



EUROPEAN COMMISSION
Employment, Social Affairs and Equal Opportunities DG

Social Dialogue, Social Rights, Working Conditions, Adaptation to Change
Social Dialogue, Industrial Relations

**Plenary Meeting of the Sectoral Social Dialogue Committee
in Contract Catering**

7 October 2008

Minutes

Present:

FERCO:	Belgium	UBC	Charles PETIT
	France	SNRC	Claudine FABBY
		SNRC	Laurent HUEZ
	Hungary	MVSZ	Peter ROMAN
		MVSZ	Lajos BÖRÖCZ
		MVSZ	Andras MESZAROS
		MVSZ	Jolan Kaposzta GRELINGER
	Italy	ANGEM	Ilario PEROTTO
	Netherlands	VENECA	Jan van ZUNDERT
	Portugal	ARESP	Filomena DIEGUES
	Spain	FEADRS	Paloma FERNANDEZ ALLER
			DE RODA
	Sweden	SHR	Torbjörn GRANEVARN
		FERCO	Antonio LLORENS TUBAU
FERCO		Marie-Christine LEFEBVRE	
EFFAT:	Finland	PAM	Annika RÖNNI SÄLLINEN
		PAM	Sirpa LEPPÄKÄNGAS
	France	FGTA-FO	Rafaël NEDZYNSKI
	Hungary	VISZ	Erzsébet KOLLARSKY
		VISZ	Judit RUISZNE NADAS
		VISZ	Bernadett NAGY
		VISZ	Maria BOGDÁNNE NÁNAI
		VISZ	Zsuzsanna VARNAI
	Spain	FECOHT-CCOO	Pilar RATO RODRIGUEZ
		TCM-UGT	Gema SANCHEZ
		EFFAT	Kerstin HOWALD
EFFAT		Elke LIBBBRECHT	
EFFAT		Athanasios BATSILAS	
Invited Guest:	Oxford Research	Kim MØLLER	
EU Commission:	DG EMPL	Susan BIRD	
	DG EMPL	Tomasz WIRKUS	
	DG EMPL	Elisabeth AUFHEIMER	

1. Opening

The plenary meeting is co-chaired by Antonio Llorens, FERCO President, and Rafael Nedzynski, EFFAT Vice-President, FGTA-FO, France, who jointly welcome the participants.

Rafael Nedzynski excuses the absence of Mr Harald Wiedenhofer, the EFFAT Secretary General. Because of their participation in actions, taking place in several Member States, some trade unions will also be absent.

Mr Llorens highlights the current difficult economic situation. Given that clients in the contract catering sector such as schools, hospitals, etc, are probably less affected by these economic difficulties, the sector may be less sensitive to the crisis. But in any case, this situation will test the ability of the social partners to collaborate in times of arduousness.

Ms Aufheimer, European Commission, DG EMPL, welcomes the participants; on behalf of Mr Jean-Paul Tricart, the new head of the Commission's social dialogue unit, she transmits his best wishes for an efficient and fruitful work in the SSDC contract catering.

2. Approval of the agenda and of the minutes

The agenda is approved. It is agreed to start with the item: Study “**Comprehensive sectoral analysis of emerging competences and economic activities in the EU**”: presentation of the interim report on Hotels, Restaurants and Catering by Oxford Research, the consultant appointed by DG Employment.

The minutes of the Conference, held on **9 October 2007**, when the Social Dialogue Committee in the Contract Catering Sector was officially launched, are approved.

3. Study “**Comprehensive sectoral analysis of emerging competences and economic activities in the EU**”: presentation of the interim report on Hotels, Restaurants and Catering by Oxford Research, the consultant appointed by DG Employment.

Mr Kim Møller, Oxford Research, presents the study. (Slides are joined to the minutes).

4. **EFFAT-FERCO Guide to the economically most advantageous offer in contract catering**

- Follow up of the EU Conference “Promoting Best Value through Social Dialogue” organized with the cleaning, private security and textile sectors and coordinated by the EU Commission, DG EMPL
- Presentation of the Draft “**Guide on Social Considerations in Public Procurement**”, an initiative of DG Employment for the promotion of social aspects in public procurement, by Ms Susan Bird, DG Employment, Unit “EU Employment Strategy, CSR and local development”.

