

## **The CECOP position on the European Commission's consultation "EU initiative on Concessions"**

Brussels, 30 September 2010

*CECOP – CICOPA Europe (European Confederation of Worker Cooperatives, Social Cooperatives and Social and Participative Enterprises) is a European confederation grouping national organisations in 16 countries which in turn affiliate over 50.000 cooperative and participative enterprises in industry and services. The vast majority are SMEs, while some of them are second-degree enterprises of SMEs. They employ 1.4 million workers across Europe. Among the main sectors of activity, we find metal industries, mechanical industries, construction and public work, wood industry and furniture, white goods, textiles and garments, transport, media-related activities, social-health services, long-term care, employment services, education and culture, environmental activities, etc. Finally, more than a thousand worker cooperatives in the CECOP network were born as business transfers to employees of conventional enterprises in crisis or without heirs.*

As a confederation grouping around 50.000 enterprises across Europe, part of which are involved in concessions (both works concessions and service concessions), CECOP wishes to take the opportunity during the on-going consultation "EU initiative on Concessions" to share important issues for its members.

As already expressed in the letter, sent to the Commissioner Barnier during the first consultation on concessions launched by the European Commission in June 2010, the existing situation in which works concessions are regulated at the EU level, while service concessions are not, goes against the full implementation of the EU internal market. The continued absence of any type of EU regulation for service concessions will consequently cause a reinforcement of case law, which would never generate a satisfactory level of legal certainty, and thus would remain a constant obstacle to the full implementation of the internal market, especially for the smaller economic actors such as SMEs, including cooperative SMEs. As member-based economic organisations, industrial and service cooperatives, as well as cooperatives in general, are characterized by long-term business strategies and lay a strong emphasis on capital accumulation, dedicating a substantial percentage of their surpluses to this purpose.

In the letter, we have expressed our support for an EU regulation for service concessions, on the same level as that which is already in force for works concessions, in particular concerning the obligation of publicity and the obligation to sub-contract part of the concession to third parties that are not companies controlled by the contracting party. Such minimum EU regulation would provide the enterprises that are in a position to compete for public concession contracts, including cooperatives, with the necessary legal certainty to bring into full play their economic contribution to the EU's development.

In the second consultation published in August 2010, the European Commission describes its new initiative on concessions as a measure to contribute to EU policy goals in the field of Public-Private Partnerships, as explained in the Commission's Communication on "Mobilising private and public investment for recovery and long term structural change: developing Public-Private Partnerships". If through this new initiative on concessions, the European Commission's objective is to mobilise private and public investment for recovery and long term structural change in the EU, then "modest" legal provisions on concessions such as those mentioned above could not be an adequate solution. A minimal EU regulation in this way will not be sufficient to attract capital needed for the recovery of the EU economy and long-term structural change.

In order to achieve this ambitious goal, the European Commission should:

- adopt a **new definition for concessions**, with particular clarification of elements such as the notion of risk, the duration of the concessions, the “modifiability” in time of the clauses of concession and extension/modification of the contents of the concessions
- adopt a **definition for contractual Public-Private Partnerships**, with a **clear distinction between concessions and public procurements**
- transform existing case law and Commission interpretative communications in **regulations**<sup>1</sup>

It is also important to underline that service concessions have been under constant increase over the last few years across the EU, and have a very strong development potential over the next few years. In this way, when developing policies and regulations related to service concessions, the European Commission should take into consideration the employment potential that is behind service concessions as well as social effects and the added value they generate.

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<sup>1</sup> Those elements are more detailed in the consultation questionnaire sent to the European Commission