

## **For a proactive European food policy, let's free up public procurement and put the European regulation on sustainable food systems back on the agenda**

*The transformation of agricultural and food models is a strategic **challenge we need to address to guarantee food security in Europe and the resilience of our territories**. Every citizen wants access to **sufficient, healthy food from an early age**. While the European Union aims to improve its capacity to face crises, European policies are insufficiently coordinated to achieve these objectives.*

*We, local authorities, economic stakeholders and associations, are committed every day to supporting the best farming practices using public catering, the setting up of logistics platforms and processing tools, food education, land and water management policies as a lever. From Ghent to Milan, Copenhagen to Paris, European cities are getting involved.*

*However, the legal framework is restrictive and ill-suited to the implementation of such local policies and practices. Promoting the diversification and relocation essential to building more resilient territories takes years. **We cannot wait. By 2040, the European Union could lose 6.4 million farms, down 62% on 2016<sup>1</sup>.***

*In a sensitive geopolitical, social and environmental context, on the eve of new European elections, we want to demonstrate that **food can be a crucible for positive alliances between rural and urban areas, between European cities, between member states, between economic stakeholders, associations, public sector and citizens**. We can build a comprehensive approach that takes into account the preservation of rare and fragile resources, such as water and soil, and unite democratically around common concerns : food that promotes consumer health, the preservation of farmers and our environment as a whole, today and for future generations in Europe and around the world.*

**The draft regulation on sustainable food systems, guided by human health and environmental objectives, should give new coherence to the European Union's actions :**

1. reaffirm access to healthy and sustainable food as a unifying goal
2. give the local level its full dimension
3. secure a renewed public procurement policy to make public purchasing a lever for transformation

### **1. Public procurement rules must be brought into line with European policies as a whole, to avoid a contradiction between ends and means.**

The challenges we face in Europe in terms of supply security and ecological transition are driving changes in public procurement. In order to create the European common market, the regulatory framework was at first grounded on principles of open access and the fight against corruption. It was then adapted to address the challenges of economic development. Public purchase is now part of a broader strategy to support new production and consumption practices.

Numerous studies demonstrate the need to change our food and farming system.

They emphasize :

- the structural weaknesses and harmful environmental impacts of a model based on massive imports of nitrogen fertilizers and soyameal, subject to major supply uncertainties and sensitive to rising fossil fuel costs. To make matters worse, the specialization of agricultural practice leads to a decline in ecosystem services<sup>2</sup> and a vicious circle with increased quantity to be used to maintain yields. Conversely, practices based on the principles of agroecology have a proven positive environmental and geostrategic impact ;

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<sup>1</sup> Mailin GAUPP-BERGHAUSEN, Bernd SCHUH, Arndt MÜNCH, Manon BADOUIX, Kinga HAT, Sanja BRKANOVIC, Thomas DAX, Ingrid MACHOLD, Karin SCHROLL, Luka JUVANČIČ, Emil ERJAVEC, Ilona RAC, Ana NOVAK, [L'avenir du modèle agricole européen : les conséquences socio-économiques et territoriales de la diminution du nombre d'exploitations agricoles et d'agriculteurs dans l'Union européenne](#), Février 2022

<sup>2</sup> Michel Duru, Pierre-Marie Aubert, Christian Couturier, Sylvain Doublet, *Scénarios de systèmes alimentaires à l'horizon 2050 au niveau européen et français : quels éclairages pour les politiques publiques ?* INRAE 2021

- the need to support the relocation and diversification of supply chains, and to integrate agricultural strategies into broader strategies aimed at securing the quantity and quality of water resources, soil preservation and air quality ;

- the critical role of the subnational level : a European strategy must be based on territorial strategies that enable the coherent use of land, water and biomass.

