium, EPSU’s paid up membership was significantly higher in comparison to the European membership of PSI. The majority of member organisations had a dual membership of both EPSU and PSI, but an important minority was affiliated to EPSU ‘only’ in a number of areas, mainly in health

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1. The Paneuropean Trade Union Council – PERC – was set up in 2007 as a trade union platform bringing together unions from the entire European continent, see speech of John Monks at the founding congress in 2007: https://www.etuc.org/speeches/pan-european-regional-council-perc-founding-assembly#.V2kNn6dfsl
2. For example the Royal College of Nurses from the UK, a non-TUC member but today closely cooperating with UNISON and other health unions, became an EPSU member as of 2000.
and social services. This particular development seemed to confirm the argument of those that maintained that the PSI would be weakened by an autonomous EPSU. Conversely, it is also true that the EPSU representativity was significantly enhanced by these affiliations.

The particular EPSU status formed part of the background for the recent merger process with PSI Europe, coming into effect in 2010. As a result of the merger, EPSU represents affiliates across the European continent, including Russia and Central Asia. Much effort has been dedicated to making the merger work and enhancing internal cohesion. The merger discussions lasted nearly five years and saw numerous moments of crisis, essentially because EPSU was not to become a fully integrated regional organisation of the PSI. Some unions had to be given the opportunity to remain outside PSI membership for reasons of representativity, as stipulated by the EPSU constitution and then agreed in the cooperation agreement between EPSU and the PSI. This status of EPSU autonomy nearly brought the merger discussions to a breakdown as trade union representatives from other parts of the world considered this as an unacceptable form of ‘regional fiefdom’, not in line with overall PSI constitutional principles. Meanwhile, EPSU’s status as recognised regional organisation of PSI in Europe has opened up interesting possibilities of close intercontinental cooperation, notably with the Canadian affiliates on the CETA agreement. EPSU representatives participate in PSI structures and the organisation as a whole contributes to PSI work. While EPSU retains a different status from other regional organisations of the PSI, a major part of EPSU’s work is also financed through a separate affiliation fee and European affiliates additionally make a major financial contribution to the operation of the global federation.iii These discussions on the status of EPSU in relation to the PSI and ways of cooperation remain on the agenda and are difficult. They are part of a broader reflection on how the European and international trade union movement should respond to regional and global integration processes.

The European trade union landscape remains complex, to say the least, but some pieces have fallen into place. In February 2005, EPSU and CESI concluded a cooperation agreement forming the basis to establish a joint trade union delegation called TUNED (Trade Unions’ National and European Administrations Delegation) for the purposes of social dialogue in central government administrations. This cooperation agreement marked the end of a lengthy and controversial discussion within EPSU. While EPSU and CESI remain separate and occasionally competing trade union organisations, the agreement has certainly paved the way for a remarkable development of social dialogue in the sector.

4.3 The internal market and public services – liberalisation unlimited?

Jacques Delors is frequently quoted as saying: ‘Nobody can fall in love with the single market.’ He clearly meant to say that the internal market can only be a means (among others) for European integration but never be the end of the European Union itself. It was clear for Delors that the market needed to be complemented by the development of a European ‘social dimension’, among other things. The Maastricht Treaty provided

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iii. EPSU receives an annual transfer from the PSI corresponding to 18 per cent of its income from its European affiliates earmarked for the activities of the central and eastern European affiliates.
the basis for the development of European social policies through a set of minimum standards, for instance on health and safety, thus introducing a level playing field for companies to compete freely but also fairly.\textsuperscript{1104}

Mario Monti in his mission statement accompanying his 2010 Report on a New Strategy for the Single Market also says: ‘that a market is not loved, is normal and even reassuring. A market is an instrument, not an end in itself. When the market is regarded as a superior entity as if it were always able to deliver efficiently and did not need appropriate regulation and rigorous supervision, dangers are likely to lie ahead as shown by the financial crisis. It was forgotten by many that the market “is a good servant but a bad master”.\textsuperscript{1105} This statement of reason seemingly has not been reflected most of the time in the policies promoted by the European Commission. Monti realised that the increasing divide between economic and social rights ‘has the potential to alienate from the single market and the EU a segment of public opinion, workers’ movements and trade unions, which has been over time a key supporter of economic integration’.\textsuperscript{iv}

The so-called ‘Laval’ quartet of rulings of the European Court of Justice was a traumatising experience for the ETUC and its affiliated unions, as they gave more weight to Internal Market freedoms than to fundamental rights. In the Rüffert ruling, the Court argued that the application of higher standards than provided by the Posted Workers Directive would undermine the ‘comparative advantage of the contractor’. These rulings pushed the ETUC to call for the inclusion into the Treaties of a social protocol to reconfirm the primacy of fundamental rights over single market freedoms.\textsuperscript{1106}

The opening of the energy and public procurement markets illustrates the degree of ‘market obsession’ which have dominated Commission policies in these areas. These two particular dossiers have followed EPSC to EPSU from the early 1990s until today. One could say they form part of our historic make-up.

