



Evaluating policy responses to prevent undeclared work in public procurement contracts

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Contents

Executive summary	1
1.0 Introduction	4
1.1 Aims and objectives	4
1.2 Methodology	5
2.0 The EU legislative framework on public procurement	5
2.1 The 'horizontal' social clause	7
2.2 Contract award criteria	8
2.3 Exclusion grounds	9
2.4 Selection criteria	10
2.5 Application of collective agreements as an award and exclusion criterium	11
2.6 Abnormally low tenders	13
2.7 Observance of the obligations by subcontractors	14
2.8 Requiring a specific label	16
2.9 Preliminary market consultations	17
2.10 Checking labour condition after contract signature	18
2.11 Reporting of irregularities	18
3.0 The extent of undeclared work in public procurement contracts	20
3.1 Extent of undeclared work in public procurement contracts	21
3.2 Types of public procurement procedures (more) prone to undeclared work	22
3.3 Economic sectors (more) prone to undeclared work in public procurement contracts	23
4.0 Tools available to prevent undeclared work in public procurement contracts	25
4.1 Tools available during the planning phase	25
4.2 Tools available during the evaluation phase	31
4.3 Tools available during the implementation phase	33
5.0 Challenges in preventing undeclared work in public procurement contracts	39
5.1 General challenges for socially responsible public procurement	39
5.2 Specific challenges faced by public authorities in preventing undeclared work in public procurement contracts	41
5.3 Examples of challenges to prevent undeclared work in public procurement	45



6.0 Tips for mitigating undeclared work in public procurement contracts.....	48
6.1 Mitigating undeclared work risks during the planning and evaluation phases.....	48
6.2 Mitigating undeclared work risks during the implementation phase.....	53
7.0 Conclusions and suggestions	56
References.....	60
Annex 1	64



Executive summary

Policy initiatives have traditionally focussed on increasing the costs of undeclared work and benefits of declared work for suppliers, as well as pursuing awareness raising campaigns among suppliers of undeclared work. Less attention has been paid to the demand-side of undeclared work, namely the purchasers of undeclared work. This study explores the existence of **undeclared work where public sector bodies purchase goods and services from private sector businesses** through public procurement and the **actions that can be taken by public authorities to mitigate undeclared work in public procurement contracts**.

This study summarises the findings of the online survey on 'the policy responses to prevent undeclared work in public procurement' conducted in November 2023 among representatives of public procurement authorities in five Member States, i.e. **Belgium, Sweden, Finland, Slovakia, and Poland**. The survey results have been complemented by interviews and desk research. **Good practice cases** in the EU Member States, Iceland, and Norway are also provided based on desk research.

The EU legislative framework on public procurement

- ▶ **Directive 2014/24/EU on public procurement**¹ and **Directive 2014/25/EU on procurement by entities operating in the water, energy, transport and postal services sectors**² promote socially responsible public procurement by fostering the transposition of **labour and environmental clauses** in national legislation, including collective bargaining.³ The relevant articles are analysed and practical examples of how they have been transposed and applied in the EU Member States are provided.

The extent of undeclared work in public procurement contracts

- ▶ The existence of undeclared work in public procurement contracts is not due to the fact that it is a public procurement contract per se.
- ▶ The problem of undeclared work does not occur specifically in public procurement contracts compared with the general economy.
- ▶ The extent of undeclared work when contracting authorities procure goods and services from private businesses is not strongly associated to the type of public procurement procedure, but rather related to the extent to which more qualitative criteria are used (e.g. whether the candidate applies a collective agreement).⁴

¹ Official Journal of the European Union. [Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC](#).

² Official Journal of the European Union. [Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC](#).

³ These include: Article 18 (2) of Directive 2014/24/EU 'Compliance with social and labour standards'; Article 42 and Annex VII of Directive 2014/24/EU, and Article 60 and Annex VIII of Directive 2014/25/EU 'Defining the requirements of a contract'; Article 57 (2,4,5), Article 18 (2) of Directive 2014/24/EU 'Exclusion criteria'; Article 69 (2,3) of Directive 2014/24/EU 'Checks in case of abnormally low price'; Article 71 (1,6) and Article 18 (2) of Directive 2014/24/EU 'Due diligence and obligations by subcontractors'; Article 43 of Directive 2014/24/EU and Article 61 of Directive 2014/25/EU 'Use of labels'; Article 67 of Directive 2014/24/EU and Article 82 of Directive 2014/25/EU 'Lowest price award and life-cycle costing'; and Article 40 of Directive 2014/24/EU 'Consulting the market'.

⁴ E.g., open procedure, restricted procedure, competitive procedure with negotiation, competitive dialogue, and innovation partnerships' procedure.



- ▶ When the lowest price is used as the only selection criteria, the risk of undeclared work increases due to the pressure on labour costs.
- ▶ A stronger association exists between the extent of undeclared work in public procurement and the sectors involved. The sectors relying on manual labour, low wages, and seasonal or foreign workers are more prone to undeclared work, including during procurement procedures.
- ▶ The vulnerability of certain sectors to undeclared work stems from: difficulties associated with inspecting workers who frequently change work location; level of workers' qualification and knowledge of their labour rights; trade union density and collective bargaining coverage; quality and complexity of the national regulations and legislation; existing culture of non-declaration of wages in certain sectors.⁵
- ▶ The link between undeclared work in public procurement and the business sector in which the work is performed is stronger than the link between undeclared work and the length of the subcontracting chain, or the motivation of private sector to lower the price in tendering.

Tools available to prevent undeclared work in public procurement contracts

Tools commonly perceived as effective in preventing undeclared work in public procurement contracts are as follows:

- ▶ **Planning phase:** designing the tendering process with clauses that bidders must comply with such as not being on non-compliance public registers, requiring additional information from businesses to verify other grounds for exclusion, extending exclusion criteria to subcontractors, and establishing joint liability between subcontractors and main contractors. Requiring compliance among the entire subcontractor chain with social and labour standards, including collective agreements, is key to mitigate risks of undeclared work.
- ▶ **Evaluation phase:** obtaining additional information, verifying public registers (e.g. track-record in terms of potential violations of labour rights, non-payment of taxes or social security fees, criminal offences, or non-compliance listings) and explanations for abnormally low tender prices and ensuring subcontractors' eligibility. Lower-priced offers are particularly vulnerable to undeclared work risks, highlighting the importance of additional scrutiny during evaluation, including also the possibility of rejecting abnormally low bids.
- ▶ **Implementation phase:** requiring notification and approval of additional subcontracting, ensuring all subcontractors meet the established award and non-exclusion criteria by the contracting authorities, maintaining an updated list of subcontractors, verifying migrant workers' work permits, checking the use of social ID/labour cards in the worksites under public contracts⁶ as well as collaboration with social partners to monitor compliance with collective agreements. These measures aim to mitigate risks associated with subcontracting and ensure compliance with labour standards throughout the supply chain, including through targeted controls and inspections.

Challenges in preventing undeclared work in public procurement contracts

⁵ Interview with a representative of the Belgian Social Information and Investigation Service (SIRS) and the Federal Public Service Employment (FPD SPF), (27 February 2024).

⁶ If applicable according to national law or in a specific sector.



- ▶ Lack of human resources to check all reports by the main contractor.
- ▶ Lack of access to registers such as company registers, tax, social securities and employment registers, court decisions on past infringements, compliance and non-compliance lists maintained by public bodies or social partners.
- ▶ Lack of methodologies or internal procedures to assess the reasons for abnormally low prices.
- ▶ Lack of human resources for on-site inspections; and lack of methodologies and/or internal procedures for checking the newly appointed subcontractors.
- ▶ Non-transposition or incomplete transposition of EU instruments and adopted international standards on labour market practices.
- ▶ A major challenge to preventing undeclared work when contracting authorities procure goods and services from private businesses is also the lack of unified systems for collecting Socially Responsible Public Procurement (SRPP) data.⁷

Tips for mitigating undeclared work in public procurement contracts

In the **planning and evaluation phase** of public procurement:

- ▶ Provide additional **human and financial** resources to public procurement authorities, as well as **trainings** to acquire skills and methodological knowledge, to better inform and develop practical tools preventing undeclared work.⁸
- ▶ Develop comprehensive **risk analysis** of the market before the start of the public procurement procedure and ensure careful drafting of the contract, including the use of qualitative selection and award criteria such as the requirement of having a collective agreement.
- ▶ Ensure adequate contract **supervision**, check and verify subcontractors' compliance with mandatory and exclusion criteria.

In the **implementation phase** of public procurement:

- ▶ Ensure adequate contract **supervision**, check and verify continuous compliance by subcontractors with mandatory and exclusion criteria (also checked during the planning and evaluation phase).⁹
- ▶ Establish effective control mechanisms in the relevant public authorities to ensure **compliance with the legal provisions tackling undeclared work**.¹⁰

⁷ Directive 2014/24/EU on public procurement and Directive 2014/25/EU on procurement by entities operating in the water, energy, transport and postal services sectors promote socially responsible public procurement by fostering the transposition of labour and environmental clauses in national legislation, including collective bargaining. The rules seek to ensure greater inclusion of common societal goals in the procurement process. These goals include environmental protection, social responsibility, innovation, combating climate change, employment, public health and other social and environmental considerations.

⁸ Sweden.

⁹ Finland.

¹⁰ Czechia.



1.0 Introduction

Policy initiatives have traditionally focussed on increasing the costs of undeclared work¹¹ and benefits of declared work for suppliers, as well as pursuing awareness raising campaigns¹² among suppliers of undeclared work. Less attention has been paid to the **demand-side of undeclared work**, namely the purchasers of undeclared work.

The current study explores the **purchase by public sector bodies of goods and services from private sector businesses through public procurement**. While public procurement aims to achieve best value for money, this objective may inadvertently increase the risk of unscrupulous contractors resorting to the dumping of labour costs through practices that evade legal and regulatory requirements resulting in partially under-declared, wrongly declared,¹³ or fully undeclared work. To date, limited empirical evidence has been gathered to assess the prevalence of this phenomenon. There is no reason to believe that in certain sectors, public procurement contracts are more likely to involve undeclared work than contracts not based on public procurement. However, **if public procurement contracts are appropriately designed and executed, they can reduce the risk and prevalence of undeclared work**. The current study explores actions that can be taken by public authorities to mitigate the possibility of undeclared work in public procurement contracts.

1.1 Aims and objectives

The aim of this study is to evaluate the policy responses targeting public procurement. To achieve this, this study has the following objectives:

- ▶ To provide an overview of the **EU legislative framework** on public procurement;
- ▶ To explore the **extent of undeclared work** when contracting authorities procure goods and services from private businesses and the sectors in which undeclared work in public procurement contracts prevails;
- ▶ To explore whether the extent of undeclared work in public procurement is **related to the type of public procurement procedures used**¹⁴ or is due to the labour intensity¹⁵ and other specificities of the respective sectors;
- ▶ To review the **tools that are being used to prevent undeclared work** in public procurement contracts. The analysis focuses on the contractual obligations and other control measures which public sector bodies can include in the technical specifications of public procurement procedures;
- ▶ To identify the **challenges** involved in preventing undeclared work in public procurement;
- ▶ To identify the possible **tips** for overcoming these challenges.

¹¹ European Platform Undeclared Work (2021). [Enhanced learning resource paper from the thematic review workshop on cross-border sanctions in the area of undeclared work](#).

¹² European Platform Undeclared Work (2021). [Practitioner toolkit: Information Tools and Approaches to Reach Out to Workers and Companies in the Fight against Undeclared Work](#).

¹³ That is bogus posting and bogus self-employment.

¹⁴ That is open procedure, restricted procedure, competitive procedure with negotiation, competitive dialogue, and innovation partnerships' procedure.

¹⁵ Labour intensive sectors require a large amount of labour (often manual labour) to produce goods or services. These are usually the sectors most at risk of undeclared work.



1.2 Methodology

The study summarises the findings of the online survey on ‘The policy responses to prevent undeclared work in public procurement’ conducted in November 2023 among representatives of public procurement authorities in five Member States, i.e. **Belgium, Sweden, Finland, Slovakia, and Poland** (see Figure 1). The survey focussed on (1) the causes and extent of undeclared work when contracting authorities procure goods and services from private businesses, (2) the tools used for mitigating undeclared work in public procurement contracts, (3) the challenges involved in preventing undeclared work in public procurement contracts, and (4) the tips for addressing these challenges.

Figure 1: Respondents to the online survey



Source: CSD/ICF.

Due to the small sample size (5 respondents) and the lack of existing literature on the topic, the survey responses should be considered cautiously as these are largely based on perceptions rather than empirically verifiable data.

The survey results have been complemented by interviews with Belgium and Finland as well as desk research. **Good practice cases** in the EU-27 Member States, Iceland, and Norway are also provided based on desk research.

2.0 The EU legislative framework on public procurement

The foundations of EU public procurement law are based on the principles of equality, non-discrimination, transparency, and proportionality, codifying a long line of case law of the Court of Justice of the European Union (CJEU). EU public procurement promotes the free movement of goods and services. It also aims to ensure that contracting authorities get better value for money.

On 26 February 2014 the Council of the European Union and the European Parliament adopted two directives aimed at simplifying public procurement procedures and making them more flexible: **Directive 2014/24/EU on public procurement**¹⁶ and **Directive 2014/25/EU on procurement by entities operating in the water, energy, transport and postal services sectors**.¹⁷ These Directives promote socially responsible public procurement by

¹⁶ Official Journal of the European Union. [Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC.](#)

¹⁷ Official Journal of the European Union. [Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC.](#)



fostering the transposition of **labour and environmental clauses** into national legislation, including collective bargaining.^{18,19} The rules seek to allow for greater inclusion of common societal goals in the procurement process. These goals include environmental protection, social responsibility, innovation, combating climate change, employment, public health and other social and environmental considerations. Member States had until April 2016 to transpose the new rules into national law (except for e-procurement rules, for which the deadline was October 2018).²⁰

Several articles of the two Directives promote socially responsible public procurement (SRPP) and provide the legal basis for the introduction of stronger conditionalities in the Member States' national legislation that also serve to prevent undeclared work in public procurement. The relevant articles include the following:

- ▶ **Compliance with social and labour standards:** Article 18 (2) of Directive 2014/24/EU requires Member States (through the contracting authorities) to take appropriate measures to ensure that in the performance of public contracts economic operators comply with applicable obligations in the fields of environmental, **social, and labour law** established by Union law, national law, collective agreements or by the international environmental, social and labour law provisions. This requirement is further reaffirmed in Article 9 of Directive (EU) 2022/2041 on adequate minimum wages.^{21,22} Article 56 (1) of Directive 2014/24/EU reiterates compliance with applicable obligations as part of the general principles of selection that need to be followed and respected.
- ▶ **Defining the requirements of a contract:** The technical specifications which the contracts should set out are defined in Article 42 and Annex VII of Directive 2014/24/EU; and Article 60 and Annex VIII of Directive 2014/25/EU.
- ▶ **Exclusion criteria:** As foreseen in Article 57 (2) of Directive 2014/24/EU, exclusion criteria relate to breach of obligations in the payment of taxes or social security contributions; Article 57 (4) (a) relates to non-respect of Article 18 (2); and Article 57 (5) relates to the exclusion of those economic operators that are proven to be violating Article 18 (2) at any moment of the selection procedure.
- ▶ **Checks:** Article 69 (2) (d) of Directive 2014/24/EU establishes that contracting authorities shall require economic operators to **explain the price or costs proposed** in the tender where tenders appear to be

¹⁸ An ongoing study, coordinated by the European Trade Union Institute, ETUC and its members, explores the state of the art on socially responsible public procurement across a selection of Member States, focusing on opportunities for collective bargaining as a tool to define labour standards in public procurement contracts. The dedicated country reports as well as the comparative study are expected to be published in 2024 (*forthcoming*).

¹⁹ Relevant trade union studies on socially responsible public procurement include: [Social Clauses in the Implementation of the 2014 Public Procurement Directives](#) (study by ETUC, 2021), [Resolution for a More Sustainable and Inclusive Competition Policy \(policy paper by ETUC, 2021\)](#), [Put your money where your mouth is – Why and how the EU needs to change its public spending policies to promote a social Europe](#) (study by UNI Europa, 2021), [Green, Pave the Way for Social! How the EU's Green Public Procurement Can Forge a Path Towards Socially Responsible Public Procurement](#) (study by UNI Europa, 2023), [Map of Misery – Examples of EU Public Money Going to Companies that Exploit Workers and Deliver Low-quality Services](#) (study by UNI Europa, 2023), [PROCUFAIR Project – Promoting Decent Work Through Public Procurement in Cleaning & Private Security Services](#) (project by UNI Europa, 2023), European Federation of Building and Woodworkers (EFBWW) (2022). [Better European Rules for Subcontracting in the Construction Sector](#), and the European Parliament study, with ETUC contribution [The Social Impact of Public Procurement – Can the EU do more?](#) (European Parliament, 2023).

²⁰ In addition, in response to a 2021 call from trade unions, academia and other stakeholders, the EU introduced a policy that ties Common Agricultural Policy payments to compliance with EU minimum social and labour standards. This new policy introduces important selection and exclusion criteria for the funds disbursed. Member States will start the implementation of social conditionality voluntarily from 2023 and mandatorily from January 2025, as set out by Article 14 of Regulation (EU) 2021/2115.

²¹ Official Journal of the European Union. [Directive \(EU\) 2022/2041 of the European Parliament and of the Council of 19 October 2022 on adequate minimum wages in the European Union](#).

²² European Labour Authority (October 2022). [Learning resource paper: Tackling undeclared work in supply chains](#).



abnormally low. Article 69 (3) foresees rejecting the abnormally low tender when the obligations of Article 18(2) are not observed.

- ▶ **Due diligence and obligations by subcontractors:** Article 71 (1) of Directive 2014/24/EU allows competent authorities to put in place measures in order to ensure subcontractors respect Article 18 (2); Article 71 (6) lists the appropriate measures that can be taken to ensure compliance, such as utilising national mechanisms of joint liability²³ between subcontractors and the main contractor and requesting that the economic operator replaces a subcontractor.
- ▶ **Use of labels:** Conditions for using labels are laid out in Article 43 of Directive 2014/24/EU and Article 61 of Directive 2014/25/EU.
- ▶ **Most economically advantageous tender and life-cycle costing (LCC):**²⁴ Awarding public contracts based on the most economically advantageous tender is provided as part of Article 67 of Directive 2014/24/EU and Article 82 of Directive 2014/25/EU. Article 67 (2) of Directive 2014/24/EU foresees the inclusion of social aspects during the selection of best price-quality ratio.
- ▶ **Consulting the market:** Article 40 of Directive 2014/24/EU allows for preliminary market consultation with suppliers and other relevant stakeholders to get advice, which may be used in the preparation of the procedure.

Some aspects of the provisions listed above are mandatory ('Member States should'), while other are optional ('Member States may') which means that these are applied at the discretion of the individual Member State.²⁵

The overview below explains the relevant articles of the two Directives and other legal provisions and provides practical examples of how they have been transposed and applied in the five surveyed countries. Good practice cases across the EU-27 Member States, Iceland, and Norway are also provided when available.

2.1 The 'horizontal' social clause

Article 18 (2) of Directive 2014/24/EU lays down the so-called 'horizontal social clause' requiring Member States to take 'appropriate measures to ensure that in the performance of public contracts **economic operators comply with applicable obligations in the fields of environmental, social and labour law** established by Union law, national law, collective agreements or by the international environmental, social and labour law provisions [...]'. In some Member States this article has not been transposed in line with the Directive.²⁶ However, there are some

²³ Joint liability: All parties are collectively responsible for the full amount owed.

²⁴ Life cycle costing (LCC) allows a purchaser to calculate all the costs incurred during the lifetime of a good, service or construction. In addition to the purchase price and associated costs such as delivery and installation, this includes operating costs such as energy, fuel, spares and maintenance, and end-of-life costs such as decommissioning and disposal. The method of calculating these costs must be objectively verifiable and transparent. For more information see Article 2(20) and Article 68 of Directive 2014/24/EU and Article 83(2) of Directive 2014/25/EU.

²⁵ For example, according to Article 57 (1) of Directive 2014/24/EU, *mandatory* exclusion criteria are: participation in criminal organisation, corruption, fraud, terrorist offences, breach of taxes or social security contributions, while according to Article 57 (4), *optional* exclusion criteria are: violation of applicable obligations referred to in Article 18 (2) (environmental, social and labour law, as well collective agreements), bankruptcy or insolvency, grave professional misconduct, agreements with other economic operators aimed at distorting competition, conflict of interest, deficiencies in the performance, and undue influence over the decision-making process of the contracting authority. Article 71 (6b) of Directive 2014/24/EU foresees as an optional / non-mandatory clause, the use of risks assessments and checks in subcontracting chains to prevent labour exploitation and human trafficking (grounds for exclusion and replacement of subcontractors).

²⁶ European Commission (2021). [Buying Social - a guide to taking account of social considerations in public procurement \(2nd edition\)](#)



good practices. In **Italy**, for workers employed under public procurement contracts, compliance with the relevant national and local collective agreements is guaranteed.²⁷

In **Belgium**, according to Article 7 of the Act of 17 June 2016 concerning public procurement,²⁸ economic operators are required to respect and ensure compliance with all applicable obligations in the areas of environmental, social and labour law established by European Union law, national law, collective agreements or by international provisions. **Sweden**²⁹ and **Poland**³⁰ establish the same requirement if the nature of the procurement so justifies. Similarly, in **Finland**, Chapter 10, Section 79 of the Law on Public Procurement and Concessions No. 1397³¹ foresees that the contracting entity may decide not to conclude a procurement agreement with the tenderer submitting the most economically advantageous tender if it finds that the tender fails to comply with the environmental, social, and labour law obligations.