**In relation to these observations, the purchase of foodstuffs must support the ability of each territory, according to its resources, not only to strengthen its production and supply capacities in the long term,** in coherence with other needs (production of renewable energies, wood production...), but also to preserve human, animal and environmental health by guaranteeing Europe's food security and contributing to the emergence of a virtuous international model. In 2023, the United Nations Special Rapporteur on the Right to Food asked for a "support [of] territorial markets" - which have demonstrated "great resilience" - in the management of which "local administrations often play an important role".<sup>3</sup>

And yet, while it is imperative to provide security for farmers, encouraging them to set up, and to support maintain and transition to sustainable practices, **the public procurement framework does not allow, due to a narrow interpretation of the "link to the subject matter of the contract", to fully associate within a set of specifications the purchase of foodstuffs and the objectives of a broader territorial resilience strategy.** In response, contracting authorities are combining criteria, specifications (shortened supply chain, food in bulk, raw products, labels, farm visits) dividing contracts into smaller lots, grouping orders, supporting logistics, distribution and processing tools, and supporting B to B platforms making easier for companies to participate in calls for tender. Many regions are pioneers: Copenhagen<sup>4</sup>, Terres de Source<sup>5</sup> (Rennes region), Ghent<sup>6</sup>, Milan<sup>7</sup>, Paris...

However, this response is partial. Strategies aimed at relocating supply chains, and stabilizing and increasing the supply of sustainable food are fragile. The arrangements and specifications they require are complex even for medium-sized to large municipalities and farmers and remain a source of legal uncertainty. The legal framework does not make it possible to compensate for uncertain volumes and prices (review clauses ill-suited to price volatility, low negotiating margins). The ability to combine food purchasing with water quality improvement around catchment areas is limited, as is the ability to combine food purchasing with soil quality improvement.

Ambitious strategies undertaken by contracting authorities are built over a long period of time, sometimes a decade, in a context where the accelerating decline in the number of farmers calls for urgent action. Public authorities are hampered in their role as a lever and "buyer of first resort". And yet, while the volume of public catering represents sometimes only 2 to 3% of a region's food flows, it can be sufficiently critical to secure outlets for farmers, bring about a change in consumption practices and set in motion a virtuous circle.

## **2. Developments in public procurement in recent years demonstrate the adaptability of European law**

Several sectors and/or services benefit from adaptations based on reasons of general interest :

- The contracting authority may require that part of the service be carried out by disadvantaged workers located in a given territory<sup>8</sup>;

- Under French law, a purchaser "may require that the means used to execute all or part of a contract [...] be located within the territory of the Member States of the European Union in order, in particular, to take account of environmental or social considerations or to ensure the security of information and supplies"<sup>9</sup>. The location

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<sup>3</sup> M. Fakhri, Le rôle du droit à l'alimentation dans le relèvement et la transformation des systèmes alimentaires, 18 juillet 2023, Rapport A/78/202

<sup>4</sup> [Copenhagen - Food Trails - Milan Urban Food Policy Pact](#)

<sup>5</sup> [Un label pas comme les autres - Terres de Sources](#)

<sup>6</sup> [Sustainable food | Stad Gent](#)

<sup>7</sup> [Milan - Food Trails - Milan Urban Food Policy Pact](#)

<sup>8</sup> CJCE, 1988, *Gebroeders Beentjes BV contre Etat des Pays-Bas*

<sup>9</sup> Article L. 2112-4 du code de la commande publique français

of the means used to carry out a contract - place of production, storage<sup>10</sup> - can be imposed if it is demonstrated that it is justified by its purpose, necessary and proportionate to its objectives<sup>11</sup> ;

- Similarly, meeting deadlines, if justified by the subject matter of the contract, may mean that only a locally-established company can bid (e.g. an elevator maintenance contract) ;

- Legal services are excluded from traditional competitive bidding and advertising procedures, on the grounds that the relationship between the public purchaser and his or her lawyer requires a strong personal bond and confidentiality, incompatible with public procurement obligations<sup>12</sup> ;

- In the case of renewable energy communities, members must be located close to the renewable energy projects they're part of.

