



PROCUFAIR COUNTRY REPORT

GERMANY

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

Co-financed by the European Commission

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Introduction

Public procurement has increasingly become the focus of politics and public attention in Germany, especially since the controversial 'Rüffert' ruling of the CJEU in 2008, which overturned Germany's prevailing wage laws. Recent legislative reforms (Revised EU Procurement Directive of 2014) and court rulings at the European level have opened up public procurement for social purposes more than ever before. This report examines whether and how (sub)national legislators and contracting authorities in particular have attempted to use public procurement to ensure decent work at contracted companies under these new framework conditions. The analysis shows that the new regulatory context does not eliminate the conflict between competition protection and social goals. Rather, the coexistence of marketization and social policy has been institutionalized to a certain extent (Jaehrling/Stiehm 2022). How the two principles are balanced depends all the more on the design of laws and administrative practice at the national level.

PROCURFAIR Project – Research questions and design

This report is German contribution to the EU funded research project entitled “Promoting decent work through public procurement in cleaning and private security services” (Procurfair).¹ The project aims to explore how public authorities and social partners have engaged in novel practices to ‘buying decent work’, i.e. to ensure decent working conditions within public procured services across distinct industrial relations and welfare regimes such as Denmark, UK, France, Germany, Italy, and Poland. Through in-depth case studies in each of the six countries, the project examines innovative or experimental solutions of public procurement practices to secure and promote decent work in cleaning and private security services – within the new regulatory context set by the EU Procurement Directives, and despite adverse economic conditions following the COVID-19 pandemic.

To guide the case studies and the national data collection the following topics were addressed in all country reports:

- (1) **Protective gaps and goals:** What are the most important protective gaps for employees under public contracts that are not sufficiently addressed by established forms of work regulation and that would therefore benefit from ‘organisational and institutional experimentation’ in public procurement practices? Which of these gaps do public purchasers and social actors target with their strategic experimentation on social responsible public procurement?

¹ The project was funded by the European Commission – DG for Employment and Social Affairs (Call ‘Improving expertise in the field of industrial relations’, Grant VS/2021/0211) and managed by Mark Bergfeld at UNI Europa’s Property Services office which covers the services sectors of industrial cleaning and private security. The scientific coordination of the project was assumed by Karen Jaehrling at the University of Duisburg-Essen’s Institute for Works, Skills and Training (IAQ), Germany.

For a more detailed account of the research design and methodology, key concepts and findings from the cross-national analysis see the comparative report (Jaehrling 2023).

The comparative report, as well as all 6 country reports of the PROCURFAIR project are available at: <https://www.uni-europa.org/procurfair/>.

- (2) **Strategies:** Which tools and resources do actors mobilise for this purpose; to what extent do they seek to build alliances (between peer organisations; between representatives of employers, employees, customers, public purchasers and other types of organisations involved in social responsible public procurement (e.g. control agencies, inspectorates)?
- (3) **Learning processes:** What kind of conflicts and obstacles arise in the process and how do actors cope with them?
- (4) **Institutional constraints and support:** What role do regulative and budgetary constraints play? To what extent and how has the new EU procurement regime stimulated new experiments? To what extent does subnational, national and European legislation and jurisdiction inhibit a stabilization of experiments or force actors to adjust their strategies?
- (5) **Overall lessons:** What are the lessons for trade unions, employers, local authorities and governments in how to more effectively use public procurement for securing decent work?

A more detailed account of the research design and methodology, key concepts and findings from the cross-country analysis can be found in the comparative report (Jaehrling 2023, forthcoming).

To address these research questions, this report draws on a total of 33 interviews with trade unions, employers' associations, industry experts, consultancies, policy makers, municipalities and procurement managers (see list of interviews in the Annex). The data was triangulated with desk research of relevant policy documents, collective agreements, labour and public procurement legislation, and minutes of local authority and parliamentary debates. All quotes from interviews with German-speaking respondents used in this paper have been translated by the authors.

Structure of the report

The report is divided into three parts:

- (1) **Part ONE aims to identify the main protection gaps for workers in the two sectors studied**, with a view to identifying where 'buying decent work' (hereafter BDW) practices could make a difference and fill the protection gaps left by labour law, collective bargaining and other efforts to secure decent work.
- (2) **Part TWO provides an overview of the recent legislative and administrative infrastructure for BDW practices:** How does it support or, on the contrary, inhibit decent work measures in public procurement? This includes an analysis of the main changes in the regulatory framework that were implemented after the revision of the European Public Procurement Directives in 2014. It also looks at the development of soft law and other efforts to professionalise public procurement with a view to promoting the uptake of socially responsible public procurement, and looks at the wider political and social debates on the main current challenges and conflicts surrounding the issue of DW and public procurement and outsourced public services more generally.
- (3) Thus, while the first two sections deal with the general framework in which the 'experimentation' of public authorities with BDW practices takes place, **PART THREE is devoted to the experimentation itself, based on the case studies.**

Part ONE: Protective gaps and challenges in the cleaning and security services industry

Contract cleaning and private security are service industries characterised by a high proportion of formally low-skilled and low-paid jobs. Their growth since the 1980s is largely due to the outsourcing of these activities from private companies and the public sector (Mayer-Ahuja 2003; Stienen 2011, Briken 2011), in line with 'lean production' and 'business reengineering' in the private sector and 'new public management' in the public sector. German reunification also opened up the new federal states in eastern Germany as a new market for commercial security and cleaning services.

As in many other countries, the vertical disintegration of private sector firms and outsourcing from the public sector has been accompanied by a decline in wage and protection levels for workers (Doellgast/Greer 2007; Grimshaw et al. 2015). High unemployment rates and labour market deregulation have further increased the pressure on wages and working conditions in low-skilled jobs since the mid-1990s (e.g. Bosch/Weinkopf 2008). This is facilitated by fragmented and antagonistic structures of collective interest representation. In contrast to what has long been the case in the core sectors of manufacturing industry, many branches of the private service sector in Germany are characterised by low union density and, in some cases, low membership rates in employers' associations; by comparatively low collective bargaining coverage; and by fragmented and patchy structures of workplace codetermination. Where bilateral bargaining takes place at all, it is often highly antagonistic. (e.g. Birke 2010; Artus 2010; Rehder 2016).

However, these characteristics only apply in part to the two sectors under consideration here. On the one hand, low wages and precarious working conditions are widespread in both the cleaning sector (e.g. Gather et al. 2005; Baatz/Schroth 2006; Jaehrling 2008) and the security services sector (Briken/Eick 2011). What is rather atypical, however, is that the employers' associations in both sectors have developed strategies to combat the bad reputation of the sectors, both in terms of service quality and job quality. This includes not only efforts to professionalise service work, but also a commitment to industry-wide collective agreements. In contrast to the retail and hospitality sectors, employers' organisations in both sectors have long supported making collective agreements generally binding.

The following section begins with a brief introduction to the companies, employment structures and industrial relations structures in both sectors. It then focuses on working conditions - those aspects that are considered particularly problematic and that have been addressed by the social partners or by government regulation over the past decade..

1.1 Firm and employment structure in the two industries

Firm structure

The two sectors are characterised by similar, highly polarised business structures: There are a large number of small and very small companies, but the majority of turnover and employment is accounted for by medium-sized and large companies, some of which are multinational. These are often 'multi-service providers' with a

foot in both the security and cleaning sectors and other activities grouped under the heading of 'facility services' (e.g. Dussmann, Kötter, ISS Services, Klüh, WISAG, Gegenbauer, Piepenbrock). In the cleaning sector, the number of enterprises increased from around 25,000 to more than 40,000 between 2010 and 2020 (Table 1-1). Despite the large number of enterprises, most employees work in enterprises with 50 or more employees (83.7%). Only a small proportion (3.7%) of building cleaners work in very small companies with less than 5 employees (Emons/Steinhaus 2020). The situation is similar in the security sector. As in the cleaning sector, turnover more than doubled between 2010 and 2020 and the number of companies increased sharply (+75%). The fact that wages and salaries have almost kept pace over the same period, but the number of employees (in full-time equivalents) has only increased by more than 40% over the same period, gives an indication of the significant increase in hourly wages over the same period (see section 1.3.).

Tab. 1-1 Key figures on companies and employees (2010-2020)

	Security services (NACE 80.1)			Cleaning industry (NACE 81.2)		
	2010	2020	2010-20	2010	2020	2010-20
Enterprises - number	2.551	4.456	+75%	25.088	41.070	+64%
Turnover or gross premiums written - million euro	4.168,2	8.999,7	+116%	15.013,3	30.991,9	+106%
Wages and Salaries - million euro	2.300,3	4.863,7	+111%	7.130,8	13.487,9	+89%
Employees - number	142.315	200.601	+41%	811.853	946.205	+17%
Employees in full time equivalent units - number	110.833	162.707	+47%	385.003	537.280	+40%

Source: Eurostat Database / Annual detailed enterprise statistics for services (+own calculations)

Employee and job structure

The industry report (BIV 2022), commissioned by the employers' association, states that the cleaning industry is an employment engine for people who otherwise find it difficult to access the labour market. Jobs in the security industry are also seen as a fallback position, or at least a transit station, for career changers and people who, for various reasons, have not progressed in their career biographies - for example, have failed in vocational training or have already experienced long periods of unemployment (Briken 2011; Bahl 2018). Although both sectors offer multi-year vocational training courses, these are not a prerequisite for a large proportion of jobs. More than 70% of jobs in the cleaning industry are considered 'helper' jobs, which do not require formal vocational training (see below). In security services, the proportion is only half as high (35%), but still higher than in the economy as a whole (25%). Correspondingly, the proportion of employees with no training or whose training is unknown (security services: 39%; cleaning services: 60%) is twice or even three times as high as in the economy as a whole (20%). The proportion of non-German employees is also disproportionately high, especially in the cleaning sector (see Table 1-2 below).