In **Slovakia**, Article 32 (2) of the Act on Public Procurement 343/2015³² requires all applicants to provide certified confirmation from the health insurance company and the Social Insurance Company no older than three months that they have complied with all health and social security duties toward their workers. They must provide a similar certificate also from the local tax and customs office. According to Article 32 (1) (g) the applicants should prove that they have not committed a serious breach of obligations in the area of environmental protection, social law or labour law in the previous three years since the announcement or commencement of the public procurement.

In some other Member States, although not directly and fully transposed into national legislation (e.g. **Czechia**, **Latvia**, and **Poland**, among others), the ‘horizontal social clause’ appears in provisions linked to the exclusion of economic operators from public procurement procedures (in case of non-payment of taxes or social security or health insurance contributions).³³

2.2 Contract award criteria

According to Article 67 (2) of Directive 2014/24/EU ‘contract award criteria’, ‘the most economically advantageous tender from the point of view of the contracting authority shall be identified on the basis of the price or cost, using a cost-effectiveness approach, such as life-cycle costing in accordance with Article 68, and **may include the best price-quality ratio, which shall be assessed on the basis of criteria, including qualitative, environmental and/or social aspects**, linked to the subject-matter of the public contract in question.’ This provision provides for the possibility that quality criteria (e.g. observation of labour law and collective agreements) are used during the public procurement procedures in selecting the most economically advantageous tender. This article is transposed in different ways across the Member States.

In **Poland**, if the weight of the price in the total award score is above 60 %, quality standards should be specified.³⁴ Section 115 (2) of the **Finnish** Law on Public Procurement and Concessions No. 1397 requires that ‘a contracting entity that applies the lowest price as the sole criterion for determining the most economically advantageous tender sets out the justifications for doing so in the procurement documents, in the procurement decision, or in a separate statement on the procurement procedure.’³⁵ Chapter 17, Section 2 of the **Swedish** Law No. 1145 of 2016 on public procurement sets out that ‘a contracting authority shall, if necessary, require that the supplier performs the contract

²⁷ European Trade Union Confederation (ETUC) (2021). [Social Clauses in the Implementation of the 2014 Public Procurement Directives](#).

²⁸ JUSTEL, [Belgian Act of 17 June 2016 concerning public procurement](#).

²⁹ Chapter 4, Section 3 of [Law No. 1145 of 2016 on public procurement](#).

³⁰ Article 17 of the [Public Procurement Law](#) (11 September 2019), in force from 1 January 2021.

³¹ Finlex, Finnish Ministry of Justice, [Law on Public Procurement and Concessions No. 1397 of 29 December 2016](#).

³² Slov-Lex, Ministry of Justice of the Slovak Republic (2015). [Slovak Act on Public Procurement 343/2015](#).

³³ European Parliament (October 2023). [The social impact of public procurement. Can the EU do more?](#)

³⁴ Ibid.

³⁵ Finlex, Finnish Ministry of Justice, [Law on Public Procurement and Concessions No. 1397 of 29 December 2016](#).



in accordance with the stated requirements on wages, holidays and working hours that the employees who will be performing work under the contract shall, as a minimum, be guaranteed. The authority shall also require that the supplier ensures that its subcontractors directly contributing to the performance of the contract satisfy the same requirements.³⁶

In **Czechia**, the lowest price must not be used as the main criterion in competitive dialogues and tenders for specified services. **France** permits the lowest price only for highly standardised products, while **Italy** permits it only for works with a value below EUR 5 382 000.³⁷ The contracting authorities in the **Netherlands** are obliged to justify the use of price as the main criterion. Further, in **Croatia, Germany, Greece, Italy, and Sweden** the best price quality is often used as a method for awarding contracts.^{38,39}

2.3 Exclusion grounds

Article 57 of Directive 2014/24/EU 'exclusion grounds', specifies that an economic operator may be excluded from a procurement procedure if the contracting authority has established or is aware of the operator's failure to meet obligations regarding tax or social security payments, as confirmed by a judicial or administrative decision. This exclusion ceases when the economic operator fulfils its obligations by paying or committing to pay the taxes or social security contributions due. Recital 39 further clarifies that non-compliance with collective agreements by an economic operator could be deemed as serious misconduct.

In **Sweden**, Chapter 13, Section 3 (1) and Chapter 16, Section 9 of the Law No. 1145 of 2016 on public procurement establish that a contracting authority may exclude a supplier if the authority can show that the supplier is in breach of applicable environmental, social, or labour law obligation.⁴⁰ Section 105 of the **Finnish** Law on Public Procurement and Concessions No. 1397 and Article 109 of the **Polish** Public Procurement Law provide for similar exclusion grounds.^{41,42}

In **Belgium**, Article 66 of the Act of 17 June 2016 concerning public procurement specifies as exclusion grounds the non-compliance with the obligations applicable in the areas of environmental, social, or labour law.⁴³ The Act also provides a list of circumstances that the authorities are obliged to check before contracting. Authorities have access to multiple databases and may receive support for the preliminary checks by the Belgian Social Information and Investigation Service (SIRS) and the Federal Public Service Employment (FPD SPF).⁴⁴ Thus, they can easily verify online if the candidate companies have committed any social and fiscal fraud, if they have tax debts, and if

³⁶ Swedish Competition Authority, [Law No. 1145 of 2016 on public procurement](#).

³⁷ European Parliament (October 2023). [The social impact of public procurement. Can the EU do more?](#)

³⁸ In Croatia, the social considerations listed for the assessment of the best price-quality ratio include 'job creation, decent work, democratic ownership, social and professional inclusion of persons with disabilities and disadvantaged persons, integration of disadvantaged groups in the democratic process of the enterprise and accessibility of the service (particularly for those living in remote areas).'

³⁹ European Parliament (October 2023). [The social impact of public procurement. Can the EU do more?](#)

⁴⁰ Swedish Competition Authority, [Law No. 1145 of 2016 on public procurement](#).

⁴¹ Finlex, Finnish Ministry of Justice, [Law on Public Procurement and Concessions No. 1397 of 29 December 2016](#).

⁴² Polish Public Procurement Office, Journal of Laws of 2021, item 1129, [Public Procurement Law](#) (11 September 2019), in force from 1 January 2021.

⁴³ JUSTEL, [Belgian Act of 17 June 2016 concerning public procurement](#).

⁴⁴ For example, the website <https://www.checkobligationderetenue.be/>, maintained by the Federal Public Finance Service, shows whether a company has social and/or tax debts. Other available databases include: CheckIn@Work, which is an online service for registering the attendance of individuals working on construction sites exceeding EUR 500 000 in cost; Limosa, which is a declaration requirement for foreign employees, agents, and self-employed individuals conducting temporary or part-time work in Belgium, particularly in high-risk sectors such as construction, meat, and cleaning; Dimona, which is the electronic declaration that employers use to report employees' entries and exits to the National Social Security Office; A1 certificate for posted workers; the cadastre of inspections, which is a shared database where inspectors can consult whether a colleague (from their own or another inspectorate) has already carried out an inspection at this company and what the result was; the employer database; ARZA database of self-employed workers; GINAA, which is the database for administrative fines; JustBan, which is a register listing all persons and entrepreneurs who have been banned from management by the court.



they do not comply with the limitation of the proportion of the public contract subcontracted and/or the limitation of the subcontracting chain. Under Article 54 of the Belgian Social Penal Code civil servants, including public contracting authorities, may obtain from social inspectors information gathered in the course of their investigations, insofar as such information is necessary for the public contracting authorities to fulfil their own legal obligations.⁴⁵

The use of ‘**non-compliance lists**’ which prohibit offenders from applying for public support programmes or public procurement tenders are in use in several Member States and they serve as direct incentives to comply with the national and multinational regulations related to working conditions and undeclared work.⁴⁶ For example, in **Slovakia** when an entity is listed in the publicly available register of violators of the ban of illicit employment, the legal entity cannot participate in any public procurement for five years.⁴⁷ This approach (using non-compliance lists or other similar mechanisms) is reflected in the learning material from the thematic review workshop on Effective penalty measures for tackling undeclared work, including through cost-effective administrative actions.⁴⁸ Beyond the five surveyed countries, **Germany** also has a centralised Competition Register that provides information on whether suppliers fall within any of the grounds that would justify their exclusion from public tenders in Germany (i.e. if serious economic offences have been committed). German contracting authorities are obliged to consult the register for contracts for tenders above EUR 30 000. However, the register does not operate as a traditional ‘blacklist’, as the contracting authority remains free to decide whether or not to exclude a bidder. Similar lists are maintained in **Italy, Spain, Greece, and Lithuania** (although the scope and duration of procurement bans could vary across the countries).⁴⁹

In **Spain, Italy, and France** criteria have also been established to exclude bidders who have committed certain crimes, and tax or labour irregularities. Social criteria have also been incorporated into subcontracting to ensure that subcontractors also respect labour rights and working conditions.^{50,51} Contracting authorities in **France** exclude tenderers who have not complied with the obligation to negotiate with trade unions provided for in Article L. 2242-1 of the French Labour Code.⁵²

2.4 Selection criteria

According to Article 58 of Directive 2014/24/EU ‘selection criteria’, contracting authorities may design procurement procedures and use selection criteria such as the **suitability to pursue the professional activity, economic and financial standing, and technical and professional ability**. While Article 58 does not refer specifically to the observance of labour law as a mandatory selection criterion, it still provides a basis for requiring sound business practices. For example, imposing the economic and financial standing as an award criterion is indirectly linked to the capacity of the company to pay wages and social security contributions to its workers. The requirement for economic operators to be enrolled in a professional or trade register also indirectly contributes to them not being involved with undeclared work.⁵³

⁴⁵ E-justice (6 June 2010). [Belgian Social Penal Code](#).

⁴⁶ European Labour Authority (October 2022). [Learning resource paper: Tackling undeclared work in supply chains](#).

⁴⁷ European Commission, DG Employment, Social Affairs and Inclusion (2021). [Aiming high: joint forces for better prevention and control of undeclared work in Slovakia](#).

⁴⁸ European Labour Authority (2023). [Effective penalty measures for tackling undeclared work, including through cost effective administrative actions](#).

⁴⁹ In this context, it is worth mentioning that the European Commission operates the Early Detection and Exclusion System (EDES), which may result in firms being blacklisted from bidding for or receiving EU-funded contracts. Among the exclusion grounds applicable to EDES is the ‘non-payment of taxes or social security contributions’.

⁵⁰ Ibid.

⁵¹ European Trade Union Confederation (ETUC) (2021). [Social Clauses in the Implementation of the 2014 Public Procurement Directives](#).

⁵² Ibid.

⁵³ Some ‘exclusion criteria’ also act as ‘selection criteria’. Most good practice cases refer to ‘exclusion criteria’.



2.5 Application of collective agreements as an award and exclusion criterium

Article 18 (2) of Directive 2014/24/EU provides that Member States shall take appropriate measures to ensure that in the performance of public contracts economic operators comply with **collective agreements**. Article 69 (5) clarifies that, upon request, Member States shall make available to other Member States relevant information on the applicable collective agreements or national technical standards. Recitals 39, 98, and 105 further encourage Member States to include clauses ensuring compliance with collective agreements in public contracts. Non-compliance could be considered a grave misconduct leading to exclusion.

The European Trade Union Federation of Service Workers (UNI Europa) and the Confederation of European Security Services (CoESS) have issued a **joint declaration** demanding public contracts to be awarded to companies adhering to collective agreements, where they exist.⁵⁴ Likewise, UNI Europe and the European Federation of Cleaning Industries (EFCI) have issued a similar joint declaration on public procurement (2023) as well as another joint statement on undeclared work (2020).^{55,56} Similarly, the European Federation of Food, Agriculture and Tourism Trade Unions (EFFAT) and FoodServiceEurope have adopted a joint declaration on public procurement and collective bargaining (2023).⁵⁷

Across Member States, the **actual use of social clauses is limited in scope and in content** (e.g. narrowed to non-discrimination clauses in employment).⁵⁸ Interviews with public procurement authorities conducted in earlier research suggest that some public authorities perceive social clauses more difficult to be implemented compared to environmental clauses, and also more difficult to enforce and control compared to the environmental ones.⁵⁹

The **Finnish** Law on Public Procurement and Concession Contracts obliges contracting authorities to check the collective agreement or the principal terms of employment applicable to the work.^{60,61} Other Member States such as **Sweden** apply a similar clause, on a voluntary basis (e.g. some public tenders for cleaning services state that: 'wages, holidays and working hours must at least be in line with central collective agreements applied in Sweden').⁶² In addition, in **Sweden**, the national procurement law requires accessibility and transparency. Chapter 17, Section 3 of the Swedish Law No. 1145 of 2016 on public procurement states that the levels of the requirements contracting authorities use shall be the lowest levels in accordance with a central collective agreement which applies throughout Sweden for equivalent employees in the industry field in question.⁶³ The requirements shall, however, at least correspond to the levels pursuant to legal acts. The National Public Procurement Strategy stipulates that '[...] competition in public procurement must never be at the expense of good work environment or reasonable working conditions. The Government wishes to strengthen the possibilities for stipulating criteria for conditions in line with Swedish collective agreements in public procurement. Criteria for conditions corresponding

⁵⁴ UNI Europa and EFCI (2023). [Joint Declaration on Public Procurement and Collective Bargaining](#).

⁵⁵ Ibid.

⁵⁶ EFCI and UNI Europa (2020). [Joint Statement for the European Campaign for Declared Work 2020 - #EU4FairWork](#).

⁵⁷ EFFAT-FoodServiceEurope (2023). [Joint Declaration on Public Procurement and Collective Bargaining](#).

⁵⁸ This finding is based on consulting publicly available lists of implemented procurements. The Slovak Central Public Procurement Authority (Úrad pre verejné obstarávanie), <https://www.uvostat.sk/obstaravania>, and the international registry of socially responsible public procurements operated under the Czech Ministry of Regional Development and funded by the NextGeneration EU, <https://www.sovz.cz/priklady-dobre-praxe/>.

⁵⁹ Background interviews within the ETUI project including Bulla and Kahancová (2022).

⁶⁰ According to section 98.2 of the Act on Public Procurement and Concession Contracts, procurement agreements concluded between a central government authority and the successful tenderer shall include a condition on compliance with the minimum terms and conditions of employment governing work of the same nature under the law and collective agreements of Finland. According to the Act on Public Procurements and Concession Contracts, section 98.3, other contracting entities have the same obligation when the contract concerns a construction contract.

⁶¹ HEUNI (2021). [Labour Exploitation and Public Procurement – Guide for risk management on national supply chains](#).

⁶² European Parliament (October 2023). [The social impact of public procurement. Can the EU do more?](#)

⁶³ Swedish Competition Authority, [Law No. 1145 of 2016 on public procurement](#).



to Swedish collective agreements are an important means of combating social dumping in public procurement. By requiring suppliers to guarantee reasonable working conditions for their employees, the services procured can be performed at a high quality while still combating social dumping.⁶⁴

In **Slovakia**, the use of social clauses as defined in legislation is often confined to the purchase of goods and services from sheltered workplaces employing persons with disabilities. The control on working conditions, including undeclared work, is not part of this practice. However, two recent local initiatives by trade unions in cooperation with regional public authorities show a potential to use the legislation to set procurement conditions by involving a reference to collective bargaining requirement. First, when the Bratislava region procured a new contractor for regional transport, the labour conditions advertised by the public employer failed to recruit a sufficient number of drivers to provide the agreed scope of transport services. Trade unions (OZ Kovo) proposed that the requirement to adhere to regulations stipulated in the collective agreement by the previous contractors providing the same service for 10 years could help solve the situation that the same working conditions are assured even if the contractor changes. Second, the regional government of Banska Bystrica responded to the unions' query of prohibiting negative derogation from previous working conditions in an innovative way, namely, by introducing wage indexation derived from average wages and bargained wages. This way, wage levels are secured through the supply chain, although their enforcement and control are a separate challenge.⁶⁴

Finally, in **Poland**, an example showing the use of labour clauses as part of socially responsible public procurement is the city of Poznan and its Board of Communal Housing Resources. In 2021, a stipulation was introduced for publicly procured services that contracts should be evaluated higher if they pay their employees' wages above the minimum wage. The second stipulation aims to secure that wages are paid regularly on a monthly basis. Next, the District Court of the city of Mielec, in cooperation with the national labour inspectorate, adopted a regulation in 2017 to protect employees by ensuring they will be hired on a proper employment contract according to the Labour Code. While at first glance these practices may be perceived as standard and not as examples of innovation or socially responsible public procurement, they are indeed important for setting higher labour standards and benchmarks for fully declared contracts. This is relevant especially in countries with a high share of service contracts and underdeclared work with envelope payments in addition to wages not exceeding the minimum wage in formal employment contracts.⁶⁵

In **Spain**, Act 9/2017 on Public Sector Contracts Law (PSCL) transposed the 2014 Public Procurement Directive into national legislation. This legislation requires that the reference regulation for companies wishing to bid for public contracts should be the existing sectoral collective agreement. This stipulation created a controversy with 2012 legislative reforms, which stipulate the priority application of company-level collective agreements.⁶⁶ Due to such legislative controversies, there is little evidence of public procurement procedures including clauses to promote collective bargaining. One such example is the procurement rule of the city of Barcelona. While the general working conditions of workers employed by others are usually decided by collective bargaining, in public contracts the contracting body may decide to include consideration of the wages of workers assigned to perform the contract and, among other selective criteria, evaluate the highest tender in terms of their salaries. In turn, the company that voluntarily pays more money to staff who will deliver on the contract put out to tender receives a higher score because this will inevitably result in better performance.⁶⁷

⁶⁴ Bulla, M. and Kahancová, M. (2022). Diversity of (failed) opportunities? Public procurement, social clauses and collective bargaining in Slovakia, Report commissioned by the European Trade Union Institute (*forthcoming*).

⁶⁵ Ibid.

⁶⁶ In 2021, the Workers' Statute underwent a reform that altered the order of precedence between company and sectoral collective agreements in terms of wage amounts, giving priority to the sectoral agreement over the company collective agreement.

⁶⁷ Barcelona City Council (2017). [Social Public Procurement Guide](#).



The transposition of the EU Public Procurement Directive in **France** triggered a national reform which resulted in a new public procurement code adopted in 2019 to enable public purchasers to meet their social and environmental responsibilities.⁶⁸ This regulation includes the promotion of socially responsible public procurement.

In **Germany**, new state procurement acts were adopted in Thüringen, Berlin, and Saarland demanding compliance with prevailing collective agreements. Further legal steps in this direction were discussed in other regions, and the national coalition agreement announced in 2022 a forthcoming federal act on collectively agreed standards for workers under public contracts. The example of the Procurement Act of the Land of Berlin (2020) stipulates that ‘...public contracts shall be awarded to contractors only if, when submitting a tender, they commit themselves to [...] pay their employees during the execution of the contract [...] at least the remuneration (including overtime rates) according to the regulations of the collective agreement applicable to the corresponding branch in the Land of Berlin’ (§ 9, 1 (2)).⁶⁹

2.6 Abnormally low tenders

Article 69 of Directive 2014/24/EU ‘abnormally low tenders’ stipulates that ‘contracting authorities shall require economic operators to explain the price or costs proposed in the tender where they appear to be **abnormally low** in relation to the works, supplies or services.’ The five surveyed countries, i.e. **Belgium, Finland, Poland, Slovakia, and Sweden** (as well as other EU Member States such as **Italy and France**, among others) represent good practice in transposing Article 69 of the Directive. Their national legal basis provides for an obligation for procuring authorities to reject abnormally low tenders where the tenderer is unable to give a sufficient explanation for the low price or cost offer and where it has been established that the abnormally low price or costs proposed in the bid result from a non-compliance of the supplier of a good or the provider of a service with (international or national) social or labour law provisions.⁷⁰

More specifically, Chapter 16, Section 7 of **Swedish** Law No. 1145 of 2016 on public procurement states that if a tender appears abnormally low, the contracting authority shall first request that the supplier explains the low price or cost.⁷¹ The authority shall reject the tender if the supplier has not in a satisfactory way explained the low price or cost. A contracting authority shall also reject a supplier’s tender if it finds that the abnormally low price is due to the tender not satisfying applicable environmental, social, or labour law obligations.

Section 96 of the **Finnish** Law on Public Procurement and Concessions No. 1397 states that contracting authorities should request additional information (and explanation) about any abnormally low price offers (e.g. the manufacturing method).⁷² Other Finnish legal acts require the candidates to be registered and compliant in tax, labour and social security law and registers.⁷³

In **Belgium**, according to Article 164 of the Act of 17 June 2016 concerning public procurement contracting authorities should gather and keep a written record of the legal and factual reasons for rejecting offers deemed abnormally low.⁷⁴ The Brussels region has an observatory of reference prices in public contracts which provides an analysis of tender prices when the contracting authority questions whether the received bid is abnormally low.⁷⁵ The Walloon region has published a guide detailing the various steps to be followed to analyse bid prices

⁶⁸ Official Journal of the French Republic (5 December 2018). Public Procurement Code: [Ordinance No.2018-1074](#) regarding the legislative part of the Public Procurement Code and [Decree No.2018-1075](#) regarding the regulatory part of the Public Procurement Code.

