

# Public Procurement – Position Paper



FEBA's contribution to the EU Public Consultation on Public Procurement

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# Public Procurement – FEBA’s Position Paper

The European Food Banks Federation (FEBA) is a network of 351 food banks working to reduce food insecurity by rescuing safe surplus food and supporting a wide range of non-profit partners across Europe. FEBA welcomes the European Commission’s proposed Public Procurement Act and the revision of the EU public procurement framework, as these are important tools for advancing sustainable, green public procurement (SPP and GPP, respectively).

## 1. Context

### The role of food waste reduction within public procurement

Public procurement is a key instrument to advance sustainability and support the EU’s environmental goals. Because public authorities have significant purchasing power, they have a strong potential to influence markets.<sup>1</sup> Thus, public authorities can influence markets and drive environmental objectives through SPP.

The European Commission highlighted the role of public procurement in achieving environmental goals as early as 2003 in its Communication on Integrated Product Policy. It later expanded on this in the 2008 Communication *Public Procurement for a Better Environment*, which describes GPP as a process in which public authorities choose goods, services and works with lower environmental impacts across their life cycle compared to conventional alternatives.<sup>2</sup>

The Communication highlights the need for clear and ambitious criteria to support GPP.<sup>3</sup> It identifies food and catering services as a priority sector, noting their significant

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<sup>1</sup> Food and Agriculture Organization, *Strengthening Sector Policies for Better Food Security and Nutrition Results: Policy Guidance Note 11* (FAO 2018) <<https://www.fao.org/policy-support/tools-and-publications/resources-details/en/c/1175509/>> accessed 1 December 2025.

<sup>2</sup> European Commission, ‘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’ COM (2008) 400 final (16 July 2008) <<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52008DC0400>> accessed 2 December, p.4.

<sup>3</sup> Ibid, p.3.

environmental impacts, including food waste.<sup>4 5</sup> As a result, the Commission's guidance includes food and beverage waste prevention among its core GPP criteria.<sup>6</sup>

This approach aligns with the recent revision of the Waste Framework Directive, which entered into force on 16 October 2025 and sets binding 2030 targets: a 10% reduction in food waste from processing and manufacturing, and a 30% per capita reduction at retail and consumption levels (including restaurants, food services and households).<sup>7 8</sup> Public procurement can play an important role in helping Member States meet these targets.

Revising EU public procurement rules to support sustainable food consumption and reduce food waste is consistent with the *Vision for Agriculture and Food* and the EU's *Farm to Fork Strategy*. Using public procurement to prevent food waste also contributes to achieving of SDG 12.3, which calls for halving global food waste by 2030.<sup>9</sup>

## 2. Food Waste, Climate Impact and Social Need: A Compelling Policy Intersection

Addressing food waste within SPP is essential given its climate impact. When food is discarded, the energy and resources used to produce it are also lost.<sup>10</sup> Food that ends up in landfills generates greenhouse gases, including methane,<sup>11</sup> which is far more potent than carbon dioxide and significantly contributes to climate change.<sup>12</sup> Estimates indicate that food loss and waste make up a significant share of the EU food system's greenhouse gas emissions.

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<sup>4</sup> Ibid, p.7.

<sup>5</sup> European Commission, 'Commission Staff Working Document - EU green public procurement criteria for food, catering services and vending machines' SWD (2019) 366 final, p.36-37.

<sup>6</sup> Ibid.

<sup>7</sup> Directive (EU) 2025/1892 of the European Parliament and of the Council of 10 September 2025 amending Directive 2008/98/EC on waste (Text with EEA relevance) OJ L 2025/1892, art 9a(4).

<sup>7</sup> Ibid.

<sup>8</sup> Ibid.

<sup>9</sup> UN General Assembly, *Transforming our world: the 2030 Agenda for Sustainable Development*, UN Doc A/RES/70/1 (21 October 2015) paras 12.3-12.4

<sup>10</sup> Harvard Law School Food Law & Policy Clinic and Global FoodBanking Network, *Voluntary Carbon Markets to Reduce Food Waste: Issue Brief* (The Global Food Donation Policy Atlas, Mar 2025) <[https://atlas.foodbanking.org/wp-content/uploads/2025/03/Atlas\\_Voluntary-CarbonMarketsMarch2025FINAL.pdf](https://atlas.foodbanking.org/wp-content/uploads/2025/03/Atlas_Voluntary-CarbonMarketsMarch2025FINAL.pdf)> accessed 1 November 2025, p.3.