Tab. 1-2 Characteristics of employees and employment relationships in the private security service and cleaning industry (as of 30.6.2022)

	Security services (NACE 80.1)	Cleaning industry (NACE 81.2)	Overall economy
employees (in main job), overall number	210.653 2014: 166.369 → +27%	802.344 2014: 759.493 → +6%	38.828.683 2014: 35.524.356 → +9%
additionally: employees with a minijob as second job ¹	43.090 2014: 28.951 → +49%	285.106 2014: 195.247 → +15%	3.238.636 2014: 2.461.52 → +32%
in % of all employees (excl. employees with a second job)			
full time	141.627 = 64% 2014: 103.584 = 62%	191.197 = 24% 2014: 157.297 = 21%	62% 2014: 62%
part-time (covered by social insurance)	45.266 = 21% 2014: 28.675 = 17%	389.138 = 49% 2014: 311.474 = 41%	26% 2014: 24%
marginal part-time job / 'minijob' (as the main job) ²	33.440 = 16% 2014: 34.108 = 21%	222.009 = 28% 2014: 290.718 = 38%	4.383.596 = 13% 2014: 5.349.851 = 15%
female	22%	66%	48%
without German nationality	21%	43%	15%
jobs requiring no formal vocational education ('helper' jobs) ³	35%	71%	25%
employees without / with unknown vocational training	39%	60%	20%

Sources: Bundesagentur für Arbeit (2023): Beschäftigte nach Wirtschaftszweigen (WZ 2008) (Quartalszahlen, Stichtag 30.6.2022); Bundesagentur für Arbeit (2015): Sozialversicherungspflichtig und geringfügig Beschäftigte nach Wirtschaftszweigen der WZ 2008 (Quartalszahlen Stichtag 30.6.2014)

¹ = ,im Nebenjob geringfügig Beschäftigte'

² = ,ausschl. geringfügig Beschäftigte'

³ Helper activity according to skill requirement level from the classification of occupations (ISCO 2010) ('Helfertätigkeit gemäß Anforderungsniveau aus der Klassifikation der Berufe (KldB) 2010')

There are **marked differences in the structure of employment: while almost two thirds of employees in the (male-dominated) security sector still work full-time, part-time employment predominates in the (female-dominated) cleaning sector**. Only just under a quarter of employees work full-time, while almost 50% of employees have part-time jobs subject to social security contributions. On the other hand, more than a quarter (2022: 28%) of employees are 'mini-jobbers' not subject to social security contributions. This group has become smaller in absolute and relative terms in recent years: in

2008 it accounted for 45% of all employees in the cleaning sector (ArbeitGestalten 2017), in 2014 for 38%. The **employment structure has thus shifted somewhat in favour of jobs subject to social security contributions** (especially part-time jobs) over the last decade; to a lesser extent, this also applies to security services. However, this is only the case if one restricts oneself to those with a minijob as their main/only job ("ausschließlich geringfügig Beschäftigte").

The picture changes if we include employees with a minijob as a second job. In parallel with the decline in minijobs as a main job, the group of employees who have a minijob in addition to their main job subject to social insurance contributions has grown strongly. This applies to both sectors, but especially to security services. In absolute terms, the increase in minijobs as a second job has more than compensated for the decrease in minijobs as a main job. In the last decade, therefore, there has not been so much a reduction in mini-jobs in favour of jobs covered by social security, but only a change in the composition of employees in these mini-jobs: To a greater extent than in the past, it is now employees who have this activity as a second job. The reasons why enterprises continue to divide the available work largely into mini-jobs/small jobs are discussed in more detail below.

1.2 Industrial relations in the two industries

As mentioned at the beginning, **industrial relations in both sectors are rather atypical for the service sector in Germany**. This applies in particular to the role of the main employers' associations in both sectors - the Bundesverband der Sicherheitswirtschaft (BDSW) for the private security industry and the Bundesindustrieverband Gebäudereinigung (BIV) for the cleaning industry. They have been working for some time to improve the reputation of the industry in the interests of their own members, both in terms of securing contracts from potential clients and recruiting staff. These efforts include, for example, measures to professionalise services (e.g. through policies to promote vocational training and skills development, and the establishment of professional standards for the industry - see for the security industry e.g. Hirschmann 2016; Jaehrling/Stiehm 2022:181ff; for the building cleaning industry e.g. Latzke 2018; Thomzik 2020). More importantly in our context, this also includes the **employers associations' support for the conclusion of collective agreements with a broad scope of application in order to regulate the industry in the self-interest of its members**, to defuse competition from low-cost service providers and also to facilitate recruitment, as the following quote from Arnulf Piepenbrock, chairman of the largest company in the German cleaning industry, illustrates:

"In the media, the issue of the legal minimum wage is back on the agenda. There are almost always pictures of cleaners at work in offices, schools or toilets. This image annoys me because it contributes to the fact that the cleaning industry is closely linked with the statutory minimum wage in the collective memory. Only industry insiders know that wages in our industry were already at or above the level of the general statutory minimum wage when it was introduced in 2015, and in some cases are still significantly above it today. The cleaning industry has had collectively agreed wages for more than ten years. By the end of 2020, we will be one of the first trades to have harmonised wages between East and West Germany. Our industry is much better than its reputation. It has an integrative function. It enables many comparatively low-skilled people and people who want to work part-time to enter the

labour market - on reasonable terms. It is time to change the public image of our cleaners. This concerns the appreciation of our employees' work, but also the image of our industry as a whole" (CEO of Piepenbrock facility services, quoted after Thomzik 2020; own translation)

Tab. 1-3 Collective bargaining coverage by industry, 2018

	% of companies covered by collective agreements	Anteil der Beschäftigten in tarifgebundenen Betrieben (in%)
Security Services incl. detective agencies (NACE 80)	42	68
Cleaning industry, incl. gardening and landscaping (NACE 81)	31	65
Overall economy	14	43

Source: Structure of Earnings Survey 2018 (Statistisches Bundesamt 2021)

The strategy of the employers' associations thus differs in two respects from that of other sectors (services and, to some extent, manufacturing):

Firstly, the two employers' associations do not allow so-called "OT" (= "without collective agreement") memberships, which would allow members to opt out of the agreed sectoral collective agreement. As a result, there is a high degree of original coverage: The proportion of employees whose employers are bound by collective agreements in both sectors is around 2/3, well above the average for the economy as a whole (see Table 1-3).

Second, the employers' associations in both industries have long been in favour of making collective agreements generally binding.

- According to the BDSW, the declaration of collective agreements as generally binding is essential for the **security services industry**, as it also "ensures that the jobs are suitable for securing a livelihood" (Olschok 2008, p. 111). This applies first and foremost to collective agreements. There are 14 different regional collective agreements, 12 of which have been declared generally binding. However, not all wage groups are generally binding, but mainly the lower wage groups. In the past, the BDA (Confederation of German Employers' Associations) has partly vetoed the extension of the full pay scale (Günther/Höpner 2022, referring to the period around 2016). The BDSW had publicly criticised this long-standing 'blockade attitude' of the BDA as 'arbitrary' (Olschok 2008). According to our interviewee from the BDSW, the attitude of the BDA has become less restrictive in recent years, not least due to a change at the top of the BDA (Interview BDSW, 11/2022). Since the abolition of the 50% quorum (together with the introduction of the statutory minimum wage in 2015), the social partners have increasingly succeeded in having their regional collective agreements declared generally binding, at least in large parts. In many regions, however, this now includes wages for workers with three years' vocational training. Wage supplements and other provisions are often dealt with in separate agreements (so-called framework agreements). These are also only partly generally binding, i.e. they apply only to companies that are bound by collective agreements through their membership of an association..
- Collective bargaining in the **cleaning industry** is even more centralised than in the security industry. There is now a single collective agreement for the whole of Germany, which is generally binding for the two

most common activities (wage group 1 for interior and maintenance cleaning; wage group for glass and façade cleaning or for employees with three years' vocational training). The national collective agreement is also generally binding and covers other working conditions such as paid holidays, extra pay for night and Sunday work, notice periods and working hours. In fact, 100% of companies are obliged to apply (part of) the collectively agreed wages and other provisions. In addition, since 2007, both the generally binding wages and other working conditions have been compulsory for companies based in other EU Member States (by decree under the Posted Workers Act).).

Union density is low in both sectors, although unions in both sectors have successfully developed new strategies to organise workers over the past decade, particularly in private security (see Stiehm/Weinkopf 2022). According to the interviewee from Ver.di, union busting and obstruction of works council elections (where efforts are made at all) are also widespread. This is less the case in the 10 largest groups of companies where works councils exist (e.g. Securitas and WISAG). However, there is a very large group of 'lemons' in the industry, competing in a race to the bottom, fuelled by price-driven public procurement, in his view.

And the award criterion is 100 percent price. Then I virtually breed the lemons as a State. (...) Then I force compliant companies out of the market, and they get creative. They set up subsidiaries that are not bound by collective agreements. [Large Company X], for example, does this. That's also what [Large Company Y] does. And then I, as the public sector, stir up a race to the bottom." (Interview trade union Ver.di, regional level, 2/2021)

1.3 Most important protective gaps and recent efforts to address them

Pay

The national minimum wage is an important reference point for the social partners in the two industries:

- In the security sector, before the introduction of the statutory minimum wage in 2015, the wage rates for the lowest wage groups (with a large number of employees) were still below 8.50 €/hour in the majority of regions. In the meantime, however, there have been some significant increases in collectively agreed wages, which employers have been more willing to support than in the past in view of the worsening shortage of skilled workers. (see Tab. 1-4 below). In January 2022, the collectively agreed basic wage (€ 10.71 to €11.58, depending on the region) was 9-17% above the statutory minimum wage (€ 9.82).
- In the cleaning industry, the pay levels were already higher (in West Germany at least) before the introduction of the minimum wage. In 2022, the lowest collectively agreed wage was € 11.55 and thus 17% above the legal minimum wage.