⁶⁹ European Parliament (October 2023). [The social impact of public procurement. Can the EU do more?](#)

⁷⁰ Ibid.

⁷¹ Swedish Competition Authority, [Law No. 1145 of 2016 on public procurement](#).

⁷² Finlex, Finnish Ministry of Justice, [Law on Public Procurement and Concessions No. 1397 of 29 December 2016](#).

⁷³ Interview with a representative of the Finnish Competition and Consumer Authority (10 January 2024).

⁷⁴ JUSTEL, [Belgian Act of 17 June 2016 concerning public procurement](#).

⁷⁵ Brupartners – Economic and Social Council of the Brussels region, [Observatory of reference prices in public contracts](#).



effectively.⁷⁶ The website of the Belgian Ministry Employment, Labour and Social Dialogue also provides information on the main working conditions and remuneration in force in the main joint committees (sectors of activity), including salary rates and other bonuses.^{77,78}

In **Slovakia**, according to Article 53 (2) of the Act on Public Procurement 343/2015, if an offer appears to be extremely low in terms of price, the contracting authorities should request a clarification.⁷⁹ The explanation may relate in particular to economy of production procedures, a technical solution or particularly advantageous conditions available to the bidder, particularities of the service proposed, compliance with obligations in the field of labour law, especially with regard to compliance with minimum wage requirements, environmental protection or social law according to special regulations, compliance with obligations towards subcontractors and/or possibilities of the applicant to obtain state aid. According to Article 53 (3), if at least three bids have been submitted, an exceptionally low price is defined as a bid with: a) 15% lower than the average of the performance prices according to the other offers except the offer with the lowest price, or b) 10% lower than the second lowest price. In addition, Article 34 (1)(a) sets out that contracting authorities may require that the applicant provides a list of supplies of goods or services provided for the previous three years from the announcement of the public procurement, indicating the prices, delivery times and customers. This document could be used as a reference for the normal prices of the potential supplier.

The **Polish** Public Procurement Law also anticipates contracting authorities requests for clarification on any abnormally low price, including the submission of evidence as to the calculation of the price or cost, or its essential components.⁸⁰ Such explanations should be requested if the submitted price offer is at least 30 % lower than the value of the contract increased by the tax due on goods and services, determined before the launch of the procedure or the arithmetic average of the prices of all tenders submitted which are not subject to rejection. The contracting authority should also account for any significant change in market prices which occurred after the launch of the procedure.

2.7 Observance of the obligations by subcontractors

Article 71 of Directive 2014/24/EU 'subcontracting' imposes the **obligation on competent national authorities** to ensure that subcontractors comply with the obligations referred to in Article 18 (2) of the Directive. It also envisages the possibility for contracting authorities to transfer payments directly to the subcontractor, to provide for joint liability between subcontractors and the main contractor, and to require the economic operator to replace a subcontractor.

Trade unions and other civil society organisations recommend awarding penalty points to tenderers responsible for any social and environmental infractions in the subcontracting and supply chain.⁸¹ Also, special attention should be paid to labour-intensive sectors (e.g. construction), as well as cross-border subcontracting set up by temporary work agencies.⁸²

⁷⁶ Walloon portal for public procurement (2018). [Checking of process in public procurement](#).

⁷⁷ Belgian Ministry Employment, Labour and Social Dialogue, [Remuneration conditions](#) and [Salary rates](#).

⁷⁸ Interview with a representative of the Belgian Social Information and Investigation Service (SIRS) and the Federal Public Service Employment (FPD SPF), (27 February 2024).

⁷⁹ Slov-Lex, Ministry of Justice of the Slovak Republic (2015). [Slovak Act on Public Procurement 343/2015](#).

⁸⁰ Polish Public Procurement Office, Journal of Laws of 2021, item 1129, [Public Procurement Law](#) (11 September 2019), in force from 1 January 2021.

⁸¹ Fair Trade Advocacy Office, European Public Service Union, EFBWW, et al. (2020). [Getting the most out of public money in support of Europe's recovery. Joint statement on the European Council Conclusions on public procurement of 25 November 2020](#).

⁸² European Federation of Building and Woodworkers (EFBWW) (2022). [Better European Rules for Subcontracting in the Construction Sector](#).



In **Finland**, Article 71 of Directive 2014/24/EU, has been further implemented by focussing on the use of regular risks assessment in subcontracting chains to prevent labour exploitation and human trafficking (foreseen in point 6 (b) as an optional / non-mandatory clause).^{83,84} Section 78 of the Finnish Law on Public Procurement and Concessions No. 1397 states that the contracting entity shall require the tenderer to replace a subcontractor that is subject to some mandatory exclusion criterion.⁸⁵

Since 2010, the regions in **Sweden** have been collaborating in a national effort to create sustainable supply chains. A Common Code of Conduct for Suppliers has been developed, covering the areas of human rights, workers' rights, environmental and business ethics, joint risk assessments, and audits.⁸⁶ The contracting authorities and contracting partners in Finland should request reports and clarifications from their subcontractors, as well as partners providing temporary agency workers.⁸⁷ This regulation is also applicable to contracts concluded with a foreign company when the work is performed in Finland.⁸⁸

In **Belgium**, Article 156 of the Act of 17 June 2016 concerning public procurement foresees the possibility of limiting the length of the subcontracting chains.⁸⁹ As of February 2024, there have been ongoing discussions in Parliament suggesting the adoption of a new law, which would empower labour inspectorates to check if the law (and the subcontracting provisions) is efficiently applied. The new law is also expected to foresee sanctions for these contracting authorities that have allowed the use of long subcontracting chains.⁹⁰

In **Poland**, Article 409 of the Public Procurement Law⁹¹ sets out that the contracting body may specify in the contract notice, or another document launching the procedure, the requirements related to subcontracting. This could include an obligation for the main contractor to list the names of all known subcontractors, the subject-matter of their tasks, and in the future to immediately inform the contracting authority of any changes affecting subcontractors that occur during the performance of the contract. The contracting authority should also limit the total value of the subcontracting up to 30 % of the value of the contract awarded to the economic operator.

In **Slovakia**, Article 40 (6)(l) and Article 41 (2) of the Act on Public Procurement 343/2015 requires that contracting authorities disqualify any applicant that has not replaced a subcontractor who does not meet the requirements.⁹²

In 2010 the **German** Federal Government cooperated with a consultancy firm to develop the **electronic platform 'Sustainability Compass'** which provides information about certified suppliers and guidance on how the sustainability criteria could be integrated in the procurement process, including a self-check for companies to identify risks in their supply chains and guidance on how to manage them. The platform highlights the social risks in the supply chains of sensitive products, which should be considered by contracting authorities when preparing tender documents and specifications. The utilisation of these resources is optional, and contracting authorities

⁸³ HEUNI (2018). [Guidelines for businesses and employers for risk management in subcontracting chains - Preventing labour exploitation and human trafficking in Finland.](#)

⁸⁴ HEUNI (2021). [Labour Exploitation and Public Procurement. Guide for risk management in national supply chains.](#) HEUNI (2021). [Labour Exploitation and Public Procurement. Guide for risk management in national supply chains.](#)

⁸⁵ Finlex, Finnish Ministry of Justice, [Law on Public Procurement and Concessions No. 1397 of 29 December 2016.](#)

⁸⁶ The Regions' Office for Sustainable Procurement, Region Stockholm. [A collaboration between Sweden's regions.](#)

⁸⁷ Act on the Contractor's Obligations and Liability when Work is Contracted Out (1233/2006).

⁸⁸ HEUNI (2021). [Labour Exploitation and Public Procurement. Guide for risk management in national supply chains.](#) HEUNI (2021). [Labour Exploitation and Public Procurement. Guide for risk management in national supply chains.](#)

⁸⁹ JUSTEL, [Belgian Act of 17 June 2016 concerning public procurement.](#)

⁹⁰ Interview with a representative of the Belgian Social Information and Investigation Service (SIRS) and the Federal Public Service Employment (FPD SPF), (27 February 2024).

⁹¹ Polish Public Procurement Office, Journal of Laws of 2021, item 1129, [Public Procurement Law](#) (11 September 2019), in force from 1 January 2021.

⁹² Slov-Lex, Ministry of Justice of the Slovak Republic (2015). [Slovak Act on Public Procurement 343/2015.](#)



retain the autonomy to choose their own procurement strategies.^{93,94} Furthermore, most regional procurement acts in Germany underline that the main contractor bears the responsibility and may have to pay a fine if the subcontractor does not comply with its social obligations.⁹⁵

The transposition of Article 71 in **Italy** provides for a few **restrictions regulating the utilisation of subcontracting**. Bidders are requested to provide a list of three subcontractors in the tender subject to approval by the contracting authority. In concession cases, bidders must permit checks on subcontractors to be conducted during the awarding phase. Furthermore, both the main contractor and subcontractor bear joint and several liability towards the contracting authority.^{96,97}

In **France**, the **contracting authority directly pays the subcontractors** for the part of the contract they perform if the contract exceeds EUR 600. This rule does not apply to second-tier subcontractors. In case of the latter, the first-tier subcontractor should provide second-tier subcontractors with a personal and joint and several guarantee or a delegation of payment, allowing the latter to be directly paid by the contracting authority.

2.8 Requiring a specific label

Article 43 of Directive 2014/24/EU and Article 61 of Directive 2014/25/EU on 'labels' stipulate that 'where contracting authorities intend to purchase works, supplies or services with specific environmental, social or other characteristics they may, in the technical specifications, the award criteria, or the contract performance conditions, require a specific **label as means of proof that the works, services or supplies correspond to the required characteristics**.'^{98,99}

In **Belgium**, Article 2 (50) of the Act of 17 June 2016 concerning public procurement defines 'label' as 'any document, certificate or attestation confirming that the works, products, services, processes or procedures in question meet certain requirements'.¹⁰⁰ Article 45 clarifies that, when the contracting authority wishes to acquire works, supplies or services presenting certain environmental, social or other characteristics, it may, in the technical specifications, the award criteria or the conditions of execution of the contract, require a particular label as a means of proving the required characteristics. It is also important that the label requirements are set by a third party over whom the economic operator requesting the label cannot exercise decisive influence. Article 43 of Directive 2014/24/EU and Article 61 of Directive 2014/25/EU are transposed in **Slovakia** through Article 42 (7) of the Act on Public Procurement 343/2015, in **Sweden**, through Chapter 9, Sections 12–15 of the Law No. 1145 of 2016 on public procurement, in **Poland** through Article 102 and Article 104 of the Public Procurement Law, and in **Finland**, through Section 72 of the Law on Public Procurement and Concessions No.1397.^{101,102,103,104}

⁹³ OECD (2019). [Public Procurement in Germany](#).

⁹⁴ German Association for International Cooperation (Deutsche Gesellschaft für internationale Zusammenarbeit), [Sustainability Compass \(Kompass Nachhaltigkeit\)](#).

⁹⁵ Ibid.

⁹⁶ Chain: Each party is individually liable for the full amount owed (e.g. wages, taxes, social security contributions, etc).

⁹⁷ European Trade Union Confederation (ETUC) (2021). [Social Clauses in the Implementation of the 2014 Public Procurement Directives](#).

⁹⁸ Eur-Lex, [Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors](#).

⁹⁹ For example, labels may include ISO certificates such as ISO9001 (quality management systems standards) and ISO14001 (standard for environmental management systems). It is also important that requirements of a label are directly related to the subject matter of the contract, such as the description and presentation of the product (Article 43 of Directive 2014/24/EU).

¹⁰⁰ JUSTEL, [Belgian Act of 17 June 2016 concerning public procurement](#).

¹⁰¹ Slov-Lex, Ministry of Justice of the Slovak Republic (2015). [Slovak Act on Public Procurement 343/2015](#).

¹⁰² Swedish Competition Authority, [Law No. 1145 of 2016 on public procurement](#).

¹⁰³ Polish Public Procurement Office, Journal of Laws of 2021, item 1129, [Public Procurement Law](#) (11 September 2019), in force from 1 January 2021.

¹⁰⁴ Finlex, Finnish Ministry of Justice, [Law on Public Procurement and Concessions No. 1397 of 29 December 2016](#).



Other EU Member States have also transposed this provision. For example, in **Bulgaria**, the provision is included in Article 51 of the Public Procurement Act, in **Spain** in Article 127 of Law No. 9 of 2017 on Public Sector Contracts (Law on Public Procurement), while in **France** it is in Section 3 of the Code of Public Procurement, etc.¹⁰⁵

2.9 Preliminary market consultations

Article 40 of Directive 2014/24/EU and Article 58 of Directive 2014/25/EU on ‘preliminary market consultations’ envisage that contracting authorities, before launching a procurement procedure, ‘may conduct **market consultations with a view to preparing the procurement** and informing economic operators of their plans and requirements.’ This provision has a twofold objective: to better define the tender’s specifications by engaging in a dialogue with independent experts, potential bidders, public authorities, NGOs, social partners, and samples of final users, and to inform the market about the upcoming tender. Consultations can take the form of information sessions, market engagement events, questionnaires, and direct contact (e.g. meet the buyer / meet the supplier events). Market consultation (dialogue) is also possible **during and after the award procedure**, however, this should be implemented in a way that does not distort competition.^{106,107}

In **Belgium**, Article 51 of Act of 17 June 2016 concerning public procurement establishes that before commencing a procurement procedure, the contracting authority may carry out market consultations with a view to preparing the procurement and informing economic operators of its projects and requirements.¹⁰⁸ To this end, the contracting authority may, for example, request or accept the opinion of independent experts, public or private organisations or market players. Article 52 requires that the contracting authority takes appropriate measures to ensure that competition is not distorted by the consultation process.

In **Finland**, according to Chapter 9, Section 65 of the Law on Public Procurement and Concessions No. 1397,¹⁰⁹ a market dialogue can be initiated by, e.g., publishing a request for information in the HILMA notification channel (the official service for notices on public procurement).¹¹⁰ The dialogue can be carried out by requesting feedback on tendering documents and/or by meeting suppliers.¹¹¹ However, developing a long-term procurement strategy requires contracting authorities to engage in a wider stakeholder consultation, beyond one-time preliminary market consultations. This could involve regular surveys, interviews, workshops, seminars, and conferences that gather relevant internal and external stakeholders, encouraging collaboration through a participatory dialogue.

In **Poland**, Article 83 of the Public Procurement Law sets out that the contracting authority should analyse its needs and requirements before launching the procurement procedure.¹¹² This analysis should include examining the possibilities of meeting identified needs with the use of own resources and market intelligence. This would provide the contracting authority with the knowledge of indicative contract value, the possibility of dividing the contract into lots, the envisaged procurement procedure, possibility of considering social, environmental or innovative aspects of the contract, and the risks related to the procurement procedure and contract performance. Article 84 further clarifies that the contracting body may, before launching a procurement procedure, conduct preliminary market consultations in order to prepare the procedure and inform the economic operators of its plans and procurement requirements. When conducting market consultations, the contracting body may benefit, in

¹⁰⁵ Lex.bg (16 February 2016). [Public Procurement Act](#); Europam (8 November 2017); [Law No. 9 of 2017 on Public Sector Contracts](#) (Law on Public Procurement); Europam (2018). [Code of Public Procurement](#).

¹⁰⁶ European Commission (2021). [Buying Social – a guide to taking account of social considerations in public procurement](#).

¹⁰⁷ European Parliament (October 2023). [The social impact of public procurement. Can the EU do more?](#)

¹⁰⁸ JUSTEL, [Belgian Act of 17 June 2016 concerning public procurement](#).

¹⁰⁹ Finlex, Finnish Ministry of Justice, [Law on Public Procurement and Concessions No. 1397 of 29 December 2016](#).

¹¹⁰ Finnish public procurement portal, [HILMA](#).

¹¹¹ HEUNI (2021). [Labour Exploitation and Public Procurement. Guide for risk management in national supply chains](#). HEUNI (2021).

¹¹² Polish Public Procurement Office, Journal of Laws of 2021, item 1129, [Public Procurement Law](#) (11 September 2019), in force from 1 January 2021.



particular, from the advice of experts, public authorities, or economic operators. The contracting body however should include information on preliminary market consultations in the contract notice.

Similarly in **Slovakia** Article 40 (7) of the Act on Public Procurement 343/2015 foresees market consultations, which should be carried out in a manner that does not disrupt competition.¹¹³

Other EU Member States have also transposed the provisions on preliminary market consultation. For example, in **Portugal** they are transposed in Article 35a of the Public Procurement Code, in **Greece** in Articles 46 and 47 of the Public Procurement Law, and in **Romania** in Articles 139 and 140 of Law No. 98 of 2016 on Public Procurement.^{114,115,116}

2.10 Checking labour condition after contract signature

Recital 105 of Directive 2014/24/EU stipulates that it is critical to ensure **subcontractors' compliance with social and labour law obligations through appropriate actions** by competent national authorities such as labour inspection agencies. This could also include various transparency measures, such as an obligation for the main contractor to keep a register of all subcontractors and workers on the site, or an obligation for employers and workers to use social ID/labour cards.¹¹⁷ Social partners also emphasise the importance of due diligence during the implementation of the procurement contract. Ideally, the provision of checks and inspections should be incorporated into the technical requirements and the conditions of the contract. Inspections may be conducted by the contracting authority, internal audit teams, trade unions or independent external parties hired by the contractor, among others.¹¹⁸

In **Finland**, the European Institute for Crime Prevention and Control, affiliated with the United Nations (HEUNI) and the Unit on Municipalities conduct **initial assessments of procurement technical specifications**. Subsequently, the Finnish Competition and Consumer Authority collaborates with the Tax Authority and HEUNI to verify procurement contracts after they are signed.¹¹⁹ HEUNI also recommends considering on-site audits to check compliance with labour law obligations and contracts in procurements where a high risk of labour exploitation is identified. Another good example in Finland is the **joint inspection campaign**, conducted by the City of Helsinki, the Confederation of Finnish Construction Industries RT (CFCI), and the Finnish Construction Trade Union at construction sites in 2021.¹²⁰

2.11 Reporting of irregularities

Since December 2021, Directive (EU) 2019/1937 on the **protection of persons who report breaches** of Union law (the so-called 'EU Whistleblower Directive') obliges companies to protect persons reporting breaches of Union

¹¹³ Slov-Lex, Ministry of Justice of the Slovak Republic (2015). [Slovak Act on Public Procurement 343/2015](#).

¹¹⁴ Europam (2018). [Decree-Law No. 18 of 2018, Public Procurement Code](#).

¹¹⁵ Europam (2016). [Law No. 4412/2016 on Public Works, Procurement and Services - Public Procurement Law](#).

¹¹⁶ Europam (2016). [Law No. 98 of 2016 on Public Procurement](#).

¹¹⁷ European Platform Undeclared Work (2022). [Learning Resource Paper: Tackling undeclared work in supply chains](#).

¹¹⁸ UNI Europa (2021). [Put your money where your mouth is. Why and how the EU needs to change its public spending policies to promote a social Europe](#); HEUNI (2021). [Labour Exploitation and Public Procurement. Guide for risk management in national supply chains](#); UNI Europa (2023). [Green, Pave the Way for Social! How the EU's Green Public Procurement Can Forge a Path Towards Socially Responsible Public Procurement](#); European Trade Union Confederation (ETUC) (2021). [Social Clauses in the Implementation of the 2014 Public Procurement Directives](#); Fair Trade Advocacy Office, European Public Service Union, EFBWW, et al. (2020). [Getting the most out of public money in support of Europe's recovery. Joint statement on the European Council Conclusions on public procurement of 25 November 2020](#).

¹¹⁹ Interview with a representative of the Finnish Competition and Consumer Authority (10 January 2024).

¹²⁰ HEUNI (2021). [Labour Exploitation and Public Procurement. Guide for risk management in national supply chains](#).



law within the scope of national procurements.¹²¹ Central, regional, and local governments, and other legal persons governed by public law should introduce an internal reporting channel.

In this regard, in **Finland**, individuals and companies supplying procurements are reporting labour-related irregularities to the Government's Chancellor of Justice.¹²² In 2019 the Confederation of Independent Trade Unions of **Bulgaria**, the General Labour Inspectorate, and the National Revenue Agency conducted an **awareness-raising campaign** about the harms of undeclared work and introduced the free mobile application 'VOX KNSB'. This application allows users to report wrongdoings by their employers (for any type of contracts, including public procurement contracts), including but not limited to non-payment of social securities or wages.¹²³ Ensuring trade unions have access to worksites under public contracts is another good practice to make sure that workers or trade unions can raise concerns about risks of undeclared work and other violations of labour rights.¹²⁴

¹²¹ Eur-Lex. [Directive \(EU\) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons who report breaches of Union law.](#)

¹²² HEUNI (2021). [Labour Exploitation and Public Procurement. Guide for risk management in national supply chains.](#)

¹²³ HEUNI (2020). [Navigating through your supply chain. Toolkit for prevention of labour exploitation and trafficking.](#)

¹²⁴ European Platform Undeclared Work (2021). [Practitioner toolkit: Successful Approaches of Cooperation between Labour Inspectorates and Social Partners.](#)



3.0 The extent of undeclared work in public procurement contracts

This chapter explores whether the **extent of undeclared work** is more prevalent in public procurement contracts than in the general economy, whether **undeclared work in public procurement contracts is related to the motivation of businesses to lower the price offering** during the public procurement procedure; and the **sectors** in which undeclared work in public procurement contracts prevails. It further examines whether the extent of undeclared work when public bodies procure goods and services from private businesses is **related to the type of public procurement procedures used** (i.e. open procedure, restricted procedure, competitive procedure with negotiation, competitive dialogue, and innovation partnerships' procedure) or whether it is due to the labour intensity and other specificities of the respective sectors. The main conclusions of this chapter are based on the survey results.