Ms Howald (EFFAT) gives an introduction to the guide on the economically most advantageous offer in contract catering, which was established in 2006 and was disseminated through the network of national social partners. Four sectors (contract catering, cleaning, private security, textile sector) have developed similar initiatives. They recognized that awarding contracts based only on the lowest prize is a practice that is not in the interest of any of the parties concerned, neither the client authorities and their users, nor the contract catering companies and their employees.

Since 2007, action has been taken to bring together the different activities of the 4 sectors in order to promote the economically most advantageous offer.

The first result of this cooperation was a large conference, held in Brussels in April 2008. 200 people attended, and presentations were given from all four sectors. Everyone agreed that the guides were a very important instrument. A joint statement and a press release were issued by the four sectors. The social partners clearly stated that they would like to see the economically most advantageous offer take priority over the lowest price, for public procurement as well as for private procurement.

There was also a clear appeal, launched to the European Institutions as clients. The European Institutions are awarding many contracts to the sectors concerned (canteens, private security, cleaning, etc.) and therefore should also incorporate the principle of the economically most advantageous offer.

At present a guide which refers to social criteria in the awarding of contracts is drafted by the European Commission. The social partners of the 4 sectors clearly stated their demand to be part of this preparatory work.

Concerning the way to proceed, the social partners insist on four points:

- 1) The guide should be made better known at sectoral and at EU-level
- 2) A joint document should be sent to the bodies, responsible for public procurement (Member States and Cities), making clear what the interests of the sectors are.
- 3) A number of other sectors are interested to join this initiative. At the last EC Forum de liaison the latest developments were discussed. The European Commission has agreed for further actions.
- 4) A stronger political profile is desirable: more political weight should be given to the legislative level. The economically most advantageous offer should also be used among private customers and should be binding. On the one hand this would lead to more sustainability, and on the other hand it would contribute to the Lisbon strategy in creating better jobs.

Ms Susan Bird (European Commission, DG EMPL) presents the EC initiative on social considerations in public procurement. A guide will be elaborated by DG EMPL and DG Internal Market. On 6 November a meeting with interested parties will take place, and in late spring 2009 the guide will be completed. (Slides are joined to the minutes).

In the following discussion, Mr Perotto (FERCO) for Italy, as well as Mr Llorens (FERCO) for Spain regret that the guide is not applied in their countries and that – in public procurement - it is always the price that is considered essential. Therefore a legislative instrument would be necessary.

For France, Mr Nedzynski (EFFAT) refers to problems in the area of competition legislation. Ms Lefebvre (FERCO) insists on the necessity to push the economically most advantageous offer much more forcefully.

Ms Bird (European Commission) highlights the possibility to implement the economically most advantageous offer by the instruments of CSR. She states that the European Commission does not necessarily focus on binding obligations. The guide is a soft measure aimed at raising awareness.

5. EU Platform for Action on Diet, Physical Activity and Health

Report on the activities of the Platform and presentation of the contribution of contract catering to the fight against obesity by Ms Lefebvre, FERCO Secretary General

6. Training Manual on Food Hygiene for the Contract Catering Sector

Presentation of the Draft FERCO Guide on Food Hygiene by Ms Lefebvre, FERCO Secretary General

Item 5 and item 6 are dealt together.

Ms Lefebvre (FERCO) makes reference to the documents that she had prepared for the participants, the 2008 commitments to the Platform and the report on the 2007 commitments. In 2005, the fight against obesity was started. The monitoring report includes significant examples from different countries on how contract catering companies, working with clients and suppliers, have contributed to the fight against obesity.

The second commitment is to implement the national nutritional guidelines and the FERCO general nutrition recommendations. Various examples show how companies and national associations have worked closely with public authorities on the implementation of the national guidelines.

The third commitment concerns the participation in national public initiatives and the developments of educational campaigns. A large number of activities regarding the education of the end consumers have been launched.

For 2008 and 2009, the European Commission has put emphasis on salt reduction. What can be done in this field should be specified at the national level. A close cooperation with the industry and the suppliers is necessary.

