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# JOINT POSITION

On the Revision of the  
EU Public Procurement  
Directive 2014/24



## Joint EFFAT-FoodServiceEurope Position on the Revision of the EU Public Procurement Directive 2014/24

The European Sectoral Social Partners in the contract catering sector, FoodServiceEurope and EFFAT welcome the Commission's decision to revise EU Public Procurement Directive 2014/24.

The contract catering sector in the EU covers the services needed to prepare and provide meals to people working and/or living in communities, including public administrations, nurseries, schools, hospitals, retirement homes and prisons. It is a major industry that employs over 600,000 people across Europe. More than 6 billion meals are prepared every year, serving 67 million consumers every day. The sector has an annual turnover of more than €24.4 billion, underlining its significant economic and social impact.

The contract catering sector also plays a critical social function, delivering meals to vulnerable consumers (e.g., children, patients, the elderly) at a subsidised “social” price. Contract caterers have a unique role within the EU's food system to guarantee access to nutrition to individuals who may not otherwise have it. In the current cost-of-living crisis an increasing number of people, and in particular children, are at risk of poverty, and this social function is needed more than ever. To that end, it is fundamental that the sector can operate and continue to provide the billions of meals that it delivers each year. But that ability to operate is currently under threat.

While the majority of EU businesses are struggling to operate in the poly-crisis environment that has emerged in recent years, contract caterers face a particular challenge: despite the rising costs, from raw materials inflation to energy and labour costs, they are often forced to operate within fixed-price contracts that are still awarded to the cheapest offer. The principle of the lowest price encourages a race to the bottom, which leads to unfair competition, and downward pressure on quality standards and operational sustainability, potentially impacting long-term service quality and working conditions.

That is why, as outlined in the [EFFAT-FoodServiceEurope Declaration on Public Procurement and Collective Bargaining](#), EFFAT and FoodServiceEurope call for the revision of the Public Procurement Directive (2014/24) so that Member States exclude the use of the lowest price as main criterion for the award of tenders in essential services and labour-intensive industries, such as contract catering. EFFAT and Food Service Europe support instead the ‘best value’ approach, giving priority to social and environmental criteria, as outlined in the [EFFAT- FoodServiceEurope Guide to Choosing Best Value in Contracting Food Services](#).

After years of intensive advocacy from Social Partners, the European Commission has recognised the need to revise the current legal framework for public procurement. The reports by Enrico Letta ([Much more than a market](#)) and by Mario Draghi ([The future of European competitiveness](#)) acknowledge public procurement as a key tool for promoting EU objectives. The [Vision for Agriculture and Food](#) highlights the need to have a “best value” approach when it comes to food procurement, with the promotion of food produced with high environmental and social standards.

The existing rules on public procurement exclude the catering sector from the full scope of the Directive. 'Hotel and restaurant services' are currently included in Annex XIV and are therefore subject to the lighter regime for social and other specific services (Articles 74, 75 and 76).

Under these provisions, only the fundamental principles of the Directive apply to the essential aspects of public procurement. Even if there is already a clear obligation to take into account quality and sustainability criteria for the awarding of contracts (Article 76), EFFAT and Food Service Europe believe that the improvements and demands outlined in this joint position paper should apply to all

industry sectors, including contract catering for which the light regime for social and other services applies.

Therefore, we believe that the revision of the EU Public Procurement Directive must deliver on four priorities:

## 1. Strengthening the Social Clause and Ensuring Mandatory Application of Collective Agreements

Directive 2014/24/EU must better safeguard social and labour standards. The current discretionary application of Article 18(2) has failed to protect workers from poor conditions and unfair competition.

### Recommendations

- **Ensure that public contracts are only awarded to companies that are party to or adhere to collective agreements** concluded by the representative trade unions and employer organisations at the relevant level in their Member State, whether that be national sectoral, regional or other, or generally applicable collective agreements, where they exist: companies that do not adhere to collective agreements, where they exist, should hence be excluded from public tenders.
- **Strengthen and clarify the horizontal social clause** so that the respect of national, EU and international labour standards and laws and applicable collective agreements are a condition for both the award and execution of contracts. In particular, economic operators that have violated workers' and trade union rights shall be excluded from public procurement processes.
- Clarify public procurement rules so that **priority can be given to tenderers whose workers (and those of their subcontractors) are covered by collective agreements**.
- Guarantee the **reinstatement of workers** in the same job and under the same or improved employment conditions in the event of a change of economic operator.
- **Collective agreements must be exempt from the subject matter link** (article 67) and can never be considered as a discriminatory measure in public contracts.
- **Promote collective bargaining through public procurement** by encouraging pre-award consultation with Social Partners.