Key findings

- ▶ The existence of undeclared work in public procurement contracts is not due to the fact that it is a public procurement contract per se.
- ▶ The problem of undeclared work does not occur specifically in public procurement contracts compared with the general economy.
- ▶ The extent of undeclared work when contracting authorities procure goods and services from private businesses is not strongly associated to the type of public procurement procedure, but rather related to the extent to which more qualitative criteria are used (e.g. whether the candidate applies a collective agreement).
- ▶ When the lowest price is used as the only selection criteria, the risk of undeclared work increases due to the pressure on labour costs.
- ▶ A stronger association exists between the extent of undeclared work in public procurement and the sectors involved. The sectors relying on manual labour, low wages, and seasonal or foreign workers, are more prone to undeclared work, including during procurement procedures.
- ▶ The vulnerability of certain sectors to undeclared work stems from: difficulties associated with inspecting workers who frequently change work location; level of workers' qualification and knowledge of their labour rights; trade union density and collective bargaining coverage; quality and complexity of the national regulations and legislation; existing culture of non-declaration of wages in certain sectors.¹²⁵
- ▶ The presence of undeclared work in publicly procured contracts depends more on the respective business sector in which the work is performed than on the length of the subcontracting chain. Nevertheless, the length of the subcontracting chain can also be a relevant factor.

¹²⁵ Interview with a representative of the Belgian Social Information and Investigation Service (SIRS) and the Federal Public Service Employment (FPD SPF), (27 February 2024).



3.1 Extent of undeclared work in public procurement contracts

According to the Labour Input Method applied to Eurostat data, in 2019, **9.7 % of the total labour input in the EU's private sector was undeclared in terms of weighted averages**, and undeclared work constituted 14.6 % of the Gross Value Added (GVA) in the private sector.¹²⁶ Undeclared work (as a proportion of total labour input in the private sector) is most pervasive in **Romania** (21.7 %), **Lithuania** (20.8 %), and **Bulgaria** (19.3 %). The lowest levels are found in **Germany** (3.9 %), the **Netherlands** (4.8 %), and **Austria** (5.1 %). Among the five surveyed countries, **Poland** ranks the highest with 16 % of undeclared work, followed by **Slovakia** (12.1 %), **Belgium** (10.8 %), **Finland** (7.8 %), and **Sweden** (5.3 %).¹²⁷ The 2019 Eurobarometer survey further highlights that one third of Europeans know someone who works undeclared. When asked for the specific **sector** in which the average EU citizen has performed undeclared work, personal services accounts for the largest share (27 %), followed by construction (19 %), hospitality (hotel/restaurant/tourism) (16 %), retail or repair (10 %), education, health and social work (8 %), agriculture (6 %), transport (5 %), industry and manufacturing (5 %), and administration (4 %).¹²⁸ **However, it remains to be established to what extent undeclared work exists in public procurement.**

Survey respondents indicate that the **problem of undeclared work in public procurement** exists to a **small degree** in **Belgium, Finland, Slovakia, and Poland**, and to a **large degree** in **Sweden**, where it seems to be more frequent in public procurement contracts. While **Finland and Slovakia** indicate that the issue of undeclared work **does not prevail more in the general economy** than in the work conducted following public procurement procedures, **Belgium and Poland** report that undeclared work is a significantly more common problem **in the general economy** (compared with the work conducted following a public procurement contract).

Only the **Swedish** respondent fully agrees with the provided statement that **underdeclared work in public procurement contracts is related to the motivation of businesses to lower the price offering** during the public procurement procedure (see Table 1). The respondents from **Belgium, Finland and Slovakia** neither agree nor disagree with this statement, while the **Polish** respondent somewhat agrees with the statement.

Survey respondents have different opinions on the **connection between undeclared work in public procurement and the length of the subcontracting chain**. The respondents from Belgium, Sweden and Finland somewhat agree with the statement that undeclared work in public procurement is linked to the length of the subcontracting chain. However, the respondent from **Slovakia** somewhat disagrees, while the Polish respondent neither agrees, nor disagrees with the statement. Still, past research indicates that there is indeed a correlation between undeclared work and the existence of a (long) supply chain.¹²⁹

The connection between undeclared work and the type of business sector concerned appears to be stronger (Belgium, Finland, and Slovakia) compared to the link between undeclared work and the length of the subcontracting chain and the link between undeclared work and the private sector actors' motivation to lower the price in public tendering. However, the **Swedish** respondent states the opposite – there is a stronger link between undeclared work and the subcontracting chain than the link between undeclared work and the sector in which the work is conducted.

¹²⁶ European Labour Authority (2023). [Extent of undeclared work in the European Union](#).

¹²⁷ Ibid.

¹²⁸ Eurobarometer (February 2020). [2019 Eurobarometer survey: Undeclared work in the European Union](#).

¹²⁹ European Labour Authority (October 2022). [Learning resource paper: Tackling undeclared work in supply chains](#).



Table 1. Extent of undeclared work in public procurement

Note: Distribution of country responses by answer category.

Extent of undeclared work in public procurement	Completely agree	Somewhat agree	Neither agree, nor disagree	Somewhat disagree	Completely disagree
Undeclared work in public procurement contracts is linked to the motivation of the business to lower the price offer	1		3	1	
Undeclared work in public procurement contracts is linked to the length of the subcontracting chain		3	1	1	
Undeclared work is not linked to public procurement per se, but rather to the type of sector involved ¹³⁰	2	1		1	

Source: 2023 Survey on policy responses to prevent undeclared work in public procurement.

3.2 Types of public procurement procedures (more) prone to undeclared work

Survey respondents were asked which types of public procurement procedures are more prone to undeclared work. Types of public procurement procedures can be distinguished as follows:

- ▶ **Open procedures** (any interested economic operator may submit a tender in response to a call for competition).
- ▶ **Restricted procedures** (any economic operator may submit a request to participate in response to a call for competition).
- ▶ **Competitive procedure with negotiation** (any economic operator may submit a request to participate in response to a call for competition, and then submit an initial tender which shall be the basis for the subsequent negotiations).
- ▶ **Competitive dialogue** (any economic operator may submit a request to participate in response to a contract notice, and later participate in a dialogue among limited number of suitable candidates to define the means best suited to satisfying the contracting authorities' needs).
- ▶ **Innovation partnerships' procedures** (any economic operator may submit a request to participate in response to a contract notice, which identifies the need for an innovative product, service or works that cannot be met by purchasing products, services or works already available on the market; negotiations may take place in successive stages in order to reduce the number of tenders to be negotiated; the contracting authority may decide after each phase of the work to terminate the innovation partnership).

Survey respondents indicate **no strong correlation between the different types of public procurement procedures and undeclared work** (see Table 2 below). The **Finnish** respondent comments that the risk of undeclared work is not as such connected to the type of procurement procedure chosen but rather it is the price, technical requirements, and specifications that are the main factors determining the existence of undeclared work.¹³¹ Furthermore, the same respondent reported that more important is whether the contracting authorities

¹³⁰ Four of five respondents answered this question.

¹³¹ Interview with a representative of the Finnish Competition and Consumer Authority (10 January 2024).



check the compliance with the mandatory and/or discretionary exclusion criteria, and whether sufficient information about subcontractors is collected by the contracting authorities, including if they (the subcontractors) fulfil the set of criteria and requirements imposed.

The **Swedish** respondent reported that in ‘open procedures’ undeclared work appears relatively easy compared to other procedures. On the other hand, the appearance of undeclared work in public procurement is considered as ‘relatively difficult’ and ‘very difficult’ in innovation partnerships’ procedures (**Sweden and Slovakia**). The perception behind this answer is that the more dialogue the contracting authorities have with the economic operator/tenderer, the easier it is to have a healthy business relation, including observance of labour laws.

Table 2. In which types of procurement procedures is it easier for undeclared work to appear?

Note: Distribution of country responses by answer category.

Types of public procurement procedures in which is easy for undeclared work to appear	Very easy	Relatively easy	Neither easy, nor difficult	Relatively difficult	Very difficult
Open procedures		1	4		
Restricted procedures			5		
Competitive procedure with negotiation			4	1	
Competitive dialogue			4	1	
Innovation partnerships’ procedures			3	1	1

Source: 2023 Survey on policy responses to prevent undeclared work in public procurement.

3.3 Economic sectors (more) prone to undeclared work in public procurement contracts

Survey respondents were asked to indicate in which **sector(s)** undeclared work in public procurement contracts prevail among the following: home care, catering/food supply, cleaning, construction, home repairs and renovations, maintenance of equipment or venues, transport, and other.

Survey respondents from **Belgium, Finland and Slovakia** do not know whether and how widespread undeclared work in public procurement contracts is in the listed economic sectors (see Table 3 below). The respondent from **Slovakia** further clarifies that the authority dealing with public procurement does not collect specific data on undeclared work in procurement contracts but it takes into account the information found during inspections (e.g. when there is a breach of the provision of the labour law). However, the **Finnish** respondent notes that the sectors where undeclared work is more prevalent are largely characterised by reliance on **manual labour, low wages, and the use of leased labour**. It was added that **economic sectors subject to stricter regulation** are likely to have less undeclared work.¹³² The **Belgian** respondent underlines several additional factors that determine the levels of undeclared work in certain sectors, including during public procurement contracts: difficulties associated with inspecting workers who frequently change work location; level of workers’ qualification and knowledge of their labour rights; trade unions’ density; quality and complexity of the national regulations and legislation; existing

¹³² Interview with a representative of the Finnish Competition and Consumer Authority (10 January 2024).



culture of non-declaration of wages in certain sectors (including pressure from the employer and colleagues).¹³³ A 2023 study by the European Labour Authority provides further information on the topic, including an extensive list of the structural determinants of undeclared work.¹³⁴

In **Sweden** undeclared work is considered widespread in almost all sectors: home care, cleaning, construction, home repairs or renovations, maintenance of equipment for venues, and transport. The respondent from Sweden commented that the Swedish National Agency for Public Procurement communicates with other public authorities and branch industries about the existence of undeclared work. In **Poland**, although there are cases of undeclared work in the cleaning and construction sectors, undeclared work is not considered widespread in public procurement contracts.

Table 3. In which sector(s) (if any) does undeclared work in public procurement contracts prevail in your country?

Note: Distribution of country responses by answer category.

Sectors in which undeclared work in public procurement contracts prevail	Undeclared work is widespread in this sector	There are cases, but it is not widespread	No undeclared work in this sector	Do not know
Home care (for children, elderly, etc.)	1			4
Catering / food supply (for public schools, offices, etc.)				5
Cleaning	1	1		3
Construction (including social housing building)	1	1		3
Home repairs or renovations	1			4
Maintenance of equipment or venues	1			4
Transport (including public transport) and communications	1			4
Other, please specify:				5

Source: 2023 Survey on policy responses to prevent undeclared work in public procurement.

¹³³ Interview with a representative of the Belgian Social Information and Investigation Service (SIRS) and the Federal Public Service Employment (FPD SPF), (27 February 2024).

¹³⁴ European Labour Authority (2023). [Extent of undeclared work in the European Union](#).



4.0 Tools available to prevent undeclared work in public procurement contracts

Procuring authorities as well as enforcement authorities have been actively developing and implementing tools to prevent undeclared work. Some of these tools explicitly target public procurement contracts, while others are applied in the regulation of the labour market in general but show relevance also for public procurement contracts.

This chapter provides an overview of the **key tools used to prevent undeclared work in public procurement contracts**. These tools range from legislative measures and enforcement mechanisms to technological solutions and collaborative initiatives aimed at enhancing transparency and accountability across the procurement process and the implementation of contracts that emerged from procurement. By exploring these tools and their respective impacts, this chapter summarises the efforts across Member States to promote ethical and compliant practices in public procurement, ultimately contributing to the advancement of transparent procurement processes in line with EU-level regulations on public procurement.

The chapter is structured according to the **three phases of the public procurement process** (planning (preparatory), evaluation, and implementation phase). For each phase of the public procurement process, the available tools are listed and an account of their effectiveness in preventing undeclared work is provided.

Key findings

- ▶ During the **planning phase**, most effective are the actions focused on designing the tendering process with clauses that bidders must comply with such as not being on non-compliance public registers, requiring additional information from businesses to verify other grounds for exclusion, extending the existing exclusion criteria to the subcontractors and establishing joint liability between subcontractors and main contractor. This confirms the observation that the major risks linked to undeclared work in this stage relate to subcontractors and the length of the subcontracting chain, as well as to the non-compliance with social and labour standards of contractors and subcontractors. The avoidance of setting the lowest price as the only award criterion is also among the most frequently used tools to prevent undeclared work.
- ▶ During the **evaluation phase**, the two most effective ways to avoid undeclared work are to obtain additional information and explanation in cases of abnormally low tender prices and to verify that the subcontractors do not meet any of the exclusion criteria. This observation is also valid within the implementation phase.
- ▶ During the **implementation phase**, most effective are contractual obligations related to requiring notification of any additional subcontracting of the procurement contract, including an approval from the contracting authority, ensuring that all subcontractors comply with the established criteria, maintaining an up-to-date list of subcontractors, requesting evidence that migrant workers throughout the entire supply chain have valid work permits and prohibiting the use of recruitment fees throughout the subcontracting chain.

4.1 Tools available during the planning phase

Not setting the lowest price as the only award criterion is one of the tools most used during the planning phase of public procurement to prevent undeclared work. Choosing the lowest price as the only award criterion poses many



possible risks. First, there is a risk of reduced contract performance. This is because opting for the bidder with the lowest price may lead to premature contract termination as the expenses associated with fulfilling the initial contract may become unmanageable. Second, bidders might be inclined to put pressure on labour costs and working conditions by offering services at the most competitive rates - they may breach labour laws and resort to employing undeclared workers or hiring staff without adhering to relevant labour and social regulations or collective agreements. According to a 2014 study, subcontracting solely to bypass wage and social costs is becoming increasingly common, especially the risk of subcontracting to temporary agencies.¹³⁵

Tools that can be activated during the planning phase of public procurement include:

► **Planning (preparatory) phase:**

- ▷ Designing the tendering process with clauses that bidders must comply with such as not being on non-compliance public registers, and requiring additional information from businesses to verify other grounds for exclusion;
- ▷ Extending exclusion criteria to subcontractors and establishing joint (and when appropriate, joint and several) liability between subcontractors and main contractor;
- ▷ Establishing clear qualitative selection and award criteria, such as the requirement of having a collective agreement.

Most of the listed tools were defined by most of the survey respondents as 'somewhat effective' in avoiding undeclared work during the procurement planning (see Table 4 below). However, two measures were indicated as 'very effective' in preventing undeclared work during this first procurement phase. As pointed out by respondents in **Belgium, Sweden, and Slovakia** these include: **1) the use of exclusion criteria in case there is a conviction by final judgement for serious crimes and violations** (e.g. non-payment of tax and social security) which are confirmed by judicial records, competent administrative authority, or an inspection report, and **2) the possibility for contracting authorities to check public registers, or require the economic operator to provide certificates, statements, and other means of proof as evidence for the absence of grounds for exclusion**, and as evidence for professional, financial, and technical capacities (indicated as a critical and very effective action from participants in **Slovakia** and **Belgium**).

Other contractual obligations and provisions considered by the survey respondents and indicated by individual countries as '**very effective**' in avoiding undeclared work during the planning phase are the use of exclusion based on an existing **non-compliance list** (in **Slovakia**), demanding that the exclusion criterion also extends to all subcontractors (in **Belgium**), requiring the use of a **joint liability** between subcontractors and the main contractor (for compliance with environmental, social, and labour law set in EU or national legislation and/or in collective agreements) (in **Slovakia**), and requiring evidence that **sub-contractors have been evaluated by the main contractor** for past instances of non-compliance (in **Slovakia**).

The **Finnish** and **Polish** respondents did not recognise any of the specified contractual obligations and provisions as 'very effective' in their country. Instead, in **Finland** the following possible actions were indicated as 'somewhat effective' by the contracting authorities: 1) checking public registers, and/or requiring additional information from the economic operator (e.g. certificates, statements, or other proof as evidence for the absence of grounds for exclusion, and as demonstration for professional, financial, and technical capacities), 2) applying exclusion criteria in case of a conviction by final judgement for serious crimes and violations, 3) extending the exclusion criteria to all subcontractors, 4) demanding the use of joint liability between subcontractors and the main contractor (e.g. compliance with social and/or labour law in EU or national legislation), 5) requesting evidence of corrective measures in case of past infringements (e.g. a payment plan for unpaid taxes/social securities), 6) envisaging

¹³⁵ Confederation of European Security Services and UNI Europa (2014). [Buying quality private security services.](#)



preliminary market consultation with suppliers to get advice, which may be used in the preparation of the procurement procedure, and 7) informing the bidders about any quality standards, recruitment policies, or social responsibility programmes which need to be respected.

In **Poland** the following possible actions were indicated as ‘somewhat effective’: 1) using exclusion criteria in case of a conviction by final judgment for serious crimes/violations, 2) avoiding setting the lowest price as the only criterion for winner selection (also marked as “somewhat effective” in Belgium and Sweden), 3) requiring all subcontractors to be subject to the exclusion criterion, and 4) using joint liability between subcontractors and the main contractor.

None of the specified contractual obligations were considered as ‘very ineffective’ during the planning of the public procurement procedure by the survey respondents. The only tool where the survey responses differed is the contracting authorities’ obligation to inform the bidders about any quality standards, recruitment policies, or social responsibility programmes that the bidder would need to be aligned with or at least respect. While most respondents (**Sweden, Finland, Slovakia**) saw these tools as partially effective, the Belgian respondent found this tool ‘somewhat ineffective’.

Table 4. Tools used during planning of public procurement

Contractual obligations / provisions	BE	FI	SE	PL	SK
1. Contracting authorities to check in public registers, or require the economic operator to provide certificates, statements, and other means of proof (including extracts from judicial records) as evidence for the absence of grounds for exclusion, and as evidence for professional, financial and technical capacities	Somewhat effective	Somewhat effective	Very effective		Very effective
2. Use exclusion criteria in case of conviction by final judgment for serious crimes / serious violations (e.g. non-payment of tax and social security, no respect for national, European and international labour standards referred to in Article 57 (1 and 2) of Directive 2014/24/EU) confirmed by judicial records, or a document issued by a competent administrative authority and/or inspection reports	Very effective	Somewhat effective	Very effective	Somewhat effective	Very effective
3. Use exclusion based on an existing non-compliance list (including the ones maintained by social partners)	Don't know	Don't know	Somewhat effective	Don't know	Very effective
4. An advantage to be provided in case of inclusion in a compliance list	Don't know	Don't know	Don't know	Don't know	Don't know
5. Contracting authorities to avoid setting the lowest price as the only criterion for winner selection	Somewhat effective		Somewhat effective	Somewhat effective	
6. Restricting or prohibiting long subcontracting chains (e.g. up to three tiers), unless justified reasons and the public authority's written consent is provided	Somewhat effective	Don't know	Somewhat effective	Don't know	Somewhat effective
7. Request that all subcontractors are also subject to the exclusion criterion	Very effective	Somewhat effective	Somewhat effective	Somewhat effective	Somewhat effective



8. Contracting authorities to require the use of a joint liability between subcontractors and the main contractor (for the compliance with environmental, social and labour law set in EU or national legislation, and/or in collective agreements)	Don't know	Somewhat effective	Don't know	Somewhat effective	Very effective
9. Contracting authorities to require the use of reverse supply chain liability by the main contractor to prevent undeclared work	Somewhat effective	Don't know	Don't know	Don't know	Somewhat effective
10. Contracting authorities to require evidence that sub-contractors have been evaluated by the main contractor for past instances of non-compliance	Somewhat effective	Don't know	Somewhat effective	Don't know	Very effective
11. Requesting evidence of corrective measures in regard to past infringements (e.g. payment plan for unpaid taxes / social securities)	Don't know	Somewhat effective	Somewhat effective	Don't know	Somewhat effective
12. Foresee preliminary market consultation with suppliers to get advice, which may be used in the preparation of the procedure (Article 40 of Directive 2014/24/EU)	Somewhat effective	Somewhat effective		Don't know	
13. Contracting authorities to inform the bidders about any quality standards, recruitment policies or social responsibility programmes that the bidder would need to be aligned with or at least respect	Somewhat ineffective	Somewhat effective	Somewhat effective		Somewhat effective
14. Contracting authorities to require an account on the collective agreement or the principal terms of employment applicable to the work/service	Don't know	Don't know	Don't know	Don't know	Somewhat effective

Source: 2023 Survey on policy responses to prevent undeclared work in public procurement.

Next to the survey results, the research team identified several **good practices** on the use of tools during the planning phase of public procurement which can be used to prevent undeclared work in public procurement contracts. These are presented below in Boxes 1 – 5. The example from Brussels as the capital of Belgium (Box 1) shows the adoption of legal preconditions that serve as a guideline and a benchmark for procurement authorities at the phase of preparing the procurement process.