The sharp increase of the national minimum wage to € 12 from October 2022 was accompanied by a further increase in the lowest collectively agreed wage (to € 13) in both industries² – as **social partners in both**

² in security services with the exception of some regions where the increase to € 13 will only take place in the course of 2023

industries are keen to keep the distance from the national minimum wage. The gap between the general minimum wage and the sectoral minimum wages has nevertheless shrunk somewhat (to 8%), see also figure 2-2 in section 2)

As mentioned above, social partners in both industry make extensive use of statutory collective bargaining extensions. In the security industry more pay groups are extended, not only the lowest pay groups. In many regions other standards are extended (holiday, time supplements). As a result, wages in both industries have increased strongly over the past decade, in most regions by more than 60% and up to 73% (see Tab. 1-4 below).

Another improvement in the cleaning industry is that the seniority related holiday entitlements are now tied to the length of the service in the *industry*, not in the company. This responds to a claim by the trade union IG BAU in order to reduce the negative effects for employees that result from the frequent re-tendering of contracts – since in the case of a change of contractor, employees often continue to work in the building and are transferred to the new company. In these cases, they would otherwise lose their entitlements if this was tied to their seniority *in the firm* (Interview IG BAU, 2/2022)

There nevertheless remain gaps in protection:

- hourly wages are still below the low wage threshold. According to the latest available figures, the low wage threshold according to the OECD definition (2/3 of the median wage) stood at € 12,27 (Statistisches Bundesamt 2021) in April 2021.
- In the cleaning industry, pay increases can be offset by the increase of the workload (sqm/hour) (see section on work pace below, and CASE STUDY GER-3)
- In the cleaning industry in particular, due to a low number of working hours (part-time or minijobs), many employees earn a very low monthly income and partly have to claim supplementary (in-work) benefits ('ALG II' or 'unemployment benefit II', now renamed into 'Bürgergeld'). According to Thomaz 2020, in September 2019, 13.8 per cent of employees in cleaning occupations who were exclusively on a minijob, and 10.8 per cent of part-time employees subject to social insurance contributions received supplementary unemployment benefit II. This is the highest proportion compared to all other occupational groups in Germany (8.6 per cent of mini-jobbers and 3.7 per cent of part-time employees receive basic security benefits).

Tab. 1-4 Hourly wages in the lowest collectively agreed pay grade in the cleaning and security services industry (2013-2023, as of January)

Security Services*	2013	2019	2020	2021	2022	2023	2013-2023
BADEN-WÜRTTEMBERG	8,90 €	10,58 €	11,00 €	11,21 €	11,56 €	13,00 €	+ 46%
BAYERN (Ortsklasse 1)	8,42 €	10,00 €	10,60 €	10,76 €	10,96 €	13,50 €	+ 60%
BERLIN	7,50 €	10,10 €	10,70 € *	10,90 €	11,35 €	13,00 €	+ 73%
BRANDENBURG	7,50 €	10,10 €	10,70 € *	10,90 €	11,35 €	13,00 €	+ 73%
BREMEN	7,50 €	10,00 €	10,50 €	10,75 €	11,10 €	12,00 €	+ 60%
HAMBURG	7,50 €	10,00 €	10,55 €	10,76 €	11,10 €	13,00 €	+ 73%
HESEN	7,76 €	10,20 €	10,75 €	10,95 €	11,30 €	13,00 €	+ 68%
MECKLENB.-VORPOMMERN	7,50 €	10,10 €	10,60 €	10,60 €	11,05 €	13,00 €	+ 73%
NIEDERSACHSEN (GÖD)	7,50 €	10,10 €	10,50 €	10,70 €	10,90 €	12,51 €	+ 67%
NORDRHEIN-WESTFALEN	8,23 €	10,58 €	11,00 €	11,21 €	11,58 €	13,00 €	+ 58%
RHEINL.-PFALZ / SAARLAND	7,50 €	10,00 €	10,60 €	10,80 €	11,15 €	13,00 €	+ 73%
SACHSEN (GÖD)	7,50 €	10,00 €	10,50 €	10,75 €	11,15 €	13,00 €	+ 73%
SACHSEN-ANHALT	7,50 €	10,00 €	10,60 €	10,81 €	11,15 €	13,00 €	+ 73%
SCHLESWIG-HOLSTEIN	7,50 €	10,00 €	10,50 €	10,71 €	11,05 €	13,00 €	+ 73%
THÜRINGEN	7,50 €	10,00 €	10,60 €	10,80 €	11,15 €	13,00 €	+ 73%
Cleaning industry**	2013	2019	2020	2021	2022	2023	2013-2023
EAST GERMANY	7,56 €	10,05 €	10,55 €	11,11 €	11,55 €	13,00 €	+ 72%
WEST GERMANY (incl. Berlin)	9,00 €	10,56 €	10,80 €				+ 44%
National minimum wage	2015: € 8,50	€ 9,19	€ 9,35	€ 9,50	€ 9,82	12,00 €	

Source: own compilation from different materials (among others: BDSW website)

*"Sicherheitsmitarbeiter im Objektschutz / Separatwachdienst"

** Indoor/Maintenance cleaning

Minijobs: Short working hours, limited coverage by labour laws and social protection

Both in security services and in the cleaning industry, minijobs continue to be a widely used employment form. **The decrease in minijobs as a main job since 2014 (see Konle-Seidl 2021) has been more than compensated by the increase of minijobs as a second job in both industries** (see section 2.1).

Similar to solo-selfemployed, minijobbers are not covered by unemployment insurance and health insurance, thus are dependent on derived entitlements through their spouse, or from their own main job (if minijob is secondary job). Unlike solo-selfemployed, minijobbers are formally entitled to sick pay and holiday pay; but surveys have shown that they are de facto often not granted these rights (Fischer et al. 2015); and non-compliance with the national minimum wage is also particularly widespread among minijobbers (Bosch et al. 2019). More than 80% of minijobbers also opt out of pension insurance³ – albeit that their own contribution would be lower than for regular employees (3.6% of the gross wage, as compared to 9.3%) – to avoid deductions and probably with regard to the fact that pension entitlements would be minimal anyway.

The pandemic has additionally exposed the risks of this employment form in times of crises, since minijobbers are not covered by the short-term work scheme (which is financed by the unemployment insurance fund). Thus, in the first year of the pandemic a disproportionate high number of minijobbers were dismissed (in particular in retail and hotel and restaurants), without being entitled to any earnings replacement. This is particularly problematic for those 40% of minijobbers who live in households in the lowest three deciles of the income distribution (Konle-Seidl 2021).

Under the new government (Social Democrats / Green Party / Liberal Democrats (FDP) since 2021, an increase of the earnings threshold from € 450 to € 520 was passed, jointly with the increase of minimum wage, thereby avoiding that the maximum number of hours minijobbers can work (without exceeding the earnings threshold) is reduced. At the previous and current rate of the minimum wage, minijobbers can work up to 10 hours/week, and this is likely to stay the same in the future, since the coalition has agreed to raise the threshold in line with further increases of the national minimum wage.

The trade unions have strongly criticised the retention of minijobs and the indexation of the earnings limits to increases of the national minimum wage; in particular the trade unions in the service sector (Ver.di, NGG, IG BAU).⁴ For employers too, minijobs do have some disadvantages. Firstly, non-wage labour costs are higher for minijobbers (ca. 28%) than for regular employees (ca. 20%), and secondly, minijobs are less flexible since the number of monthly working hours is restricted – as long as employers and/or employees want to avoid crossing the earnings threshold (which entails a

³ https://www.deutsche-rentenversicherung.de/DRV/DE/Ueber-uns-und-Presse/Presse/Meldungen/2021/210309_rententipp_minijob.html

⁴ see e.g. IG BAU 2022: Schluss mit den Minijobs: Weg in die Altersarmut ist programmiert (press release IG BAU, 4.2.2022: <https://igbau.de/Schluss-mit-den-Minijobs-Weg-in-die-Altersarmut-ist-programmiert.html> ; Ver.di 2022:: Petition gegen die Ausweitung der Minijobs, <https://frauen.verdi.de/themen/gute-arbeit/++co++ef2f3554-8ffc-11ec-915e-001a4a160100>; DGB 2022: DGB Stellungnahme zu Änderungen im Bereich der geringfügigen Beschäftigung, 8.2.2022 <https://www.dgb.de/downloadcenter/++co++699d7a90-88b8-11ec-afad-001a4a160123>

change into full liability to pay tax and social security contributions). While in the past, the employers association in the cleaning industry has repeatedly advocated for an abolition of this employment form, this is no longer the case. As the statement on the website of the BIV explains:

“this legally recognised form of employment cannot be dispensed with in the cleaning industry because cleaning jobs are often only for a few hours per day (e.g. before opening or after closing of the properties).” (BIV, employers association cleaning industry)⁵

The current attitude of companies and employers associations in the cleaning industry seems nevertheless to be ambivalent. Our interviewees both from the national and the local employers associations still asserted that they would prefer to see this employment form abolished (in particular due to their limited flexibility, i.e. the built-in barriers to increase working hours, see above), but are compelled to use them as long as they exist, as this would often correspond to preferences of employees and/or to the short time slots assigned to cleaning companies by their customers. Even where employees prefer longer working hours, this would then often require them to work at different sites and to accept split shifts (e.g., in the morning and evening) (→ CASE STUDY GER-4).

Hence, the legislative abolishment of the minijob employment form would in fact only remove one barrier to higher weekly working hours (the financial disincentives for employees), while the more challenging task would be to raise customers awareness and acceptance of longer time slots, including during the day (→ CASE 3 on daytime cleaning) and to develop sustainable standards on work pace and working hours enabling employees to work longer hours without jeopardizing their health and their work-life balance and care duties.