Concerning the Training Manual on Food Hygiene, it will be based on the EU Guide to Good Practice in Food Hygiene drafted by FERCO which will be finalised at the end of 2008. FERCO is seeking for the recognition of the Guide as Community Guide to good practice. This work was done in close cooperation with experts from national level and companies. At the request of the European Commission, FERCO will circulate the Guide for consultation amongst other stakeholders. The final endorsement of the Guide by the FERCO members should take place in December 2008. The Guide will then be submitted to DG SANCO for recognition as Community Guide by the Standing Committee on the Food Chain and Animal Health.

There is a plan to create an electronic version in English, downloadable for free from the FERCO website.

In 2009, FERCO and EFFAT intend to use the Guide as a background in order to draft a Training Manual on Food Hygiene. For this, help from the European Commission will be necessary to organize the experts meetings. The manual will be produced in English.

In answering a question from Mr Böröcz (FERCO), Ms Lefebvre (FERCO) stresses that, once the Hygiene Guide is recognized at EU level, national authorities and controllers will have to take it into consideration, when controlling companies of the contract catering sector.

In addition, as far as food hygiene is concerned, national authorities always have the capacity to go further than what is required by the EU regulation, which is the case in Hungary at the moment.

7. After the lunch break, the **DVD on Social Dialogue**, produced by the European Commission, is shown.

8. Corporate Social Responsibility in Contract Catering

Implementation of the EFFAT – FERCO Agreement on CSR

Presentation of examples of existing good practices in two areas:

"Transfer of undertakings"

- Presentation of the Dutch example by Jan van Zundert, VENECA Secretary General
- Presentation of the French example by Rafaël Nedzynski, FGTA-FO
- Comments by Mr Tomasz Wirkus, DG Employment, unit "Labour Law"

The **Dutch example** is presented by Mr Jan van Zundert (FERCO). He underlines the fact that the contract catering sector is quite different from other services and industries. Transfer of undertakings in the sector mainly means a transfer of contracts.

The EU directive was made applicable through the implementation of a separate social paragraph in the labour laws of the Netherlands; however, for many years it was considered to be inapplicable for facility services and building services. This was one of the reasons why trade unions and the employers' association VENECA introduced a social provision in their collective agreement, based on the idea that both sides - the loosing as well as the winning contractor - were responsible for dealing with the social consequences of the transfer.

Since the decision of the European Court concerning the Austrian SODEXO case, the situation in Holland has changed. The legal services of the trade unions have started legal procedures on the basis of the EU ruling, in spite of the collective agreement.

In 2005, 2006 it was again agreed by the social partners, that the situation in the contract catering sector is totally different from other services and industries in Holland. The Dutch government was asked either to exclude the contract catering sector from the EU Directive or to give social partners the right to deal with this matter in their own way, only on the basis of social agreements. At this moment, discussion is ongoing with the Dutch government.

A new social provision based upon the EU ruling was adopted in the collective agreement:

- 1) The group of employees affected by the changeover of contracts and the group of people involved were defined and a mutation list was made up, to be accepted by the new partner. If this list is not accepted by the new partner, he can call on a special arbitration commission.
- 2) Special attention is given to people who are ill for more than one year.
- 3) Different aspects of income and of other rights acquired with the old contractor were defined.
- 4) It was agreed upon a social plan dealing with the effects on the people who will not have, in the new situation, the same number of hours as in the former contract.

In this social agreement the European rules are accepted and adopted, but adjusted to the way contract catering is functioning.

In answering a question from Ms Rato Rodriguez (EFFAT), asking if employment is guaranteed, Mr van Zundert underlines that the Dutch model is a total social plan at the national level, taking into account all aspects, income, wages, transfer costs, etc.

Mr Wirkus (European Commission, DG EMPL) stresses the importance of the social dialogue, and specifies at the same time that in case there is a transfer according to the European Directive, there is in principle an automatic transfer of the workforce on the day of the transfer, as well as a transfer of rights.

Mr van Zundert insists upon the fact that the Dutch model is in full accordance with the directive.

The **French example** is presented by Mr Rafaël Nedzynski (EFFAT):

In France this question is not a controversial subject between trade unions and employers. It is agreed that a transfer should not entail any changes in the employment situation.