Box 1. Choosing not to set the lowest price as the only criterion (planning stage) and terminating the contract (implementation stage) (Belgium)

In 2015, the Vrije Universiteit Brussel, collaborating with the Belgian trade union FGTB, made a commitment to significantly enhance the public cleaning market. The rector of the University formally endorsed the charter on 17 March 2015. The charter entails several commitments: A) Meticulous attention will be paid to drafting specifications to ensure a well-organised and thoughtful contract award process; B) Social and quality criteria will be integrated into the tender specifications; C) Efforts will be made to promote full-time working hours that are compatible with personal life (daytime working) whenever feasible; D) The selection among various cleaning proposals will be conducted rigorously, not solely based on the lowest price. Any abnormally low prices, compared to those recommended by the sectoral employers' federation UGBN¹³⁶, will be rejected and reported to the social partners. If the subcontractor fails to adhere to the sectoral collective agreements regarding wages

¹³⁶ General Union of the Belgian Cleaning Sector.



and working conditions, or violates social legislation in general, the contract will be terminated. A provision outlining this consequence will be included in the commercial maintenance contract.¹³⁷

Source: Caimi & Sansonetti (2023)

Box 2 shows an example of socially responsible public procurement identified in Germany. In this case, **award criteria requiring a written concept on social compliance were defined and implemented**. The application of this tool for mitigating undeclared work can be related to the understanding of ‘social compliance’ and ‘socially responsible public procurement’, which can relate also to the use of fair working conditions, **proper employment contracts, reporting of working time, payment of social security contributions by the contractors, and other factors** showing compliance with legislation and due diligence commitment to socially responsible economic behaviour.

Box 2. Use of social compliance as an award criterium (Germany)

The LANDMARK partner WEED, together with the LANDMARK associates Bremen Development Network (BeN), Eine Welt Landesnetzwerk Mecklenburg-Vorpommern (One-World Country Network of Mecklenburg/Western Pomerania), and other North German NGOs met with Dataport representatives to explore Dataport’s undertaking of the socially responsible procurement of IT hardware. They agreed to use award criteria that require a written concept on social compliance. This was triggered by the fact that the transparency of electronics supply chains is deficient, with a noticeable absence of a thorough, trustworthy, and impartial monitoring framework for the industry. This deficiency inhibits the public sector from effectively overseeing its IT supply chains. Consequently, public sector buyers face obstacles in adhering to labour law standards and considering conditions within their supply chains.

Dataport adopted a strategy where bidders were required to submit a plan outlining their approach to adhering to the social standards, focusing on both product manufacturing and raw material sourcing, as well as detailing their monitoring procedures. Points were allocated based on the bidder’s ability to demonstrate comprehensive coverage of the relevant ILO Conventions and the quality of their methods. A verification process was established to assess these aspects. Given the diverse options available to bidders, ensuring the quality of the control mechanism was paramount. This was achieved in two ways. Firstly, the tender documentation provided a suggested verification scheme, including examples of measures bidders could implement and mandatory reporting questions. Secondly, significant emphasis was placed on the plausibility of the proposed concept (constituting 50 % of the score) and the verification methods offered (40 % of the score).¹³⁸

The application of this method for mitigating undeclared work can be related to the understanding of ‘social compliance’ and ‘socially responsible public procurement’, which can relate also to the use of fair working conditions, proper employment contracts, reporting of working time, payment of social security contributions by the contractors, and other factors showing compliance with legislation and due diligence commitment to socially responsible economic behaviour.

Source: The LANDMARK consortium (2014).

The third example (Box 3) focuses on the **introduction of dedicated legislation that governs the subcontracting process in the construction sector** in Spain. In this case, companies involved in construction activities are **required to register in the Register of Accredited Companies**. A precondition of this registration

¹³⁷ Caimi, V. and Sansonetti, S. (2023). *The social impact of public procurement*, publication for the Committee on Employment and Social affairs, Policy Department for Economic, Scientific and Quality of Life Policies, European Parliament, Luxembourg.

¹³⁸ The LANDMARK consortium, (2014). [Success stories in socially responsible public procurement](#).



is that the employer demonstrates that defined labour criteria are met, such as health and safety regulations and qualifications of staff. Although not directly stipulating preventative or deterrence tools to avoid undeclared work in public procurement, there is a relationship between employer investment into worker training, health and safety, and the commitment to declared work.

Box 3. Regulating subcontracting in the construction sector (Spain)

The Spanish Law 32/2006 concerning subcontracting in the construction sector, along with its regulatory framework outlined in Royal Decree 1109/2007, mandates that companies involved in construction activities and engaged in subcontracting must be registered on the Register of Accredited Companies (REA).¹³⁹ This registration necessitates employers to demonstrate the adequate training of personnel in safety protocols and possessing the necessary equipment to execute the work. Furthermore, the legislation restricts subcontracting to three tiers as a general rule, prohibiting self-employed individuals from subcontracting their services to other companies. Notably, the law prohibits subcontracted firms from solely providing labour, aiming to curb the illicit transfer of workers. Additionally, Spanish law mandates that at least 30 % of the workforce must be employed on a permanent basis.

To enhance oversight, the law necessitates the establishment of a transparent Subcontracting Book. This document, required to be always present on-site, details subcontracted work performed by subcontractors and self-employed individuals, chronologically listing the nature of their contracts, the level of subcontracting, the client company, and the individual responsible for organising and managing each subcontractor. The Fundación Laboral de la Construcción (FLC), a paritarian body for the construction industry in Spain, has introduced a new online tool named Gesinprec. This tool enables construction companies to manage comprehensive prevention measures. The programme, provided free of charge, allows companies to upload documentation related to social security contributions, facilitating the verification of subcontractors' compliance with their obligations.¹⁴⁰

Source: European Federation of Building and Woodworkers & European Construction Industry Federation (2020)

Finally, good practices have been identified in Denmark (see Box 4) that introduce **conditions on employee training and the use of apprenticeship as a factor that can be used in setting the award criteria** and in Spain (see Box 5) including social clauses into tenders. These measures are decided in the preparatory phase of the procurement process. Similar to the case presented in the box above, requiring formal training, health and safety measures, and the use of apprenticeships assumes that these are prevalent in declared employment and serve as tools motivating employers to hire workers and trainees only in legal ways.

Box 4. Requiring employment training and apprenticeships as an award criteria (Denmark)

The Municipality of Aarhus (Denmark) has been increasingly prioritising the social and economic impacts of procurement, particularly in creating employment opportunities for long-term unemployed individuals. With this goal in mind, the procurement department sought to explore the feasibility of **integrating training and employment** opportunities as procurement objectives. In 2019, a framework agreement for sewage services was chosen as a pilot project, with a focus on incorporating apprenticeships alongside training and employment opportunities. Previously, contracts for sewage services had been solely evaluated based on price.

¹³⁹ See more information, European Platform of undeclared work (2019). [Regulating subcontracting in the construction sector \(LSCS\)](#).

¹⁴⁰ European Federation of Building and Woodworkers and European Construction Industry Federation, (2020). [Tackling undeclared work in the construction industry](#).



Although Danish regulations require contracting authorities to consider apprenticeships for certain contracts, the procurement department in this case decided to emphasise it as an award criteria instead. This decision was made following market dialogue, during which the department discovered that the price differences among tenderers were expected to be minimal, as suppliers faced similar expenses for materials and wages. Additionally, they learned that several potential bidders were encountering challenges with recruitment.

The contract between the municipality and the winning bidder included performance clauses on wages and working conditions, apprenticeships and work retention and social responsibility. The contractor is obligated to guarantee that their employees hired in Denmark for the specified task receive compensation and employment conditions that are at least as favourable as those outlined in a universally applicable collective agreement within the relevant industry (i.e. under a representative trade union agreement). This requirement extends to any subcontractors and encompasses benefits and working hours.¹⁴¹

Source: European Commission (2020)

Box 5. Incorporating social clauses into tenders (Spain)

The Catalan Association of Local Authorities (ACM) encompasses more than 1 000 local government entities, representing 95 % of municipalities within the region. One of its key roles is to serve as a central procurement entity, consolidating needs and facilitating administrative efficiencies for its members. In 2018, ACM joined Electronics Watch, a global association focused on monitoring human rights in ICT (Information and Communication Technology) supply chains. ACM has incorporated social clauses, drawn from reference contracts provided by Electronics Watch, into tenders conducted by its members. For instance, these clauses have been included in a printer procurement framework involving the participation of 156 member municipalities.

Successful bidders granted entry into the Framework Agreement are obligated to ensure adherence to labour rights and safety regulations within the production chains of the factories where the contracted goods are manufactured. To fulfil these obligations, the successful bidder must: A) Conduct thorough due diligence to ascertain that the factories producing electronic goods comply with the provisions outlined in the Code of Labour Standards as defined in the Electronics Watch Contract Conditions; B) Provide the contracting authority with a Disclosure Form within 30 days of formalisation, disclosing the physical locations of the factories where the goods covered by the contract are manufactured, and C) If applicable, annually inform the contracting authority of any audits conducted at the factories where the goods covered by the contract were produced.¹⁴²

4.2 Tools available during the evaluation phase

When evaluating public procurement offers, public authorities need to consider several key factors. First, they must ensure that all offers comply with relevant laws, regulations, and procurement guidelines. This involves assessing the overall value for money offered by each proposal in the light of the criteria set out in the tender. Second, authorities should evaluate the technical suitability of each offer to ensure it meets the specified requirements. Financial stability and reliability of bidding entities are crucial considerations to ensure they can fulfil contract obligations.

Tools that can be activated during the evaluation of public procurement include:

¹⁴¹ European Commission (May 2020). [Making Socially Responsible Public Procurement Work: 71 Good Practice Cases.](#)

¹⁴² Ibid.



► **Evaluation phase:**

- ▷ Obtaining additional information and explanations for abnormally low tender prices;
- ▷ Ensuring subcontractors' eligibility in light of the criteria set out by the tender.

According to the majority of the respondents, the most beneficial ('very effective') actions in preventing undeclared work risks during the procurement evaluation are **1) requiring additional information about the reasons for any abnormally low tender price (Sweden, Slovakia, Poland)**, and **2) enabling or requiring contracting authorities to verify that subcontractors are not in any of the situations in which exclusion of economic operators would be warranted (Belgium, Sweden and Slovakia)** (see Table 5 below).

In **Sweden** 'very effective' also is checking whether the economic operators have shown **sufficient professional experience**, including experience in auditing and monitoring their subcontracting chain, while in **Slovakia** another 'very effective' measure during the public procurement evaluation is **checking the manner in which the economic operator intends to carry out the contract**, including whether there will be an exclusive use of workers employed by a subcontractor established in another Member State.

Explaining the reasons behind the abnormally low price in tendering is seen as less effective in **Belgium** and **Finland**. In **Finland**, checking if the subcontractors are in any situation in which exclusion of economic operator would be justified is seen as 'somewhat effective'. Other generally recognised as 'somewhat effective' actions are 1) checking that market participants have shown sufficient professional experience, including experience in carrying out monitoring/audits of their subcontracting chain (**Belgium and Slovakia**), 2) checking if the economic operators declare that they have familiarised themselves with the labour law policies or action plans, included in the open call package of documents, and will comply with the labour law standards, including prevention of undeclared work (**Sweden and Slovakia**), 3) checking the manner in which the economic operator intends to carry out the contract and if the operator envisages exclusive use of workers employed by a subcontractor established in another Member States (**Sweden and Finland**).

Table 5. Tools used during the evaluation process

Contractual obligations / provisions	BE	FI	SE	PL	SK
1. Obligation to determine the reasons for any abnormally low tender price	Somewhat effective	Somewhat effective	Very effective	Very effective	Very effective
2. Enabling or requiring contracting authorities to verify that subcontractors are not in any of the situations in which exclusion of economic operators would be warranted (and if needed – for the main contractor to replace the subcontractor concerned)	Very effective	Somewhat effective	Very effective	Don't know	Very effective
3. Check if economic operators (tenderers) have shown sufficient professional experience, including experience of carrying out audits (or monitor reports) of their subcontracting chain, if any	Somewhat effective	Don't know	Very effective	Don't know	Somewhat effective
4. Check whether the economic operator declares that they have familiarised themselves with the labour law policies or action plans, included in the open call package of documents, and will comply with the labour law standards, including prevention of undeclared work		Don't know	Somewhat effective	Don't know	Somewhat effective



5. Check the manner in which the economic operator intends to carry out the contract. If it involves the exclusive use of workers employed by a subcontractor established in a Member State other than that to which the contracting authority belongs – i.e. the subcontractor must pay those workers a minimum wage determined by that legislation (C-549/13 ECJ)		Somewhat effective	Somewhat effective	Don't know	Very effective
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Source: 2023 Survey on policy responses to prevent undeclared work in public procurement.

A good practice from **Italy** shows how the authorities implement checks over abnormally low tenders and verify compliance with minimal workforce costs (Box 6).

Box 6. Checking of abnormally low tenders and verifying compliance with minimal workforce costs (Italy)

In **Italy**, during the evaluation phase and before the award, the contracting authority must verify the compliance with the obligation not to lower the workforce cost below the average hourly rate indicated in Ministerial tables. While an explanation can be submitted (e.g. tax reliefs), no explanations can be admitted with respect to the work safety costs and mandatory minimum wages established by law. The contracting authority must reject the tender where it has established that the tender is abnormally low because it does not comply with the applicable obligations, including the subcontracting.¹⁴³

Source: European Trade Union Confederation (ETUC) (2021)

4.3 Tools available during the implementation phase

The **implementation of social clauses** within public procurement contracts signifies a departure from the conventional approach that solely prioritised cost efficiency and technical specifications. It underscores a broader commitment towards achieving sustainable development goals, fostering inclusive growth, and advancing social justice agendas. However, the mere inclusion of clauses in procurement documents does not suffice; rigorous monitoring and enforcement mechanisms are indispensable to ensure compliance and effectiveness. Monitoring whether clauses are being adhered to holds paramount importance in the implementation process of public procurement. Monitoring and enforcement derive from the application of Article 18 (2) Directive 2014/25/EU.

Continuous **monitoring and inspections** can be conducted by the contracting authorities (as well as labour inspectors) during the implementation of contracts provided that the terms and conditions are outlined in the contractor's invitation to tender. Establishing auditing or contract oversight within public procurement is crucial due to the limited resources of supervisory authorities, resulting in only a fraction of misconduct being identified. Sustaining open communication with suppliers throughout the contract duration is equally vital to ensure that the measures aimed at preventing labour exploitation, as specified by the contracting entity, are effectively implemented, and potentially refined through collaboration between the contracting entity and the supplier. Contracting authorities should exercise discretion in determining the approach and priorities for organising supervision, both on and off-site, to ensure compliance with employment terms and conditions.

Tools that can be activated during the implementation phase of public procurement include:

¹⁴³ European Trade Union Confederation (ETUC) (2021). [Social Clauses in the Implementation of the 2014 Public Procurement Directives.](#)



► **Implementation phase:**

- ▷ Requiring notification and approval of additional subcontracting;
- ▷ Ensuring all subcontractors meet the established award and non-exclusion criteria by the contracting authorities;
- ▷ Maintaining an updated list of subcontractors;
- ▷ Verifying migrant workers' work permits;
- ▷ Prescribing the use of social ID/labour cards at the worksites under public contracts (if applicable according to national law or the specific sector);^{144,145,146,147}
- ▷ Collaboration with social partners to monitor and enforce the respect of collective agreements.¹⁴⁸

The survey respondents did not recognise any of the listed tools available in the implementation phase as 'very ineffective' in their country (see Table 6 below). However, actions that are considered as 'very effective' in some countries are perceived as 'somewhat effective' in others. Therefore, a conclusive judgment about their overall effectiveness in preventing undeclared work cannot be reached. For instance, requesting reports and clarifications concerning subcontracting chains, as well as obtaining reports from the subcontractors is recognised as 'very effective' in **Sweden**, 'somewhat effective' in **Finland and Slovakia** but 'somewhat ineffective' in **Belgium**.

The respondents view the following as highly beneficial or 'very effective'; 1) **requiring notification of any subcontracting** at the latest at the beginning of the procurement contract, ensuring that all subcontractors comply with the same requirements, and maintaining an up-to-date list of all subcontractors, including self-employed workers (**Sweden, Slovakia**), 2) demanding **contracting authorities to approve any use of new subcontractors (Sweden, Slovakia)**, 3) allowing the contracting authority to **request evidence that migrant workers throughout the entire supply chain have valid work permits (Sweden, Slovakia)**, 4) obliging the supplier or service provider to **prohibit the use of recruitment fees**¹⁴⁹ throughout the subcontracting chain (**Sweden, Slovakia**).

In **Sweden** the following measures are perceived to be 'very effective' during the procurement implementation: 1) **requests by contracting authorities for updated information on the persons performing their work and their working hours** (in line with GDPR), 2) contracting authorities (or an internal audit body, another independent external party) **carrying out random inspections**, 3) requests by contracting authorities for reports, clarifications concerning subcontractors, and **reports from the subcontractors**.

In **Slovakia**, 'very effective' measures are considered to be related to 1) extending of the transparency obligations, by enabling the **contracting authority to make direct payment to subcontractors** (instead of the main

¹⁴⁴ European Platform Undeclared Work (2022). [Learning Resource Paper: Tackling undeclared work in supply chains.](#)

¹⁴⁵ European Platform Undeclared Work (2023). [Output paper from the Platform subgroup on evaluating social /labour ID cards as a tool for tackling undeclared work, including in subcontracting chains.](#)

¹⁴⁶ European Platform Undeclared Work (2021). [Practitioner toolkit: Successful Approaches of Cooperation between Labour Inspectorates and Social Partners.](#)

¹⁴⁷ EFBWW-FIEC (2015). [Report on Social Identity Cards in the European Construction Industry.](#)

¹⁴⁸ Collective agreements are a key quality criterion. Since collective agreements are negotiated and concluded by social partners, cooperation with trade unions on the ground is also key to ensure the respect and compliance with agreed labour standards. Trade unions and workers' representatives in the workplace could be invaluable in bringing breaches of labour laws and standards to the attention of competent authorities.

¹⁴⁹ Recruitment fees refer to any and all fees associated with the recruitment process regardless of when, how and by whom they are collected. They can include, but are not limited to, payments for advertising, interviewing, pre-departure or post arrival training, visas, work permits, residency certificates, employer notary or legal fees, etc. In the context of global supply chains, recruitment and employment agencies often charge fees to migrant workers in exchange for securing highly valued but often poorly paid jobs. For more information: United Nations Global Compact (2015). [Eliminating Recruitment Fees Charged to Migrant Workers](#) and Verite (2015).



contractor), 2) **monitoring the work/service**, and 3) requesting measures to **remedy any identified infringements**, terminating/closing contracts or imposing other sanctions if the private company does not implement corrections to its activities or repeatedly violates the law.

The respondents from Finland, Belgium and Poland did not consider any of the listed contractual obligations as 'very effective'. However, the tools that they identified as 'somewhat effective' are similar to those ranked as 'very effective' by the other respondents. These are 1) requiring notification of any subcontracting at the latest at the beginning of the procurement contract (**Belgium and Finland**), 2) allowing contracting authorities to approve the use of new subcontractors (**Belgium and Finland**), 3) enabling contracting authorities to request up-to-date information on persons performing the work and their working hours (**Poland**), 4) random inspections by the contracting authority, an internal audit body or another independent external party (**Belgium and Poland**), 5) allowing the contracting authority to request reports and clarifications concerning subcontracting chains used, including having reports from subcontractors (**Belgium and Finland**), 6) terminating/cancelling the contract (or imposing other sanctions) in cases where the private company does not implement corrections to its activities or repeatedly (materially) violates the law (**Belgium and Finland**).

Table 6. Tools used during the implementation of contracts based on public procurement

Contractual obligations / provisions	BE	FI	SE	PL	SK
1. Notification of any subcontracting is required at the latest at the beginning of the procurement contract (and ensuring subcontractors comply with the same requirements); an up-to-date list of all subcontractors is maintained, including self-employed workers	Somewhat effective	Somewhat effective	Very effective	Don't know	Very effective
2. The contracting authority (contracting body) approves the use of new subcontractors	Somewhat effective	Somewhat effective	Very effective	Don't know	Very effective
3. The contracting authority requests up-to-date information on the persons performing the work and their working hours (in accordance with GDPR)	N/A	Don't know	Very effective	Somewhat effective	Somewhat effective
4. The contracting authority, an internal audit body, or another independent external party's carries out random inspections	Somewhat effective	Don't know	Very effective	Somewhat effective	
5. The contracting authority requests reports and clarifications concerning subcontracting chains used, as well as obtains reports from the subcontractors	Somewhat ineffective	Somewhat effective	Very effective	Don't know	Somewhat effective
6. To extend the transparency obligations, the contracting authority also makes direct payment to subcontractors (instead of the main contractor)	Don't know	Don't know	Don't know	Somewhat effective	Very effective
7. The contracting authority requests evidence that migrant workers throughout the entire supply chain have valid work permits	Somewhat effective	Don't know	Very effective	Don't know	Very effective
8. The contracting authority monitors the work/service, and requests measures to remedy any identified infringements	N/A	Somewhat effective	Don't know	Don't know	Very effective



9. The contracting authority terminates or cancels the contract (or imposes any other type of sanctions) if the private company does not implement corrections to its activities or repeatedly (materially) violates the law	Somewhat effective	Somewhat effective	N/A	Don't know	Very effective
10. Oblige the company (supplier or service provider) to provide orientation and introduction to employees' rights, and use job satisfaction surveys	Don't know	Don't know	Don't know	Don't know	Very effective
11. Oblige the company (supplier or service provider) to prohibit the use of recruitment fees throughout the subcontracting chain	Don't know	Don't know	Don't know	Don't know	Very effective

Source: 2023 Survey on policy responses to prevent undeclared work in public procurement.