In security services, minijobs make up for a smaller share, but at 16% (of all employees in the main job) their share still exceeds the average in the overall economy (see table 1.2). This is even more the case for minijobs as a second job that have seen a disproportionate increase (by almost 50%) since 2014. The reasons for this increase remains unclear; part of the explanation might be an increase in customer demands for short time slots. Unlike the employers association in the cleaning industry, the employers association for the security services BDSW has not adopted an outspoken critical attitude towards this employment form in the past.

Enforcement

Both the cleaning industry and the security services are regularly the target of focus controls by the Customs authority (FKS) i.e. the administrative unit in charge of monitoring compliance with minimum wages. The available statistics document that there is a problem with non-compliance in both industries. For instance, in 2020 and 2021, the FKS controlled 152 companies in the cleaning industry in Berlin. In 32 cases, it initiated an investigation for non-compliance with the general or the industry minimum wage. In addition there were more than 75 criminal proceedings for violations of the obligation to pay social security contributions (see Deutscher Bundestag 2021 and 2022). There are less detailed data on the security services industry, yet the interviewees from both the employer's

⁵ <https://www.die-gebaeuedienstleister.de/service-fuer-gebaeuedienstleister/rechtliche-informationen/minijobs>

association and the trade union confirm that there are regularly cases of non-compliance with labour laws and social security contributions in the industry.

According to all respondents (from trade union, consultancies, employers), and reports from labour inspection units, **non-compliance is very often found at smaller companies subcontracted by the main contractor** (see e.g. the reports from Sonderkommission Mindestlohn, the administrative task controlling pay clauses in public contracts in the federal state of Bremen, [report 2021](#) and [report 2023](#)). This is facilitated by a general lack of work councils in smaller companies in particular, and a low unionisation degree (see above).

Against this background, some companies (say they) have adopted a strategy of not using subcontractors.

„Anyone who hires CleanSpot to clean their premises can also rest assured that their office or chambers will only be entered and cleaned by our own staff. Our employees are our figurehead. The cooperation of many cleaning companies with subcontractors, which has become common in the cleaning industry, is not part of our company philosophy.“ (own translation) [https://www.clean-spot.de/ueber-uns](https://www.clean-spot.de/ueber-uns;); similarly: <https://www.schunack-gebaeudereinigung.de/>

The state labour inspection (FKS) monitors compliance with the national minimum wage, and in the case of the cleaning industry, also with the industry specific minimum wage. This is because – unlike in the security services industry – their collective agreement has been extended under the Law on Posted work (*Entsendegesetz*; in the following: POW), which means it also applies to companies headquartered in other countries. For the cleaning industry, therefore, there is also a state infrastructure for monitoring and enforcing their collectively agreed industry-specific minimum wage. This is not the case for collective agreements that have (only) been declared generally binding, but have *not* been extended to foreign-based businesses under POW Law, as in the security services industry. The reason for this is the lack of a collective agreement at *national* level, which is a prerequisite for extending a CA in the POW-framework.

The employers association BDSW and Ver.di trade union had concluded such a national CA for an industry minimum wage in 2011, but could not agree on the terms for a renewed national CA in the years from 2013 onwards; hence wages remain largely regulated by regional CAs that cannot be extended to foreign-based businesses, even after the reform of the national law that implemented the revised European POW-Directive. Foreign businesses do not play an important role in the industry (if any) as bidders, according to interviewees; the more important consequence is thus that the Customs Authority does not monitor and enforce the collectively agreed wages in the industry.

Next to the state infrastructure for monitoring compliance for minimum labour standards, the trade union federation DGB has also set up a network of consulting agencies called ‘Faire Mobilität’ which supports migrant workers in asserting their rights. Another similar network, likewise supported by the DGB are the consulting agencies of the NGO ‘Arbeit und Leben’; and there are other consultancies outside these networks, like the BEMA („Berliner Beratungszentrum für Migration und Gute Arbeit“) in Berlin. These consultancies are largely financed by state support. Their work consists of informing migrant workers about their rights and helping them to claim their rights, in particular outstanding wages, partly also helping them to file a lawsuit (which the minority is willing to do), or organise media attention and/or the attention of public buyers in cases of wage theft (Interview BEMA, 10/2022).

Unsocial working hours, rest times, split shifts

Unsocial hours are common in both industries, mostly in response to customers demands for security and cleaning services during night and at weekends. In the security services industry, very long working hours are also the norm; according to our interviewed trade union representatives, many employees prefer to work long working hours in order to compensate for the low hourly pay (Interview Ver.di, 2/2022)

- Security services: According to a 2018 survey of workers in the industry by the Verdi trade union, more than half of them "very often" or "often" do night work (54%), overtime (59%), weekend work (82%) or work at least 10 hours a day (60%).⁶
- Cleaning industry: buildings are mainly cleaned during off-peak hours or at night. According to a report dating from 2005, only a fraction of cleaning services take place during the day (15%) (Grömling 2005) and this figure continues to be quoted in current reports (e.g. INTEP 2021). Most buildings are thus cleaned when they are not or hardly used. This may have the advantage that the cleaners are undisturbed in their work and make faster progress, but at the same time they are not seen, their work remains invisible and they have to accept unusual working hours (Sardadvar 2019).. Furthermore, working hours in the cleaning industry are fragmented both spatially and temporally: Split shifts in the morning and in the evening in different premises are quite common in the industry Both trade unions and the employers' association agree that the working conditions in the cleaning industry can be improved by more daytime work, and the employers association has launched a campaign in 2020 to advocate for this model and convince public and private customers (BIV 2020). (→ CASE STUDY GER-2)

Work pace

Because competition is primarily based on price, companies may resort to compensate rising personnel costs (e.g. following an increase in the industry specific minimum wage) through work intensification. For decades, the danger of work intensification for cleaning workers has been repeatedly emphasized by various parties (Gather et al. 2005, p. 22; BMAS 2011, p. 75, Eigenstetter et al. 2016, p. 12; Latzke 2018, 150ff) and has also been the subject of a trade union campaign (see IG BAU „Sauberkeit braucht ihre Zeit“⁷ (~cleanliness requires its time)). This aspect is not only criticised by the trade union, the employers' association BIV also wants to achieve that the price-performance ratio is assessed transparently and fairly when awarding contracts (→ CASE STUDY 3). Overall, performance values vary greatly, both between inhouse and outsourced cleaning services and between municipalities (Kösling 2021: 37). Several organisations have set out to develop reasonable performance standards as benchmarks for companies and purchasers alike (→ CASE STUDY GER-3).

⁶ Ver.di Bereich Innovation und gute Arbeit, 2018: Gute Arbeit –aber sicher! Ergebnisse der Befragung 2018: <https://www.aber-sicher.org/befragung-2018-2/befragung-2018/> [Abruf 9.2.2023]

⁷ <https://igbau.de/Sauberkeit-braucht-ihre-Zeit.html>

Tab. 1-5 Overview: Gaps in setting, extending and enforcing standards (SECURITY, CLEANING, BOTH INDUSTRIES) and General policies and efforts to diminish these gaps

	Existence+ Level of Standards	Scope of Standards	Enforcement of standards
most important protective gaps	<p>Low wages; + strong wage compression = low pay increases for work experience, formal training, front line management tasks</p> <p>Pay increases offset by reduction of hours and/or increases in workloads (sqm/hour)</p> <p>atypical working hours (night/weekend; early morning/evening)</p> <p>Marginal part-time employment („minijobs“) = very low incomes + low pensions</p> <p>very long working hours → almost no overtime pay (only > 228hours)</p> <p>Change of contractor: TUPE legislation does not apply automatically → employees may lose entitlements tied to seniority (severance pay, holiday entitlement)</p> <p>Lone parents and trade union members at risk of not being reemployed</p>	<p>many (smaller) companies not member of employers association = not covered by CA directly</p>	<p>non-compliance with CAs in particular in subcontracted/smaller companies</p> <p>low unionization rates</p> <p>lack of works councils (12% of employees in „other service industries“ = including cleaning and security services)</p> <p>union busting (even in large firms)</p>
General policies and efforts to diminish these gaps (apart from procurement)	<p>increase of statutory minimum wage to 12 € (from Oct. 2022)</p> <p>Improvement in CA cleaning: seniority related holiday entitlements tied to length of service in the <i>industry</i>, not the <i>company</i> = adjusting to frequent employers changes</p>	<p>extensive and successful use of statutory collective bargaining extensions; More pay groups extended, not just lowest pay groups; partly other standards extended as well (holiday, wage supplements)</p>	<p>labour inspections: more staff, targeting of industries, including security services and cleaning industry</p> <p>security services: formally not responsible for controlling CA (only minimum wage), since CA not extended under Posting of Workers Law</p>

PART TWO: Policy developments relevant for BDW

The 'socialpoliticization' of public procurement law (Sack/Sarter 2018) - more precisely: the integration of rules and practices aimed at buying decent work (BDW) has been strongly influenced in Germany by the CEJ's Rüffert ruling of 2008. It's impact both on German legislation and legislation abroad has been widely analysed in the literature (e.g. Blauburger 2014, Seikel 2015, Barnard 2017, Sack/Sarter 2018, Refslund et al. 2020). The ruling not only result in the abolition of prevailing wage laws (*Tariftreuegesetze*) which had been introduced from the late 1990s onwards in several federal states in Germany in order to combat wage dumping. These prevailing wage laws where mostly confined to the construction and the transport sector; they made collectively agreed pay scales of the 'most representative' collective agreements mandatory for all public contractors. **Next to abolishing prevailing wage laws, the Rüffert ruling also cast a "long shadow", similar to other CEJ rulings (Schmidt 2018), on national legislation, even after the reform of the EU procurement directives (2014)** and despite a modification of the legal interpretation by the CEJ itself in a number of subsequent cases (see Jaehrling/Stiehm, chap 4 for a detailed account).

