



EPSU Circular LC N° 44 (2012)  
To EPSU affiliates in EU countries  
EPSU public services network  
Cc ETUC

Ref: CFP/PC/cb  
Contact person: Penny Clarke [pclarke@epsu.org](mailto:pclarke@epsu.org)

Brussels, 31 October 2012

Dear colleagues,

**EU-Canada Comprehensive Economic and Trade Agreement (CETA): EU must not weaken its position on public services!**

We draw your attention to new threats posed to public services in the negotiations for a Comprehensive Economic and Trade Agreement (CETA) with Canada. .

As you will see from the attached paper, the European Commission (EC) presented to the Trade Policy Committee (TPC) three options for dealing with public services in CETA. The EC considers that “...it would be desirable for the chosen option to provide an optimal solution appropriate for other negotiations as well” indicating the significance of CETA for future bilateral - and multilateral - negotiations. However, the three options are not equivalent and only the third option (option (c) that maintains the current EU position) would be acceptable. Weakening the existing ‘public utilities’ reservation - which in practice is broader than the concept ‘public utilities’ implies – would reduce the policy space of governments to regulate public services and to provide these services to citizens

From our understanding of discussions in the TPC, a sizeable number of governments share our concerns and have indicated that they wish to maintain the current position on public services. However, we do not know if any guarantees have been given about this and there is apparently pressure on governments to conclude the CETA by the end of the year.

**This being the case, it would be helpful if you would raise with your government and/or your confederation our concerns about any weakening of the current ‘public utilities’ clause.**

Both EU and Canadian citizens need to see broad exclusions of public services from CETA and the maintenance of sufficient policy space to define and regulate public services in the future<sup>1</sup>. Any weakening of the current EU position would represent a step backwards and it would further reduce policy space for public authorities, and especially local authorities, to provide and regulate public services in the general interest.<sup>2</sup>

<sup>1</sup> These arguments are developed in a study “Public services in bilateral free trade agreements of the EU” (November 2011) by Professor Markus Krajewski University of Erlangen-Nuernberg. The study also explores how the EU might develop in trade negotiations a more positive approach towards public services [http://www.epsu.org/IMG/pdf/PublicServicesFTAs\\_FinalVersion-2.pdf](http://www.epsu.org/IMG/pdf/PublicServicesFTAs_FinalVersion-2.pdf) )

<sup>2</sup> See also EPSU/ETUC letter of 21 November 2011 [http://www.epsu.org/IMG/pdf/211111\\_ETUC-EPSU\\_CETA.pdf](http://www.epsu.org/IMG/pdf/211111_ETUC-EPSU_CETA.pdf)

Furthermore, the European Commission does not appear to have provided any impact assessment of the options put forward in the paper. This also pleads for caution and for maintaining the status quo, in keeping with comments made to EPSU by Commissioner De Gucht that ... *“there is thus no Commission initiative to open up more public services to trade liberalisation.”*<sup>3</sup>

Please will you let us know of any feedback you have from your government on this.

Many thanks,

Best regards,



Carola

Carola Fischbach-Pyttel  
General Secretary  
European Federation of Public Service Unions (EPSU)  
<http://www.epsu.org>

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<sup>3</sup> For the Commissioner's letter (5 July 2011) and other information on trade and public services see <http://www.epsu.org/r/230>



EUROPEAN COMMISSION  
Directorate-General for Trade

Directorate B - Services and investment, bilateral trade relations

Brussels, 5 September 2012  
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**OPTIONS FOR PRESERVING THE SUBSTANCE OF THE "PUBLIC UTILITIES" RESERVATION IN THE CONTEXT OF THE COMPREHENSIVE ECONOMIC AND TRADE AGREEMENT (CETA) BETWEEN THE EU AND CANADA**

**INTRODUCTION**

Canada has requested the EU to modify the current "public utilities" reservation currently found in Annex II of the EU schedule for services and investment in the CETA in order to improve transparency. Concretely, Canada wants the EU to eliminate the current PU reservation and instead:

- a) Specify explicitly all public monopolies currently existing at national and regional level, but not at local level;*
- b) Providing an exhaustive list of the sectors where exclusive rights may apply at national and regional level excluding the local level;*
- c) Removing duplications/overlaps with other reservations in order to provide greater clarity and legal certainty.*

In their view, existing local measures would be covered by grandfathering and no local level reservations would thus be necessary.

Since this issue also arises in the context of other EU negotiations such as those with Mercosur, and is likely to arise in future negotiations with other trading partners as well, the issue should be viewed in a broader context and not solely in the context of negotiations with Canada.

**THE CURRENT "PUBLIC UTILITIES" RESERVATION**

*In all EC Member States services considered as public utilities at a national or local level may be subject to public monopolies or to exclusive rights granted to private operators.\*1*

<sup>1</sup> *Explanatory Note: Public utilities exist in sectors such as related scientific and technical consulting services, R&D services on social sciences and humanities, technical testing and analysis services, environmental services, health services, transport services and services auxiliary to all modes of transport. Exclusive rights on such services are often granted to private operators, for instance operators with concessions from public authorities, subject to specific service obligations. Given that public utilities often also exist at the sub-central level, detailed and exhaustive*

*sector-specific scheduling is not practical. This limitation does not apply to telecommunications and to computer and related services.*

The current reservation applies to Article XVI Market Access of the GATS, and particularly to para 2. (a):-

*“... the measures which a Member shall not maintain or adopt either on the basis of a regional subdivision or on the basis of its entire territory, unless otherwise specified... are defined as:*

- (a) Limitations on the number of service suppliers, whether in the form of numerical quotas, monopolies, exclusive service suppliers or the requirements of an economic needs test;”*

Information provided by a number of Member States suggests that the actual situation with regard to existing exclusive rights and monopolies for public services, as well as the necessary current and future policy space, varies considerably between Member States. Moreover, where there is a situation which is common to most Member States, such as the exclusive rights or monopolies found in the health, education, and transport sectors, then the necessary specific EU reservations preserving monopolies or exclusive rights already exist.

## **OPTIONS**

The following potential options for maintaining the current level of protection of public services can be envisaged. None of the options below would introduce additional liberalisation of public services. Clearly the outcome of each proposal in terms of the consequences in negotiating results will be different but is not possible to quantify at this stage of negotiations with Canada. It would be desirable for the chosen option to provide an optimal solution appropriate for other negotiations as well.

- a) Improve the transparency and legal certainty of the public utilities reservation through explicit reservations which specify the existing monopolies or exclusive rights in a particular sector only at national and regional levels. Member States would have full freedom to determine for themselves whether they wish to subject a particular monopoly or exclusive right to a ratchet or instead to preserve full policy space to maintain quantitative restrictions in the future. Retain the existing public utilities reservation essentially in its current format and scope for the local level.
- b) Hybrid solution: each Member State introduces a specific reservation appropriate to its own individual needs and interests which provides the necessary level of protection, while improving transparency and legal certainty where possible. Some Member States may make use of option a), others may wish to continue to make use of the current wording of the PU reservation and apply it also to regional, or to both regional and national levels as is the current practice (option c).
- c) Maintain the status quo: Continue to use an EU-wide one-size-fits all Public Utilities reservation based on the current format and scope and applied to all levels of government.