

Put your money where your mouth is

Why and how the EU needs to change its public spending
policies to promote a social Europe

UNI Europa Snapshot Report 2021 - 03

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Executive summary

*The mix of financial pressure on public authorities and public procurement rules that allow the same authorities to ignore social criteria in tendering, results in **half of tenders** in Europe being awarded based solely on the **lowest price**.*

This lowest price tendering puts pressure on wages and working conditions, leads to less competition as better contractors refuse to bid so low, worsens the quality of public services, brings less tax income and, crucially, it weakens collective bargaining.

*If the European Union is serious about strengthening a social Europe and collective bargaining, it should **leverage the money** spent through public procurement by demanding that bidding contractors have **collective agreements in place**, respect **fundamental labour rights** and **workers' say at work**.*

*This demand for **social public procurement** is supported by the majority of EU citizens. Furthermore, the European Parliament has adopted several reports calling for similar changes.*

In this snapshot report UNI Europa provides background information on:

- *Part 1: Real life **examples** of what happens when public procurement ignores social issues.*
- *Part 2: How public authorities are focusing on the **lowest price** only and ignoring social considerations.*
- *Part 3: How the current rules do not guarantee **respect for collective agreements**.*
- *Part 4: How this leads to **fewer bids** for contracts, **unfair competition**, bad service quality, lower wages, lower collective bargaining coverage and less tax income*
- *Part 5: How European citizens and Parliament support and demand changes to the current public procurement rules*
- *Part 6: How the EU should leverage the public spending to strengthen collective bargaining.*

1 Reality: the real price of lowest price tendering

[*No brooms and completely worn-out mops.*](#) That's what a **French** investigative journalist found working undercover in a hospital cleaning company where cleaning staff was left to improvise without the necessary tools, and this in the midst of the Covid crisis.

In the **Netherlands**, call centre operators commissioned by the Dutch government for the COVID contact tracing were underpaid and had no right to toilet breaks. The Dutch trade union [FNV](#) also revealed that they had no pension contributions and were asked to use their own equipment

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, which many refused. This led to a lack of interpreting services for courts and prisons, instigating an uproar of judges, lawyers and doctors. In the end, the company had to withdraw from the contract, since they were unable to meet the demand.

In **Finland**, cleaning workers in [kindergartens and municipal services](#) were underpaid (with some even unpaid) and forced to sleep in the workplace. Trade unions called for a closing of the legal [gaps](#).

In **Spain**, security staff working under several municipal contracts faced non-paid wages and eventually unemployment as several companies went bust as they couldn't deliver on the cut-throat conditions of the contract.