4.3.1 Take the example of the internal energy market

This EPSU review of activities dedicates a chapter to the liberalisation of the energy market, which has been marred by numerous problems, which the European Commission has tried to address in a series of subsequent energy packages, always arguing that market liberalisation has not gone far enough.

Already in its paper ‘Basic Points for the Internal Market for Gas and Electricity’ of 1994 the EPSC criticises the lack of a European Union energy policy as opposed to a mere market approach. The fear was expressed that the rapid internationalisation of the industry could lead to dominance by big powerful companies, a prediction which proved correct. A limited number of big players now dominate the European energy supply market.

The Commission’s line of argument has not changed in the 20-year history of EU internal market policies. Three legislative packages were agreed in 1996/98, 2003 and 2009. Steve Thomas has written a series of research papers for EPSU on the liberalisation of the electricity and gas markets. He concludes: ‘The faith of the European Commission that as free a market as is possible is always the best option for organising the electricity

\textsuperscript{iv}. Kristina Maslauskaite: Posted Workers in the EU: State of Play and Regulatory Evolution, posting of workers has become to symbolize the deep running tensions between social and economic pillars of European integration; Notre Europe, Jacques Delors Institute, March 2014, p. 68: http://www.institutdelors.eu/media/postedworkers-maslauskaite-ne-jdi-mar14.pdf?pdf=ok
industry remains unshakeable despite the failure to create anything that looks remotely like an efficient market either in wholesale or retail.\textsuperscript{1107}

As probably already in 1996, it is now clear that measures to get a grip on climate change will imply that an unconstrained market model is not feasible. In order to meet greenhouse gas emission targets the cheapest energy supply option, namely fossil-fuel plants, must be discouraged. But the objective to achieve a ‘fully functioning and connected internal energy market’ continues to be pursued like the search for the Holy Grail, as illustrated by the European Council conclusions of 23–24 October 2014. In June 2016, an own-initiative report by MEP Werner Langen (EPP) talks about letting electricity ‘move freely to where it is most needed, wanted and valued inside the European Union’. The report also calls for a New Market Design and for the necessary political initiatives in order to make the Internal Energy Market in the EU work properly.\textsuperscript{1108}

The European energy market was set up on the assumption that this would provide positive benefits for Europe’s citizens, leading to lower prices and more security of supply as companies would be able to buy electricity and gas in other countries. The flaws of the electricity market set-up manifested themselves in the early 2000s when a series of major electricity blackouts occurred in North America and several European countries. EPSU highlighted the policy of liberalisation as a possible cause of the network failures. Job losses and the process of contracting out important maintenance tasks had a significant impact on the ability of companies to maintain security of networks and to react to emergencies. EPSU also drew repeated attention to the increasing problem of fuel poverty generated by an ill-functioning market. Rising energy prices have particularly hit low income households. The Third Energy Directive addresses this problem by asking member states to deal with the task through national action plans, thus delegating the collateral social damage of a liberalised European energy market. These action plans have not been developed. EPSU and the European Anti-poverty Network are leading a new initiative to address this problem.

After 20 years of continued energy market failure, the dogma continues to be doggedly pursued. Nearly every European Council and Council of Ministers meeting concludes with stating the need to complete the internal market for electricity and gas. The internal market for energy is to be reformed by the recently launched Energy Union. To the extent, however, that the Energy Union is just a continuation of muddling through, it will not be successful in addressing the challenges of security of supply, investment and just transition.

