Inštitut javno za sebno partnerstvo
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Local Preferences as Non-Discriminatory Instrument in Public Procurement of Fresh Foods: Why, When, How?

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&

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WHY?

- personal motives
- global development
personal motives
EU Food Market & Global Development

"... food prices are not a temporary phenomenon but are likely to persist..."

European Commission, 2008

+ antitrust practices

+ food frauds
+ in the times of crisis, various ‘buy domestic’ and ‘buy local’ slogans re-emerge ...
CJEU

**Buy Irish:** only national origin of goods was highlighted -> "Ireland has /.../ failed to fulfill its obligations under the Treaty by organising a campaign to promote the sale and purchase of Irish goods within its territory, thereby prohibiting State spreading of negative stereotypes against imported goods".

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**Apple and Pear Development Council:** State-sponsored promotion of national goods in general is illegitimate, if merely the national origin of goods is highlighted, while on the other hand the promotion of specific goods having distinctive qualities, besides those of national origin, is permissible.
... references to **national origin** should be **subsidiary** to the main message put over to consumers by the campaign and not constitute the principal reason why consumers are being advised to buy the product. /.../
Qualities of the products which it is permissible to mention include **taste**, **aroma**, **freshness**, **maturity**, **value for money**, **nutritional value**, **varieties available**, **usefulness** ...

Guidelines for Member States’ involvement in promotion of agricultural and fisheries products, 1986
TFEU: free movement of goods and services

General principles of public procurement

equality non-discrimination proportionality competition transparency
CJEU’s more recent case-law:

there are clear indications that public health and environmental protection can be relied on as an overriding reason in the public interest to justify discriminatory measures having an equivalent effect to a quantitative restriction, whilst the principle of proportionality must naturally always be observed

AG Trstenjak in Case C-28/09, Commission v Republic of Austria
advantages of the fresh quality food

positive influence on health

good influence on health expenditure

the positive influence on the environment
Food quality depends on a number of factors, not only on the vicinity of the producer to the consumer: the specific variety chosen, the growing methods used, ripeness when harvested, post-harvest handling, storage, extent and type of processing, and the distance transported ... Nevertheless, local food has some distinct advantages:

- less time on the road, losing nutrients before reaching the marketplace
- farmers growing for a local (and especially a direct) market favour taste, nutrition, and diversity over shipability when choosing varieties
- greater crop diversity from the farmer means greater nutritional diversity for the eater
- direct and local marketing strategies, produce is usually sold within 24 hours after harvest, at its peak freshness and ripeness, making consuming them a more attractive prospect
- produce is likely handled by fewer people, decreasing the potential for damage, and typically not harvested with industrial machinery
- minimising transportation and processing can ensure maximum freshness, flavour, and nutrient retention

→ healthy food ≠ national food ≠ local food
... fresh food is of better quality than processed food ...

element of quality (freshness) needs to be included in the public procurement of food
HOW?
subject & technical specifications

identify the descriptive attributes and characteristics of the subject of the contract

technical specifications drawn up by public purchasers need to allow public procurement to be open to competition as well as to achieve objectives of sustainability
selection criteria

capability of the tenderer -> provide evidence relating to the compliance of their financial, personnel, technical, organisational, and general abilities for the performance of the contract related to the subject of the contract

proportionate
award criteria

quality criteria

lowest price / most economically advantageous tender
Contract clauses can only be enforced during the performance of the contract...
Framework Agreements and Dynamic Purchasing Systems

lack one of the essential elements of contracts -> quantity, delivery time ...
Thank you!

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