**These grounds for exemption from the general rules have been reiterated in French law:** "the purchaser may award a contract without prior advertising or competitive tendering in the cases laid down by decree of the "Conseil d'Etat" when, due in particular to the existence of an unsuccessful initial procedure, a particular urgency, its purpose or estimated value, compliance with such a procedure is pointless, impossible or manifestly contrary to the interests of the purchaser or to a reason of general interest".

**Food should benefit from such an approach :** In a context of ecological transition and environmental urgency, it is crucial to reaffirm **the link** between food, public purchasing, preservation of water resources, air and soil quality, relocation and supply security.

### **3. The new regulation should consolidate this new generation of public procurement, and restore coherence to European policies by securing the most ambitious practices.**

#### **3.1. Bringing food policies into line with other European regulations and the "farm to table" strategy**

European regulations already adopted or in the process of being adopted set ambitious targets in terms of water quality, soil preservation and lower emissions – Green Deal, Biodiversity Strategy... The "Farm to fork" strategy is an extension of this dynamic, opening it up to the complementary issues of nutritional quality and human and environmental health. As a continuation of this work, the regulation on sustainable food systems should make it possible to secure a suitable public procurement framework and update the notion of "direct link with the subject matter of the contract", and emphasize the link between food purchase, territorial development and environmental health issues.

#### **3.2. A free choice of procedure in territories implementing this European common base**

It is proposed that the regulations include the following elements :

- a reminder of the link between food policy and territorial resilience strategy ;

- a definition and/or reminder of european objectives, already defined (water quality, soil preservation, air quality, carbon costs, relocation issues, etc.), or to be defined within the framework of the present regulation : the fight against endocrine disruptors, diversity of nutritional intake, elimination of single-use and reusable plastics and use of alternative solutions, fair remuneration of farmers, integration of the environmental impact of production processes and animal welfare, nutritional quality and impact on health, commitments made in the fight against food waste. Indicative targets could be proposed ;

- free choice of procedure for 50% of annual purchases of foodstuffs in euros, excluding taxes, backed by a local strategy drawn up within an inter-actor governance. Such a model is exemplified by France's territorial food projects, a model that has attracted the interest of other countries such as Spain : local authorities are required to assess local needs and resources.

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<sup>10</sup> <https://www.senat.fr/questions/base/2023/qSEQ230506613.html>

<sup>11</sup> CJCE, 27 octobre 2005, Commission des Communautés européenne c/ Royaume d'Espagne, Aff. C-158/03 ; CE, 14 janvier 1998, Société Martin Fourquin, n°168688

<sup>12</sup> CJUE, 2019 P.M., et al. c/ Ministernaad

### 3.3. Focus on territorial strategy

The territorial food strategy becomes the document on which public purchasing is based. The food supply contract remains legally classified as a "public procurement contract". The procedure is freely determined, as long as it meets the requirements of a healthy and sustainable food supply. The notion of free choice of procedure does not, however, imply deregulation or opacity in the awarding of contracts (see frequently asked questions).

The territorial strategy is drawn up within an inter-actor governance :

- at the initiative of contracting authorities,
- compliant with the minimum european standards, and if necessary adapted at national or regional level provided there is no contradiction ;
- supported by a diagnosis defining the practices to be promoted in order to guarantee the resilience of the area with a view to food security and global health - relocation objectives, fair remuneration, management of water, soil, waste, etc. - and the associated purchasing policy for public catering. This diagnosis shows the different levels of action and specifies the links between different levels of intervention;
- the strategy covers an area of consumption and production that may be cross-border ;
- it is public and renewed every 2 to 4 years ;
- selection criteria for farmers are in line with this strategy.

Sustainable products can be local, as long as this criterion is consistent with the other general objectives (supporting sectors contributing to the area's food and environmental resilience). The territorial strategy is drawn up within an inter-actor governance. The scale for intervention can be assessed at different levels, depending on the commodities concerned. When commodities needed are not produced locally (e.g. bananas, cocoa, seafood in certain regions), it is based on a joint approach between production and consumption areas, based on an objective analysis of needs.