‘The situation in which Europe’s energy policy finds itself today could be described as a crisis. ... the so-called internal energy market has run out of steam. ... A more ambitious approach to the Energy Union would imply admitting that a key element of Europe’s energy policy – i.e. the internal market policy – is in the doldrums and that the approach which prevailed so far cannot be the way forward.’\textsuperscript{1109}

EPSU in turn also sees the need to deal with the governance of the European Energy Market. We consider the provision of gas and especially of electricity as a public good. There is a small but growing popular movement that seeks a return of electricity into public hands via new municipal companies for renewables, or a return to public ownership of networks. These developments offer the possibility of democratically controlled energy, a concept which EPSU supports and promotes.
4.3.2 Public procurement: keeping the door open for in-house provision

Another truly epic EPSU battle against pure market logic was on public procurement, already announced in the European Commission’s White Paper on the Completion of the Internal Market of 1985. Developing a social clause in procurement was one of the proposals contained in the European Commission’s Social Action Programme of 1989, following pressure from EPSC, the ETUC and other organisations. It remains the only commitment of that programme not fulfilled by the European Commission.

EPSU has engaged in major lobbying activities during both of the major revisions of the public procurement legislative package. Both in 2003 and again in 2010, EPSU was also an active part and promoter of a broad lobbying coalition consisting of trade unions and NGOs. This certainly proved to be a very efficient and effective way of multiplying contact possibilities and thus strengthening the lobbying drive.

There have been two key objectives in EPSU’s lobbying activities in over 20 years of public procurement legislation:
1. the integration of social and environmental clauses in public procurement contracts;
2. the right to in-house provision of public services.

EPSU, together with its coalition partners stressed the need for wider goals for public procurement and wider social and sustainability policy objectives and commitments of the EU. These wider goals covered issues such as decent work, equal pay, gender pay, gender equality, sustainable development, fair trade, social cohesion, social dialogue and promotion of collective agreements, environmental and climate protection, supply chain liability and transparency. EPSU further campaigned for inclusion of a reference to ILO Convention No. 94 on labour clauses in public contracts. This was to ensure that locally agreed collective agreements would remain in force. This objective of the EPSU campaign did not receive sufficient support in the European Parliament and Council. Still, the new legislation allows contracting parties to introduce social and environmental considerations throughout the procurement process. It confirms the possibility for public authorities to indicate collective agreements that need to be applied and further stresses that contractors are responsible for sub-contractors and have to notify them.

Most importantly, the right of public authorities to provide services directly was confirmed. Public procurement remains only one of many alternative ways to provide public services. Thus the door has been kept open for direct public service delivery. For EPSU this was a very satisfying outcome of a long-lasting battle over public procurement. It is a showcase of EPSU’s increasing maturity as an organisation, its ability to form lobbying coalitions for effective influence.

4.4 Who influences European policymaking – the relative weight of the European trade union movement

The case study on public procurement shows that European trade union organisations are capable not only of making their voices heard but have their views reflected in the final legislative texts.

There are, however, other, more potent lobbyists at work when it comes to formulating and influencing European policymaking. Advisory and expert groups, set up by the European Commission, are filled with representatives with a corporate interest.
background. Thus they contribute to shaping policies in the interests of major business groups. The corporate capture in many of these expert groups has been revealed by a joint report by Alter-EU, AK Europa and the ÖGB European Office. Almost 80 per cent of stakeholders represent corporate interests, with only 3 per cent representing small and medium-sized enterprises and 1 per cent representing trade unions. An example is the DG Taxation’s expert group on Good Tax Governance, where a majority of representatives speak for organisations with little interest in bringing to light corporate tax dodging. The foxes are in charge of the hen house’, as the joint report appropriately describes this extraordinary situation.1110

Another telling indicator of the corporate bias dominant in certain parts of the European Commission is the frequently used claim that the ‘well-being of business’ always coincides with the well-being of citizens at large. In October 2013, DG Enterprise and Industry of the European Commission ran a conference with the telling title: The Path to Growth: For a Business Friendly Public Administration. In his opening speech the Commissioner in charge at the time, Tajani, makes the point: ‘We need to get Europe back on track, to enhance economic growth and well-being for our businesses and citizens. An important way to achieve this is to ensure that companies are working in a conducive business environment. We cannot have growth without competitiveness.’ 1111

The equation that the well-being of businesses seems to always coincide with the well-being of citizens is manipulative and gross.