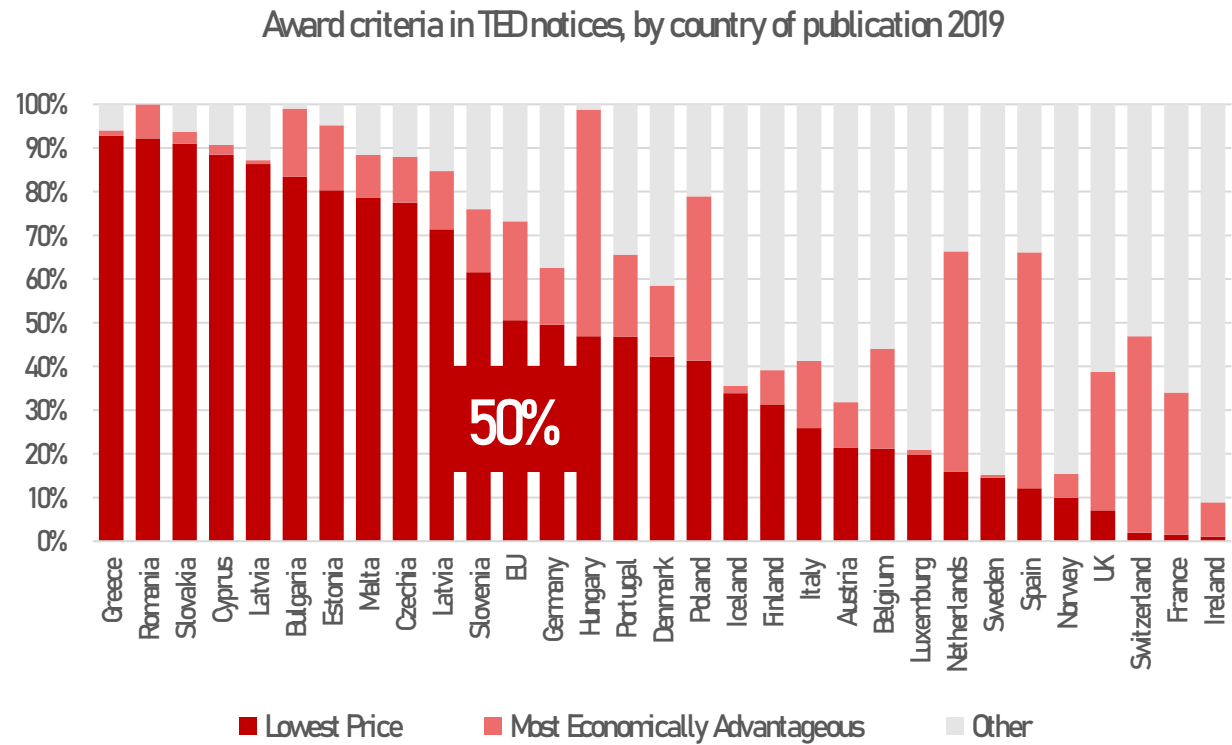
In **Belgium**, [several train stations](#) were cleaned by cleaners working without formal contracts, and later as bogus self-employed, in order for the employer to evade existing labour regulation.

These are just some real life examples indicating that there is a problem with the European public procurement rules and practices. Budget cuts and austerity programs pressure local authorities to opt for outsourcing, and in doing so, to focus on the **lowest price** almost exclusively. As the examples show, this results in unacceptable working conditions and bad quality public services.

According to the tender notices published on the [Tenders Electronic Daily](#) in 2019, **50%** of the tenders **only looked at the price tag** in deciding who contracts should awarded to. Figure 1 equally shows a considerable variation between countries with tenders in Spain

or the Netherlands¹ being more likely to award contracts primarily on the ‘most economically advantageous’ bid criteria. Despite the national variations, the conclusions remains that the current EU regulation is objectively **inefficient in inciting the strategic use of public money for social progress**.

Figure 1 - Award criteria in TED notices, by country of publication 2019



Source: TED database, tender notices, 2019.

1 In the Netherlands, the proportion of the contracts that are awarded based on lowest price is relatively low, this is related to the fact that the Dutch public procurement law explicitly states that price-quality ratios are the norm in awarding contracts and that public authorities must motivate if they apply the lowest price criterium (Bugter, 2019; Wiesbrock, 2015). Still, important problems remain (as shown in this FNV report) and public authorities continue to look mostly to the lowest price leading to scandals and problems such as with the bridge keepers or the contact tracers explained above.

2 Some problems with the current rules

Officially, the European Commission is **in favour** of public authorities including **social criteria in the public tenders**. At regular intervals it even tries to incentivise public authorities to do so by publishing best-practice guides on 'buying social' (European Commission, 2011, 2021).

Yet the reality is that public authorities still prefer lowest price tendering and ignore social considerations.

This is due to a mix of two factors.

First, public authorities are under serious **financial pressure** to keep their spending low. Decades of austerity politics are also pushing public authorities to consider outsourcing services via tenders, and in doing so, focusing on the price primarily.

Secondly, under the current rules² on public procurement, public authorities are **free to ignore** social considerations. Worse, the current rules also **limit** how local authorities can strategically award contracts. As such, (1) compliance with fundamental labour rights is not an obligatory exclusion criterium, (2) compliance with collective agreements is left to the choice of the national/regional/local level and, (3) the use of social award criteria is left to the local authorities and at the same time limited as it needs to be strictly related to the subject of the tender.