<sup>11</sup> Ibid.

<sup>12</sup> Massachusetts Institute of Technology Climate Portal, "What makes methane a more potent greenhouse gas than carbon dioxide?" (7 Dec 2023) <<https://climate.mit.edu/ask-mit/what-makes-methane-more-potent-greenhouse-gas-carbon-dioxide>> accessed 6 Nov 2025.

A study in actors involved in SPP found that all stakeholders identified climate change as a major environmental concern within GPP.<sup>13</sup> Several service and product providers also reported integrating food waste reduction into their operations because of its link to higher emissions.<sup>14</sup>

Food redistribution through food banks is a way in which to link environmental goals with social needs. This requires the adoption of a holistic approach to SPP. Several producers, wholesalers, and public caterers involved in the study also supported such an approach.<sup>15</sup>

### 3. The Role of Food Banks in GPP

#### 3.1. The Multiplier-effect: Creating Broader Social, Economic and Environmental Benefits

The profound impact of food banks can be illustrated through the multiplier effect, calculated using Social Return on Investment (SROI) methodology.<sup>16</sup> Several FEBA members have conducted SROI studies with research institutions or consultancies to assess their respective impacts. In 2024, Voedselbanken Nederland, the Dutch Food Bank Federation, partnered with the consultancy Deloitte to analyse the social, economic, and environmental value generated by food banks.

The analysis mapped the outcomes of food banks' activities and calculated a monetary value of each impact, including benefits such as improved mental and physical health. Crucially, it also quantified avoided greenhouse gas emissions from preventing food waste and the associated cost savings. These positive impacts were then compared to the financial inputs: food banks generated an estimated €12 in societal value for society for every €1 invested.<sup>17</sup>

#### 3.2. Evidence from EU Guidance and Best Practices

The role of food banks has been recognised in many EU guidance documents and technical reports from the European Commission's Joint Research Centre. A report on GPP for food procurement, catering services and vending machines recommends applying food and

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<sup>13</sup> Elvira Molin, Sofia Lingegård, Michael A Martin and Anna Björklund, 'Sustainable Public Food Procurement: Criteria and Actors' Roles and Influence' (2024) *Frontiers in Sustainable Food Systems* <<https://www.frontiersin.org/articles/10.3389/fsufs.2024.1360033/full>> accessed 2 December 2025, p.2.

<sup>14</sup> Ibid.

<sup>15</sup> Ibid, p.8.

<sup>16</sup> The Dutch Federation of Food Banks cooperated with the consultancy Deloitte to calculate the SROI: Vereniging van Voedselbanken Nederland and Deloitte Impact Foundation (DIF), Wat is de sociale impact van Voedselbanken Nederland? Een Social Return on Investment analyse (presentation, October 2024).

<sup>17</sup> Ibid.

beverage redistribution criteria whenever hygiene rules allow and when the surplus food is suitable for redistribution.<sup>18</sup>

To meet this criterion, contracting authorities may be required to contact food redistribution organisations, establish collection procedures, and ensure food safety, including maintaining the cold chain.<sup>19</sup> The report also refers to the EU Food Donation Guidelines.<sup>20</sup> The criterion explicitly foresees the involvement of food redistribution organisations.

The report notes that, for catering services, the criteria should be applied whenever permitted under national law, when they do not create excessive costs or administrative burdens, and when the volume of surplus food is suitable for redistribution organisations.<sup>21</sup> While the technical report explicitly provides exemplary food redistribution criteria within catering services, the wording could more clearly emphasise the role of food banks in the SPP.

The report stresses the importance of policies and management systems that minimise food waste and maximise the redistribution of safe surplus food.<sup>22</sup> Waste generation in catering services can serve as an indicator of their overall performance.<sup>23</sup>

## 4. Shortcomings of the current rules on public procurement

### 4.1. Voluntary nature of GPP

The sections above highlight the important role that food banks could play in reducing food waste through public procurement. Integrating food redistribution organisations into the procurement of food and catering services would enable public authorities to support people in need while also preventing food waste. However, while food redistribution is recognised as a food waste prevention measure in GPP guidance, including through contract performance clauses, these are voluntary in nature. This limits their uptake and reduces their potential impact<sup>24</sup> on food waste reduction through public procurement.