The EPSU reaction followed in an Executive Committee statement: ‘EPSU rejects the exclusive, obsessive, and caricatural focus of the European Commission on a “business-friendly” administration and recalls that public administrations must serve the interests of all people, not just one segment of society. ... Policymaking in recent years has consistently favoured business interests over other groups in society. Business even has its own “better or smart regulation agenda” under the direct responsibility of EC President Barroso and privileged access to policymaking through the multitude of EC expert groups dominated by corporate representatives.’ EPSU condemns what it phrases as ‘silent revolution’, turning public administrations into business outlets.1112

The High Level Group on Administrative Burdens, or the Stoiber Group, named after its chair Edmund Stoiber, former Prime Minister of Bavaria, was first set up in 2007 under the Barroso I Commission.1114

The High Level Group published its final report on 24 July 2014.1115 The following extracts from the report exemplify the general philosophy of the majority represented in the Group: ‘Smart regulation is the key element for the future EU law making process: Where it is necessary to regulate, legislation must be designed so as to achieve policy objectives most effectively and at lowest cost to society, citizens and business.’ Again it is insinuated that regulation with the ‘lowest cost for business’ would equate with the ‘lowest cost for society and citizens’. The EU legislative machinery is, however, not seen as the only culprit and an important share of the blame is put at the doorstep of the member states.

V. As explained in Part III, Section 2, EPSU was the only member organisation of the ETUC to be selected in 2013 to the Platform for Good Tax Governance. CESI was attributed a seat at a later stage.

VI. Interestingly, the EPSC Report of Activities of 1994–1995 makes a reference to the Molitor Report, advocating wide ranging deregulation and administrative simplification. This report was contested by several heads of state and hence no follow-up was given to that report. See EPSC Report of Activities 1994–1995, p. 15, link to the Report of the group of independent experts on legislative and administrative simplification, COM(95) 288, 21 June 1995: http://aei.pitt.edu/2867/
Member states themselves are guilty by going beyond the requirements of EU legislation, referred to as “gold-plating” or inefficient national, regional or local implementation of EU requirements in member states.\textsuperscript{1116} This then is another gross distortion of facts suggesting that EU requirements represent maximum standards which member states should not be allowed to go beyond, when in fact the opposite is true.\textsuperscript{VII}

A Dissenting Opinion to the final report was published by four members of the High Level Group, representing consumer, public health, trade union and environment concerns. In their statement these members saliently make the point: ‘Food labelling, instructions for using medicines, environmental labelling, obligations to disclose the cost of financial services or to inform workers of their rights are all “administrative burdens” within the meaning of the tasks given to the group, but there is little acknowledgement in the Report of the positive aspects of such “burdens”.’ The four dissenters further argue that building the common market is only one of a number of legitimate reasons for the EU to regulate.\textsuperscript{1117}

The political corollary of the Stoiber Group is the REFIT (Regulatory Fitness and Performance Programme) agenda,\textsuperscript{1118} launched under Commission President Barroso and embraced by the Juncker Commission as well. With the appointment of the First Vice-President (Frans Timmermans) in charge of vetting all new Commission initiatives and a reinforced Secretariat-General decision-making has been streamlined or ‘presidentialised’. Edmund Stoiber has yet again been appointed to the post of ‘Special Advisor for Better Regulation’ as ‘the right man for the task’.\textsuperscript{1119}

Lastly, we must note that a paradigm shift seems to be occurring in the European Union. The delegitimisation or sidelining of actors instituted by the Treaty on the Functioning of the European Union (social partners, EESC, CoR) to the benefit of a new category of actors – “high-level” experts, consultants, stakeholders – is worrying because a new form of opaqueness is developing, which is perhaps more dangerous than the dysfunctions in the current system. If we involve these new actors in the process from start to finish, even before the democratic procedure as been initiated, this will open the door to hidden influences.\textsuperscript{1120}

The unbalanced composition of the Expert Groups set up by the European Commission has been the subject of repeated criticism from organisations of civil society. As a consequence, the European Ombudsman, Emily O’Reilly, launched an inquiry into the composition of expert groups and their influence on policymaking in 2013, following a complaint from Alter EU. Commenting on the first results available in early 2016, the Ombudsman stated that ‘citizens have a right to know fully how expert advice feeds into EU decision-making’.\textsuperscript{1121}

The Ombudsman asked the Commission to draw up a definition of balance when it comes to the composition of the expert groups. There clearly is a problem with the dominance of corporate interests over other interests in the European Union.