Still, policies geared towards BDW were not simply put on a freeze. As Sack (2012) pointed out, the Rüffert ruling also triggered legislative innovations at the subnational level, most importantly in the form of *procurement-specific minimum wages* ("*Vergabemindestlöhne*") covering public contracts in industries without a (higher) industry specific minimum wage. These **procurement specific minimum wages were the only pay clauses in public contracts for almost 10 years** – apart from 'declaratory' pay clauses that incorporated the obligation to comply with statutory labour laws and (from 2015 onwards) the national minimum wage into the contracts with public suppliers. **Recent years have however seen a renaissance of pre-Rüffert prevailing wage laws, this time covering not only construction and transport, but all industries.**

The role of these different pay clauses and the legislative dynamics around them over the past few years will be further discussed in the first section (2.1). The second paragraph addresses the (very limited) organisational infrastructure geared towards encouraging contracting authorities to take up the new legal options for 'buying decent work' (2.2). The third section briefly presents new legal options (other than pay) and persisting legal barriers for BDW since the implementation of the 2014 directive (2.3); the final paragraph looks at innovative purchasing practices within the existing legal framework.

2.1 Pay clauses in public contracts

Statutory wage requirements for publicly contracted firms have existed for a long time, and in many variants, both in Germany and in other countries. Their effect depends very much on the broader context, specifically on the gaps in the collective bargaining landscape. A rough distinction can be made between two variants: **On the one hand, compensatory pay clauses that set wage standards themselves and take effect wherever there is a lack of effective collectively agreed standards.** One example is the so-called 'living wage' in Great Britain. In contrast, there are *complementary pay clauses* that are linked to collective agreements. In these cases, the wage level is not set by the legislator

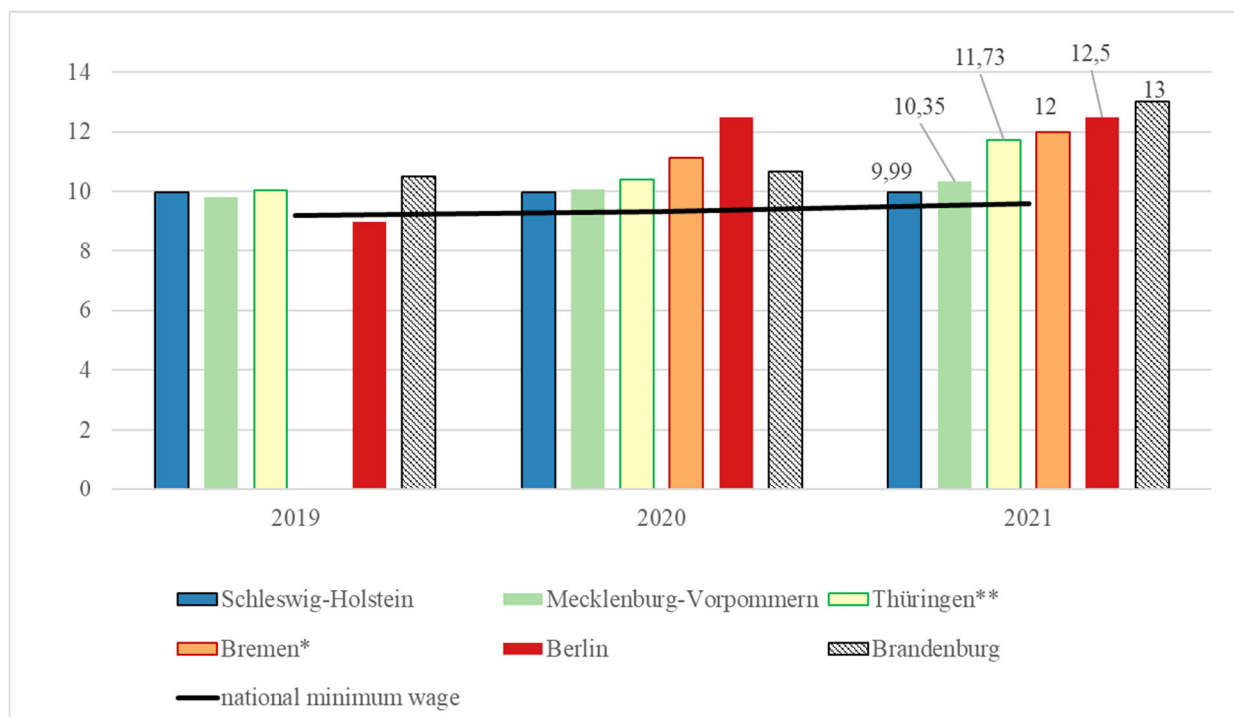
but by the collective bargaining parties; these pay clauses are intended in particular to *increase the scope and enforcement* of these collective agreements.

In Germany, the procurement specific minimum wages (“Vergabemindestlöhne”) fall into the group of compensatory regulations; whereas the more recent generation of prevailing wage laws (“Tariftreuegesetze”) fall into the group of complementary pay clauses; the legal developments for both types are analysed below.

Procurement specific minimum wages: from a precursor to the statutory minimum wages towards a ‘living wage’ for public contracts

As mentioned above, **procurement-specific minimum wages** were introduced in Germany in response to the ECJ's Rüffert ruling, which prohibited prevailing wage laws. At the time of their introduction, they **were an innovative experiment that 'tested the waters' of European case law** (Jaehrling/Stiehm 2022, ch. 4), i.e. they were considered to be compatible with European and national competition law, but legal certainty was only achieved with a further ECJ ruling (RegioPost, (C-115/14)). **In addition to their direct protective effect on workers in private sector companies under a public contract, these procurement specific minimum wages were also intended by their supporters to pave the way for and promote the introduction of a general statutory minimum wage**, which was then introduced in 2015. The introduction of the national minimum wage in 2015 led to a temporary 'freeze' or even abolition of procurement specific minimum wages that had been introduced before 2015 in many states. However, after 2018 there has been a 'renaissance' of procurement specific minimum wages, with a number of federal states significantly increasing procurement specific minimum wages well above the level of the national minimum wage (see Fig. 2-1).

Figure 2-1 Procurement-specific minimum wages (€ / hour): 2019-2021



Source: own compilation (Jaehrling/Stiehm 2022)

This was justified with the aim to pay employees in the (externalized) part of the public sector a ‘living wage’ or at least a wage that helps to avoid workers on public contracts to have to claim social benefits on top of their wages and to avoid old-age poverty (Jaehrling/Stiehm 2022, Chap. 4). **Again, this sort of ‘second generation’ of procurement specific minimum wages, just like the first generation, also had a symbolic or strategic value in that they were also intended to pave the way for a more sustainable level of the general statutory minimum wage.**

The strong increase of the national minimum wage in October 2022 was inspired by the same ambition, i.e. to raise the minimum wage to a level closer to what can be considered as a ‘living wage’. After this strong raise, the question is again on the agenda whether there will be a role in the future for a separate *procurement specific* minimum wage. So far, at € 13, the one on Brandenburg and Berlin is above the level of the new national minimum wage. It is however not any longer above the level of the *industry specific* minimum wages in both the cleaning industry and in security services (see figure 2-2 below).

Figure 2-2 Industry minimum wages, national minimum wage, procurement-specific minimum wage



Source: own compilation

Prevailing wage laws: Return to and expansion of pre-Rüffert laws

So-called prevailing wage laws oblige companies with public contracts to apply the provisions of collective agreements that have not yet been declared generally binding. This is particularly relevant in industries where collective agreements exist but cover only a small proportion of companies, or where only some of the collective agreement provisions have been extended to all companies. The difference in pay between companies covered by collective agreements and those that are not can be correspondingly large. **In the cleaning and security industries, the instrument is initially less relevant than in other sectors, because many rules already apply to all companies in the industry as a**

result of the legal extension of the (most important) provisions of the collective agreements. However, there are some elements that only apply to companies that are originally bound by collective agreements. For example, holiday pay in the cleaning industry and certain wage supplements in the security industry. Given the fierce price competition, even such small differences can, according to the companies interviewed, make the difference in the competition for public contracts.

In particular, the adoption of the new Posting of Workers (POW) Directive and its transposition into national law in 2020 has been interpreted by many actors as a legal opening in favour of a return to pre-Rüffert prevailing wage laws (cf. Jaehrling/Stiehm 2022, ch. 4). However, **this 'second generation' of prevailing wage laws differs from the pre-Rüffert laws in that they are not limited to certain sectors (mainly construction and public transport) but cover all industries.** Nevertheless, the renaissance of prevailing wage laws began with a legal experiment focused on the construction industry in the city-state of Bremen, where the Social Democrat (SPD)-led government decided in 2016 to reintroduce pre-Rüffert prevailing wage laws, but only for the construction sector and only for contracts below the EU value thresholds. The SPD made this decision following complaints, particularly from small and medium-sized construction companies, many of which are covered by collective agreements. By limiting the prevailing wage law to contracts below the EU thresholds, the law intentionally remained 'under the radar' of potential judicial intervention by the ECJ (see Jaehrling et al. 2016; Refslund et al. 2020). The reform of the POW Directive also encouraged this legal experimentation with a broader scope in other states. The 'first movers' in adopting this very comprehensive type of prevailing wage legislation were the federal states of Berlin (2020) and Saarland (2021). Other states have announced this in their most recent coalition agreements (Hamburg, Bremen, Mecklenburg-Vorpommern, Saxony) and are currently preparing to adopt them. Others have already adopted them but are still awaiting administrative implementation (Thuringia, Saxony-Anhalt) (see Table 2-1 below)

Table 2-1 Pay clauses in German federal states (as of 7/2023)

	Procurement-specific minimum wages (€/hour)	Prevailing wage laws
Berlin	13,00 €	since 4/2020 (implemented: 12/2022 ¹)
Brandenburg	13,00 €	-
Bremen	12,29 €	since 2016: construction (below EU thresholds)
		(since 2/2023: all industries) ²
Saarland	-	seit 12/2021
Saxony-Anhalt	13,48 € ³	(seit 3/2023) ²
Thuringia	12,07 €	(seit 12/2019) ⁴

So far without pay clauses (except for public transport)	
Baden-Württemberg	Bill by opposition (SPD) rejected in March 2023; state government (CDU/Greens) holds out prospect of own draft for legal reform ⁵
Hamburg	Draft law by state government (SPD/Greens) from April 2023, currently on hold until federal tariff fidelity law is in place ⁶
Mecklenburg-Vorpommern	Draft law by state government (SPD/Left) from April 2023, currently in legislative process
Sachsen	Prevailing wage law agreed in coalition agreement (2019). Draft law by coalition partner SPD from December 2022, so far no agreement with coalition partner CDU ⁷
Hessen, Lower Saxony, Northrhine-Westphalia, Rhineland-Palatinate, Schleswig-Holstein	Prevailing wages only for public transport
Bavaria	No prevailing wage law at all

Source: Own Compilation

1 - Administrative implementation in Berlin did not come into force until 12/2022.