Several good practices exist on the tools that can be activated during the implementation phase of public procurement to prevent undeclared work in public procurement contracts.

Although not a recent initiative, the **Nacka pilot project in Sweden** was specifically dedicated to tackling undeclared work in public procurement contracts. Initiated in 2008 by the Nacka municipality in response to rising undeclared labour and economic illegality within Sweden's construction sector, the project aimed to address undeclared work in public procurement contracts through a regulatory framework. Contractors awarded tenders were required to implement the ID06-system for identity and attendance control at construction sites, submitting monthly sealed records to the Swedish Tax Agency along with declarations of taxes and social fees paid for each worker. Surprise inspections were conducted jointly by the Tax Agency and the municipality to ensure compliance. Non-compliance could result in tax liabilities and fines imposed by the municipality. This structured approach focused on daily verification, monthly submissions, and joint inspections to combat undeclared work and economic criminality in public procurement.¹⁵⁰

In 2013, the **Loures Municipality in Portugal** went beyond just establishing a Code of Conduct for its suppliers by implementing a robust process for verification. This involves a dedicated Verification Group comprised of representatives from various technical departments within the Municipality, focusing on Supplier Relationship and Procurement Practices (SRPP). The group employs a methodology to ensure supplier compliance with the Code by applying it to procurement processes, administering monitoring questionnaires, conducting on-site visits, and collecting evidence. In cases of non-compliance, corrective action plans are devised in collaboration with suppliers and overseen either by the Municipality or a designated third party, aiming to improve adherence to the Code and promote socially responsible practices among suppliers.¹⁵¹

The following examples deal with subcontracting. Box 7 illustrates an example of a municipality in **Norway** that introduced a practice of **limiting the number of subcontractors next to effective monitoring of working conditions**. This practice shows that the quality of working conditions in the construction sectors is secured by standardising the contract terms applicable to certain services and works. Part of this standard is limiting the number of subcontractors and an effective monitoring of working conditions. Box 8 presents a practice in Denmark which introduced random **inspections to oversee the compliance of contractors and subcontractors** to labour regulations, in line with the use of labour clauses that are part of the national legislation on public procurement.

¹⁵⁰ European Labour Authority, (2017). [Good practice fiche - Sweden: The Nacka Project \(Nackaprojektet\) against undeclared work and economic criminality in public procurement.](#)

¹⁵¹ The LANDMARK Consortium. [Success stories in socially responsible public procurement.](#)



Box 7. Limiting the number of subcontracting levels and effective monitoring of working conditions (Norway)

The Municipality of Skien endeavours to advance fair labour practices and combat work-related crime, social exploitation, and worker abuse within supply chains. To achieve this goal, it has introduced standardised contract terms applicable to certain goods, services, and construction contracts identified as particularly sensitive to labour rights issues.

This collection of contractual requirements known as the Skien Model applies specifically to sectors deemed 'high-risk' and was established through a city council resolution in 2014, with a subsequent review in 2019. The model, summarised in Norwegian, is compulsory for all construction contracts and is utilised for goods and services contracts where feasible and proportionate. By establishing clear standards, Skien aims to level the playing field for suppliers and create a supportive framework for compliant employers committed to quality employment and corporate social responsibility.

Limiting the maximum number of subcontractors serves as a tool for preventing undeclared work. It facilitates more effective monitoring and oversight of work conditions and standards enforced by the contracting authority. To achieve this objective, the Municipality has instituted a policy stipulating a maximum of one level of subcontracting beneath the primary supplier. While there are no constraints on the quantity of subcontractors or the portion of the contract that can be subcontracted, all subcontractors must remain directly supervised by the principal contractor to prevent fragmentation of accountability. It is mandatory for subcontractors to be explicitly identified in the contract. This provision accommodates potential specialisation requirements within a contract and ensures consistent oversight.

The Skien Model also stipulates that bidders must guarantee that both their own employees and those of any subcontractors receive wages and employment conditions that meet or exceed the standards outlined in the applicable nationwide collective bargaining agreement or are typical for the specific location and occupation.¹⁵²

Source: The Norwegian Municipality of Skien (2022)

Box 8. National Task Force for Labour Clauses and random inspections (Denmark)

In 2020 Denmark established a national task force dedicated to overseeing the adherence of suppliers and subcontractors to labour regulations at the state level. This unit operates from two separate locations within Denmark and is tasked with inspecting procurement contracts for state entities responsible for infrastructure such as roads, buildings, public properties, and railways. Primarily, it conducts surprise inspections at the sites. While the unit lacks the authority to impose sanctions directly, it generates reports that are forwarded to the relevant procurement entity. In instances of violations, the procurement entity may levy financial penalties, such as mandating contractors to rectify unpaid or underpaid wages. Although theoretically, severe breaches could result in contract termination, there have not been any instances of this occurring thus far.^{153,154}

A good practice from **Finland** shows how a non-governmental organisation could perform a Human Rights Impact Assessment (HRIA) on procurement subcontractors along supply chains that operate in other Member States and

¹⁵² The Norwegian Municipality of Skien (2022). [The Skien Model](#).

¹⁵³ UNI Europa (2023). [Green, Pave the Way for Social! How the EU's Green Public Procurement Can Forge a Path Towards Socially Responsible Public Procurement](#).

¹⁵⁴ Refslund, B., Larsen, TP. and Arnholtz, J. (2023). [Promoting Decent Work Through Public Procurement in Cleaning and Private Security Services: The Case of Denmark - PROCURFAIR Country Report](#).



employ third-country nationals. The assessment resulted in recommendations for better recruitment models and enhanced due diligence (Box 9).

Box 9. Checking the manner in which the economic operator intends to carry out the contract, including the subcontracting chain (Finland)¹⁵⁵

SOK Corporation (Central Finnish Cooperative Society) provides procurement and other services through S-Group, a Finnish network of retail and service companies including supermarkets. They commissioned Oxfam Italy (a non-governmental organisation) in 2018 to conduct a Human Rights Impact Assessment (HRIA) on their processed tomato supply chains in Italy. Tomato pickers in Italy are mainly migrants from Africa who work 10-hour days earning about EUR 35 a day. The data used included interviews with approximately 50 stakeholders (including workers, suppliers, SOK/Coop Trading staff), a multi-stakeholder roundtable, documents, and an analysis of supply chain price trends. The HRIA identified forced labour, low wages, excessive working hours, unsafe and unsanitary housing, health and safety risks at **work and in transport**, and lack of access to justice. Recommendations included bringing SOK's buying and sustainability functions closer together; requiring Italian tomato suppliers to source from members of the Network on Quality Agricultural Labour; supporting the establishment of alternative recruitment models and workers' grievance mechanisms in the supply chains; and advocating for local, national (Finnish and Italian), and EU level changes in human rights due diligence processes and migrant workers' rights.¹⁵⁶

Large procurement suppliers in **Finland** have introduced their own internal rules and guidelines to gather regular reports by subcontractors and use only subcontractors approved by the main contractor (Box 10).

Box 10. Using subcontractors approved by the main contractor (Finland)

Senate Properties is a large semi-private Finnish company that maintains and constructs the properties of the Finnish Government. They have adopted higher-than-average requirements regarding the chaining of contracts to promote transparency, accountability, and compliance with social and labour standards within the procurement process, including avoidance of undeclared work. Senate Properties' guidelines to prevent financial crime cover building and maintenance projects, as well as service acquisition and administration. For instance, the supplier must hand in reports on every subcontractor in their subcontracting chain. They can only use sub-contractors that have been approved in writing by the main contractor. They are also committed on a contractual level to provide an introduction on working conditions to everyone working at their sites in a language they understand. Any deficiencies or negligence in getting the approval for a subcontract results in a fine of up to EUR 10 000.¹⁵⁷

¹⁵⁵ HEUNI (2020). [Navigating through your supply chain: Toolkit for prevention of labour exploitation and trafficking](#).

¹⁵⁶ Ibid.

¹⁵⁷ Ibid.



5.0 Challenges in preventing undeclared work in public procurement contracts

The following sections provide information on the **challenges** involved in preventing undeclared work in public procurement contracts. Challenges are divided into 'general' challenges and 'specific' challenges (e.g. legal, procedural, and capacity-related challenges).

Key findings

Some critical limitations of the SRPP hindering its effective utilisation across the EU are:

- ▶ Lack of unified data collection, monitoring, and reporting systems at national and EU levels;
- ▶ Violation of fundamental labour rights and collective agreements could be emphasised clearly as a mandatory exclusion criterium to avoid uneven implementation due to different interpretations by local authorities;
- ▶ Heavy reliance on the lowest price criteria which often incentivises contractors to engage in undeclared work practices, sidestepping labour regulations;
- ▶ Lack of human resources for checking all reports by the main contractor and for carrying out inspections;
- ▶ Lack of information exchange and access to registers;
- ▶ Lack of compliance and non-compliance lists maintained by public bodies or social partners;
- ▶ Lack of methodologies or internal procedures for assessing the reasons for abnormally low prices;
- ▶ Lack of labelling/certification practices of contractors;
- ▶ GDPR issues preventing the public authority from requesting up-to-date information on the persons performing the work and their working hours;
- ▶ Lack of appropriate measures to ensure compliance with applicable obligations established by Union law, national law, collective agreements, or by the international law provisions.

Minor challenges are:

- ▶ The non-transposition or incomplete transposition of EU instruments and adopted international standards on labour market practices into national legislation, lack of legal grounds to oblige the supplier to provide introductions to employees' rights or use job satisfaction surveys, violations during the implementation of the selection procedure and/or non-application of exclusion criteria where they exist due to gaps in legislation, lack of technical specifications in open calls, and restricted competition.

5.1 General challenges for socially responsible public procurement

This section provides a list of challenges undermining the inclusion of socially responsible requirements in public procurement such as insufficient data at EU and national level regarding the use of SRPP criteria, the predominant



use of lowest price or cost, the optional and vague exclusion criteria and social clauses, legal issues and deficient capacities to implement and monitor.

Lack of data at the EU and national level on the use of socially responsible public procurement

The systems at EU and national level do not collect data on the use of SRPP in a uniform and consistent way. Tenders Electronic Daily (TED), mandated for the publication of procurement notices above EU thresholds, was not designed to track information on socially responsible, green, or innovative procurement. While TED identifies tenders using the most economically advantageous tender (MEAT), it does not specify the criteria used, making it impossible to discern whether and which social criteria were included. There is a need to integrate data collection, monitoring, and reporting systems on SRPP at all levels, based on common indicators and requirements.¹⁵⁸

Using lowest price or cost as a main award criterion

It is widely acknowledged that prioritising the lowest price criterion in public procurement may create an environment where labour law violations are more likely to occur due to cost-cutting pressures and inadequate oversight. **The lowest price criterion may incentivise contractors to operate in the undeclared economy to reduce costs, and bypassing labour regulations.** In 2021 ten Member States awarded between 82 % and 95 % of their above-EU thresholds tenders solely on the basis of the lowest price or cost; six Member States awarded between 60 % and 80 % of such tenders only because the offer was the cheapest one available, while the remaining 14 countries awarded between 1 % and 56 % of such tenders on the basis of the lowest cost or price.¹⁵⁹ This practice puts pressure on wages and working conditions (e.g. overtime, health and safety), and results in exploitation of workers. The latter has taken various forms – from unpaid wages and social security contributions, underpayment of workers, and excessive workloads and overtime, to discrimination and violation of labour rights through illegal dismissals and union-busting tactics (union avoidance).¹⁶⁰

Optional and vague exclusion criteria and social clauses

Social partners and experts argue that **Directive 2014/24/EU on Public Procurement leaves wide margins to Member States and their contracting authorities** to decide how to exactly transpose non-mandatory social provisions.¹⁶¹ Article 57 (4) of the Directive outlines several **optional exclusion criteria** for contracting authorities, including non-compliance with social, and labour laws, bankruptcy, professional misconduct, and conflicts of interest. UNI Europa argues that the phrasing of the Directive should be even more definitive in putting non-compliance with fundamental labour rights and collective agreements as a **mandatory exclusion criterion** instead of as an optional one. Social partners advocate for including social criteria in procurement rules, such as wages and working conditions, notably through the requirement of having a collective agreement.^{162,163} However, balancing the need not to discriminate against tenderers and ensuring respect for labour rights poses a challenge for contracting authorities.

Legal issues

Challenges in implementing the Directive also arise from **unresolved legal issues** surrounding the incorporation of certain social criteria into award criteria and technical specifications, particularly regarding their '**link with the subject matter of the contract**'. It was observed that this link is often interpreted narrowly, complicating the inclusion of social or environmental considerations in practice. This limited interpretation makes it challenging for

¹⁵⁸ European Parliament (October 2023). [The social impact of public procurement. Can the EU do more?](#)

¹⁵⁹ Ibid.

¹⁶⁰ Ibid.

¹⁶¹ Caranta, R. (2022). [Towards socially responsible public procurement. ERA Forum.](#)

¹⁶² UNI Europa (2021). [Put your money where your mouth is. Why and how the EU needs to change its public spending policies to promote a social Europe.](#)

¹⁶³ UNI Europa (2023). [Green, Pave the Way for Social! How the EU's Green Public Procurement Can Forge a Path Towards Socially Responsible Public Procurement.](#)



contracting authorities to define social and sustainability criteria in tender documents and subsequently evaluate bids based on these criteria due to a lack of suitable assessment tools.¹⁶⁴ In practice, the working conditions under which goods are produced or services provided should always be deemed relevant, regardless of the subject matter of a public contract. A possible solution could be sought if the term, 'link with the subject matter of the contract', was understood to refer to 'the product, service or works during (or and) its life cycle', in line with the EU initiative for a taxonomy for sustainable activities.¹⁶⁵

Lack of capacity and mechanisms to monitor compliance

Some contracting authorities encounter challenges in enforcing labour regulations, as well as monitoring all conditions imposed during the procurement award stage. For example, tools can be activated during the procurement process, but the implementation might show that the procurer lacks enforcement capacity, that actual enforcement and the responsible actor have not been properly defined. This is especially evident when procuring goods and services through subcontracting chains, where only the final contractors (and not the subcontractors) enter a contract with the public authority. In such cases there may be a need to employ a civil servant whose responsibility would be solely monitoring contractors' compliance with the social clauses.¹⁶⁶ In addition, it is recommended for contracting authorities to join forces with social partners and labour inspectorates.¹⁶⁷

5.2 Specific challenges faced by public authorities in preventing undeclared work in public procurement contracts

The following section provides details on specific challenges encountered by the surveyed contracting authorities during their operations. The survey results revealed that contracting authorities in **Belgium, Sweden, Finland, Poland, and Slovakia, face similar challenges when preventing undeclared work in public procurement contracts**. However, the perception of which challenges are most important varies. Survey respondents were asked to rank the listed challenges from 1 (strong) to 17 (weak) depending on how strong those challenges were perceived to be in preventing undeclared work in public procurement. Table 7 below shows the three main challenges. For a full overview of the challenges faced by public authorities when preventing undeclared work in public procurement contracts see Annex 1.

¹⁶⁴ Ibid.

¹⁶⁵ European Commission (2023). [EU taxonomy for sustainable activities](#).

¹⁶⁶ Interview with a representative of the Finnish Competition and Consumer Authority (10 January 2024).

¹⁶⁷ European Platform Undeclared Work (2021). [Practitioner toolkit: Successful Approaches of Cooperation between Labour Inspectorates and Social Partners](#).



Table 7. Main challenges faced by public authorities when preventing undeclared work in public procurement contracts (ranked between 1 and 3)

Challenges which public authorities face when preventing undeclared work in procurement from private businesses?	Belgium	Sweden	Finland	Slovakia	Poland
Lack of information and access to registers (company registers, tax, social securities and employment registers, court decisions on past infringements, as well as compliance / non-compliance lists maintained by public bodies or by social partners)		1		1	
Lack of human resources for checking all reports by the main contractor	1		1		
Lack of methodologies or internal procedures for assessing the reasons for abnormally low prices					1
Lack of methodologies or internal procedures for checking the newly appointed subcontractors				2	
GDPR issues preventing the public authority to request up-to-date information on the persons performing the work and their working hours		2			
Lack of human resources for on-site inspections	2	3	2		
Lack of methodologies or internal procedures for requesting justifications for abnormally low prices	3				2
Lack of human resources for checking all reports by all subcontractors			3		3
Legal barriers which prevent the inclusion of stricter requirements/exclusion criteria (e.g. if the operator is in breach of its obligations relating to the payment of taxes or social security contributions)				3	

Source: 2023 Survey on policy responses to prevent undeclared work in public procurement.



Main challenges

For **Belgium** and **Finland**, the main challenge faced by public authorities in preventing undeclared work in public procurement is the lack of human resources for checking all reports by the main contractor. In **Sweden** this has been perceived as a moderate challenge, while in Slovakia and Poland it is seen as a minor challenge. In **Sweden** and **Slovakia**, the main challenge for public authorities when preventing undeclared work in public procurement is the lack of information and access to registers such as company registers, tax, social securities and employment registers, court decision on past infringements, compliance and non-compliance list maintained by public bodies or social partners, while in Belgium, Finland, and Poland this challenge is seen as minor. Lastly, in **Poland** the lack of methodologies or internal procedures for assessing the reasons for abnormally low prices is perceived as the greatest challenge in preventing undeclared work in public procurement contracts. However, this is considered as a moderate challenge in Sweden and Slovakia and as a minor challenge in Belgium and Finland.

Other main challenges in **Belgium** are the lack of human resources for on-site inspections (2nd in rank), lack of methodologies or internal procedures for requesting justifications for abnormally low prices (3rd in rank), non-transposition or incomplete transposition of EU instruments and adopted international standards on labour market practices into national legislation (4th in rank) and the lack of methodologies and/or internal procedures for checking the newly appointed subcontractors (5th in rank).

In **Sweden** the remaining top challenges are GDPR issues preventing the public authority to request up-to-date information on the persons performing the work and their working hours (2nd in rank), the lack of human resources for on-site inspections (3rd in rank), the lack of human resources for checking all reports by all subcontractors (4th in rank), and the lack of methodologies or internal procedures for checking the newly appointed subcontractors (5th in rank).

In **Finland** the remaining top five challenges are the lack of human resources for on-site inspections (2nd in rank), the lack of human resources for checking all reports by all subcontractors (3rd in rank), the lack of national non-compliance (black) and compliance (white) lists or labelling/certification practices of contractors (4th in rank), and the lack of methodologies or internal procedures for requesting justifications for abnormally low prices (5th in rank).

Box 11. Lack of human resources for inspections (Finland)

Over 300 workers involved in renovating Helsinki's Olympic Stadium have been working under conditions which are not compliant with collective agreements in 2019. The Finnish Construction Trade Union found there was payment shortcomings among 340 construction workers, employed by 13 different subcontractors. Furthermore, senior workers have been paid according to the wrong wage brackets. This has resulted in experienced workers taking the lowest hourly wages according to collective agreements – which is EUR 10 per hour – instead of the nearly EUR 15 per hour for experienced professionals. Overtime and travel reimbursements were not paid. **In this case the employment was not properly declared in accordance with the existing legal requirements, in particular failing to adhere to agree upon wage rate outlines in Finnish collective agreements and evading taxes and social security contributions.** For instance, one firm caught underpaying workers was ordered to pay EUR 80 000 to 50 employees.¹⁶⁸

In **Slovakia** the remaining main challenges are the lack of methodologies/internal procedures for checking newly appointed subcontractors (2nd in rank), legal barriers which prevent the inclusion of stricter requirements/exclusion criteria (3rd in rank), violations during the implementation of the selection procedure and/or non-application of exclusion criteria due to gaps in legislation, lack of technical specifications in open calls (4th in rank), and GDPR

¹⁶⁸ YLE (2019). [Union: Low wages, unpaid overtime found at Olympic Stadium renovation project.](#)



issues preventing the public authority from requesting up-to-date information on the persons performing the work and their working hours (5th in rank).

In **Poland** the second greatest challenge is associated with the lack of methodologies or internal procedures for requesting justifications for abnormally low prices (2nd in rank), the lack of human resources for checking all reports by all subcontractors (3rd in rank), the legal barriers which prevent the inclusion of stricter requirements/exclusion criteria (4th in rank), and other challenges without further specification (5th in rank).

Major challenges

Common 'major' challenges faced by public authorities in preventing undeclared work in public procurement are the **lack of national non-compliance (black) and compliance (white) lists, or labelling/certification practices of contractors (Belgium, Sweden, Slovakia, and Poland), GDPR issues** preventing the public authority from requesting up-to-date information on the persons performing the work and their working hours (**Belgium, Finland, and Poland**), **the lack of appropriate measures to ensure compliance with applicable obligations** established by Union law, national law, collective agreements or by the international law provisions (**Belgium, Finland, and Poland**).