\textsuperscript{VII.} This interpretation of EU standards as representing ‘maximum’ as opposed to ‘minimum’ standards has sneaked its way into EU debates with the interpretation of the Posting of Workers Directive by the European Court of Justice in the Laval, Rüffert and Luxembourg cases. The interpretation in these cases established a priority of internal market rules over social rights. See ETUC: A revision of the Posting of Workers Directive: Eight proposals for improvement: Final report from the ETUC Expert Group on Posting; Brussels, 31 May 2010: https://www.etuc.org/IMG/pdf/final_report_ETUC_expert_group_posting_310510_EN.pdf In May 2016, 11 Member States from Central and Eastern Europe introduced a ‘yellow-card’ procedure against the planned revision of the posting of workers directive. The proposed revision of the directive attempted to redress ‘social dumping’ where European companies use low-cost workers to circumvent the labour force of a host country. For further explanation see: http://leidenlawblog.nl/articles/third-times-a-charm-national-parliaments-form-bloc-against-posted-workers-d
In welcoming this enquiry, the ETUC took an unusually critical position by criticizing the dominance of corporate interests in these expert groups. While trade union organisations are underrepresented, the ETUC also saw the role of social dialogue and other forms of formal consultations undermined.

The ETUC’s explanation of the causes of the pro-business bias is as follows:
- ‘an institutional culture, within the European Commission which privileges corporate interest;
- the lack of diversity in the backgrounds of Commission officials and internal expert;
- the lack of knowledge and in some cases blatant ignorance of some EC officials on social policy, industrial relations matters and EC social obligations on social dialogue;
- the disparity in both human and material resources, between trade union and civil society organisations and those representing corporate interests;
- the proliferation of experts groups that we fear bypasses EU institutions and undermines EU democratic decision-making process and public scrutiny.’

The ETUC is highly critical of the pro-business bias and the apparent unwillingness of the Commission to address the problem of privileged access. The Secretariat General of the European Commission, overseeing all expert groups, is accused of refusing to acknowledge the domination of groups by corporate interests as a problem. A report from Corporate Europe Observatory (CEO) and Friends of the Earth Europe illustrates the ‘informal’ influence of former senior civil servants, turned lobbyists, on the policy design of the European Commission and sees this as one of the root causes of the one-sided, pro-business orientation of this important institution. This is a troubling conclusion, but not an unreasonable one to reach in light of the evidence presented. ‘A deregulation agenda favourable to big business interests has, over the past decade, entirely permeated the European Commission. With the entrenchment of REFIT, the goal of “cutting red tape” has morphed into slashing regulations that raise costs for business – and protect the environment, workers and consumers. Worryingly, an agenda started by Barroso – from “better” and “smarter” regulation to REFIT and the Stoiber Group – looks set to continue and expand under Juncker.’

4.5 Against all odds: Pursuing a public service agenda

A flashback in time: During a meeting of the Social Dialogue Committee of July 1994, UNICE, the predecessor organisation of Business Europe, introduced a report entitled ‘Making Europe More Competitive – Towards World Class Performance’ as its response to the Delors White Paper. ‘The report sets out several areas for action to shrink the public sector through deregulation and privatisation.’ The costs of unemployment benefits should be reduced by limiting the period of entitlement and enforcing tougher eligibility criteria. Sickness and disablement benefits are to be transferred from the public sector to companies and individuals. The costs of pensions are to be trimmed so as to only provide a ‘basic’ state pension for everyone who has worked, with an optional complementary pension financed by companies and/or individuals. In its 1993–1994 Activities Report, the EPSC strongly criticised these proposals, stating that it was not appropriate to claim that measures of deregulation and privatisation were in the interests of all citizens, providing more jobs and a higher standard of living.
Transnational companies were the principal beneficiaries from privatisation, be it in the energy or water industry or in cleaning and security services.\textsuperscript{1127}

The UNICE 1994 version of competitiveness advocacy reflects the major building blocks of the neoliberal policy paradigm. The political template for this philosophy had been very much set by Margaret Thatcher and Ronald Reagan during the 1980s, who both pursued stringent deregulation, anti-public sector and anti-trade union policies. Ironically, it was to be the Social Democratic/Green coalition government in Germany, headed by Gerhard Schröder, which in 2003\textsuperscript{1128} introduced ‘Agenda 2010’ with the ambition to cut back on public and welfare services in order to promote ‘individual responsibility’. A major element of this reform agenda was a far-reaching labour market reform, the so-called ‘Hartz IV’, implemented in the early 2000s. It constituted the largest cut in the German welfare system since the Second World War.