2 - Administrative implementation (legal ordinances defining sector/activity-specific wages and working conditions) still outstanding.

3 - According to the TVergG LSA, the amount of the award-specific minimum wage corresponds to remuneration group 1, level 2, of the public sector collective agreement for the federal states (TV-L), including annual bonus payment.

4 - In Thuringia, there is also a prevailing wage regulation for contracts at the state level (not the municipal level); however, no collective agreements have yet been declared representative within the meaning of the law, which is why only the procurement-specific minimum wage applies to date (<https://www.tmasgff.de/arbeit/arbeits-und-tarifrecht/>),

5 – Landtag Baden-Württemberg, Drucksache 17/3811.

6 – Press statement of the financial ministry of Hamburg of 13.6.2023 (<https://www.hamburg.de/pressearchiv-fhh/17193552/2023-06-13-fb-vorschaltgesetz-vergabe/>).

7 – MDR, 30.4.2023: „Wirtschaftsminister Dulig: „Vergabegesetz wird kommen““ (<https://www.mdr.de/nachrichten/sachsen/wirtschaft-gesetz-vergabegesetz-steuern-auftraege-100.html>)

Prevailing wage laws bring with them specific challenges because existing regulations based on collective agreements must be interlinked with state legislation and administrative practice. The most important challenge in the past has been to specify *which* collective agreement, and *which* provisions of this collective agreement, can be made mandatory for each industry, craft or occupation. This is also the reasons why the administrative implementation took quite a long time after the laws had been passed in both Berlin and Saarland, and why they are not yet implemented in other federal states. Despite the fact that there is less trade union plurality in Germany (than e.g. in Italy or France), there are still a few ‘yellow’ unions (e.g. in the security services), and also an overlap of the organizational scope of some collective agreements concluded by the DGB-affiliated trade unions. Hence

the difficulty to identify the correct CA, in particular for administrative staff unfamiliar with the diversity of collective bargaining agreements.

This is also an important challenge facing legal or practical innovations at the two other state levels:

- **National level:** Currently, after long announcements and failed attempts, a prevailing wage law is also being prepared at the national level (“Bundestariftreuegesetz”). However, it will not replace the federal state laws listed above (that usually cover public contracts issued by the federal states and the municipalities) but only apply to contracts awarded by central state authorities. Since these are spread across the whole German territory, it is one of the core challenges to set up a register that enables contracting authorities to select the correct collectively agreed norms for each respective tender. The first draft for this new law was however contested by the confederation of employers organizations at national level (BDA) with a legal expertise which holds that prevailing wage laws are not compliant with European law (Hartmann 2023) – an interpretation reiterating the view that dominated *before* the new legislation on the Posting of Workers. Indirectly, through the legal expertise, the BDA thus also threatens to take the new law to the courts.
- **Municipal level:** There are also a number of initiatives launched by political parties at the municipal level. This is in particular the case in federal states where there is no support for a prevailing wage law, as in Bavaria⁸, North Rhine-Westphalia⁹ and in Baden-Württemberg (→ CASE STUDY GER-5.). These initiatives are promoted and supported by local, regional and national level of the trade union confederation (DGB). DGB district federations have for instance approached representatives in municipal parliaments or coordinated petitions to municipal councils. The DGB has also drawn up a model motion that can be used to take the issue to the municipal councils. (Schulten et al. 2022 : 116ff)

2.2 ‘Political professionalization’: A new expertise infrastructure, but a limited support to promote ,buying decent work’

Over the past two decades, soft law and the organisational infrastructure to support public procurement practice have grown strongly alongside hard law (legislation, case law), not least as a result of the increasingly dense and complex web of public procurement rules. The aim of this new professional infrastructure is to professionalise procurement practice and thus help it to cope with the increased (and varied) demands on public procurement. **The professional standards and capacity building efforts are developed by a large number of external actors with different interests and policy priorities, who make their expertise available to practitioners in the form of guidelines, consultations, knowledge repositories and standards of 'good' procurement practice. Their activities can therefore be described as 'political professionalisation'** (Jaehrling/Stiehm 2022, ch. 6). These activities take on a political character not least because external actors of the political system are themselves involved in professionalisation, such as the European Commission, although the European Commission initially focused on other objectives that were bundled under the term 'strategic procurement' (e.g. 'innovative' procurement or the promotion of small and medium-sized

⁸ e.g. in Nürnberg <https://gruene-stadtratsfraktion.nuernberg.de/vergabeverfahren-der-stadt-nuernberg/>

⁹ e.g. Kreis Lippe: <https://www.dielinke-lippe.de/start/aktuell/detail-aktuell/antragzumhaushalt2022tarif-undsozialdumpingbeidervergabeffentlicheraufttrageverhindern/>

enterprises), and only recently have 'social' aspects come more to the fore (see European Commission 2019 and 2020, see also Cai-mi/Sansonetti 2023 for a brief overview). **This asymmetry is also reflected in capacity building at national level.**

In Germany, the new expertise infrastructure is provided by commercial providers, (semi-)governmental agencies, and associations and other civil society organisations. Their offerings can be divided into consultancy services, conferences and training courses, guides and information services, and forums for peer-to-peer exchange (see table below). In addition to their expertise in public procurement law, some of these providers also contribute market knowledge, i.e. specialist knowledge of the service to be procured (on company structures, prices, marketable variants of the services to be procured, technical standards, etc.). In addition to their core business of providing advice, law firms and consultancies are also involved in the provision of other services (training and conferences, information services, etc.) (see table 2-2 below).

Table 2-2 Public, private and non-profit guidance: An overview of the new expertise infrastructure for professionalising public procurement practices

	commercial suppliers	(Semi) public facilities	NGOs, social partners
Guides; Information services	"Kompetenzstelle VergabeWissen" of Regu-visFachmedien GmbH ¹ DVNW Award Blog ²	EU Commission ⁴ National 'Competence Centres' (KOINNO⁵, KNB⁶, Kompass Nachhaltigkeit⁷) Competence centres + information services at <i>Länder</i> and municipal level ⁸ Sector-specific institutions, e.g. network offices for school catering	Development organisations (e.g. Weed ¹¹ , CI Romero) ¹² Associations of the social partners <ul style="list-style-type: none"> Employers' associations: e.g. BDSW for security services) Trade union(s): e.g. Mobifair¹³ (2017) for transport services
Consulting	specialised law firms other consultancies	Advisory Services ("Auftragsberatungsstellen"-ABSt) of the Chambers of Industry and Commerce and the Chambers of Skilled Crafts	
peer-to-peer exchange	DVNW (online forum; regional groups) ³		Regional groups and discussion groups of Forum Vergabe e.V. ¹⁰
Conferences and training courses	DVNW Academy Practical seminars of law firms (in cooperation with academies + associations)	Conferences and seminars of KOINNO, KNB Training courses offered by ABSt, local and regional academies for public administration ⁹	Conferences and workshops of the above-mentioned associations and federations, etc. e.g. DGB / FES conference series¹⁴

Source: Own compilation

1 www.reguvis.de/vergabe.html; e.g. VergabePortal; diverse journals (Print), u.a. VergabeNews; **2** Vergabeblog des Deutschen Vergabenetzwerks GmbH (www.vergabeblog.de); **3** Deutsches Vergabernetzwerk GmbH (DVNW) (www.dvnw.de); **4** e-Competence Center: Tools for public buyers (ec.europa.eu/info/policies/public-procurement/tools-public-buyers_en); **5** Kompetenzzentrum für innovative Beschaffung (www.koinno-bmwi.de); **6** Kompetenzstelle für nachhaltige Beschaffung (KNB) www.nachhaltige-beschaffung.info; **7** www.kompass-nachhaltigkeit.de **8** e.g., Kompetenzstelle für sozial verantwortliche Beschaffung des Landes Bremen <https://www.immobilien.bremen.de/einkauf-vergabe/kompetenzstelle-fuer-sozial-verantwortliche-beschaffung-14924>; **9** z.B. Kommunalakademie Rheinland-Pfalz (www.akademie-rlp.de); Landesakademie für öffentliche Verwaltung Brandenburg (lakoew.brandenburg.de); **10** Forum Vergabe e.V. (www.forum-vergabe.de) is a network recognized as a non-profit organization for professional exchange in public procurement law **11** World Economy, Ecology and Development (WEED) e.V. www.weed-online.org; **12** Christliche Initiative Romero e.V. (www.ci-romero.de/kritischer-konsum/beschaffung); **13** mobifair – für fairen Wettbewerb in der Mobilitätswirtschaft e. V. (www.mobifair.eu); **14** Conference series on social criteria in public procurement, organized annually since 2017 by the German Trade Union Confederation (DGB) and the Friedrich Ebert Foundation (FES).