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<sup>18</sup>A Boyano Larriba, M de las Nieves Espinosa Martínez, R Rodríguez Quintero, B Neto, M de Oliveira Gama Caldas and O Wolf, *EU GPP criteria for food procurement, catering services and vending machines* (Joint Research Centre, Publications Office of the European Union 2019) <<https://publications.jrc.ec.europa.eu/repository/handle/JRC118360>> accessed 3 December 2025, p.80.

<sup>19</sup> Ibid.

<sup>20</sup> Ibid.

<sup>21</sup> Ibid, p.14.

<sup>22</sup> Ibid, p.47.

<sup>23</sup> Ibid.

<sup>24</sup> European Commission (n 5) p.36-37.

## 4.2. VAT and liability barriers

The JRC report also highlights key barriers to implementing the food redistribution criterion, including VAT applied to donated products and donors' liability for food safety.<sup>25</sup> These challenges are reflected in the EU Food Donation Guidelines issued in 2017.<sup>26</sup>

FEBA has consistently stressed that these issues hinder food donation and require further action at the EU level. The VAT levied on donated food creates a twofold problem. In many Member States, businesses must pay VAT on food they donate meaning donations generate additional costs<sup>27</sup> As a consequence, companies may be discouraged from donating to food banks that support people in need and instead choose more profitable or wasteful options.

Food banks may also be required to pay VAT on donated food when receiving it from donors.<sup>28</sup> Clearer EU-level guidance and more consistent application of VAT rules are therefore needed to remove fiscal disincentives to food donation.

Liability concerns for both donors and food banks also act as a barrier.<sup>29</sup> Although all actors must comply with EU and national food safety laws, the risk of financial or legal consequences can discourage donation in the absence of adequate liability protection.<sup>30</sup> To overcome this obstacle and encourage food donations, Member States should strengthen national frameworks that provide appropriate liability safeguards for food donors and food banks, while fully respecting EU food safety rules.

Laws governing food donation should address these policy issues across all relevant areas, including public procurement. The JRC report highlights several Member State best practices, such as Italy's 2016 legislative reform, whereby catering companies are able to propose food

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<sup>25</sup> Ibid.

<sup>26</sup> European Commission *EU Guidelines on Food Donation*, C/2017/6872, *Official Journal of the European Union* C 361 (25 October 2017) <<https://op.europa.eu/en/publication-detail/-/publication/e3b24a7b-b93f-11e7-a7f8-01aa75ed71a1>> accessed 10 December 2025.

<sup>27</sup> Harvard Law School Food Law & Policy Clinic and Global FoodBanking Network, *Promoting Food Donation: Tax Law and Policy – Issue Brief* (The Global Food Donation Policy Atlas, Oct 2021) [https://atlas.foodbanking.org/wp-content/uploads/2023/11/2021\\_Atlas\\_Tax\\_Brief.pdf](https://atlas.foodbanking.org/wp-content/uploads/2023/11/2021_Atlas_Tax_Brief.pdf) accessed 6 November 2025, p.6.

<sup>28</sup> Ibid.

<sup>29</sup> Harvard Law School Food Law & Policy Clinic & Global FoodBanking Network, *Promoting Food Donation: Liability Protection Law and Policy – Issue Brief* (Nov 2021) <<https://atlas.foodbanking.org/wp-content/uploads/2023/11/Liability-Protections.pdf>> accessed 1 November 2025, p.5.

<sup>30</sup> Regulation (EC) No 178/2002 of the European Parliament and of the Council of 28 January 2002 laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety, OJ L 31, 1.2.2002, 1-24; Regulation (EC) No 852/2004 of the European Parliament and of the Council of 29 April 2004 on the hygiene of foodstuffs, OJ L 139, 30.4.2004, 1-54; Regulation (EC) No 853/2004 of the European Parliament and of the Council of 29 April 2004 laying down specific hygiene rules for food of animal origin, OJ L 139, 30 Apr 2004, 55-205.

donation as an added-value service to new customers.<sup>31</sup> The law also enables public tenders, such as those for school or hospital catering, to include food donation requirements.<sup>32</sup>

### 4.3. Lack of Clarity

A 2025 JRC report on SPP criteria for food, food services and vending machines highlights a further challenge in preventing of food waste: the absence of clear guidance on how different criteria should be prioritised.<sup>33</sup> In the context of food waste reduction, the revised Waste Framework Directive places prevention at the top of the waste hierarchy, followed by redistribution for human consumption.<sup>34</sup> As the Directive recognises food donation and redistribution as high-priority measures, this hierarchy should be reflected in the selection and application of SPP criteria.