In the recent economic and financial crisis, from 2008 onwards, employers, the interested ‘privatising industry’\textsuperscript{1129} seized the opportunity to ardently promote a general neoliberal restructuring of economies with the support of the Troika institutions (expert groups composed of representatives from the European Commission, the European Central Bank and the International Monetary Fund; since February 2015 now referred to as the ‘Institutions’).\textsuperscript{1130} In the ‘Troika’ countries in particular, public and social welfare services were dramatically curtailed and pressure was put on countries such as Greece to proceed with wide-ranging privatisations. While Greece stands out as the most emblematic case of Troika-forced privatisations, the Mediterranean country is not the only one being pressurised into implementing such programmes. Portugal, Italy, Spain, Ireland and the UK have all seen a renewed effort to privatise the last remaining state services.\textsuperscript{1131} The economic crisis provided a favourable pretext for EU institutions to promote and impose austerity policies, of which privatisations were key features. These undemocratically imposed policies often meet with popular and trade union opposition, as was the case with water privatisation in Thessaloniki. The movement against this privatisation organised a referendum in May 2014, supported also by EPSU. A total of 218,000 citizens took part in the popular vote and an amazing 98 per cent said ‘no’ to water privatisation.\textsuperscript{1132} Still, in 2016 the fight against water privatisation in Greece was not over, in spite of a successful referendum and a ruling of the Greek Supreme Court against privatisation. Partial privatisation of the water companies in Thessaloniki and Athens continues to feature in the Troika’s bailout plans for Greece. ‘The sell-off of these companies plays a key role in releasing cash which can be pumped back into the creditor’s coffers.’\textsuperscript{1133}

The dominant neoliberal policy concept pursued throughout recent decades has increased the glaring social inequalities within and between societies. This is unfortunately true for the European Union, where Germany’s excessive export rates are to the detriment of the economic development of other EU countries. This is also true for the crass social divide between developed and developing countries. The organisation Oxfam International regularly draws attention to this untenable state of affairs. The Oxfam 2015 Report predicted that in 2016 the ‘combined wealth of the richest 1 per cent will overtake that of the other 99 percent of people, unless the current trend of rising inequalities is checked.’

Oxfam is advocating an action plan to tackle inequalities, recommending the following:
- clamp down on tax dodging by corporations and rich individuals;
- invest in universal, free public services, such as health and education;
- introduce minimum wages and move towards a living wage for all workers;
– promote equal pay legislation for women;
– ensure adequate safety nets for the poorest.

Our current economic system, an economy for the 1 per cent, is broken, Oxfam has declared.\textsuperscript{1134} I cannot agree more.

International trade deals have become another vehicle to promote market opening, liberalisation, deregulation and investor protection. These trade agreements are promoted as instruments to ‘regulate globalisation’, but this regulation is motivated first and foremost by corporate business interests.

Both EPSU and our global federation PSI are very critical of these unbalanced trade deals. We criticised the Multilateral Agreement on Investment, the GATS deal and the DOHA Round. Those unsuccessful attempts at reaching multilateral agreements at the beginning of the millennium were opposed by a very broad alliance of social movements, including many municipalities who declared themselves ‘GATS-free zones’. This campaign was aimed at achieving agreements based on fair trade, that are respectful of public services, are transparent and follow democratic processes, taking the concerns of developing countries seriously. This same type of criticism spurs the opposition to a series of new trade deals the European Commission is seeking to conclude with Canada (CETA), the US (TTIP) and many other countries around the world on services (TISA).

4.5.1 International trade deals – a threat to public services

At the 2014 EPSU Congress, Larry Brown from NUPGE, the Canadian National Union of Public and General Employees, referred to international trade deals as ‘corporate constitutions’ because, in his view, they have very little to do with trade but a lot to do with granting corporate rights at the expense of governments’ rights to regulate.\textsuperscript{1135} “The problem with CETA is the ratchet effect: the level of liberalisation included in these deals only goes one way. The last treaty is the starting point for the negotiations of the next. So if you are worried about TTIP, you should be worried about what’s in CETA because everything in CETA will definitely be included in TTIP.”\textsuperscript{1136}

On Public Service Day, 23 June 2016, EPSU rang the alarm bell and called for the rejection of CETA, the Comprehensive Economic and Trade Agreement. CETA risks being passed through European decision-making machinery ‘with barely a whisper about its far-reaching consequences for workers’ rights, public services and democracy as a whole’.\textsuperscript{1137} CETA has slipped under the radar of public attention, overshadowed by trade negotiations currently under way between the European Union and the United States over the Transatlantic Trade and Investment Partnership (TTIP).

Unlike TTIP, negotiations on the CETA text have already been finalised. The College of Commissioners are expected to endorse the final CETA proposal in July, with the official approval by the Council expected to happen already in September or October and adoption in the European Parliament in late autumn.

As the details of CETA emerge, it becomes clear that it is not a good deal and in addition sets a worrying precedent for future trade agreements, including TTIP.

