

FinUnions' position: Public Procurement Regulation must be revised to ensure access to the market for responsible companies

It is justified to revise the EU's Public Procurement rules. It matters how and by what means the competitiveness of companies is improved.

Procurement legislation must be revised so that the promotion of competition in goods, services and contracts—already pursued in 2014—is reflected in the actual procurements. Social conditionalities and environmental standards must genuinely be included in procurement processes.

The current EU Procurement legislation has proved insufficient and ineffective, particularly in ensuring compliance with social criteria. Public contracts are often awarded by cutting labour costs and ignoring collective agreements, which safeguard adequate working conditions and wages for workers. Neither has there been sufficient action to combat the grey economy.

The revision of the regulation must aim for better consideration of working conditions and collective agreements, and for the creation of quality jobs, while ensuring fair competition. When irresponsible companies operate in the public procurement market, municipalities' and states' tax revenues decline, and European workers' conditions deteriorate. FinUnions' proposals for changes to EU legislation require active measures and recognition of fair competition requirements from both public authorities and companies. This would be a step towards better working life.

Current legislation still emphasizes economic objectives too much

Current EU Procurement legislation is dominated by economic and technical considerations. Although, it is possible to use social and environmental criteria in procurement, their use is not mandatory. This makes the use of such criteria inconsistent. As a result, public funds can be used to purchase from operators who do not sufficiently comply with Labour Law, working conditions or environmental principles.

Especially in municipalities, achieving social objectives in procurement is challenging due to lack of resources, which worsens the situation. Procurement authorities also often continue to use the lowest price as the main criterion and invest little in monitoring or in responsible procurement practices.

This has led to recurring cases of underpayment, for example on construction sites and in the cleaning and security sectors. The availability and quality of services have also deteriorated alarmingly in Social and Health Services, such as elderly care and child protection.

Even after the reform of the Directive, the consideration of social and environmental factors, the principle of ensuring fair working conditions, and their actual implementation are not strongly enough enshrined in Directives and National Regulations on Public Procurement and concession contracts. However, the reform sought to increase the importance of strategic objectives, such as taking social rights into account in projects.

Member States were, for example, given the opportunity to require contracting authorities to use the most economically advantageous tender instead of the lowest price as the award criterion. However, this is not mandatory, and many Member States, including Finland, have not made use of this possibility.

According to the European Court of Auditors' 2023 report, in more than 50 % of European procurements the lowest price is still the main criterion.

Social and environmental considerations must be included to improve Public Procurement

The EU's Public Procurement Directives must be revised so that they include more effective means to address violations of working conditions and the grey economy. Procurement must consider environmental, social and Labour Law aspects more extensively. Making social criteria mandatory would improve compliance with working conditions, the fight against the grey economy, and the promotion of responsible business practices.

EU Public Procurement Legislation should be updated as follows. These measures are largely in line with the positions of the European Trade Union Confederation (ETUC):

- Make comprehensive quality criteria (social, environmental, societal) mandatory as the basis of comparison for tenders and remove the possibility of competition based on price alone.
- Exclude from procurement processes operators that violate workers' and trade union rights and labour law, including collective agreements. Labour offences against workers and their representatives should be more clearly included in the mandatory grounds for exclusion.
- Clarify EU procurement legislation so that contractors who have violated the right to collective bargaining and freedom of association are required to be excluded from future contracts.
- In award criteria, ensure that the bidder complies with legislation and applicable collective agreements concerning workers' conditions.
- Require that in all contracted work under procurement agreements, at least the minimum standards of national law and collective agreements must be respected.
- Ensure full implementation of Article 18 section 2 of Directive 2014/24/EU by including the conditions of applicable collective agreements in procurement notices.

Other important measures to promote social criteria and ensure quality jobs in EU Procurement and Concession Law include:

- Regulate subcontracting to ensure sustainability and respect for workers' rights and limit the length of subcontracting chains.
- Strengthen monitoring and sanction mechanisms in procurement and improve cooperation between authorities.
- Step up actions to exclude operators who neglect their own payment obligations from public contracts.

- Increase transparency and openness of procurement contracts.
- Ensure that public provision of services, public sector partnerships and in-house provision of services always remain alternatives to outsourcing public services.
- Include ILO Convention 94 among the agreements to be taken into account in [Annex](#) to Directive 2014/24/EU.

Additional information:

- Susanna Salovaara, Director of FinUnions, tel. +32 488 479 508, e-mail: susanna.salovaara@finunions.org
- Pia Björkbacka, Senior Adviser, Climate and Sustainable Development, at SAK, tel. +358 50 464 5342, e-mail: pia.bjorkbacka@sak.fi
- Ville Kirvesniemi, Lawyer at STTK, tel. +358 45 329 8669, e-mail: ville.kirvesniemi@sttk.fi