## SUMMARY

### A new regulation based on existing principles

*The link to the subject matter of the contract justifies an on-site service.*



*The objective of preserving soil, water and air can be related to the subject matter of the contract.*

*The objective of employing disadvantaged workers justifies recruiting staff in a given area.*



*Relocation must justify geographic criteria / specifications.*

*Environmental, social, security of information and supply considerations justify requiring location in a member state*



*A European regulation outlines the issues at stake / A local diagnosis aims to establish the link between consumption, the consolidation of supply chains and supply strategies, and to guarantee compliance with the principles of transparency and open access.*

*The principle of transparency and open access requires that any geographical clause be justified by a link with the subject matter of the contract.*

### A renewed framework for action

TODAY	TOMORROW
Procedures governed by the Procurement Directive and its transpositions, and by case law	A new European regulation to secure renovated procedures : - Definition of food : link with soil preservation, water, air quality, etc. - Basic prescriptions / guidelines : fair pay, decent working conditions, animal welfare, environmental issues, nutritional quality, fight against endocrine disruptors, etc. - Free choice of procedure for 50% of the volume of purchase -Compliance with the reasons of general interest set out in a territorial strategy -Inclusive territorial food governance
The integration of territorialised reasons of general interest (relocation, water and soil preservation) is prohibited because they are not directly linked to the subject matter of the contract	Allowed if in accordance with the territorial strategy and the new european regulation
Call for tenders for large volumes	Free choice of procedure for 50% of annual purchases in euros excluding taxes

## Appendix 1

### Frequently asked questions

**What might a territorial resilience strategy look like?** A resilience strategy is inspired by European and national prospective scenarios, which aim to identify land use conditions that will guarantee short and long-term productive capacity, as well as compliance with the Paris agreements. Examples of this kind already exist in several member states.

**How can we purchase production that cannot be relocated in certain areas, such as fishery products, bananas or cocoa?** In this case, an inter-territorial strategy is adopted, analyzing the reciprocal needs of production and consumption areas.

**Should the Market Directive be amended?** The aim is not at this stage to amend the directives, but to secure a new approach by means of an ad hoc regulation.

**Doesn't freedom of choice present a risk of favoritism or lack of competitive bidding? How do we respect the principle of transparency and open access?**

The free choice of procedure does not mean that the local authority will systematically opt for a direct agreement procedure : it could just as easily opt for a competitive bidding process limited to producers within its territory, or beyond (e.g.: sustainable fisheries for non-coastal towns).

Direct agreement does not conflict with the best use of public funds, as the local authority retains the ability to negotiate bids, nor with the transparency of procedures, as the purchaser remains subject to its obligations to publish essential information on public contracts. The choice of contractors will also be consistent with the overall strategy set out in the local strategy (public document).

Finally, in the case of food purchases, the performance of contracts should be assessed not only in financial terms, but more globally in terms of their coherence and their leverage effect on the food strategy.

**However, our proposal opens up a number of possibilities**

- specifications and criteria, including location criteria, can be assessed more broadly without being censured if they are in line with a duly objectified territorial strategy. Just as local producers can be selected as part of a service contract aimed at improving water quality around catchment areas, the same reasoning should be applicable tomorrow to a food procurement contract.

- the procedure must enable and facilitate negotiation to take into account the complexities of food markets, such as the duration and volatility of prices.

**Will the application of european requirements be mandatory for all?** this regulation should allow Member States and decentralized authorities wishing to promote ambitious objectives to get more involved on a voluntary basis. The aim is to support the most advanced, turning them into demonstrators likely to inspire a Europe-wide movement.

**Will we have the choice of staying with the current system?** It's always possible which is the notion of free choice as proposed here.

**How do you define a relevant distance for local sourcing?** It must be assessed with a certain latitude of interpretation according to the objectives of the sectors and the needs of the territory being set out in the food strategy. The territory is not limited to an administrative delimitation. It takes into account the scale of sectors and cooperation between local public authorities, populations, farmers... It should be up to these stakeholders to define the territory democratically, based on in situ analysis.