1. **Violation of fundamental labour rights is not an obligatory exclusion criterium.** In selecting a provider, local authorities '*shall*'³ exclude companies that have been involved in such things as corruption, fraud, terrorism, money laundering, child labour⁴, tax evasion or breaches related to social security contributions⁵. Interestingly, local authorities '*may*' exclude public contractors for other reasons such as competition

² The public procurement rules in Europe are partly governed by the European Directive on Public Procurement (2014/24/EU) and their national transposition laws of this Directive. These rules only apply to public tenders above a certain threshold², yet often set a reference for other procurement

³ Article 57 of the 2014/24/EU Directive which has to be read in conjunction with article 56 which states that, in open procedures, authorities '*may*' decide to examine grounds of exclusion.

⁴ Article 57§1 of the 2014/24/EU directive.

⁵ Article 57§2 of the 2014/24/EU directive.

distortion, conflict of interest, or violations of the [ILO's](#) core conventions on **Fundamental Principles and Rights at Work**⁶. The current rules on public procurement, in other words, give authorities the freedom to exclude (or not) companies involved in violations of fundamental rights at work.

2. **Compliance with collective agreements left to the member states.** Article 18 of the Public Procurement Directive (2014/24/EU) states that authorities '*shall*' ensure equal treatment and competition of the bidders⁷. When it comes to compliance with environmental, social and labour law including collective agreements, the EU passes the ball to the member states which should '*take appropriate measures*'⁸. Thus, the EU legislation directly imposes on authorities to guarantee equal competition, however, it does not do so regarding compliance with social and labour law, nor collective agreements.
3. **Award criteria: supported and limited at the same time.** Regarding the choice of contractor, the authorities are to use 'award criteria' and make a choice based on the most economically advantageous tender⁹. Here, authorities '*may*' include criteria related to quality, environmental or social standards. Again, the responsibility is passed to the lower level. At the same time the scope of the strategic use of the award criteria is limited as they must be linked to the subject-matter such as the goods or services to be delivered. Whether general corporate policies can be included as award criteria is therefore disputed.

It is obvious that while the European Commission is officially in favour of strategic use of public procurement for social issues, the current rules are insufficient in guaranteeing such a practice. Given the strong financial pressure on public authorities, the reality is that many do not engage in social procurement.

⁶ Article 57§3 of the 2014/24/EU directive. the Freedom of Association (ILO 87), the right to organise and collective bargaining (ILO 98), the convention on forced labour (ILO 29 & 105), minimum age (138), discrimination (111), equal pay (100) and child labour (182).

⁷ Article 18§1 of the 2014/24/EU directive.

⁸ Article 18§2 of the 2014/24/EU directive.

⁹ Article 67 of the 2014/24/EU directive.

3 Consequences of the current rules

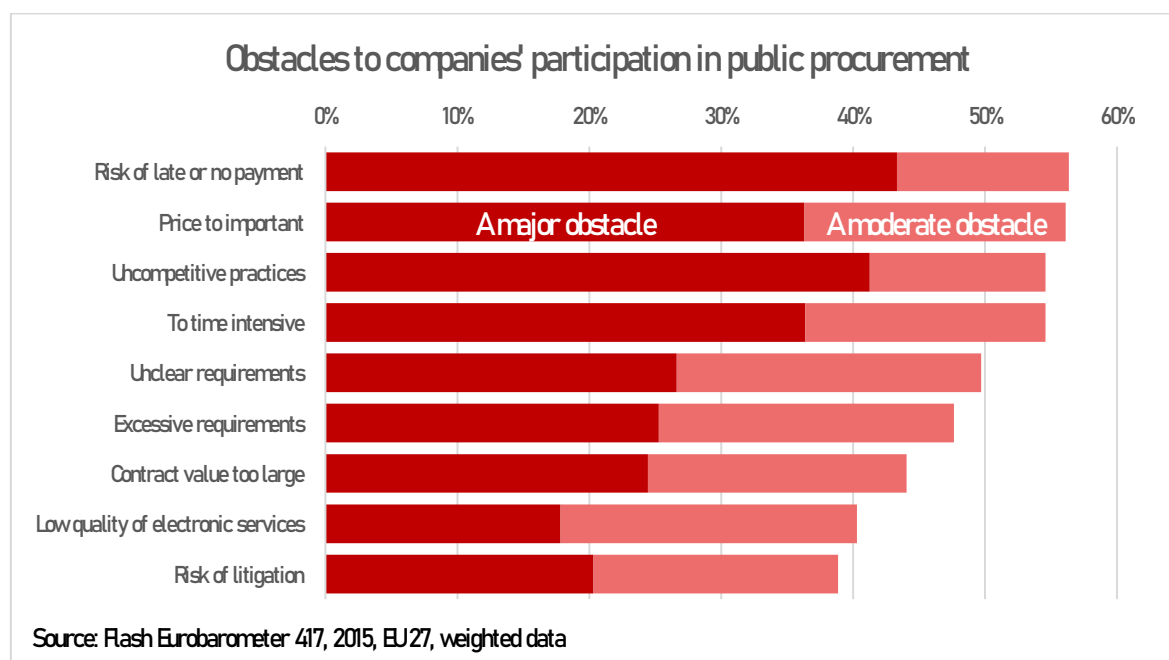
The fact that many public authorities do not include sufficient social criteria in their public tenders has some serious consequences such as less bids for contracts, the promotion of unfair competition, lower wages, less collective bargaining and less tax incomes.