The Commission's evaluation also points to fragmentation and inconsistency within EU public procurement law as barriers to achieving strategic policy objectives.<sup>35</sup>

## 5. Policy Recommendations

### Introduce 'Comply or Explain' Criteria for Food Waste Prevention and Redistribution

To ensure GPP delivers tangible climate and environmental benefits, the revised framework should strengthen the integration of food waste prevention and safe redistribution measures in public food and catering contracts. The current voluntary nature of these criteria limits their uptake and reduces their potential to drive a sustainable transition.<sup>36</sup> The revised public procurement rules should remedy this with a stricter use of environmental and social criteria. A 'comply or explain' approach would require contracting authorities to systematically assess these measures and justify decisions not to apply them, based on considerations of proportionality, feasibility, and food safety.

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<sup>31</sup> A Boyano Larriba, M de las Nieves Espinosa Martínez, R Rodríguez Quintero, B Neto, M de Oliveira Gama Caldas and O Wolf, *EU Green Public Procurement criteria for food procurement, catering services and vending machines* (Joint Research Centre, Publications Office of the European Union 2019) EUR 29884 EN <<https://publications.jrc.ec.europa.eu/repository/handle/JRC118360>> accessed 10 December 2025, p.80.

<sup>32</sup> Ibid.

<sup>33</sup> Laura García Herrero, Aurora Perez Cornago, Cecilia Casonato, Ana Sarasa Renedo, Ioanna Bakogianni, Jan Wollgast, Miguel Gama Caldas and Petros Maragkoudakis, *Criteria for Sustainable Public Procurement (SPP) for Food, Food services, and Vending machines* (Publications Office of the European Union 2025) JRC 139495 <<https://publications.jrc.ec.europa.eu/repository/handle/JRC139495>> accessed 10 December 2025, p.89

<sup>34</sup> WFD (n 7).

<sup>35</sup> European Commission, 'Staff Working Document - Evaluation of Directive 2014/23/EU on Concessions, Directive 2014/24/EU on Public Procurement and Directive 2014/25/EU on Utilities' SWD (2025) 332 final (Brussels, 14 October 2025) <[https://ec.europa.eu/transparency/documents-register/detail?ref=SWD\(2025\)332&lang=en](https://ec.europa.eu/transparency/documents-register/detail?ref=SWD(2025)332&lang=en)> accessed 10 December 2025.

<sup>36</sup> SANYE MENGUAL, E., VALENZANO, A., SINKKO, T., GARCIA HERRERO, L., CASONATO, C., LISTORTI, G. and SALA, S., *Sustainable public procurement: current status and environmental impacts*, Publications Office of the European Union, Luxembourg, 2024, doi:10.2760/06145, JRC134432.

This approach would increase uptake while respecting EU procurement principles and contribute to greater consistency and harmonisation across procurement processes, thereby reducing fragmentation and supporting the sustainable transition.

### **Recognise food banks as strategic partners in the SPP rules**

This contribution has shown that food banks play a crucial role as strategic partners in implementing SPP rules. Their involvement is already acknowledged in several EU guidance documents, yet this role should be further strengthened to ensure that food banks are actively engaged and fully considered when applying food waste redistribution criteria in public procurement.

### **Remove barriers to donation through VAT and liability exemptions in public contracts**

To support the food donation more broadly and in particular within public procurement, existing EU-level barriers must be addressed. Removing fiscal and legal obstacles, such as VAT burdens and liability risks, would significantly facilitate the donation process and enable more surplus food to reach people in need.

### **Alignment with the Waste Framework Directive**

To address the lack of clarity in prioritising GPP criteria for food waste reduction, public procurement rules should be aligned with the waste set out in the revised Waste Framework Directive. This hierarchy places waste prevention first, followed by food redistribution for human consumption. Public procurement should therefore highlight food redistribution criteria as a key measure to be included in food and catering contracts.

### **Support for stakeholder cooperation**

Effective implementation of GPP depends on strong cooperation among all stakeholders involved in the procurement process, including through structured stakeholder dialogues.<sup>37</sup> Addressing sustainability challenges requires coordinated action across different levels of governance.<sup>38</sup> Engaging both internal and external stakeholders can also provide valuable feedback and improve the practical application of GPP criteria.<sup>39</sup>

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<sup>37</sup> Molin, Lingegård, Martin and Björklund (n 15) p.3.

<sup>38</sup> Ibid.

<sup>39</sup> Ibid, p.12.