

# PROCURFAIR Snapshot GERMANY

**Promoting Decent Work Through Public Procurement in  
Cleaning & Private Security Services**

## More info

Please consult and cite the full report:

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## Key insights from this Overview Report

- Both sectors have relatively well protected wages, via collective agreements
- But procurement legislation and practices could help to close protective gaps
- “Prevailing wage” laws, previously ruled unlawful, are being reintroduced
- Progress towards socially responsible procurement in other areas is slow
- Some contracting authorities are experimenting with schemes to improve enforcement and working conditions

## **The cleaning and security sectors in Germany**

Wage competition in the cleaning and security sectors is relatively strongly restricted by collective agreements. This is supported by a strong commitment from employers' associations to extend collective agreements. The introduction of a national minimum wage in 2015 has also reinforced the trend of relatively strong wage growth in both sectors. Unsocial working hours and split shifts, marginal part-time work and weak enforcement of collective agreements, particularly among subcontractors, remain a problem.

## Policy and legislative developments

A 2008 ruling by the European Court of Justice overturned Germany's prevailing wage laws, which made collectively agreed pay scales mandatory for public contractors in some sectors. Moreover, when transposing the 2014 revised EU Procurement Directive into national law, the German government shifted responsibility to the regional level. Nevertheless, in recent years there has been considerable legislative momentum on improving pay clauses in public contracts, mostly at regional level. This has seen the return of prevailing wage laws in some regions, thanks in part to the revised EU Posted Workers Directive, although their implementation is still in its initial phase.

## **The role of unions and/or employers**

The two main employers' associations – BDSW for security services and BIV for cleaning – are helping develop programmes to encourage public buyers to include quality-related criteria in tenders. This aims both to improve the reputation of the sectors and to defuse competition from low-cost service providers. Initiatives to train public buyers in buying decent work were also developed by the trade union federation DGB. The DGB has also pushed for the reintroduction of prevailing wage laws. The security industry uses regional collective agreements, while the cleaning industry has a national agreement on wages and working conditions.

## **Obstacles in developing socially responsible public procurement**

Aside from wages, progress towards socially responsible procurement is slow. There is a lack of state infrastructure to advise contracting authorities and the existing framework is still shaped by restrictions from competition law. Despite the relatively heavy self-regulation of both sectors, employers have trouble excluding low-cost competitors because tenders don't sufficiently take quality of service into account. Enforcement of collective agreements is weak, although some municipalities are investing in monitoring.

### **Local insight**

Individual contracting authorities have developed various approaches to improve working conditions. These focus on enforcing collectively agreed standards and setting standards beyond the issue of wages, such as on working time, work pace and hours.



## **Case Study One: Enforcement of Labour Clauses, Berlin**

Over the past 10 years a few federal states, including Berlin, have set up agencies that check compliance in public contracts or commission auditors to do the same. A reform in 2019 expanded the competences of the Berlin agency and clarified its rights and procedures. The unit monitors and sanctions non-compliance over the pay clauses that oblige contractors either to pay the procurement-specific wage or the minimum set by a collective bargaining agreement. The unit complements existing minimum wage inspection authorities so is meant to close an enforcement gap. In the first few years after 2019, the project made cleaning and security a priority, but has been hindered by a lack of resources and a fear of creating too much red tape, as well as a lack of publicity among the industries concerned.

## **Case Study Two: Daytime Cleaning, Hamburg**

Like many other municipalities, Hamburg has experimented with daytime cleaning schedules to improve working conditions for cleaning staff, particularly by reducing split shifts and unsocial hours. This particular initiative, run between 2017 and 2019 at four Hamburg schools, was led by the city's procurement department and aimed to increase public awareness of the role played by cleaners as well as to improve working conditions. The local employers' association was also involved. The campaign included leaflets and posters, YouTube videos and a press release from the city authorities. The scheme hasn't led to a widespread shift to daytime hours. One logistical obstacle is that building users have to want daytime cleaning – and even if they do, it takes considerable planning to make the schedules fit with building use. But done successfully, daytime hours are beneficial to employees' work-life balance and help integrate them with the wider workplace.

## **Case Study Three: Work Pace in the Cleaning Industry**

Some consultancies and social partners have developed industry-wide performance standards such as maximum values for the number of square metres to be cleaned per hour. They've done this to re-establish standards that have been lost amid race-to-the-bottom competition on cost, with a detrimental effect on both work intensity and service quality. In order to spread these performance standards, professional associations rely on consultation and guidance materials. The general aim is to convey to procurement bodies and contractors that performance targets should not be set arbitrarily and at ever increasing levels, but tailored to the specific building and set at feasible level. For this to work, it also requires procurement staff who have the time and knowledge to check figures in bids and monitor contracts once they are in operation. Companies tend to welcome maximum values in tender documents, but a controversial issue is whether hours effectively worked should be controlled. From the workers' perspective, fair performance standards are not sufficient on their own but are an element that can support better working conditions.

## **Case Study Four: Re-Insourcing Cleaning and Improving the Management of Contracted Services, Düsseldorf**

The city of Düsseldorf started a project in 2017 that aimed to increase the share of in-house cleaners from around 20% to a minimum of 50% by the end of 2020. The city's staff council was the driving force behind the project. The key goal of this initiative was to improve both job quality for in-house cleaners and the quality of cleaning services. Local government support, however, came on the condition that cost increases should be avoided as far as possible, by reorganising in-house cleaning. At the same time, quality standards were to be more clearly defined and raised, so the project also included a reorganisation of tendering procedures. By contrast, working conditions of outsourced cleaners were not a priority for the project. As the case study shows, they have nevertheless been affected by the experimentation, with ambiguous results.

## **Case Study Five: Municipal Experiment With Pay Clauses, Karlsruhe**

In the absence of a regional prevailing wage law, the city of Karlsruhe has developed its own scheme. This scheme, agreed in 2020, aims to extend collectively agreed wages to contracted companies. It was formed under the initiative of local political parties, with the involvement of the local trade union umbrella organisation, the DGB. The politicians and union representatives organised workshops with lawyers to explore the extent to which they could legally enforce the policy. The municipal contracting authority started with a pilot tender. Because of the limited effect and the effort involved, the city authority ultimately decided that pay clauses should be implemented by a regional or national law, rather than at local level.