



## Open letter to the European Parliament by the EU Social Partners in the Contract Catering sector

**Brussels, 17 December 2013: On the eve of the plenary vote for the revision of the Public Procurement Directive, the EU Social Partners in the contract catering sector call on Members of the European Parliament to include their sector under the full scope of the Directive and to ensure that the new rules effectively guarantee socially responsible tenders.**

The IMCO Committee endorsed on 5 September 2013 the trilogue agreement on the Public Procurement Directive reached by the European Council, the European Parliament (EP) and the European Commission. On the eve of the vote in plenary session by the European Parliament, foreseen for January 2014, the EU Social Partners in the contract catering sector, EFFAT (European Federation of Food, Agriculture and Tourism Trade Unions) and FoodServiceEurope, call on MEPs to ensure the new rules effectively guarantee socially responsible tenders.

Although some progress has been achieved in certain fields, with regard to the sector we represent the negotiated text does not fully meet our expectations and presents many shortcomings: it jeopardizes legal certainty and fails to effectively ensure that the general public will benefit from procurement decisions based on the best value for money. The following are issues of key concern for our sector:

### Scope of the Directive

Contrary to the Commission's original proposal and the IMCO report adopted in December 2012, the final agreement excludes the contract catering sector from the full scope of the Directive. "Hotel and restaurant services", which also cover contract catering, are now included under Annex XVI and thereby subject to the lighter regime set out for social services (Articles 74, 75, 76). Under this regime, a very high threshold has been established and only general principles apply to crucial aspects of the public procurement procedure, leaving to Member States significant freedom to decide the applicable regime. Contract catering would therefore remain excluded, without any justified reason, from the stronger legal framework that is provided at EU level by the Directive for most other economic sectors.

The inclusion of catering services under the full scope of the Directive would represent a crucial opportunity to create a level playing field and encourage cross-border trade in this sector. A stronger European legal framework would be an advantage for all the stakeholders concerned by the procurement procedure: contracting authorities, enterprises, employees and society as a whole. **We therefore call on the EP to ensure that contract catering will fall within the full scope of the Directive by excluding our sector from Annex XVI.**

### Award criteria

In the aftermath of negotiations, claims have been made that the agreement reached between Council and EP ensures that contracts would be awarded on the basis of the "most economically advantageous tender" (MEAT) and that the new text would put an end to the "dictatorship of the lowest price".

The text agreed does state that "...contracting authorities shall base the award of public contracts on the 'most economically advantageous tender' (Art. 66). However, this longstanding concept has been given a new meaning and is no longer to be understood as an award criterion, but rather as a mere overarching principle for the award of contracts, thus voiding the term of any operational meaning.

Despite this deceptive reshuffling of terminology, the proposed directive would indeed allow tenders to be awarded on the basis of price only: Under the new provisions, in fact, contracts would be awarded on the basis of a) price; b) a cost effectiveness approach, or, as a mere option, c) the “best-quality ratio” (which essentially would replace the current MEAT criterion).

Furthermore, in respect to the contract catering sector and all the services under Annex XVI, Art.76 leaves to Member States a similar wide discretion concerning the award criteria and does not even expressly provide for the possibility of Member States excluding the price only criterion.

In a labour intensive sector such as contract catering, bidding for services solely in view of the lowest price leads to a downward spiral on the quality of the services provided to the detriment of all stakeholders involved, in particular workers. EFFAT and FoodServiceEurope thus **call on the EP to effectively ensure that the public procurement of services can no longer be awarded on the basis of mere price considerations.**

### Abnormally low tenders

Contrary to what had been originally proposed the agreed text does not provide for objective criteria for the identification of abnormally low tenders and thereby again renounces to legal certainty. The Social Partners for the contract catering sector do welcome the confirmation by trilogue negotiations of the obligation for contracting authorities to ask information on prices charged where a tender significantly undercuts the prices demanded by other tenderers (Art. 69) and that it maintains the obligation to reject offers abnormally low due to non-compliance with social, environmental and labour standards. However, **the introduction of an objective definition at EU level of what is meant by “abnormally low tenders” is an essential element to ensure the new provisions are indeed effective.**

#### For more information please contact:

Kerstin Howald (EFFAT)  
Tel: +32 2 218 77 30  
[effat@effat.org](mailto:effat@effat.org)

Rocco Renaldi (FoodServiceEurope)  
Tel: +32 2 808 0644  
[RRenaldi@foodserviceeurope.org](mailto:RRenaldi@foodserviceeurope.org)