**How can we guarantee that local is a relevant criterion?** Local is not a relevant criterion on its own. It's a question of selecting producers who meet the guidelines set out in the territorial strategy, which aims for global resilience and public health: soil, water...

**Why and how to build local governance to analyze local needs?** Local governance systems are being set up in many sectors and in many countries. A triptych of diagnosis - governance - financing is frequently observed : in food councils or in renewable energy communities. The regulation could usefully draw on existing legal provisions in countries that have set up such schemes.

**How can we prevent a proliferation of uncoordinated strategies and detour to producers who do not fully meet needs?** This issue already exists. A new regulation would encourage the deployment of territorial strategies. A more coordinated approach would require these strategies to focus on the articulation of different scales, and to take into account a limited number of objectives emanating from higher levels. Non-binding guidelines associated with the regulation could promote such practices.

## Appendix 2

### References

This declaration is based on various studies and programs demonstrating the key role of production areas in the implementation of coherent territorial strategies.

[JRC Publications Repository - Concepts for a sustainable EU food system \(europa.eu\)](#) : the work coordinated by the Joint Research Centre aims to identify priority levers and emphasizes in particular the issues of governance and traceability ;

Reports from the "School Food 4 change" program, the European Food Trails program, and the IPES-Food think tank show the role of public catering in creating a virtuous circle of consumption and production in response to environmental and public health issue s:

[Planting seeds of agrifood systems transformation in Europe - Food Trails - Milan Urban Food Policy Pact](#)

[IPES-Food. 2016. From uniformity to diversity : a paradigm shift from industrial agriculture to diversified agroecological systems – Recommendation 4 "Public authorities too should support the trade in products from diversified agro-ecological systems, through food purchases for school canteens, hospitals and other public institutions, drawing on the many success stories in this field \(opportunity no. 7\). They would thus create outlets for farmers who diversify their production, while ensuring that users of public canteens, schoolchildren in particular, benefit from a supply of fresh, nutritious food and a diversified dietary intake. Many national and local authorities are already using public procurement to improve the balance sheet of food systems, usually through organic food sourcing. Although already at work, this policy tool could be used more systematically and ambitiously to drive the transition forward; this will prove particularly important in sustaining demand for food from such systems during the development phase of these markets \(see recommendation #3\). Agroecological procurement could be implemented gradually and in a variety of ways:](#)

- *Agroecological sourcing could be phased in gradually, with staggered targets at local and national levels, possibly with a faster rate of increase for fruit and vegetables, and upward revisions whenever supply increases.*

- *Where labelling and certification systems do not exist, agro-ecological production could be identified by indicators that, while specific to sustainable food systems, could be applied locally (see recommendation no. 1).*

*Local purchases of seasonal produce could be encouraged and coordinated through localized food-system planning processes, at the level of a city-region, for example (see recommendation no. 7).*

IPES Food, [L'alimentation, moteur de l'action climatique des collectivités locales](#), novembre 2023

Michel Duru, Pierre-Marie Aubert, Christian Couturier, Sylvain Doublet, *Scénarios de systèmes alimentaires à l'horizon 2050 au niveau européen et français : quels éclairages pour les politiques publiques ?* INRAE 2021

M. Fakhri, *Le rôle du droit à l'alimentation dans le relèvement et la transformation des systèmes alimentaires*, 18 juillet 2023, Rapport A/78/202

The Best-ReMap shows the growing number of national initiatives aimed at making food a regulated subject, given the public health issues involved : [2022-Overview-applicative-situation-analyses-of-the-existing-EU-national-legislation](#)

The scenarios drawn up by certain think tanks and consultancies emphasize global territorial action (revision of menu and consumption structures, planning and strategies focused on land and biomass use on a European, national but also infra-territorial scale, e.g. TYFFA, Afterres...). TYFFA, Afterres 2050... : [Comparer les scénarios - Afterres2050 \(solagro.org\)](#)