## 2. Moving Away from Lowest Price to Best Value

The fundamental obstacle for contract catering operators is that public sector procurement contracts are still predominantly awarded based on the lowest offer. Competing on price alone can lead to a race to the bottom both in terms of services provided and working conditions – particularly in the case of subcontracting chains, which are accompanied by lower wages and poorer working conditions.

This can result in huge potential losses for customers, workers, users and the sector as a whole.

Public procurement can be a lever for sustainability and the creation of quality jobs, both in contract catering and across the agri-food sector, but not if the lowest price is the reference criterion to award tenders.

A recent [study](#) conducted in April 2021 by the EU Joint Action Best-reMaP project on EU and national public procurement legislation identified the requirement to choose the cheapest offer as the main issue for food procurement, when it comes to providing the highest quality and healthiest food.

As the EU pivots towards creating a more sustainable EU food system, now more than ever the contract catering sector needs to be supported in its efforts to raise the bar in terms of sustainability and nutrition. The most effective way to do this is by ensuring that contracts are awarded based on quality criteria, a ‘best value approach’, rather than the lowest price.

FoodServiceEurope and EFFAT have been calling for a best value approach to public procurement for many years, as outlined in our [Best Value Guide](#) – ‘Choosing Best Value in Contracting Food Services’. We also call for a best-value approach to public procurement in our 2023 [Joint Declaration on Public Procurement and Collective Bargaining](#) with EFFAT.

This joint declaration stresses the need to ensure that existing legislation aimed at strengthening social and economic rights is effectively implemented. It refers to the article 9 of the Directive on Adequate Minimum Wages, which provides that Member States shall take appropriate measures to ensure that, in the awarding and performance of public procurement or concession contracts, economic operators and their subcontractors comply with the applicable obligations regarding wages, the right to organise and collective bargaining on wage-setting, in the field of social and labour law established at national, EU or international level.

It is high time that the EU took decisive action in this regard, for without it, the important objectives of the Farm to Fork Strategy will remain elusive for our sector.

## Recommendations

- **Ban the awarding of contracts solely on price**, and mandate instead the use of quality criteria, including social and environmental criteria as outlined in the EFFAT-FoodServiceEurope [Best Value Guide](#).
- **Redefine the Most Economically Advantageous Tender (MEAT) criterion as the Most Advantageous Tender (MAT)**, establishing the Best Price-Quality and Sustainability Ratio (BPQ&S) as the standard award criterion for public contracts. The adoption of MAT criteria would allow social and environmental considerations to be assessed independently of purely economic factors. Currently, according to Article 67, the MEAT criterion ‘may include the best price-quality ratio, which shall be assessed on the basis of criteria, including qualitative, environmental and/or social aspects, linked to the subject-matter of the public contract in question’. Therefore, Article 67 not only allows for tenders to be awarded based on price only but allows contracting authorities to claim they are basing their decisions on a MEAT criterion when their decision is explicitly based only on price.
- **Adopt a definition of abnormally low tenders at EU level** whereby an offer is to be considered abnormally low when the price or costs charged is more than 20% lower than the average cost or price of the other tenders. In addition, where tenders appear to be abnormally low for any other reason, **contracting authorities should be able to easily exclude them**.
- Addressing the issue of exploitation in subcontracting chains following the awarding of a public contracts, through the establishment of joint and several full chain liability, as well as the limitation of subcontracting chains to a maximum of two tiers.

- **Monitor compliance and enforcement throughout contract execution:** To make the 'best value' approach effective, it is not enough to prohibit the use of lowest price as the main award criterion. Better monitoring and effective compliance and enforcement are needed. This requires better tender monitoring and systematic checks during the performance of contracts, so that companies cannot claim to apply best value while competing on lowest price alone.
- **Enhance transparency and best-value compliance through digital procurement.** Digital platforms and automated evaluation systems can standardise processes, reduce bias, and ensure decisions, prioritise cost-effectiveness, quality, sustainability, and innovation rather than price alone. The EU should therefore support robust, interoperable digital procurement platforms across Member States to improve cross-border participation, prevent corruption, and ensure fair and efficient procurement aligned with best-value principles.

### 3. Allow for the Review of Contracts

A revision must strengthen legal certainty for buyers under which conditions they shall revise prices of running contracts. We believe this is legally necessary for specific conditions related to unforeseen economic or regulatory changes that impact wage and non-wage related costs. Otherwise, in times of exceptional inflation, missing legal obligations for price revisions disturb the contractual equilibrium between buyer and supplier, which impacts heavily the financial sustainability of SMEs and availability of essential services.

