

European food law is on our side!

How the EU Public Procurement Directive supports sustainable food in the public sector

“Public procurement can shape production and consumption trends – and a significant demand from public authorities for ‘greener’ goods will create or enlarge markets for environmentally friendly products and services.”

European Commission, Communication on Green Public Procurement, 2008

“Government expects all public sector purchasers to use their procurement spend to support sustainable development, including environmental aims.”

UK Office of Government Commerce, Buy Green and Make a Difference: How to address environmental issues in public procurement, 2008

“Public procurement has an important part to play in furthering the Government’s agenda for tackling social issues. Social issues can be legitimately addressed within the policy and legal framework governing public procurement.”

UK Office of Government Commerce, Buy and Make a Difference: How to address social issues in public procurement, 2008

“The NHS spends more than £20 billion per annum on goods and services. This gives it the opportunity to influence improvement in labour standards across healthcare supply chains. Failure to identify and address labour standards abuses, both for goods and services provision, presents a significant risk to the reputation and ethical standing of NHS organisations.”

Purchasing and Supply Agency (PASA), Ethical Procurement for Health Guidance, 2009

This fact sheet (June 2009) is published by Good Food for Our Money, which is campaigning for compulsory health and environmental standards in public sector food.

Some public sector institutions say that they believe that European public procurement rules stop them from specifying environmental, ethical, health, social and animal welfare (‘sustainable food’) criteria in catering contracts paid for from the public purse. This fact sheet shows that in fact, both EU law and UK government policy strongly support sustainable food procurement in the public sector.

We summarise the situation as follows. Under the EU Public Procurement Directive:

1. Public money can be spent on sustainable food
2. Public sector institutions can specify sustainable food in contracts
3. Public sector institutions can give weighting to sustainable development criteria in specifications
4. There are just a few (reasonable) conditions

Find out more about the Good Food for Our Money campaign at:
www.sustainweb.org/publicfoodcampaign/

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How the EU Public Procurement Directive supports sustainable food in the public sector

In the UK, around £2 billion of taxpayers' money is spent every year on food, for hospitals, schools, care homes, government offices and other public sector institutions. This money could be spent on good food – food that protects our health and the environment and promotes decent jobs. Our money could be used to buy seasonal food, produce from environmentally friendly and welfare-friendly farming, sustainable fish, and fairly traded goods from poor countries, to help ethical producers make a decent living.

All these benefits could be achieved by public sector institutions specifying environmental, ethical and social criteria in their catering contracts. Sadly, very few do, despite the serious environmental and social problems that they could help to solve.

Some public sector institutions say that they believe that European public procurement rules stop them specifying environmental, ethical and social criteria in public sector catering contracts. This is very far from the truth. In fact, the EU Public Procurement Directive specifically supports sustainable procurement throughout the European Union. Moreover, a recent Communication by the European Commission emphasises the substantial benefits that can be derived from Green Public Procurement, encourages governments to adopt green procurement, and identifies 'food and catering services' as one of ten areas for priority action. The UK Government is also very keen to see public money used to support environmental, ethical and social goals. Key policies are highlighted at the end of this document.

Some public sector institutions also say that they believe that public procurement tenders cannot include specifications that go beyond the standards required by legislation. This is not the case. There is nothing in the EU Public Procurement Directive that prevents public sector bodies from specifying standards in a particular field that are higher than the legal minimum.

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This fact sheet seeks to clarify the legal situation on how public money can be spent, quoting directly from the EU Public Procurement Directive, and from current UK Government guidance. It demonstrates that under procurement law, food buying that supports sustainable development is possible, desirable and strongly supported by both EU and UK government policy. Throughout this fact sheet we use the terms "sustainable food" and "sustainable development" as a short-hand for environmental, ethical, health, social and animal welfare criteria.

A summary of key provisions of the EU Public Procurement Directive and an explanation of how they can influence sustainable food in the public sector is outlined below.

1. Public money can be spent on sustainable food

The EU Public Procurement Directive sets out the legal requirements for public procurement – i.e. rules for how governments and publicly funded institutions can spend public money on goods and services. The Directive strongly supports procurement of goods and services (such as food and catering) that meet wider environmental and social goals. The Directive states (Recital 5):

"Under Article 6 of the Treaty, environmental protection requirements are to be integrated into the definition and implementation of the Community policies and activities referred to in Article 3 of that Treaty, in particular with a view to promoting sustainable development. This Directive therefore clarifies how the contracting authorities may contribute to the protection of the environment and the promotion of sustainable development, whilst ensuring the possibility of obtaining the best value for money for their contracts." [emphasis added]

2. Public sector institutions can specify sustainable food in contracts

Article 23(6) and Recital 29 of the EU Public Procurement Directive make it clear that governments and public sector institutions can specify in contracts that goods and services (such as food and catering) should meet the standards of particular accreditation schemes, or their equivalent. Recital 29 states:

“Contracting authorities that wish to define environmental requirements for the technical specifications of a given contract may lay down the environmental characteristics, such as a given production method, and/or specific environmental effects of product groups or services.” [emphasis added]

Article 23(6) states:

“Where contracting authorities lay down environmental characteristics ... they may use the detailed specifications, or, if necessary, parts thereof, as defined by European or (multi-) national eco-labels, or by and any other eco-label, provided that:

- those specifications are appropriate to define the characteristics of the supplies or services that are the object of the contract,
- the requirements for the label are drawn up on the basis of scientific information,
- the eco-labels are adopted using a procedure in which all stakeholders, such as government bodies, consumers, manufacturers, distributors and environmental organisations can participate, and
- they are accessible to all interested parties.”