3.1 Lowest price focus hampers competition

Ironically, the current legislation – which is mostly aimed at ensuring sufficient competition in public procurement – is self-defeating. The limited scope for social criteria and lack of incentives to use them results in an excessive focus on the price tag. This itself **hampers**, rather than boosts **competition** for public contracts.

This is known from previous studies (Madland & Walter, 2010; Rubenstein, 2009), yet becomes very clear when companies are asked about the obstacles they face when submitting bids for public contracts, the excessive importance of **price** in the awarding of the contract is indicated by more than half of the companies as an important obstacle.

Figure 2 - Companies' perceived obstacles in applying for public contracts



3.2 Competitive advantage for unfair competition

Under the current legal framework, public money risks being used to stimulate unfair competition, predatory price dumping, and promoting negative wage competition.

Imagine a country where authorities only look at the price tag for giving a public contract in, for example, the security sector. In such a context, a company employing workers at very low wages (even wages below sectoral collective agreement standards) has a competitive advantage over a company providing decent wages. Only these low-paying companies would be able to get the public contracts and increase their market share. They can use that market power from public contracts to increase their activity in the private sector and put a downward pressure on wages there. The 'good employer' sees itself barred from the public market and under pressure on the private market to lower wages. The employee, on the other hand, is the victim.

A completely different scenario unfolds when public authorities only award public contracts to companies which give decent wages in line with collective agreements (or even better). In such a case the low-wage employers will have a competitive disadvantage in the public market. Moreover, as good paid employment in the sector is rising through the public contracts, this will put pressure on low-wage employers to provide higher wages in order to retain its staff. Instead of a negative spiral, a virtuous circle unfolds in which the public contracts are instrumental for higher wages across the whole sector, plus better services, more tax income and social security contributions.

These scenarios are far from imaginary. [Unions](#) (e.g. [ABVV](#), [DGB](#), [ETUC](#), [FNV](#)), [employer organisations](#) [and experts](#) alike [have](#) been warning against the vicious circle that lowest price public procurement causes.

3.3 Pressure on wage, collective bargaining and less tax income

The lack of guarantee that public contractors need to follow collectively agreed wages puts pressure on the existing collective agreements in other companies or at the sectoral level. As described above, lowest price tendering without collective bargaining requirements results in negative wage competition.

This pressure on wages and collective bargaining is a problem on its own (as the examples in the introduction show), yet it is also a problem for the public authorities. On various occasions, the German [DGB](#) estimated the costs of employers not following collective agreements in terms of missed purchasing power for workers, reduced social security contributions and tax income. The DGB estimated that in 2019, the German government and social security missed almost on € 40 billion.

An estimation of UNI Europa for a limited number of countries, and only limited to the services sector, came to a figure of € 28 billion in lost revenue. If all services workers were covered by a collective agreement the authorities would be € 108 billion a year richer (Egan et al., 2021).