The social partners themselves are also involved in developing this infrastructure of expertise. This includes, for example, the annual conference on the subject organised by the DGB and the Friedrich Ebert Foundation (FES), which is affiliated to the SPD (see table). They are also helping to fill a gap left by the state: Although there are three "competence centres" that focus on ecological procurement (*Kompetenzstelle für Nachhaltige Beschaffung* (KNB)), the purchase of fair trade products (*Kompass Nachhaltigkeit*) and innovative procurement (*Kompetenzstelle für innovative Beschaffung*), there is no centre that focuses on the "purchase of decent work" in domestic services. Against this background, the DGB also started in 2021 to develop a training programme for procurement practitioners together with specialised procurement lawyers and municipal academies. Since then, several seminars have taken place, in which staff from purchasing bodies have been informed about the possibilities of the new procurement law to consider working conditions. However, the continuation of these efforts is uncertain due to the rather low demand from purchasing authorities and the limited resources that the DGB can devote to this training. (interview DGB national level, 4 + 12/2022, interview DGB Rheinland-Pfalz, 4/2022, interview ELAN 2/2023).

In addition, **employers' organisations are** also trying to persuade clients to consider criteria other than price when awarding contracts, by **developing their own professional standards and sector-specific guidelines for quality-oriented tendering procedures**. This is mainly justified on the grounds of service quality, but collective agreements and other working conditions are also sometimes promoted as prerequisites for good service quality.

- In the cleaning sector, there are various approaches and organisations that advise clients, for example, on sustainable performance values (Interview BIV, 8/2022 and Kompetenzteam Reinigung, 9/2022, see in detail → CASE STUDY GER-3).
- The security services employers' association BDSW is particularly active in this area of political professionalisation. In addition to using the translated version of the 'Securing Best Value' handbook developed by the sector's social partners at European level (CoESS +Uni Europe 2014; <https://www.secure-bestvalue.org/> ; German version <https://www.bdsw.de/images/broschueren/Auftragsvergabe-EU-2014.pdf>), the BDSW is actively involved in the development of other professional standards (including DIN standards). On the one hand, these standards and codes of conduct aim to raise the public profile of (privately provided) security services and are part of a broad-based campaign to improve the image of private security services. At the same time, the association aims to embed these standards in procurement practice, i.e. to establish them as a standard that can be used as a criterion or for the evaluation of bids in the context of private and public contracts. However, the use of these standards as a mandatory criterion is hindered by procurement law hurdles, as has been shown in the past. (Jaehrling/Stiehm 2022, p. 191).

Overall, there has been a lack of government infrastructure to advise contracting authorities on the possibilities of 'buying decent work'. The social partners compensate for this to some extent, but they have limited resources and also face legal constraints.

2.3 New legal options and persisting legal barriers to implement 'Buying decent work' practices

The transposition of the new European Public Procurement Directive (2014/24/EU) into German national law in 2016 - in particular, the Act against Restraints of Competition (*Gesetz gegen Wettbewerbsbeschränkungen*, GWB) and the corresponding *Vergabeverordnung* ('VgV') - resulted in a number of clarifications and openings for 'strategic purposes' in Germany. Overall, however, the changes have been moderate. This is, firstly, because numerous strategic objectives had already found their way into German procurement law, so that the new legislation rather represented 'the retrospective recognition of a legal situation that already existed anyway' (Burgi 2015, p.19, own translation). Second, in line with the fundamentally sceptical stance that the German government had already adopted in the negotiations on the European directives (cf. Semple 2018, p. 114), the German government committed itself early on to a "one-to-one" implementation of the European procurement directives (BMWi 2015, p. 2). In concrete terms, this meant that the *optional* provisions of the European procurement directives were only converted into *optional* provisions in national law. Legal prohibitions or requirements, which the Directive left open to the Member States, were therefore not exhausted. The most important changes relate to the mandatory horizontal clause in Art. 18 (2) of the EU Directive, which obliges Member States to ensure compliance with applicable environmental, social and labour law in the performance of public contracts..

- **Award criteria:** The national law does not make use of the possibility to prohibit an award on the basis of price considerations alone. Instead, the new law only contains an explicit reference to optional criteria in addition to price, including "social aspects" (§ 127 GWB). However, fixed prices are now also expressly permitted, so that the most economically advantageous tender can also be determined purely on the basis of qualitative and social criteria (§ 58 VgV).
- **Exclusion grounds:** In line with the mandatory social clause, the new regulation provides for a mandatory exclusion in the event of a proven breach of the obligation to pay social security contributions. (§ 123 GWB). However, it is left to the discretion of the contracting authorities to exclude bidders in the event of a "proven" breach of applicable social security or labour law obligations. This is therefore not a mandatory ground for exclusion. The EU Directive had given Member States the option of making exclusion mandatory in these cases as well, but this option was not used in Germany. In addition, even if an economic operator has been found guilty of breaching social security and labour law in the past, contracting authorities must, in accordance with the Directives, take into account measures for the self-cleaning of tenderers, which tends to further reduce the "bite" of sanctions for non-compliant behaviour in the past..
- **Abnormally low prices:** In line with the mandatory social clause, the new regulation provides for an obligation to reject a tender if the price is abnormally low due to non-compliance with social and labour law provisions (§ 60 VgV).
- **Subcontractors:** In line with the EU Directive, the use of subcontractors can only be restricted in exceptional cases for certain "critical tasks" (§ 47 VgV). For all other tasks, the law and the corresponding case law impose severe restrictions on a limitation (e.g. a certain share of the contract value) or even a ban on subcontracting. This is because restrictions on subcontracting are seen as a barrier to small and medium-sized enterprises (SMEs). The European Court of Justice has thus maintained its long-standing restrictive interpretation even after the 2014 reform; several CJEU rulings have held that regulations, for example in Italy or Poland, that limit the share of the contract that the tenderer may

subcontract to a certain percentage of the contract value are illegal (see "Wroclaw" ruling C-406/14 and "Vitali" ruling C-63/18 CJEU; see also ESA's letter of formal notice to the State of Norway (Løsnedahl 2021)). In line with this restrictive stance, courts in Germany have adopted a narrow interpretation of what constitutes a 'critical task' justifying restrictions on subcontracting. For example, in a decision of the Procurement Chamber of Thuringia, this was interpreted as meaning that standardised postal services, although recognised as important for the smooth running of administrative procedures, are generally not to be classified as a 'critical task' (VK Thüringen, decision of 10.07.2019 - 250-4003-15326/2019-E-010-GVK). In the field of standardised services, the ban on subcontracting is therefore apparently difficult to justify. This is even the case if there is a risk of quality deficits. Social considerations, such as frequent violations of labour law and collective agreements by subcontractors, appear to be even less justifiable and are not mentioned in either the legal commentaries or the relevant case law..

The social partners in both sectors are critical of this legal transposition in various respects. The following aspects were raised in the interviews:

- **Too few binding quality requirements:** The employers' associations in both sectors see the generally binding collective agreements in both sectors as an effective barrier that restricts wage competition, even in the case of tenders based purely on price. Nevertheless, the respondents from both industry associations consider it necessary to take into account quality criteria in addition to price when tendering. The BDSW has therefore been calling for some time for its own sectoral law on security services to stipulate that qualitative criteria should be taken into account with a weighting of at least 60%, at least in particularly sensitive areas (see most recently BDSW 2023). In the opinion of the BDSW, the lack of such a mandatory consideration of quality criteria is - apart from budgetary reasons - one of the reasons why, in practice, contracting authorities have all too often invited tenders purely on the basis of price (interview BDSW 2/2021).

Even when quality criteria are specified, in the experience of the interviewees this is often only pro forma; criteria are defined that are easy for any bidder to meet on paper and therefore remain ineffective, as illustrated by the following example:

An award criterion used in a tender was: "Do you have a quality management system according to DIN 77200? Please describe this". In that case, as the interviewee points out, companies can then simply answer in the affirmative and copy what is written in the DIN norm, without ever really having dealt with it and having built up corresponding structures in the company. (Interview BDSW Berlin-Brandenburg 2/2023).

- **Legal restrictions to limit subcontracting:** According to all interviewees, non-compliance with labour laws and collective agreements is particularly pronounced among sub-contractors. According to the Ver.di representative interviewed, restricting subcontracting would be the most effective way to improve enforcement of labour laws and collective agreements.

The "chain subcontracting" of this industry is a huge problem. Even those [companies] who always stand up, when I go to a staff meeting, and say: 'We're not the black sheep [i.e. the 'lemon'], we should do something about them'. But then it turns out that they themselves hire subcontractors because they can't find any staff or have to cover a peak or something. And there's nothing wrong with that in principle, but it happens on a scale that makes it clear that it can't work if the subcontractor hires subcontractors and the subcontractor hires a sole trader and everyone wants to make money out of it". (Interview Ver.di, 2/2022).