Moderate challenges

Common 'moderate' challenges faced by public authorities in preventing undeclared work in public procurement are **legal barriers preventing the inclusion of stricter requirements/exclusion criteria** (e.g. if the operator is in breach of its obligations relating to the payment of taxes or social security contributions) (**Sweden, Finland**), **lack of human resources for checking all reports by all subcontractors (Belgium, Slovakia), lack of legal grounds to oblige the supplier to provide introductions to employees' rights and use job satisfaction surveys (Finland, Poland), lack of appropriate measures to ensure compliance with applicable obligations** established by Union law, national law, collective agreements or by the international law provisions (**Sweden, Slovakia**), **violations during the implementation of the selection procedure and/or non-application of exclusion criteria due to gaps in legislation, lack of technical specifications in open calls, etc. (Sweden, Poland)**, and **restricted competition** (the procurement was designed with the intention of unduly favouring or disadvantaging certain economic operators) (**Sweden, Slovakia**).

Minor challenges

Common 'minor' challenges faced by public authorities in preventing undeclared work in public procurement are the **non-transposition or incomplete transposition of EU instruments and adopted international standards on labour market practices into national legislation (Sweden, Finland, Slovakia), other challenges** not specified in the survey (**Belgium, Sweden, Slovakia**), **lack of legal grounds to oblige the supplier to provide introductions to employees' rights and use job satisfaction surveys (Belgium, Sweden, Slovakia), violations during the implementation of the selection procedure and/or non-application of exclusion criteria where they exist due to gaps in legislation, lack of technical specifications in open calls (Belgium and Finland)**, and **restricted competition (Belgium and Poland)**.



Box 12. Insufficient human resources, skills, internal procedures, and methodologies for monitoring contracts (Belgium)

Although the 2014 EU Directive was transposed faithfully in Belgium, its implementation varies from one region to another, from one level of government to another, and from one sector of activity to another. Experts identified as a challenge the need for including provisions on monitoring and inspection in the tender requirements to guarantee the correct implementation of social considerations. Currently, such monitoring is rare in supply and service contracts in Belgium. Another outlined challenge is the social dumping which is very often brought to light during the performance of the contract. Although the employer is co-responsible, it lacks the skills and control tools. Also, social inspection staff lack human resources.¹⁶⁹

5.3 Examples of challenges to prevent undeclared work in public procurement

Similar challenges to those indicated by the five surveyed countries are experienced in **Sweden, Italy, and Spain**, (see Box 13). These **include lack of expertise and guidance among relevant actors, absence of procurement data and statistics, common national models and e-tools, lack of human resources and time, and difficulty in measuring social impact.**

Box 13. Lack of enough human resources, skills, methodologies, and data (Sweden), GDPR issues (Italy), and legal gaps (Spain)

The following challenges are hindering public authorities in **Sweden** from checking and verifying compliance with the SRPP for 2018 and 2021:¹⁷⁰

- ▶ Lack of capability and experience among contracting authorities, suppliers, and decision-makers;
- ▶ Lack of guidance and support, for example, guidance materials and criteria;
- ▶ Lack of a common national model, e-tools, platforms for planning and follow-up, and acceptance of employment requirements by the private sector and suppliers;
- ▶ Lack of procurement data and statistics on social consideration and procurement and methods for measuring results and effects when it comes to the social impact;
- ▶ Lack of time, competence, and methods and tools for analysis of the social impact.

Furthermore, desk research and interviews from another study from 2023 further identified as challenge the lack of sufficient resources – i.e. dedicated budgets and qualified staff to design the public tenders.¹⁷¹ This is partly due to insufficient training and knowledge of the procurement officers and other public service workers involved in public tenders. There is a need for more resources to do risk assessments, in particular, for high-risk economic sectors and to effectively formulate social clauses¹⁷² at the pre-procurement stage and monitor implementation efforts by suppliers during the procurement lifecycle. Also, the dialogue between procurement bodies and market players needs improvement and extension prior to launching a procurement procedure.

¹⁶⁹ European Parliament (October 2023). [The social impact of public procurement. Can the EU do more?](#)

¹⁷⁰ Swedish Competition Authority, The Swedish procurement monitoring report 2018 (2018:43); Procurement Monitoring Report Template. In view of the Member States' reporting process under the Directives 2014/23/EU, 2014/24/EU and 2014/25/EU, (2021: 33)

¹⁷¹ European Parliament (October 2023). [The social impact of public procurement. Can the EU do more?](#)

¹⁷² Including through the use of qualitative criteria linked to collective agreements and ensuring monitoring in collaborating with social partners.



In addition, the monitoring of contract performance clauses is acknowledged as resource-intensive and difficult, due in part to the lack of data on conditions and processes further down the supply chains outside Sweden. As a result, the monitoring of contract performance clauses is not done systematically.¹⁷³

Contracting authorities in **Italy** also lack strategies, skills, time, and instruments to actually pursue social aspects in tenders and contracts. For social aspects, contracting authorities need to make an extra effort, need to collect data, and sometimes even deal with GDPR. Another challenge is the lack of enough soft tools (e.g. capacity building and market engagement, provision of guidance, professionalisation in SRPP, available templates to apply certain provisions or instruments, as well as maintaining networks of experts who share their experience) to encourage contracting authorities to use and monitor the application of the SRPP.¹⁷⁴

Contracting authorities in **Spain** often have doubts in using social requirements in award criteria due to the existing legal framework. Although social requirements are stipulated in the law, the case law of the national courts, based on the Court of Justice of the European Union's (CJEU) jurisprudence concerning award criteria, have often considered that social requirements were not fulfilling a key aspect. Specifically, they do not allow bids to be evaluated in terms of performance and they also require being linked with the subject matter of the contract, which is not always easy to achieve. Also, there is no specific specialised training in SRPP for public procurement officials and managers.¹⁷⁵

Denmark, the Netherlands, France, and Malta experience challenges related to difficulties to **hold the main contractor accountable for labour violations** in case of long subcontracting chains, risks of incentivising companies to exploit workers through undeclared work if the lowest price is used as award criteria and risks that national collective agreements may hinder foreign companies from competing freely (see Boxes 14 – 16).

Box 14. Legal and technical barriers with undesirable effects on undeclared work prevention (Denmark, the Netherlands)

Using 'lowest price' as a key criterion in public procurement brings risks related to undeclared work:

Denmark awarded all interpretation services to a new and cheaper tenderer. The winning company required all employees to change status and work as self-employed and for lower rates, raising concerns about undeclared work. However, many workers refused. This led to a lack of interpreting services for courts and prisons, instigating much disruption for judges, lawyers, and doctors. In the end, the company had to withdraw from the contract since they were unable to meet the demand.¹⁷⁶

In the **Netherlands**, call centre operators commissioned by the Dutch government for the COVID-19 contact tracing programme were not only underpaid, but without pension contributions and were asked to use their own equipment.¹⁷⁷

Box 15. Legal and technical barriers with undesirable effects on undeclared work prevention (France)

¹⁷³ Ibid.

¹⁷⁴ Ibid.

¹⁷⁵ Ibid.

¹⁷⁶ UNI Europa – the European Services Workers Union (2021). [Put your money where your mouth is. Why and how the EU needs to change its public spending policies to promote a social Europe.](#)

¹⁷⁷ FNV (February 2021). [Million-dollar tender for corona call centers leads to significant underpayment.](#)



The case of ‘**Racing Arena**’ is related to a construction site for a rugby stadium in Nanterre (France) in which workers posted to the construction site were not duly paid and had to do extra-hours. This case exemplifies the adverse consequences of cascading subcontracting operations, wherein instructing companies enjoy heightened flexibility while evading accountability. In this case, the main issue concerned the role and the responsibility of the main contractor and the client. **French labour law establishes a monitoring system that rules out, if respected, any joint liability of the main contractor and the client. Consequently, the posted workers struggled to receive their wages.** The case illustrates the harmful effects of cascading subcontracting operations in which the instructing companies benefit from maximum flexibility while bearing no responsibility.¹⁷⁸

Box 16. Legal and technical barriers perceived as burdensome from market players and with undesirable effects on undeclared work prevention (Malta)

As companies with a company-level collective agreement are more likely to have higher salaries than those without agreements, they are more likely to be penalised in procurement, if tenders are awarded only on the basis of price or cost. In such a situation, award criteria have undesirable effects and may increase risks of undeclared work or lead to suspicions of restricting competition. However, it should be used to re-establish a level playing field again by rewarding companies that have company-level agreements with more award points. In Malta, contracting authorities that gave extra points as award criteria to companies with company-level collective agreements ‘have constantly been involved in lawsuits.’¹⁷⁹

¹⁷⁸ European Trade Union Confederation (ETUC) (2021). [Securing Workers' Rights in Subcontracting Chains. Case Studies.](#)

¹⁷⁹ European Parliament (October 2023). [The social impact of public procurement. Can the EU do more?](#)



6.0 Tips for mitigating undeclared work in public procurement contracts

The following section presents a selection of good practices to mitigate undeclared work in public procurement contracts. The tips are structured according to the three phases of the public procurement process (planning, evaluation, and implementation phase). This section includes findings derived from both the survey and desk research.

Key findings

In the **planning and evaluation phase** of public procurement:

- ▶ Provide additional **human and financial** resources to public procurement authorities, as well as **trainings** to acquire skills and methodological knowledge, to better inform and develop practical tools preventing undeclared work.¹⁸⁰
- ▶ Develop comprehensive **risk analysis** of the market before the start of the public procurement procedure and ensure careful drafting of the contract, including the use of qualitative selection and award criteria such as the requirement of having a collective agreement.
- ▶ Ensure adequate contract **supervision**, check and verify subcontractors' compliance with mandatory and exclusion criteria.

In the **implementation phase** of public procurement:

- ▶ Ensure adequate contract **supervision**, check and verify continuous compliance by subcontractors with mandatory and exclusion criteria (also checked during the planning and evaluation phase).¹⁸¹
- ▶ Establish effective control mechanisms in the relevant public authorities to ensure **compliance with the legal provisions tackling undeclared work**.¹⁸²

6.1 Mitigating undeclared work risks during the planning and evaluation phases

To mitigate the risks of undeclared work in the planning and evaluation phase of public procurement, survey respondents suggested the following two measures: 1) Providing **additional human and financial resources, as well as methodological knowledge** to public procurement authorities to better inform and develop practical tools preventing undeclared work,¹⁸³ and 2) developing **comprehensive risks analysis of the market** before the start of the public procurement procedure, and carefully **drafting** the contract, including the use of qualitative selection and award criteria such as the requirement of having a collective agreement, as well as ensuring adequate contract **supervision**, checking and verifying the **compliance of subcontractors with the mandatory and exclusion criteria**.¹⁸⁴

¹⁸⁰ Sweden.

¹⁸¹ Finland.

¹⁸² Czechia.

¹⁸³ Sweden.

¹⁸⁴ Finland.



It should be noted that a procurement procedure may not be needed in all cases. **In-house provision of services** may be a viable alternative when previous procurement experience has shown that the cost of ensuring compliance with labour law by the main contractor and all subcontractors is overly high.

Based on desk research, the following good practices in mitigating the risk of undeclared work in the planning and evaluation phases were identified (See Tips 1 – 8 below).

Tip 1. Developing guidance for applying SRPP in public procurement (Sweden and Belgium)¹⁸⁵

The **Swedish National Agency for Public Procurement** offers **guidance** to promote the socially responsible public procurement and social labels on labour conditions according to collective agreements.¹⁸⁶ The guidance offers support on how to apply SRPP criteria in public procurement. The focus is on working conditions in Sweden (in accordance with Swedish collective agreements) and outside of Sweden in global supply chains (in accordance with the ILO core conventions on human rights, environmental protection, and anticorruption). **The support materials contain practical information for procuring organisations, suppliers, and other stakeholders on how procurement with such conditions can be carried out in practice.** The materials provide guidance on the following, among other things: a) what needs to be done before the procurement, b) what a needs assessment is, c) how conditions can be drawn up, d) published labour law terms and conditions, e) what applies to subcontractors, f) how a follow-up can be carried out, etc. Swedish trade unions have also developed guidelines on how social partners could help improve public procurement.¹⁸⁷

Similarly, different regions in **Belgium** have developed step-by-step guidelines for fighting social dumping through public contracts, which could be invaluable to the contracting authorities, as well as the companies.¹⁸⁸ In addition, a list attached as an appendix to the public contracting authority's specifications setting out the main provisions to be complied with by the tenderer (and its subcontractors) in terms of working conditions, remuneration, and employment can also help tenderers to be aware of their obligations and to comply with them. Contracting authorities may also decide to require a declaration by the contractors that they will comply with their obligations.¹⁸⁹

Tip 2. Identifying the risks of labour exploitation in supply chains (Finland)¹⁹⁰

Contracting authorities can use the checklist below to identify risks of labour exploitation and undeclared work in supply chains. Companies that can relate to one or more of the statements in the checklist below are at risk of being involved in fraudulent activities:

1. Does your company use unskilled, temporary, and/or seasonal labour?
2. Does your company employ many migrant workers who might be unfamiliar with your country's or business sectors' collective agreement?
3. Does your company have migrant workers/temporary staff employed under temporary contracts and hired by national or international temporary staffing agencies?

¹⁸⁵ Ibid.

¹⁸⁶ [Labor law conditions according to collective agreement](#) (Sweden).

¹⁸⁷ OFR trade union (2019). [Union Handbook for Better Public Procurement \(Facklig handbok för Bättre Offentlig Upphandling\)](#).

¹⁸⁸ Brussels-Capital Region (2021). [Fighting social dumping through public contracts](#); Walloon Region (2023). [Public procurement - Guide for companies](#); Walloon Region (2018). [Verification of public procurement contract prices - Guide of good practices](#); Walloon Region (2018). [Promoting fair competition and combating social dumping - Tools for contracting authorities awarding public works contracts](#).

¹⁸⁹ Interview with a representative of the Belgian Social Information and Investigation Service (SIRS) and the Federal Public Service Employment (FPD SPF), (27 February 2024).

¹⁹⁰ HEUNI. [Risk Assessment Tool for Responsible Businesses](#).



4. Does your company use subcontractors (possibly with several layers in the supply chain), temporary staffing agencies, and short-term seasonal contracts? If so, does your company staff possess the skills to identify uncharacteristically low tender/contract offers?
5. Are there job functions which are outsourced and carried out by migrant workers/temporary staff who are not immediately visible or noticeable because the work is carried out at night or in remote places where there is less oversight?
6. Is there sometimes confusion about the identity of workers who are employed, for example, on job sites that have complex subcontracting arrangements?
7. Does your company lack an internal or external grievance mechanism or a system for processing complaints that would allow all workers (directly/indirectly employed, local or migrant) to bring issues to the attention of management anonymously?
8. Is your company part of a business sector which has previously been affected by undeclared labour, social dumping, labour exploitation and/or human trafficking according to, for example, the media, research, NGO reports, or some other sources?
9. Is your company part of a business sector that, according to, for example, the media, research, NGO reports or some other sources, is insufficiently monitored by state actors?

Tip 3. Contract tool for prevention of labour exploitation and trafficking (HEUNI) (Finland)¹⁹¹

- ▶ **Step 1: If your company uses a supplier/contractor/agency, check whether the company operates legally** (e.g. is registered in the relevant state-run registers) and require or seek assurances that the company is not involved in an ongoing criminal case through, for example, state-operated registers or via written testimonies. Companies may also request inspection reports from labour inspectorates if such inspections have been carried out.
- ▶ **Step 2: Determine the obligations and requirements of the contractual partners**, for example, whether contractors can further contract out the work to subcontractors, and if so, what kind of terms and conditions should be agreed upon in writing; should they be approved by your company before doing so? Should the same terms of employment apply to all layers of subcontracting? How do you intend to monitor your contractors and their possible subcontractors?
- ▶ **Step 3: Makes sure that the obligations and requirements are part of a written contract.** Put the company policy in writing and consider including permanent clauses in the contracts with subcontractors and other partners.
- ▶ **Step 4: Draft a clear strategy on how to deal with possible breaches of contract.**

Tip 4. Including non-cash payment criteria in public procurement documentation (Norway)¹⁹²

The following tip is part of the overall practice of the Municipality of Skien (Norway). **To prevent undeclared work in public procurement, the municipality sets out additional requirements in procurement documents for no payments in cash.** All wage payments and other compensation shall be paid to the individual worker's bank account. Wage payments must be paid to a bank account, and the employer must be able to trace the payment. All payments other than wages made by the supplier in connection with the execution of the contract will also be paid by electronic means and be traceable. Suppliers are obliged to identify their bank on request. To identify (confirm) any issues of undeclared work, the contracting authority (Municipality of Skien) is also

¹⁹¹ HEUNI (2020). [Navigating through your supply chain: Toolkit for prevention of labour exploitation and trafficking.](#)

¹⁹² Skien municipality (2017). [The Skien Model](#); European Commission (2020). [Making Socially Responsible Public Procurement Work: 71 Good Practice Cases.](#)



performing control over the contract delivery, requiring reports and follow-up of subcontractors throughout the supply chain.

Tip 5. Monitoring the age of tendering companies (Finland)¹⁹³

It is advisable to monitor the longevity of tendering companies. A new company typically has a clean record. Therefore, whenever feasible, it's recommended to ascertain whether the company's management has been involved in past instances of negligence, such as in other companies. Additionally, the size of the tenderer's company and its turnover can be assessed relative to the size of the procurement/contract, as it might pose challenges for a small company to handle a large procurement. **Conversely, a small turnover combined with previous involvement in significant contracts may indicate engagement in the undeclared economy and the commissioning of undeclared work.** References from past projects can offer insights into the tenderer's capability to successfully execute the procurement.

Tip 6. Developing a digital tool for risks assessment (Sweden)¹⁹⁴

The Swedish National Agency for Public Procurement has developed a digital tool for identifying and handling risks during the design of contracts in working conditions outside of Sweden in global supply chains (in accordance with the ILO core conventions on human rights, labour rights and anticorruption).

According to the respondent from **Finland**, the procurement stage at which undeclared work could be reasonably suspected is the evaluation phase, where there is an unusually low tender price. None of the other respondents (**Belgium, Sweden, Poland**) commented or provided sufficient information (**Slovakia**) on this question, including sources of information and/or red flags which might be used to build a reasonable suspicion of undeclared work. The selected tips below can support contracting authorities in the identification of abnormally low tenders:

Tip 7. National solutions concerning the identification of abnormally low tenders (Italy, Poland, Slovakia)¹⁹⁵

In Italy, although the price is the only criterion for the award of contracts, the law provides for the investigation of tenders showing deviations from the "anomaly threshold". **Five different methods may be used for the calculation of the anomaly threshold, and the contracting authority determines the one that is to be applied in a specific case by lottery.** To avoid the manipulation of prices by bidders, the method of calculation of the anomaly threshold is not revealed in advance.

In Poland, contracting authorities are obliged to **require explanations from bidders that submit tenders containing prices that are lower by more than 30 % than the estimated value or the average price of all submitted tenders.** There is no requirement concerning a minimum number of submitted tenders for this method to be applied.

In Slovakia, a tender is understood as abnormally low if the following conditions have been met: 1) At least three tenders, submitted by qualified bidders, fulfil the requirements of the contracting authority, 2) the

¹⁹³ HEUNI (2021). [Labour Exploitation and Public Procurement: Guide for Risks Management in national supply chains.](#)

¹⁹⁴ Policy Department for Economic, Scientific and Quality of Life Policies Directorate-General for Internal Policies (October 2023). [The social impact of public procurement.](#)

¹⁹⁵ SIGMA (2016). [Abnormally Low Tenders](#), Brief No. 35.



tender offers a price that is at least 15 % lower than the average price of all other offers, 3) the tender offers a price that is at least 10 % lower than the second lowest offer. It is enough to consider the tender abnormally low if conditions (1) and (2) or conditions (1) and (3) are met.

None of the participants shared their opinion on at which procurement stage undeclared work could be reasonably identified (confirmed) or at what procurement phase public authorities in their country could send an inquiry if undeclared work is detected and request remedial or prevention action by the respective economic operator. It remains unclear what actions are taken in case of undeclared work. None of the respondents commented or gave information on the actions which their organisation is taking in case of undeclared work (e.g. tracking other contracts of the company, advising other contracting authorities, etc.).

None of the survey participants shared their opinions or experience on how private companies might be supported in achieving legal and technical procurement requirements related to the prevention of undeclared work, including suggestions as to whether public authorities should include in the procurement open call clarifications and guidelines listing labour and social security obligations, or establish regular discussions and consultations with the economic operator after contract signature. However, the following tip provides contracting authorities a suggestion on how the design of tender documents could be improved, in order to make it easier for bidders to apply SRPP.