4 Europeans and their Parliament demand a change

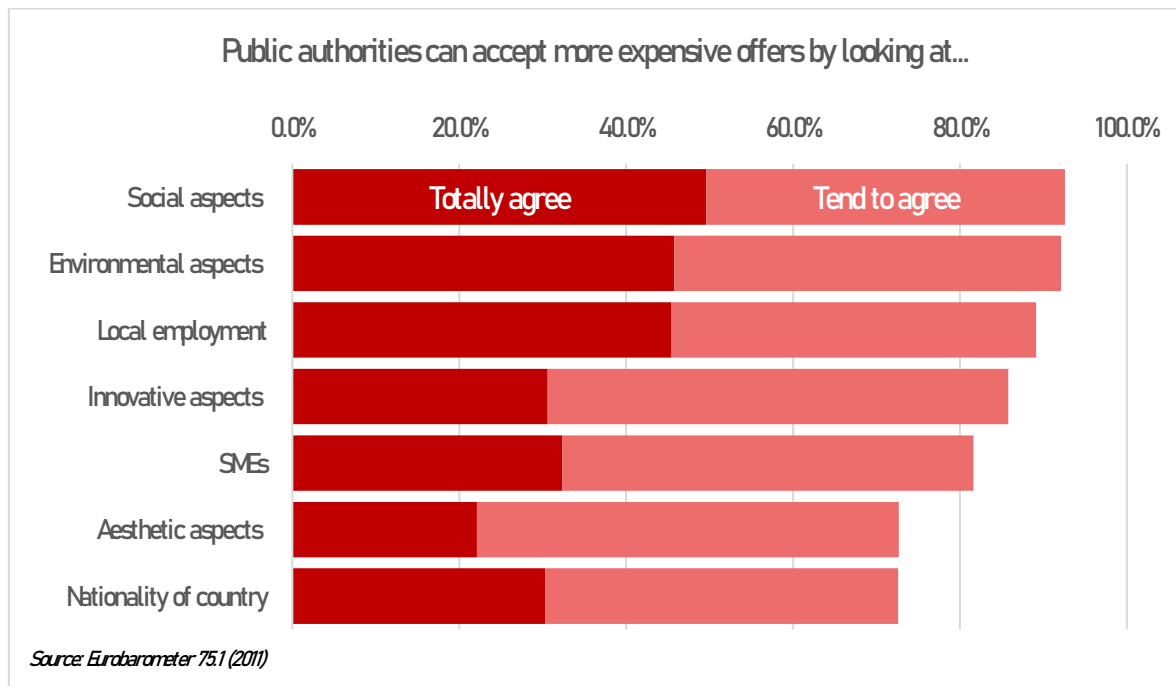
EU citizens tend to be largely in favour of social use of public money for a better European Union. In a Eurobarometer survey of 2011, European citizens were asked about what considerations should play in spending public money, the majority (59%) stated that contracts should go to companies by looking at *“a mix of characteristics including the price and, for example, the quality, environmental considerations, social aspects and/or innovative aspects”*. Only 13% of the citizens think contracts should go to those companies that offered the lowest price. This observation stands in stark opposition to the fact that about **one in two** tenders in Europe are awarded by only looking at the price tag.

Figure 3 - European citizens and public contracts



Digging deeper into which criteria could be considered by public authorities in the choice of a more expensive contract, EU citizens tend to agree most about the importance of social criteria (Figure 4).

Figure 4 - European citizens about which aspects to take into account in awarding public contracts



Taking into account that this data is from 2011, it can nevertheless be concluded that EU citizens are very much in favour of strategic use of public money and attach importance to social considerations when awarding public contracts.

This consensus among citizens also translates into a broad support for a public procurement that takes into account social dimension such as collectively agreed wages and working conditions in the **European Parliament**. In recent years, the European Parliament has passed several reports and motions calling for public money to go only or preferably to companies that respect the fundamental right to organise and follow or have a collective agreement:

- In **October 2020**, the European Parliament adopted a [report](#) titled *“Employment and social policies of the euro area 2020”* (466+, 189-, 32o) including article 18 stating that *“the successful implementation of the EU Recovery Plan requires a proper social dialogue at all levels with effective involvement of the social partners, the strengthening of workers’ and trade union rights, as well as collective bargaining and workers’ participation, which are fundamental tools for democracy and inclusion; (...) and to respect collective agreements in public procurement”*.
- In **December 2020**, the European Parliament adopted a [report](#) entitled *“A strong social Europe for Just Transition”* (380+, 219-, 97o), including a call on the European Commission to *“revise the European public procurement directive in order to establish*

preferential treatment for companies complying with collective bargaining agreements; also calls on the Commission to strengthen the social clause and exclude from tenders companies which have engaged in criminal activities or union-busting or have refused to participate in collective bargaining" and "that all EU financial support to undertakings should be made conditional on their compliance with the applicable working and employment conditions and/or employer obligations resulting from the relevant collective agreements;" (article 20). The report further called on the Commission to "strongly enforce the social clause of the existing EU public procurement directive and to examine the need to revise that directive in order to strengthen social clauses in public contracts, requiring economic operators and subcontractors to fully respect workers' right to collective bargaining, and to set conditions for the full implementation of the applicable sectorial collective agreements and the working conditions described therein, while at the same time respecting national labour market traditions and models" (article 57)

- In **February 2021**, the European Parliament adopted a [report](#) titled "Reducing inequalities with a special focus on in-work poverty" (365+, 118-, 208o) urging the *"Commission to improve the Public Procurement Directives to prevent competition at the expense of wages so that only those who do not undermine existing collective agreements can successfully bid; calls on the Member States to ensure compliance, monitoring and enforcement"* (article 90)
- In **October 2021**, the European Parliament adopted a report titled "Employment and social policies of the euro area 2021" calling (347+, 162-, 191o) *"on the Commission and the Member States to use a specific system to monitor the creation of quality jobs in all sectors including those created from public investment, which should also include a dedicated section on green and digital jobs and take account of the gender and non-discrimination perspective, and to agree on a system of quality and green job creation conditionalities for companies seeking to access EU public funds; calls for close monitoring of active outreach measures to ensure equal participation of those furthest from quality jobs on the labour market; stresses that access to EU public funds must be made conditional on respect for workers' rights and collective agreements"* (article 31).

On various occasions, the European Parliament, along with the European Economic and Social Committee ([2021](#), [2020](#)), urged the European Commission to take action in the field of public procurement and to ensure that public money is used for the public good.

Up until now, the European Commission has refrained from doing so and therefore misses out on using public procurement for social progress.

5 The alternative: leveraging public procurement for collective bargaining

In the last decade, there is a growing political awareness that the European Union needs to become a more social and inclusive union. As such, the previous President of the European Commission Jean-Claude Juncker [declared](#) in 2014 that the European Union should be a 'Social Triple A' union. Three years later, in 2017, the European Union made a declaration around the 'European [Pillar](#) of Social Rights'. And, at the 2021 [Porto](#) summit, the EU published an action plan on the European Pillar of Social Rights.

In the endeavour, **collective bargaining** is essential. As such, the current President of the European Commission [von der Leyen](#) stated *"I am a strong advocate of collective bargaining"*.

The European union should leverage the massive spending of authorities to move toward a social Europe with strong collective bargaining and employee voice at work.

5.1 The target: a social Europe through collective bargaining

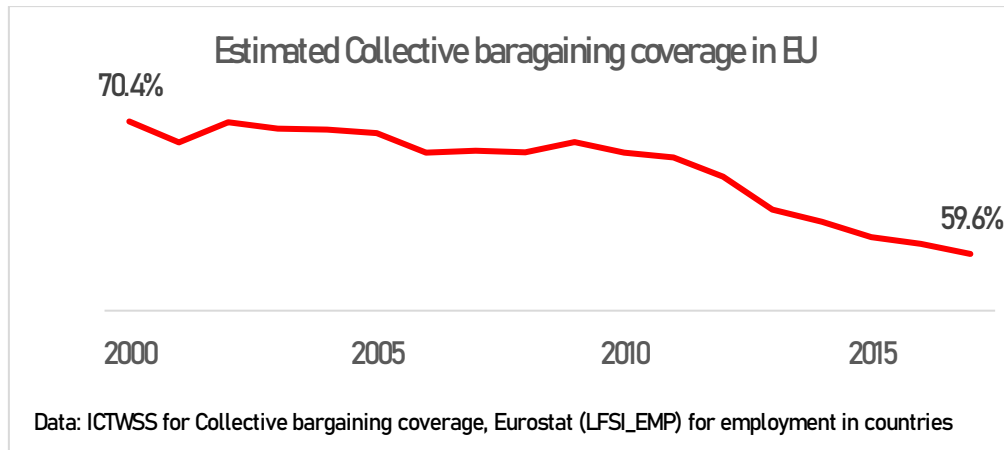
While only about **one in two** Europeans tends to trust the European Union, almost **90%** of Europeans [finds](#) a 'social Europe' to be important¹⁰. Especially in these times of crisis, the EU must address this lack of trust by responding to people's wishes for a social Europe.