EPSU highlights the following key points:
– CETA does not offer adequate protection for public services in spite of the recommendations made by the European Parliament to exclude public services in their entirety from trade deals, irrespective of how they are financed and organised.
– CETA is based on a negative-list approach for services commitments. This means that all services will be subject to market liberalisation, unless explicitly excluded. This makes a radical departure from the positive lists of previous agreements, where services are committed one by one. The negative-list approach thus expands trade agreements and makes it more difficult to anticipate and regulate new services that might develop in the future.

– The inclusion of ‘standstill’ and ‘ratchet’ mechanisms will lock in present and future liberalisation, so infringing on governments’ future possibilities to extend regulation or renationalise services. The European Parliament has rejected such standstill clauses in its recommendations on TISA (Trade in Services Agreement) as they undermine the democratic process and accountability.

– CETA severely restricts the use of universal service obligations in the post and telecoms sector. Such obligations are to guarantee universal access to basic services at affordable prices to citizens. CETA will also restrict the freedom of public utilities to produce and distribute energy according to public interest goals, such as to support renewable energy to combat climate change. Very few member states have explicitly reserved their right to adopt certain measures in electricity production.

– CETA contains far-reaching investment protection provisions. While CETA’s revised investor protection mechanism (Investor Court System) is an improvement on the Investor-State Dispute Settlement, it still is not acceptable. The ICS continues to grant special rights to investors to sue governments for policies seen as threatening their expected profit margins. This right will apply to many of the US companies that have operations in Canada. Hence, CETA risks continuing a trend of previous ISDS claims by private providers, rendering sectors, such as education, water, health, and social welfare and pensions vulnerable to all kinds of investor attacks.

– CETA is weak on human rights, including workers’ rights. CETA does not include any clause to protect human rights nor does it include binding and enforceable
measures to ensure that ILO core labour standards are respected. The CETA public procurement provisions do not include obligations to respect labour and environmental standards nor does it promote the use of social and environmental criteria in public tenders.

The European Commission has tried to diffuse these concerns by referring to the EU’s ‘tried and tested’ techniques for safeguarding public services in trade agreements in past years. But CETA does not resemble previous trade agreements. It covers a package of new provisions that change the balance of protection for public services. It raises the worrying suggestion that the EU no longer has anything to do with public services and that anything is UP for grabs by foreign investors. There is no doubt: the European trade union movement needs to muster its forces to stop CETA and similar agreements. These agreements must be stopped because they constitute a threat to democracy, transparency, public scrutiny and accountability.

So EPSU has to again get into mobilisation mode, this time against a secretly negotiated trade agreement pushing for liberalisation of public services through the backdoor. EPSU has gained sufficient experience over time to muster support for such a major campaign. Opposition against CETA, TTIP and TISA is widespread and EPSU will not be alone in this battle. It has the support of other European Trade Union Federations and the ETUC; it can count on wide support in civil society. More often than not, business interests do not automatically concur with citizens’ interests. This is illustrated by the large number of citizens’ movements around the globe to ward off privatisation and to take back privatised services into public ownership.

This manuscript was concluded on the day that the results of the Brexit referendum in the UK became known, on 24 June 2016. A slim majority of people in the UK voted in support of leaving the EU. Most UK trade unions, EPSU and ETUC had campaigned for the Remain vote. Still there were many workers that were not convinced of the
benefits of the European Union. The EU has for many become associated with corporate interests and attacks on public services. This history of EPSU shows that these concerns are justified. There has been a lack of an EU social agenda roughly throughout the past 15 years. Migration and the dismal handling of the ‘refugee crisis’ by EU government leaders further fuelled concerns in the UK. It is ironic if not deeply saddening that some progressive forces were campaigning for the Leave Camp and included opposition to the TTIP deal in their arguments. (Vote Leave to prevent the UK being part of TTIP) They will now have to come to terms with a likely Free Trade Agreement between the UK and the EU. Can we build a sufficiently strong social movement to ensure UK and EU workers get the best deal?

For EPSU, Brexit and its aftermath will open a new chapter. There are many unknowns and challenges that public service workers and their unions will face: further integration of the remaining EU or the start of more disintegration? We see a growing and very worrying trend towards nationalism and xenophobia in many European countries. History tells us this does not bode well for workers. Responding to this will be one of the many challenges European public service workers and their unions need to respond to in the coming years. I am convinced that a strong European Federation, joining our interests and power across workplaces, borders and cultures needs to be part of that response.
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1102. A draft directive on public country-by-country reporting is currently the subject of a draft directive but its scope is limited to EU territory.