Tip 8. Supporting public authorities and private companies in preventing undeclared work¹⁹⁶

Developing a catalogue of socially responsible conditions, clauses, and criteria to support public and private organisations. Although there might be a general regulatory framework stipulating the use of SRPP, it is advised to further specify the way in which social clauses and performance conditions can be applied in the design and implementation of procurement procedures. Therefore, **creating a catalogue of socially responsible conditions, clauses, and criteria and facilitating bidders' access to this catalogue** might be useful in removing legal uncertainty for **public authorities during the design of tender documents and make it easier for bidders to apply SRPP.**

Finally, when evaluating public procurement offers, contracting authorities need to consider several key factors: firstly, they must ensure that all offers **comply with relevant laws,** regulations, and procurement guidelines. This involves assessing the overall value for money offered by each proposal. Additionally, authorities should evaluate the **technical suitability** of each offer to ensure it meets the specified requirements. **Financial stability and reliability** of bidding entities are crucial considerations to ensure they can fulfil contract obligations. **Past performance** should also be reviewed to gauge bidders' ability to deliver as promised. It is advisable to keep track of the **establishment date of bidding companies.** A newly formed company typically possesses a clean track record. Therefore, whenever feasible, enforcement authorities can inspect whether the management of the company has been accountable for instances of negligence in prior engagements, such as in other enterprises. The **scale** of the bidder's company and its **revenue** can be evaluated in relation to the scale of the procurement/contract, as managing a large procurement might pose challenges for a smaller company. Conversely, a **small revenue paired with a history of managing significant contracts could indicate involvement in undeclared work.** **Testimonials** from past projects may provide insights into the bidder's capability to effectively execute the procurement.

¹⁹⁶ European Trade Union Confederation (ETUC) (2021). [Securing Workers' Rights in Subcontracting Chains. Case Studies](#); Policy Department for Economic, Scientific and Quality of Life Policies Directorate-General for Internal Policies (October 2023). [The social impact of public procurement](#).



6.2 Mitigating undeclared work risks during the implementation phase

To mitigate the risks of undeclared work in the implementation phase of public procurement, survey respondents suggested the following two measures: 1) Ensuring adequate contract **supervision**, checking, and verifying the **continued compliance of subcontractors with the mandatory and exclusion criteria** (also checked during the planning phase),¹⁹⁷ and 2) Ensuring compliance with the law on undeclared work.¹⁹⁸

Based on desk research, the following good practices in mitigating the risk of undeclared work in the implementation phase were identified (see Tips 9 – 12 below).

Tip 9. Building a network of facilitators to monitor the delivery of contracts with social clauses (Belgium)¹⁹⁹

Since 1996, Wallonia has had a long history of using social clauses in public works contracts and is one of the first regions in Europe that developed a system to monitor their use. The Network of Facilitators of Social Clauses was created in 2012 to gather representatives of key stakeholders in public works contracts, such as the Public Procurement Directorate of the Walloon Public Service, the Walloon Housing Company, the Union of Walloon Cities and Municipalities, the Walloon Union of Architects, the Walloon Construction Confederation, and SAW-B, the organisation representing social economy enterprises. **The Network set up a process for monitoring public contracts covered by the obligation to include social clauses, as well as public works contracts that voluntarily include the same social clauses.** At the end of each year, the data is processed, analysed, and published in a report by the Walloon Public Service. This report is studied by a steering committee in which the cabinets of the various ministries concerned are represented and can decide to make improvements or adjustments to the scheme and its monitoring system. There has been a constant and stable increase in the number of work contracts that include these clauses, ranging from 237 in 2016 to 1 494 in 2021.

Tip 10. Using HEUNI’s risk assessment tool on labour exploitation and public procurement (Finland)²⁰⁰

This check list below is supporting contract authorities in Finland to identify which procurements and contracts should be subject to due diligence and corporate social responsibility measures to prevent labour exploitation.

- ▶ Does the procurement contract employ migrant workers/temporary labour who are in a vulnerable position in the labour market (e.g. due to language barriers) and are not likely to be familiar with Finnish labour market rules and regulations, the collective agreement for the sector, and/or their other rights?
- ▶ Does the public procurement include the employment of migrant workers/temporary labour working through foreign or Finnish temporary staffing agencies or through a long subcontracting chain in labour-intensive, low-skilled, and low-pay sectors?
- ▶ Does the public procurement include the employment of light entrepreneurs or self-employed persons working through, for example, different invoicing service companies who are in a vulnerable position or have a weak negotiating position in the labour market?
- ▶ Is there a lack of transparency as to who the actual employer of the worker is or what the terms of employment are, or are the workers entrepreneurs or working through an employment contract?

¹⁹⁷ Finland.

¹⁹⁸ Czechia.

¹⁹⁹ Policy Department for Economic, Scientific and Quality of Life Policies Directorate-General for Internal Policies (October 2023). [The social impact of public procurement](#).

²⁰⁰ HEUNI. [Risk Assessment Tool](#).



- ▶ Have deficiencies been observed repeatedly in certain types of procurements or with regard to certain suppliers or their subcontracting, e.g., underpayment, lack of clarity with agreed working hours, issues with the submission of reports under the Act on the Contractor's Obligations or their content, or in the verification of a migrant worker's right to work?
- ▶ Has there been an atypical dispersion in tender prices or unusually low tender prices in certain type of procurements or business sectors that could pose a risk to labour rights violations?
- ▶ Does the procurement include job functions that are outsourced to migrant workers/temporary staff, who are not immediately visible to other staff/to the contracting entity because their work is performed outside of official working hours or in remote/ isolated places?
- ▶ Are services procured from business sectors in which, according to the media, research, NGO reports or other sources, there is prior knowledge of problems such as use of undeclared labour, inappropriate working conditions, social dumping, labour exploitation, or human trafficking?

Tip 11. Identifying the risks of labour exploitation or trafficking through direct discussions with workers (Finland)²⁰¹

Labour exploitation and undeclared work are closely related, often intersecting in undeclared and underground economies. Although not exhaustive, the list of questions below is designed to support the contractors and the contracting authorities in uncovering risk factors that make workers vulnerable to labour exploitation:

- ▶ How did you find out about the job?
- ▶ Before starting this job, did someone explain to you your rights as an employee in the country that you are working in?
- ▶ Before starting this job, did someone explain to you the general terms and conditions of employment (working hours, pay rate, etc.) and who to turn to in case of difficulties?
- ▶ Have you been given adequate orientation and work guidance?
- ▶ Are the terms of employment part of a written contract in a language that you understand? Have you signed another contract with the same employer and for the same job but with different terms of employment?
- ▶ Do you know how much money per hour/month you should be earning according to the law?
- ▶ Are you informed of your working hours in a timely manner? Are the working hours listed in a shift schedule that is up-to-date, accessible, and comprehensible?
- ▶ Do you get compensation for working overtime? What about if you work for more than 8 hours per day or 40 hours per week – do you get any extra money then?

Tip 12. Acting when there are concerns (Finland)²⁰²

The contractors and the contracting authorities could use the following checklist to act when there are concerns:

- ▶ If it becomes apparent that a subcontractor is breaking the law, the police, labour inspectorates, and/or occupational health and safety authorities must be contacted;
- ▶ When violence or threats are involved, the national authorities must be contacted immediately;
- ▶ If the contracting authority is unsure whether terms and conditions of employment are respected, **labour inspectorates, tax authorities, immigration services as well as trade unions and employers' organisations can be contacted for consultation and further information;**

²⁰¹ HEUNI (2020). [Navigating through your supply chain: Toolkit for prevention of labour exploitation and trafficking.](#)

²⁰² Ibid.



- ▶ If there are concerns that the terms and conditions of employment are not respected but the worker is unwilling to disclose any information, **the contracting authority can provide a list of organisations that the worker can contact in case they want to discuss their situation more anonymously;**
- ▶ If there are suspicions that someone may be a victim of human trafficking, the national assistance system for victims of trafficking should be contacted;
- ▶ National authorities may have hotlines or electronic forms through which tips or information (often anonymously) related, for example, to a suspicion of tax non-compliance, misconduct, or crimes, etc. can be left.



7.0 Conclusions and suggestions

The study explored the existence of undeclared work in public procurement contracts and the possibilities for its prevention through various procurement strategies and conditionalities. Based on a survey, interviews and desk research, several suggestions on ways forward can be provided to the EU Member States, Iceland and Norway's labour and contracting authorities:

- ▶ **Implementing the provisions outlined in Directive 2014/24/EU into practical operation:** The provisions in Directive 2014/24/EU need to be further clarified and operationalised by introducing **concrete internal procedures based on established and validated guidelines and manuals** within the practice of the contracting authorities. Moreover, **national legal and regulatory frameworks** should be advanced with more or better formulated requirements linked to labour law and social requirements, including in relation to collective agreements. Such requirements might be the introduction of joint liability between subcontractors and the main contractor in national law (i.e. making the main contractor liable, along with the subcontractors that hire the workers).²⁰³ **Measures found to be very efficient against undeclared work in supply chains are consultations between the public bodies and the key stakeholders (e.g. social partners and suppliers).**
- ▶ **Enhanced utilisation of the discretionary exclusion criteria:** Contracting authorities should utilise not only the mandatory exclusion criteria (e.g. participation in criminal organisation, corruption, fraud, terrorist offences, breach of taxes or social security contributions), but also optional exclusion criteria²⁰⁴ (environmental, social, and labour law as well as collective agreements, bankruptcy, or insolvency, grave professional misconduct, agreements with other economic operators aimed at distorting competition, conflict of interest, deficiencies in the performance, and undue influence over the decision-making process of the contracting authority).²⁰⁵ Considering the discretionary criteria, including a stronger focus on qualitative requirements (as opposed to cheapest price as the only selection criteria), is **essential in terms of curbing undeclared work in supply chains**. This allows for a more nuanced assessment of issues that may impact the suitability and reliability of potential economic operators. While mandatory criteria serve as baseline requirements, optional criteria provide a broader perspective, enabling a comprehensive assessment beyond the minimum such as financial stability and ensuring more informed decision-making.
- ▶ **Capacity building and training for suppliers and contracting authorities:** Capacity development and training initiatives for both suppliers and contracting authorities are **crucial for enhancing their understanding and proficiency in procurement practices and contract execution procedures, and how these relate to enabling declared and curbing undeclared work** including, but not limited to, the observation of labour and social rules.²⁰⁶ Contracting authorities also need to gain knowledge and experience on how to **include labour law conditionalities** as well as measure and monitor the **quality and social aspects** in their procurement process and its different stages.²⁰⁷
- ▶ **Market consultations with potential applicants and other stakeholders:** Contracting authorities are advised to **engage in stakeholder and market consultations with a diverse array of entities**, including

²⁰³ Ibid.

²⁰⁴ Article 57(4) of Directive 2014/24/EU.

²⁰⁵ European Federation of Cleaning Industries (EFCI) and UNI Europa (2016). *Selecting Best Value a Guide for Private and Public Organisations Awarding Contracts for Cleaning Services*.

²⁰⁶ A good example presents the Training Desks in Italy (STDs) ('Sportelli in Rete' in Italian). Experts from the Italian central purchasing agency, 'Consp', train employees from the suppliers' associations that then train local micro, small and medium enterprises on the use of electronic procurement tools. For more information: OECD (21 January 2015). [Compendium of Good Practices for Integrity in Public Procurement](#).

²⁰⁷ European Federation of Cleaning Industries (EFCI) and UNI Europa (2016). *Selecting Best Value a Guide for Private and Public Organisations Awarding Contracts for Cleaning Services*.



other public buyers, users (e.g. employees, citizens, civil society organisations), social partners, businesses, national and international labour organisations.^{208,209} The dialogue could improve the mutual understanding of the market landscape, including the risk of undeclared work, while contributing to more informed and effective procurement decisions, including technical capacities of the suppliers and their labour practices as well as the needs and requirements of the contracting authorities.²¹⁰

- ▶ **Creating a balance between the imposed administrative burden and the need for conditionalities against undeclared work is crucial, while ensuring that the use of taxpayers' money under public contracts deliver in the general interest.**²¹¹ Three critical aspects warrant attention. First, excessively stringent application requirements, including **extensive documentation submissions and proof of non-exclusion, can discourage potential bidders**. In this regard, more proof can be requested at a later stage of the selection procedure and/or the contracting authorities could be provided with access to multiple databases and registers to check selection and exclusion circumstances, instead of shifting the burden to the candidate. Second, **continuous monitoring of labour conditions during contract execution, involving regular subcontractor reports and on-site inspections are necessary to verify that social award and selection criteria including collective agreements are respected in practice. This should be carried out after the selection phase and during the implementation of the public contract**. Third, **prioritising the lowest bid as the primary contract award criterion can incentivise labour exploitation and undeclared work**. Therefore, contracting authorities are advised to carefully plan their procurement strategy, and strike a delicate balance between procedural simplicity (to attract multiple competitors and ensure free competition) and effective labour protections (relevant exclusion criteria and follow-up checks of labour law compliance).²¹²
- ▶ **Applying a comprehensive public procurement approach:** Social and labour-law related clauses in public procurement should be applied in parallel with the general rules of **fair competition, inclusiveness, non-discrimination, and integrity** as recommended in the **OECD's Compendium of Good Practices for Integrity in Public Procurement**.²¹³ In that regard, the European Commission has already established a procedure for issuing infringement decisions and pursuing legal action against Member States that fail to comply with their obligations under EU law.²¹⁴ The application of such a comprehensive public procurement approach is linked to the overall objective of tackling undeclared work, as the integrity of the evaluation committee would guarantee an unbiased selection of the best candidates who have proven labour law compliance practices. The observance of OECD's recommendations is also important for any follow up checks and on-the-spot inspections, in order to ensure that any detected irregularities are not overlooked. In the same vein, requiring the application of a collective agreement is also an important tool to ensure decent work and fair competition based on a level playing-field in the market among bidding companies, ensuring that they compete on other parameters than labour costs and sub-standard working conditions.
- ▶ **Enhancing the role of central public procurement agencies:** Central public procurement agencies in the Member States should support a comprehensive public procurement approach, including the observation of labour law regulations. Through collaborative efforts with social partners and the private sector clear methodologies and guidelines for contracting authorities should be developed. Additionally, central agencies can provide invaluable support by offering preliminary checks and legal advice on technical specifications before calls are launched. This proactive approach ensures that all relevant legal provisions, particularly those concerning labour law, are considered. Central agencies can also strengthen the process by supporting follow-

²⁰⁸ E.g. the Organization for Economic Cooperation and Development (OECD) and the International Labour Organization (ILO).

²⁰⁹ European Commission (2021). [Buying Social – a guide to taking account of social considerations in public procurement](#).

²¹⁰ Interview with a representative of the Finnish Competition and Consumer Authority (10 January 2024).

²¹¹ Interview with a representative of the Belgian Social Information and Investigation Service (SIRS) and the Federal Public Service Employment (FPD SPF), (27 February 2024).

²¹² Ibid.

²¹³ OECD (21 January 2015). [Compendium of Good Practices for Integrity in Public Procurement](#)

²¹⁴ European Commission (18 October 2023). [October infringement package: key decisions](#).



up control measures, gathering feedback from contracting authorities on the challenges faced, and proposing legal and procedural enhancements.

- ▶ **Regular risk assessment, evaluation, and advancements of applied procedures:** Contracting authorities are advised to regularly apply risk assessment tools to prevent labour law violations, such as undeclared work and exploitation in public procurement. **Checklists and tools** (such as social ID cards or anonymous safe reporting channels) **can facilitate the work of the contracting authorities while performing due diligence on the main bidder and its subcontractors.**²¹⁵ Risk indicators that can be used by contracting authorities which can help prevent the risk of undeclared work include: **abnormally low price, previous misconduct, small turnover** (indicating lack of technical capacity to implement the procured service), **new company status**, etc.²¹⁶ The contracting authorities are encouraged to cooperate and exchange know-how among each other, which would facilitate their risk assessment and other procedures.²¹⁷ **As non-compliance with exclusion grounds often happens in the supply chain, due diligence and checks are also needed there.**²¹⁸ It is further expected that contracting authorities will be able to strengthen the checks and oversight over subcontractors through the due diligence obligations introduced on main contractors in supply chains, when the recently adopted *Corporate Sustainability Due Diligence Directive* comes into force.²¹⁹
- ▶ **Past performance should also be reviewed to gauge bidders' ability to deliver as promised.** It is therefore advisable to keep track of the establishment date and operation of bidding companies. A newly formed company typically possesses a clean track record. Therefore, whenever feasible, enforcement authorities can inspect whether the management of the company has been accountable for instances of negligence in prior public procurement contracts. Additionally, the scale of the bidder's company and its revenue can be evaluated in relation to the scale of the procurement contract, as managing a large procurement might pose challenges for a smaller company. Conversely, a small revenue paired with a history of managing significant contracts could indicate involvement in undeclared work. Testimonials from past projects may provide insights into the bidder's capability to effectively execute the procurement.²²⁰
- ▶ **Digitalisation of the procurement and social security systems in EU and across the EU Member States:** Implementing e-tendering which involves the online submission and processing of procurement documents, offers several advantages, including decreasing the red tape and creating a central database of technical specifications but also contracts and reports regarding the procurement contracts' implementation (incl. any detected irregularities). Electronic procurement applications would also significantly enhance the ability of contracting authorities to verify award and exclusion criteria. This can be achieved by automatically cross-checking information from applications with public registers like past infringement databases, compliance lists, and company registries. The adoption of European digital tools such as the EU Digital Identity (EUDI) wallet, the European Social Security Pass (ESSPASS), as well as social ID and labour cards developed on a bi- or tripartite basis at national or sectoral level can help prevent irregularities in cross-border supply chains.^{221,222}

²¹⁵ HEUNI (2021), [Risk assessment tool](#).

²¹⁶ Interview with a representative of the Finnish Competition and Consumer Authority (10 January 2024).

²¹⁷ Ibid.

²¹⁸ European Parliament (October 2023). [The social impact of public procurement. Can the EU do more?](#)

²¹⁹ European Parliament (1 June 2023). [Amendments adopted by the European Parliament on 1 June 2023 on the proposal for a directive of the European Parliament and of the Council on Corporate Sustainability Due Diligence and amending Directive \(EU\) 2019/1937](#).

²²⁰ Interviews within public procurement authorities and organisations procuring labour and services, conducted within earlier projects PROCURFAIR and Bulla and Kahancová (2022).

²²¹ European Commission (6 September 2023). [Towards a more digital social security coordination: Commission proposes steps to make it easier for Europeans to live, work and travel abroad](#).

²²² European Federation of Building and Woodworkers (EFBWW) (2022). [Better European Rules for Subcontracting in the Construction Sector](#).



- ▶ **Ensuring collaboration between key actors:** Promote effective cooperation and knowledge exchange between procurement officials, labour inspectorates, and other departments responsible for social and employment policies in all institutions and public administrations to minimise the risks of undeclared work and guarantee better implementation of SRPP. Also, promote a deeper discussion with social partners and qualified operators at the national level to strengthen the SRPP regulation and implementation, including through the application of collective agreements, but also to identify gaps increasing the risks of undeclared work. In addition, public bodies should maintain regular dialogue with relevant experts, non-governmental organisations (NGOs) and other relevant stakeholders, to plan and assess SRPP policies and tendering procedures. These experts could support the public bodies in including specific conditionalities in the technical specifications, which are designed to tackle the use of undeclared work.²²³

²²³ European Parliament (October 2023). [The social impact of public procurement. Can the EU do more?](#)



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Annex 1

Table 8. Ranking of the challenges which public authorities face when preventing undeclared work in procurement from private businesses

Note: The ranking begins with the most significant challenges (1 to 5) highlighted in the darkest colour and progresses to the least significant ones.

Challenges which public authorities face when preventing undeclared work in procurement from private businesses?	Belgium rank	Sweden rank	Finland rank	Slovakia rank	Poland rank
Legal barriers which prevent the inclusion of stricter requirements/exclusion criteria (e.g. if the operator is in breach of its obligations relating to the payment of taxes or social security contributions)	6	12	13	3	4
Lack of uniform criteria for including mandatory provisions of labour clauses in public contracts (e.g. those set out in ILO convention 94 on Labour Clauses (Public Contracts), ratified by 10 Member States)	12	15	7	7	17
Lack of national non-compliance (black) and compliance (white) lists, or labelling/certification practices of contractors	7	6	4	6	8
Lack of human resources for on-site inspections	2	3	2	10	7
Lack of human resources for checking all reports by the main contractor	1	8	1	15	12
Lack of human resources for checking all reports by all subcontractors	11	4	3	11	3
Lack of methodologies or internal procedures for checking the newly appointed subcontractors	5	5	12	2	14
Lack of methodologies or internal procedures for requesting justifications for abnormally low prices	3	7	5	9	2
Lack of methodologies or internal procedures for assessing the reasons for abnormally low prices	13	9	16	8	1
Lack of information and access to registers (company registers, tax, social securities and employment registers, court decisions on past infringements, as well as	10	1	17	1	15



Challenges which public authorities face when preventing undeclared work in procurement from private businesses?	Belgium rank	Sweden rank	Finland rank	Slovakia rank	Poland rank
compliance / non-compliance lists maintained by public bodies or by social partners)					
GDPR issues preventing the public authority from requesting up-to-date information on the persons performing the work and their working hours	8	2	8	5	9
Lack of legal grounds to oblige the supplier (economic operator) to provide orientation and introduction to employees' rights and use job satisfaction surveys	16	16	10	14	13
Lack of appropriate measures to ensure compliance with applicable obligations established by Union law, national law, collective agreements, or by the international law provisions	9	13	6	13	6
Violations during the implementation of the selection procedure and/or non-application of exclusion criteria where they exist due to gaps in legislation, lack of technical specifications in open calls, etc.	14	11	15	4	11
Restricted competition (because the procurement was designed with the intention of unduly favouring or disadvantaging certain economic operators, or because of unintended practices and/or decision)	15	10	9	12	16
Non-transposition or incomplete transposition of EU instruments and adopted international standards on labour market practices into national legislation	4	17	14	16	10
Other	17	14	11	17	5

Source: 2023 Survey on policy responses to prevent undeclared work in public procurement.