Collective bargaining is an essential part of this 'European Social Model', yet collective bargaining remains under **intense pressure**. According to estimations (Figure 5), the proportion of employees covered by a collective agreement has **decreased with over 10 percentage points** in the between 2000 and 2017. If collective bargaining would not have declined, an additional 27 million workers would currently be covered by collective

¹⁰ Fairly important + very important

agreements. Additionally, a general weakening of sectoral level collective agreements has been observed in several EU countries (Müller et al., 2019).

Figure 5 - Collective bargaining coverage in Europe

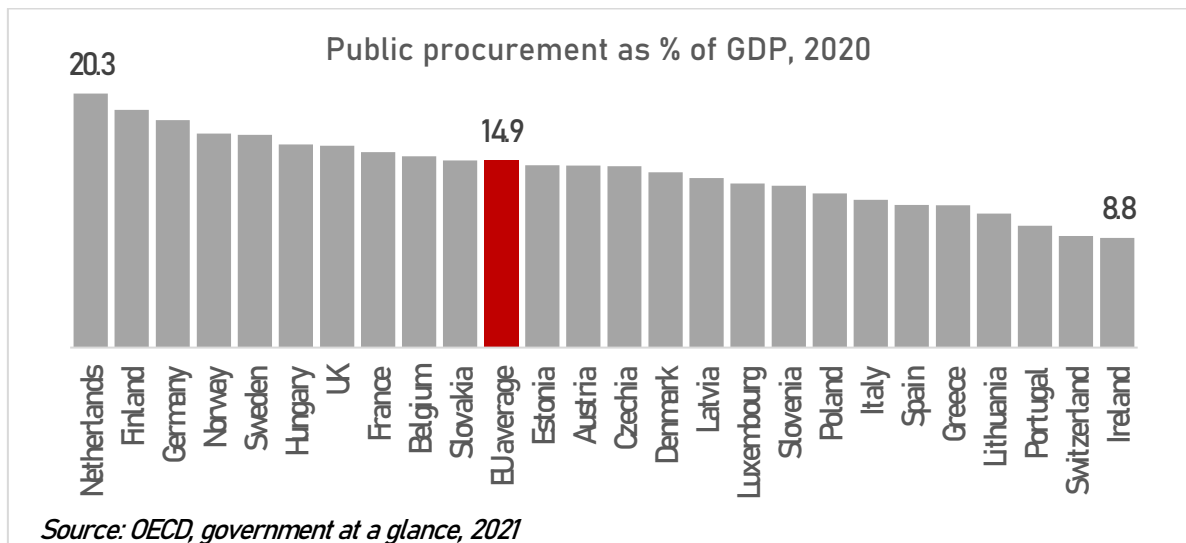


A decline in the European Social Model should be cause for serious concern. A cross-country analysis shows that countries with a higher collective bargaining coverage and employee representation mechanism also have (1) higher employment rates, (2) less inequality, (3) more investments in R&D, (4) less in-work poverty, (5) higher labour share, and (6) stronger political democracies (De Spiegelaere & Vitols, 2020).