1106. See Part II, chapter 7.


1113. Ibid.


1116. Ibid., p. 20.


1118. For an analysis see ETUI: https://www.etui.org/Topics/EU-institutional-development/Better-regulation-and-REFIT

1119. Van den Abeele (2015), op. cit., p. 34.

1120. Ibid., p. 28.


1123. Ibid.


1126. Ibid.

1127. Ibid.


1136. Ibid.
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Biography of Carola Fischbach-Pyttel

Born in 1950 (Flensburg, Germany)


Main work experience:
- Trade union secretary with the German Public Service and Transport Union (ÖTV), 1979 – 1986. She started her trade union career in 1978 with responsibility for health policy at the ÖTV head office in Stuttgart and in 1982 became a local organiser for the Munich ÖTV branch in different areas, for example women, social security services and education.
- Regional / vocational secretary with Public Services International (PSI), 1986 – 1992 She pioneered the women and gender equality work of PSI and ensured the Women’s Committee became a dominant factor in promoting women in the organisation and equality policies in public unions across the world. She was also responsible for the European region of the PSI.
- EPSU, from 1992, since 1996 as General Secretary until 2014. As EPSU General Secretary she was a member of the ETUC Executive Committee and the PSI Executive Board.

Carola is a lifetime member of the German social democratic party SPD and been active in the SPD Brussels branch for many years including in its Board.

Since 2016 Carola has re-joined her husband Hilmar Pyttel and now lives in Hamburg.
Appendices

1. List of EPSC/EPSU Presidents

1978 – 1982  Cyril Cooper, Institution of Professional Civil Servants, UK, died in 2012
1996 – 2001  Herbert Mai, ÖTV, Germany
2001 – 2005  Anna Salfi, FP-CGIL, Italy
2005 – 2014  Anne-Marie Perret, FGF-FO, France
2014 – 2016  Annelie Nordström, Kommunal, Sweden
As off 2016  Isolde Kunkel-Weber, ver.di, Germany

2. List of EPSC General Assemblies/EPSU Congresses since the recognition of the EPSC as an industry committee of the ETUC in 1978

24 April 1981 Inaugural General Assembly at Luxembourg
14 February 1985 2nd General Assembly at Brussels, Belgium
10 – 11 February 1989 3rd General Assembly at Estoril, Portugal
1 – 3 April 1992 4th General Assembly at Prague, Czechoslovakia (Dissolved into Czech and Slovak Republics as of 1 January 1993).
23 – 24 May 1996 5th General Assembly at Vienna, Austria
17 – 19 April 2000 6th General Assembly at Lisbon, Portugal
14 – 17 June 2004 7th Congress at Stockholm, Sweden
8 – 11 June 2009 8th Congress at Brussels, Belgium
20 – 23 May 2014 9th Congress at Toulouse, France
Photos of EPSU congresses

Rodney Bickerstaffe, EPSU President from 1990 to 1996, with Carola Fischbach-Pyttel, at EPSU General Assembly, 1996, Vienna

From left to right: Francisco Braz, STAL Portugal, John SHELDON, Joint General Secretary PCS UK, Herbert Mai, EPSU President from 1996 to 2001, Carola Fischbach-Pyttel, EPSU General Secretary from 1996 to May 2014, Poul Winkler, FOA, Denmark, Jorge Nobre Dos Santos, SINTAP, Portugal, at EPSU General Assembly, 2000, Lisbon
EPSU Congress board, June 2004, Stockholm – from left to right: Jiri Schlanger, TUHSS Czech Republic, Ylva Thorn, Kommunal Sweden, María José Allende, FES-CC OO Spain, Anna Salfi, EPSU President from 2001 to 2005, Carola Fischbach-Pyttel EPSU General Secretary from 1996 to May 2014, Anne-Marie Perret EPSU President from 2005 to 2014 and Rino Tarelli, FPS-CISL Italy

Anne-Marie Perret, EPSU President from 2005 to 2014, speaking at EPSU Congress 2009, Brussels
Dave Prentis, General Secretary, UNISON UK and EPSU Vice-President speaking at EPSU Congress 2009, Brussels

Jan Willem Goudriaan, EPSU General Secretary since May 2014 with Annelie Nordström, Kommunal, Sweden, EPSU President from May 2014 to 2016, after elections at EPSU Congress 2014, Toulouse
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