Article 72 of the Directive does not include provisions and legal certainty for buyers to adapt contracts to changes in Collective Agreements, fiscal and labour law, or high national annual inflation rates. However, the contract catering sector is sensitive to unforeseen and substantial changes in the economic and regulatory environment of a public contract. For example, a reduction of working time, either by labour law or as set out in Collective Agreements, has a direct impact on the expected cost structure for the duration of an existing public contract. Especially in the past years, labour and operational costs increased significantly within multi-annual contracts:

The past three years saw exceptional and unforeseen peaks in inflation, leading to a substantial increase in operational costs such as gas and product prices.

As per [Eurofound](#), Statutory Minimum Wages increased substantially in Europe. In our sector, Social Partners have adopted in collective agreements significant wage increases to offset inflation and enable workers to keep up with the cost of living.

Mandatory, but conditional price revision clauses would ensure that suppliers do not cut corners and avoid that unlawful competitors pass on decreasing margins to workers detrimental to fair pay, good working conditions and quality services. FoodServiceEurope and EFFAT therefore stress that a public contract with contract catering services should, under strict conditions, be adapted to the changing environment.

## Recommendations

- **Allow for the review of contracts if there are significant wage and non-wage related costs.** The revision should include a clause in Art. 72 whereby, throughout their duration, public contracts must provide for price variations and guarantee full adaptation to the suppliers' cost increases, at least conditional and restricted to a proven link to:
  - Changes in collective agreements, concluded by representative trade unions and employer organisations that impact costs of service providers, as per the date they become effective and eventually limited to the national inflation rate or alternative objective indices.
  - Changes in fiscal and labour legislation that have an impact on labour costs.
  - National annual inflation rates above the 2% target of the European Central Bank, e.g. in form of automatic indexations. Suppliers must duly justify price revisions. The Directive should recommend public buyers to engage with the representative sectoral Social Partners to confirm justified price revisions due to changes in Collective Agreements.
- **End the forced extension of contracts** that contract caterers are subject to in some Member States, such as Italy or Spain. Operators must be granted the right to renegotiate contracts before an extension being imposed on them. In all cases, they must ensure the continuity of employment for workers assigned to the contract.

## 4. Leverage the Social Function of the Contract Catering Sector by Strategically Deploying Public Procurement

Contract catering plays a crucial social function. Meals are regularly delivered to vulnerable consumers (e.g., children, patients), at a subsidised “social” price. Contract catering thereby guarantees access to nutrition to individuals that may not otherwise have it.

The cost-of-living crisis that has emerged in the last years has resulted in increased levels of poverty in the EU. According to a [2023 report](#) from Save the Children, over 200,000 more children were driven to the brink of poverty in EU countries in 2021, bringing the total number of children at risk of poverty to over 19.6 million, or one in four. Overall, in the EU, in 2021, 95.4 million people, representing 21.7% of the population, or one in five, were at risk of poverty or social exclusion<sup>1</sup>.

To address the increasing needs of those at risk of poverty, the revised EU public procurement rules should further leverage the social function of contract catering through the strategic deployment of public procurement.

Public procurement can be a lever for sustainability and the creation of quality jobs, both in contract catering and in the agri-food sector. The impact of public procurement in the contract catering sector goes beyond the conditions of contract catering workers. Evidence shows that the provision of healthy, tasty and high-quality food, produced in an environmentally and socially sustainable way, can bring significant benefits to all actors involved across the agri-food value chain. It supports rural development and can be a lever for creating quality jobs in the agriculture and food processing sectors. Additionally, sustainable food procurement contributes to environmental protection by supporting sustainable food production, biodiversity conservation and animal welfare. However, the current

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<sup>1</sup> Eurostat, [Over 1 in 5 at risk of poverty or social exclusion](#), 15 September 2022

gap between contracting authorities' ambitions and the prices they are willing to pay remains a fundamental barrier: that's why a revision is needed.

In the light of the recent adoption of the European directives on Due Diligence, which establish clear obligations to address actual and potential impacts on human rights and the environment throughout companies' operations and supply chains, it is essential that the Public Procurement Directives require bidders to fulfil their due diligence obligations in order to participate in public procurement.

## Recommendations

- **Mandate the universal provision of free school meals, with a focus on primary schools.** While the 2021 Council Recommendation on the European Child Guarantee took a step in the right direction by recommending that Member States provide at least one healthy meal each school day, we call on policymakers in the next EU mandate to go a step further and require Member States to include the provision of free school meals in their national Child Guarantee Action Plans. As a first step, Member States should be required to provide free school meals to all children below the poverty threshold, with a view to extending the provision of school meals to all children. Finland and Sweden, which currently provide free meals for all school-goers up until secondary school, can be used as models.
- **Public buyers should promote responsible business conduct by favouring tenderers that can demonstrate that they comply with applicable due diligence obligations,** including respect for workers' rights and environmental standards throughout their supply chains. Public authorities should be supported in assessing supplier commitments and practices in this area when designing and evaluating tenders.



**EFFAT**

### **EFFAT**

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