5.2 Public procurement spending in Europe: a long enough lever

Public procurement is a critical, yet underutilised lever for lifting the social level of the European Union. Every year, according to estimations of the [EU](#), about 250 000 public authorities spend roughly **€ 2 trillion** on the purchase of services, works and supplies in the European Union. This spending accounts for about **15% of the European GDP** (Figure 6)

Figure 6 - Public procurement spending as a % of the GDP



Obviously, the way this public money is spent can have a serious impact on the European economy. As a comparison, the Juncker investment plan hoped to mobilise roughly € 351 billion in three years and the EU Green Deal envisages investments of about € 260 billion a year (see Figure 7). Both these plans hope to transform European societies. At the same time, European authorities are spending a manifold of those budgets, yearly, through public contracts.

Figure 7 - EU investment plans and public procurement spending



It is clear that strategic and social use public procurement have an enormous potential to transform our societies for the better.

EU Commission, Parliament and agencies, big public spenders

The European institutions like the Commission, the Parliament or the European decentralised agencies are themselves spending large budgets through public procurement. Based on the data retrieved from the [Tenders Electronic Daily](#), European institutions awarded 2 170 contracts in 2020 for a total value of **€ 31.5 billion**. And these figures do not even include the money spent through European mechanisms like the European Social Fund (ESF), the European Regional Development Fund (ERDF) or the Cohesion Fund.

5.3 What can be done?

While the potential of public procurement is promising, the current public procurement rules do not sufficiently guarantee social considerations to be taken into account. Compliance with fundamental labour rights is optional, compliance with collective agreements is left to the discretion of the member states or local authorities and the strategic use of award criteria is effectively limited (see part 2).

If the European Commission's objective is to '[reinvigorate the European Social model](#)' and if '[collective bargaining is crucial](#)', as stated by European Commission President Ursula von der Leyen, the European Union should amend its public procurement policies so that public money is instrumental in supporting collective bargaining and promoting decent employment.

For this, at least three interventions are required:

1 No public contracts without a collective agreement

In spending public money, authorities should ensure that they do not promote undercutting and spur a negative wage competition. For this, public contractors should be party of, or

at least respect, **collectively agreed wages and working conditions**, even if these are not made generally applicable¹¹.

Through a 2018 amendment, the Posted Workers Directive refers not only to collective agreement that are made generally applicable, but also to collective agreements that are generally applicable to similar undertakings or have been concluded by the main employer and workers' organisations¹². In a similar way, the Public Procurement Directive should be amended as to ensure compliance with applicable collective agreements.

A number of local and regional governments already demand compliance with applicable collective agreements which are broader defined than those made generally applicable. Some examples are the Norwegian 'Skien model' which requires bidders to comply with ILO Convention 94 (EC, [2020](#)). In Denmark, 'Copenhagen against social dumping' requires contractors to pay collectively agreed wages. In Spain, [Coruna](#) includes social clauses referring to collectively agreed working conditions and wages. In [Sweden](#), authorities can include a contract performance criterium that requires that wages are in line with collectively agreements applied throughout Sweden to equivalent employees in the sector

2 No public contracts to union busters

It only makes sense that violators of fundamental labour rights should be excluded from receiving public contracts. The public procurement directive currently allows authorities to check compliance with the core ILO Conventions. Obviously, compliance should be ensured in all cases. **Compliance with core labour standards should be mandatory.**

This demand is reasonable as many cities and regions already make clear reference to ILO standards in public procurement policies like Aarhus, Berlin, Tampere, Ghent etc.

3 Awarding contracts for employee voice

Given the importance of democracy at work for a social Europe, public money should be used to **boost collective bargaining and workers representation**. For this, public authorities

¹¹ In various EU countries, sector level collective agreements can be made 'generally applicable' through governmental decision, law or legal decisions. This means that employers have to follow the stipulations of the collective agreement whether they are member of the negotiating employer organization or not (e.g. [Germany](#))

¹² Posting of workers Directive (96/71/EC) as amended by on 29/07/2018, article 358.

should provide public contracts to companies respecting the right to organise, to information and consultation, and to collective bargaining.

In places like Scotland and Malta, public authorities use public procurement to support local trade union organizing and collective bargaining. In Malta, some public authorities include these aspects in their award criteria and in [Scotland](#) public authorities require suppliers to ensure effective employee voice channels such as trade union recognition.

Through these changes, the European Union can follow up on the advice of Archimedes and effectively use the lever of public procurement to lift Europe to become more inclusive and social.

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