3. Public sector institutions can give weighting to sustainable development criteria in specifications

Crucially, under Article 53 public bodies are not obliged to choose simply the lowest price. They may instead opt for the “most economically advantageous” tender. The phrase “most economically advantageous” is key here, and means ‘value for money’ – encompassing elements of both price and quality. Article 53 makes it clear that the criteria that can be used to determine the most economically advantageous tender include “quality” and “environmental characteristics”. It is these criteria that permit public sector bodies to specify sustainable food in food and catering contracts. Article 53 adds that:

“The contracting authority shall specify in the contract notice or in the contract documents or, in the case of a competitive dialogue, in the descriptive document, the relative weighting which it gives to each of the criteria chosen to determine the most economically advantageous tender.”

The UK Government backs up this approach. As the UK Treasury stated in 2008:

“The very principle of buying on a value for money basis isn’t about buying the cheapest, it is about taking account of the whole-life cost and wider factors such as social considerations.”

From: Treasury introduction to the Office of Government Commerce’s, Buy and Make a Difference: How to address Social Issues in Public Procurement, 2008

4. There are just a few (reasonable) conditions

As indicated above, the EU Public Procurement Directive allows public sector organisations to specify specific requirements in order to meet sustainable development goals. These requirements can be included in the contract so long as (summarised in our own words, but based on the wording and our understanding of the Directive), for example:

- There is evidence that the specifications will result in the claimed benefits. This could include environmental, ethical and health specifications.
- Any ‘eco-labels’ or accreditation schemes should be run by a recognised and reputable body.
- Simply specifying food or other goods by geographical region (e.g. ‘local’ or ‘British’) is not permissible, as this does not necessarily benefit sustainable development, and might be used as protectionism, going against the principle of fair and open competition.

- The contracting organisation must make it clear in the tender how criteria can be met, and what weighting these criteria will have in the decision-making process.
- Any specific requirements, for example, environmental accreditation, can be met by equivalent means (e.g. by providing appropriate evidence of benefits, or equivalent accreditation).
- The tendering process and award of contracts is open and accessible and allows all eligible suppliers to compete fairly, “in compliance with the principles of transparency, non-discrimination and equal treatment and which guarantee that tenders are assessed in conditions of effective competition”.

5. Key European and UK Government documents

European and UK Government documents referred to in the compilation of this fact sheet are:

1. The EU Public Procurement Directive, 2004/18/EC (Works/Supplies/Services):
http://ec.europa.eu/internal_market/publicprocurement/legislation_en.htm;
in full at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32004L0018:EN:NOT>
2. Commission Interpretative Communication on the Community law applicable to public procurement and the possibilities for integrating environmental considerations into public procurement, see:
<http://www.bipsolutions.co.uk/pdf/com274en.pdf>
3. Office of Government Commerce, 2008, Buy Green and Make a Difference: How to address environmental issues in public procurement: www.ogc.gov.uk/documents/Environmental_Issues.pdf
4. Office of Government Commerce, 2006, Social Issues in Purchasing: How to address social issues in public procurement: www.ogc.gov.uk/documents/Social_Issues_in_Public_Procurement.pdf
5. Defra, February 2008, Public Sector Food Procurement Initiative: Putting it into practice. Advice for promoting healthy food and improving the sustainability and efficiency of food procurement, catering services and supply, see:
www.defra.gov.uk/farm/policy/sustain/procurement/pdf/psfpi-putting-into-practice.pdf
6. Purchasing & Supply Agency consultation on Ethical Procurement for Health Guidance, see:
[www.pasa.nhs.uk/pasa/Doc.aspx?Path=\[MN\]\[SP\]/NHSprocurement/Sustainable%20procurement/ethical%20procurement/EPF%20full%20document.pdf](http://www.pasa.nhs.uk/pasa/Doc.aspx?Path=[MN][SP]/NHSprocurement/Sustainable%20procurement/ethical%20procurement/EPF%20full%20document.pdf)
7. HM Government (2008) Health is Global: A UK Government Strategy 2008
8. European Commission (July 2008) Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: Public procurement for a better environment.
See: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52008DC0400:EN:NOT>

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Contact: Alex Jackson, Good Food for Our Money, 94 White Lion Street, London N1 9PF. Tel: 020 7837 1228; Email: alex@sustainweb.org

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