# Joint EFFAT-FoodServiceEurope Declaration on Public Procurement and Collective Bargaining

EFFAT and FoodServiceEurope have come together to highlight how the current public procurement rules and provisions in the European Union can potentially undermine the social and economic rights of the actors (workers and employers) involved in the contract catering sector. This declaration follows similar statements by social partners in the cleaning and private security services sectors.

Public procurement amounts to €1.9 trillion per year in the EU, representing 14 per cent of the GDP[1]. It is estimated that half of the public tenders in Europe are awarded based solely on the lowest price[2].

Public procurement policies, practices and lack of effective implementation of the EU Public Procurement Directives in many Member States[3] incentivise some bidders in the market to engage in unfair competition and ignore social criteria, distorting the market and weakening the positive impact of collective bargaining and the value of social dialogue.

Public procurement can only create societal value through the inclusion and democratic participation of the social partners, trade unions and employers alike, directly impacted by it.

Public money can be conducive to ensuring high-quality service provisions and fair working conditions, particularly in labour-intensive sectors, such as contract catering, and especially if these services have direct impacts on public health.

By putting the lowest price above all other selection criteria, public bodies risk discouraging quality service provision, harming socially responsible companies and jeopardising decent work and fair pay, and by this contributing to unsustainable levels of labour shortages. This is especially the case where industrial relations are weak.

Key to creating societal value is sectoral and multi-employer bargaining which provides a mechanism to cut out those economic actors that seek to undercut competitors by operating unfairly in the market and attacking employment conditions. The European Union needs to create an equal playing field rather than exacerbate a race to the bottom. Furthermore, it must ensure that existing legislation aimed at strengthening social and economic rights is effectively implemented. For instance, the Directive on Adequate Minimum Wages and Collective Bargaining foresees enhancing collective bargaining coverage to 80% in each of the EU Member States.

EFFAT and FoodServiceEurope have been advocating for many years for a 'best-value' approach to public procurement. The EU Public Procurement Directive needs to be revised in order to ban the awarding of contracts solely on price, and to mandate instead the use of quality criteria, encapsulated in the notion of the 'economically most advantageous offer'. Our 2019 Guide "Choosing Best Value in Contracting Food Services", outlines how this can work in practice in public tenders.

[1] European Semester - Thematic Factsheet, https://www.europarl.europa.eu/factsheets/en/sheet/34/public-procurement-contracts

[2] Put your money where your mouth is. Why and how the EU needs to change its public spending policies to promote a social Europe https://biblio.ugent.be/publication/8728171/file/8728173

[3] European Parliament Report on the Public Procurement Strategy Package A8-0229/2018 https://www.europarl.europa.eu/doceo/document/A-8-2018-0229_EN.pdf

EFFAT and FoodServiceEurope call upon the European Commission:

- to strengthen the bargaining capacity of social partners at national level, including by allocating funding for capacity-building actions, especially in Central, Eastern and South-Eastern European countries;
- to call on Member States to regularly consult with representative social partners in the sector in matters concerning public procurement;
- to call on Member States and public authorities to adapt their tendering in light of the proportionate increase in service provision over the provision of goods and/or the realisation of public works;
- to increase funding for the professionalisation and awareness-raising of public buyers in order to effectively implement the EU Public Procurement Directives;
- to sanction Member States that inadequately transposed the EU Public Procurement Directives;
- to promote provisions aiming to prevent social fraud, like excluding the use of false self-employed and fictional employment statuses, limiting the subcontracting chain, joint and several liability for wages, social debts and health and safety at work;
- to consider an adjustment to the public procurement rules for essential services and labour-intensive industries, in constant dialogue with the representative social partners of the sector, including:
    a. requirements for Member States to exclude the use of the lowest price criterion only for the award of tenders in essential services and labour-intensive industries, such as contract catering, and instead implement a 'best value' approach. (See here for more detail on how the contract catering industry and the trade unions in the sector jointly conceive of this);
    b. provisions which 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, regional or other, or generally applicable collective agreements, where they exist;
    c. provisions that throughout their duration, public contracts shall provide for price variations due to changes in collective agreements concluded by representative trade unions and employer organisations, or changes introduced by legislation that have an impact on wages-related labour legislation. In particular, price-revision formulas should be included, together with a general prohibition of clauses that set an obligation to fulfil the contract in case of a negative margin for the contractor or that cap price adjustment;
    d. provisions that enable and stimulate public buyers to promote collective bargaining through public procurement.

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