European Court confirms possibility to demand Fair Trade criteria in public procurement

10 May 2012 (Brussels) – Two days before World Fair Trade Day, the Court of Justice of the European Union provides much-needed legal clarification by confirming that Fair Trade criteria can be included in public procurement. This confirms the practice across the European Union by contracting authorities and cannot be ignored in the current revision of the EU Public Procurement Directive.

This decision puts an end to a dispute between the Dutch Government and the European Commission. In 2008 the Province of North Holland, published a tendering procedure for a public contract for the supply and management of automatic coffee machines, which referred to products bearing the EKO and Max Havelaar labels. The European Commission referred the Netherlands to the Court of Justice of the European Union in 2010 for non-compliance with the EU public procurement rules.

In its ruling today, the Court clearly states that contracting authorities can chose award criteria based on considerations of an environmental or social nature. The Court also explicitly states it is possible to refer in award criteria “to the fact that a product is of fair trade origin”. Consequently, public authorities can give preference to a bidder who includes Fair Trade criteria.

The judgment also confirms that contracting authorities can refer to the environmental characteristics of Fair Trade (e.g. no pesticides, no Genetically Modified Organisms) as part of the technical specifications of a call for tenders.

Concerning the reference to labels, the Court considers that, by referring to a label without listing the underlying criteria of this label, the North-Holland Province did not comply with the provisions of the Directive. The Court is of the view that it is necessary to specify the underlying criteria of labels, such as Fair Trade labels. Labels are nevertheless considered by the Court as a valid means of proof of compliance with such criteria, provided that other means of proof are allowed.

Overall, the ruling is good news for the Fair Trade movement as it clarifies the inclusion of Fair Trade considerations all along the tendering process, under the current EU Public Procurement Directive. Sergi Corbalán, Executive Director of the Fair Trade Advocacy Office stated “we welcome the confirmation by the European Court that Fair Trade criteria can be supported through public procurement under the current EU rules”.

This clarification is on time as the EU Public Procurement Directive is currently being revised at EU level. An important issue at stake is whether, in the future EU rules, technical specifications can refer to social aspects in production process “The European Parliament and Council of Ministers should ensure the future EU rules permit a distinction to be made in the technical specifications between
products produced with or without, for example, forced child labour”, Corbalán said.

The ruling is also timely as it has been issued two days before World Fair Trade Day, an initiative of the World Fair Trade Organization (WFTO) that takes place every second Saturday of May. In this context, Fair Trade will be celebrated on 12 May 2012 in diverse places and cultures across the globe. Various events are organized in more than 70 countries in Africa, Asia, Europe, Latin America, North America and Pacific Rim.

The Fair Trade Advocacy Office (FTAO) speaks out for Fair Trade and trade justice with the aim to improve trading conditions for marginalised producers and workers in the South. It is a joint initiative of the European Fair Trade Association (EFTA), Fairtrade International (FLO and the World Fair Trade Organization-Europe (WFTO-Europe). These networks bring together over 2 million Fair Trade producers from more than 60 countries, 24 labelling initiatives, hundreds of specialized Fair Trade importers, over 3000 Worldshops and more than 100,000 volunteers.

Contact: Elba Estrada. Fair Trade Advocacy Office. Rue Fernand Bernierstraat 15 – 1060 Brussels – Belgium. Tel: +32 (0) 4 73 540 741. Email: estrada@fairtrade-advocacy.org