

EPSU recommendations for trilogues on public procurement Directives

(5 March 2013) As you know, there is now a trilogue(*) between the EP IMCO, Council and European Commission on the public procurement and concessions Directives. Last week we circulated to you [EPSU's demands regarding the concessions Directive](#) (*available in English and French*) and we now send you our views on the public procurement Directives. We underline that in the trilogue each Directive should be discussed on its merits and that it should not be necessary to 'intertwine' the two dossiers.

Our recommendations for the trilogue on public procurement are set out in the attached paper. This has been drawn up by the NSDPP Network for Sustainable Development in Public Procurement (NSDPP), which brings together a number of trade unions and NGOs, including EPSU. The broad composition of the NSDPP shows the wide support that exists to strengthen the 'sustainability' provisions of the Directives and to make it easier to include social and environmental considerations. The key recommendations are summarised on the first page and the accompanying table gives a comparison of the EP IMCO and Council texts and concrete proposals. Please note that we will translate the cover page into French. We ask you to raise the issues covered by the NSDPP assessment with your government and IMCO contacts.

Points to raise include:

- * The EP has deleted the 'lowest price' option, thus encouraging contracting authorities to consider the wider consequences of their purchasing rather than default to the cheapest price. This is a step forward and needs to be maintained in the trilogue.
- * The EP has set as general principle compliance with law and collective agreements and has therefore helpfully underscored that environmental and social issues are relevant in the procurement context. It also indicates that monitoring of compliance with social and environmental laws is necessary, which will in itself improve the attention that is given to monitoring of contract performance. This

achievement needs to be maintained (**).

-* There is no reference in the EP or Council texts to social clauses and ILO Convention 94 on labour clauses in public contracts. This demand should be raised again.

-* Both the EP and the Council texts reflect recent changes in case law (e.g. the “North Holland” ruling) and acknowledge the broad discretion for contracting authorities to include social and environmental considerations. However, it needs to be stated clearly in the Directive that such considerations are permissible at all stages of the procurement process, not just as award criteria.

-* In both the EP and the Council texts the definition of ‘life-cycle’ life-cycle is comprehensive but it needs also to be extended to cover social externalities in the same way as environmental externalities.

-* The interpretation of ‘link to the subject matter’ should reflect CJEU case law, which has clarified that environmental and social aspects of production processes and methods can be taken into consideration, also with regards to technical specifications and selection criteria.

-* The EP and Council text on transparency of public contracts for citizens (and so the use of public money) do not go far enough and we should raise our previous demands that contracts are made public

-* The Council amendment introduced to the Article on reserved contracts (Article 17) should be deleted as this would encourage privatisation The first meetings of the trilogue take place already this month, with discussion on Articles 15(2), 40, 42, 52, 55, 56, 60, 67, 68, 70 scheduled already for 26 March. (We will send you further information about the timetable as soon as possible.) Please keep us informed of your discussions. Many thanks for your support.

(*) For an [explanation of the trilogue procedure see here](#). The EP representatives are the Rapporteur(s), Shadows and the Chair of the IMCO. After each trilogue, the EP representative s report back to the IMCO and documents are to be made available on that occasion. If the negotiations lead to a compromise, the agreed text has to go to the vote in IMCO, then in plenary. In the absence of a compromise, the normal procedure in the European Parliament resumes with a plenary session vote and its accompanying amendments.

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