The point of departure is a law which is part of the labour code and stipulates that all work contracts must be taken up by the new employer. In 1985 a decision of the highest court stated that this article of the labour code applies only if there is a change in the legal situation of the employer, but would not apply in cases of transfer of contracts.

Three months after this judgement, the social partners reached an agreement: Work contracts are to be retained by the person or the entity taking over the contract. There exist two exceptions: In the case of an important change of technology, the transfer of contracts does not involve the transfer of all of the employees. The second exception concerns salaried employees and people in the higher management; they remain with the original employer and keep all their rights, including wages, qualifications, seniority, etc.

On the contrary, collective advantages, like health coverage, pension plans, etc. are of the competence of the new employer.

Certain elements concerning the procedure must be taken into consideration: 15 days before the transfer, the loser of the contract must write to the new employer and to the employees.

What happens if the employed person refuses to be transferred? If the labour contract does not change, this is considered as a resignation. If the labour contract has changed, then the employee is made redundant. The conditions for redundancy are similar to the conditions applied for employee representatives.

This is the result of the agreement which was signed in 1985. Since then, something has changed: French justice has modified its jurisprudence. A new decision established that transfers of contracts also include transfers of all the jobs, even if the companies are not changed.

The situation of a central kitchen was not taken into consideration in the agreement. A central kitchen prepares i.e. meals for all the schools plus for some private companies. What happens if the contract for the schools changes, but not for the private clients? These questions created a certain number of cases and sometimes real difficulties. The agreement of 1985 was completed for these cases: All the employees in the central kitchen would have to follow the contract. At that time the rules on the management staff were also modified.

In practice, most of the problems are solved in good faith by the parties concerned, even if there are still problems pending which could lead to certain distortions. From a trade union's point of view we are attached to the system we have established in France.

Mr Huez (FERCO) adds that in the negotiations the principle was always that the person who has been awarded the contract has to face this problem, without the employees suffering any loss. Secondly, there have been certain exceptions in the course of the years; adjustments to market realities have been gradually introduced. In 2007, social partners in France have

succeeded at branch level to integrate into the agreement the necessity to keep seniority in a given branch.

Mr Wirkus (European Commission, DG EMPL) underlines the fact that the social partners in 1985 even went a step further than the Supreme Court's decision, in making the rules on transfer applicable also to change of contract and to certain change of service provision; this was later confirmed by the European Court of Justice.

"Gender equality"

- The Chair excuses the absence of the participant who was scheduled to present the Belgian regulation introducing Gender Equality criteria in public procurement.
- Presentation of the Swedish example by Torbjörn Granevarn, Legal Advisor in SHR (Slides are joined to the minutes)

Mr Granevarn gives a presentation on how the contract catering companies in Sweden are implementing the gender equality principles.

Ms Pilar Rato Rodriguez (EFFAT) expresses her profound dismay in seeing the figures on women in management and insists upon the necessity to continue working for more gender equality.

9. Employment and training in Contract Catering

Follow up of the FERCO – EFFAT agreement on training

Mr Nedzynski (EFFAT) excuses the absence of the participant who was scheduled to present an example from Finland. He gives a review on the agreement on vocational training, signed by EFFAT and FERCO, and the three existing kinds of implementation of the agreement:

- a) New national collective agreements in order to integrate the principles of vocational training (France, Belgium, i.e.)
- b) A second group of countries did not need to change their national collective agreement
- c) The third group consists of Member States without any measures which are in line with the joint agreement.

Since last year this situation has not changed.

10. Work programme

Ms Lefebvre (FERCO) presents the proposal for the work program for 2009 which is formally approved with two small amendments from Ms Howald (EFFAT) (see attached final version).

11. Closing of the meeting

The meeting is closed by the two co-chairs. Mr Nedzynski (EFFAT) insists upon the necessity to keep the European Commission informed about the special aspects of the sector activities and to draw special attention on the CSR agreement which includes very important subjects. He reminds the participants that it is up to the social partners to make this agreement work.

Mr Llorens' (FERCO) closing remarks concern the necessity to have a strong social dialogue in these economically difficult times. He thanks all the participants for this fruitful meeting, as well as the interpreters.