- **Effectively excluding abnormally low prices difficult:** In addition, there have been various attempts in the past to develop sector-specific benchmarks - in the cleaning industry, for example: 70% mark-up on the generally binding wages - which the contracting authorities can use to identify 'abnormally low prices' and exclude them from the procedure (see Jaehrling/Stiehm 2022, ch. 9.4 for details). However, the exclusion of bids below certain minimum mark-ups is problematic under public procurement law, as shown by several rulings by public procurement courts (VK Bund (VK 1 - 159/11); VK Südbayern (Z3-3-3194-1-43-12/13)). Even prices that do not cover costs may not be excluded from procedures in every case according to case law

In addition to these specific problems, the long-standing trend towards the 'marketisation' of public procurement law continues. In particular, two pillars of marketised procurement law remain in place or have even been strengthened

- **Horizontal social clause vs. horizontal clause restricting socially responsible procurement:** In addition to the horizontal social clause in Article 18(2) of the Directive, the reform also introduced a kind of horizontal clause to restrict strategic procurement: As Semple (2016) has pointed out, in return for opening up to social criteria, the European Commission has used the reform for "a radical extension of the LtSM [link to the subject matter] requirement" (Semple 2016, p. 65), i.e. to extend this clause to all stages of the award process, whereas it had previously been used in European case law only in relation to selection criteria. This also applies to the implementation in Germany (Jaehrling/Stiehm 2022, ch. 4.2). Consequently, selection criteria, award criteria and contract performance conditions may not take into account certain general corporate policies, but must relate to the duration and the specific tasks of the contract. According to this logic, it is not permissible to favour companies because they have a works council, or because they largely refrain from using atypical forms of employment (and have demonstrated this in the past), or because they belong to an employers' association and are therefore covered by collective agreements, or because they have a reputation or even a certificate for offering better working conditions than their competitors in the sector. Rather, the criterion or performance condition must relate to the duration of the contract and only to the personnel performing the contract; wage clauses, for example, can only apply for a limited period and to part of the workforce.
- **Guardians of competition: legal redress for bidders:** The German government – like other EU member states – had been forced by the European legislation and jurisdiction to introduce a new legal procedure that gives bidders the possibility to claim their right to 'unrestricted competition' in award procedures (*Remedies Directive*, Directive 89/665/EEC). The number of proceedings before public procurement tribunals and courts rose sharply in the first years after the implementation in Germany (1999) and remained at a high level of almost 1000 proceedings per year (Jaehrling/Stiehm 2022, p 52). It can be assumed that the impact of these review proceedings was not limited to the corrections of individual cases ex-post, but that this "flood of review proceedings has, as it were, prospectively raised awareness among contracting authorities of the importance of procurement law," according to Burgi (2018, § 1, RN 3 (own translation)).

These two factors are complemented by an **increasingly dense net of detailed provisions that spell out the 'Do's and Don'ts' to protect competition as a goal in its own right** (Jaehrling/Stiehm 2022, Ch. 3). Taken together, this has contributed to a general feeling of legal uncertainty which, according to several interviewees, partly explains the reluctance of contracting authorities to leave the 'safe' path of awarding contracts on the basis of the lowest price alone and to experiment with the new options available. For example, a representative of a local employers' association recalled that after

the introduction of the new marketised procurement law in Germany (1999), price competition increased due to more frequent re-tendering procedures (in complying with competition law) and due to the fear of administrations (fear of being sued by unsuccessful tenderers) to take quality criteria into account..

„So the public procurement law: may be that it has saved money for the municipalities, but it has not improved many things for our companies, but since it was introduced, prices have fallen. You really have to say that. So that has brought a lot of disadvantages as well. The municipalities are afraid of lawsuits, of proceedings under public procurement law, which also delay everything, even if you win [the lawsuit] afterwards. But you do lose, from time to time, and municipalities are terrified of that. They no longer take any risks with regard to procurement law; they only do what is absolutely safe. But the absolutely safest thing, in terms of procurement law, is 'I'll take the cheapest one', so no one can complain anymore. And these are the things that bother us.“ (Interview Gebäudereinigerinnung Düsseldorf, 3/2023)

Overall, therefore, the **new legislation has created new legal options for BDW practices, but their use is hampered by the same procurement legislation and case law.** This confirms that the social turn in procurement law after 2014 has not *replaced* the marketised interpretation of EU treaties, but has led to an **'institutionalised coexistence' of 'marketisation' and 'social politicisation' of public procurement.** (Jaehrling/Stiehm 2022, Ch. 4).

PART THREE: Case studies

Individual municipalities and contracting authorities have developed various approaches to improve working conditions within the existing legal framework. They cover all three dimensions of the potential role of BDW practices covered above (setting, extending, enforcing standards). A selection of these practices will be described in more detail below. Probably not least due to the fact that collective agreements in the two industries under study have already been extended to all competitors, and that the issue of pay clauses is also largely addressed by state legislation (see section 2.1 above), the focus of novel practices targeting these two industries is more on a) *enforcing* these standards and b) *setting* standards beyond the issue of wages, part of which are difficult to codify in a collective agreement but require a dedicated co-management of decent working conditions at company level.

In addition to the cases described in more detail below, a few more innovative practices were either mentioned or qualified as desirable in the interviews with stakeholders, industry experts, municipal authorities, and in forums for peer exchange among procurement professionals:

- (1) Provisions in tender documents **explicitly requiring training certificates** of the employees could be another option (Interview Company SECURITY 2, 2/2023; Interview Verdi, 2/2022)
- (2) **Predefining a 'minimum price' based on collectively agreed wages** might also avoid wage dumping or help to excluded companies with 'unreasonably low priced' bids that are likely to resort to wage theft (Interview BIV, 8/2022; Interview BDSW, 2/2022)
- (3) Provisions in tender documents requiring contractors to **avoid minijobs**.

Example: A district in the city of Berlin has recently decided to require from its contractors to abstain from using marginal part-time jobs for the contract (Interview Beauftragte für Gute Arbeit, 5/2023)

- (4) **Extend contract duration** in order to result in more employment stability.

Example: A procurement manager of a East German city in Jan 2022 posted a question and thereby initiated a debate in the online-forum for peer exchange about contract duration - whether it would be possible to go beyond the usual 4 years. Answers of his peers were predominantly arguing against longer contract duration, partly justified with legal restrictions, but mostly justified by potential losses in economic efficiency. One expert for instance replied, that this would in principle be legally possible but require justification:

"This justification should be based on demonstrable efficiencies from long-term collaboration (e.g., longer period for service providers' return on investments, job security for deployed personnel). In the case of cleaning and security services, such efficiencies can rarely be justified. I therefore recommend a contract term of no more than four years for both service areas".

The procurement manager replied: "The trend seems to be toward 4 years [contract duration] . (...) I just wonder how this is employee-friendly. In the area of security guards, for example, practically all employees are taken over by the new service provider. However, this means that they lose their company affiliation, which means that they may lose wages and have less (entitlements to) vacation time. And they have to live in uncertainty for a long time as to what will happen next, whether they will be taken on, etc. In my view, this does nothing to improve morale or quality. At the same time, we are told every day that people in low-wage jobs (and that includes security guards and cleaning) deserve more respect. Unfortunately, for me, that doesn't really fit with this

obviously very tight corset. And these services, in my view, are hardly comparable to procurement of furniture or office supplies. For this reason, I would like to extend at least the maximum times and 4 or 6 years are already a big difference.”

Hence, while some of these practices were held as desirable by contracting authorities, companies and employee representatives, not all of them were already put in place. The list above and the table below is certainly not exhaustive, but **the interviews overall confirm the impression that progress on practices suitable to promote decent working conditions is slow and remains very limited – with the important exception of the legislative dynamics around pay clauses described above – both due to legal doubts and budgetary restraints. These factors also play into the implementation of the cases analysed in more depth below.**

Tab. 3-1 Overview on (potential) role for public procurement in ‘buying decent work’

	Setting standards	Extending Standards	Enforcing standards
(potential) role of public procurement	<p>procurement specific minimum wages</p> <p>Extend contract duration (employment stability)</p> <p>Predefining a decent workload (qm²/hour) (→ CASE STUDY GER-3),</p> <p>Arranging for more convenient working hours (daytime cleaning (→ CASE STUDY GER-2), avoiding split shifts (→ CASE STUDY GER-4)</p> <p>Provisions in tender documents requiring contractors to avoid minijobs</p> <p>Provisions in tender documents explicitly requiring training certificates (=link to CA) = proper application of CA</p>	<p>prevailing wage regulations also at municipal level (→ CASE STUDY GER-5)</p>	<p>Limit subcontracting (but legal restrictions)</p> <p>specific control mechanisms for public contracts in order to detect/sanction cases of non-compliance with labour laws + other contractual obligations (→ CASE STUDY GER-1)</p> <p>Predefining ,fair prices’ based on CA wages = avoid wage dumping (but legal restrictions)</p>

CASE GER-1: Enforcement of wages and working conditions in public contracts

Context and situation before the experimentation

Majour fault line: Outsourcing of responsibility, erosion of self-enforcement mechanisms and gaps in state control infrastructure

The outsourcing of public sector jobs has externalized the imminent responsibility of the state to ensure compliance with labour laws and collective agreements for employees who provide public goods or services. This 'limited liability' of the public customer is aggravated by the fact that, unlike public sector organisations, private sector companies are often characterized by weak unionization rates and a lack of staff representatives at company level that traditionally watch over the enforcement of labour standards. In Germany, works councils are an important institutional pillar for the enforcement of wages and working conditions as laid down in laws, collective agreements and individual contracts.¹⁰ Yet they are largely absent in small and medium-sized companies today, and this also true for the two industries under study, security services and industrial cleaning, with their large number of small and very small companies (see section 2.1 in this report). What is more, even where works councils are existent, contacts between staff representatives and employees are made more difficult by the decentralised work organisation for both cleaners and security agents (work places are distributed across clients' premises), or at least requires higher efforts and innovative approaches. Many private sector companies thus enjoy relatively wide discretion in terms of (non-)compliance with labour standards.

According to a range of studies, the fragmentation or 'fissuring' of work in conjunction with a deregulation of the labour market have facilitated rule evasion altogether and put (non-)compliance on the political agenda (Dickens 2012, Weil 214; Mustchin/Martinez-Lucio 2019, Vosko et al. 2020), including in Germany. A lack of compliance with statutory and industry-specific minimum wages in Germany has been found to be a problem ever since these minimum wages were introduced (Bosch et al. 2023; Fedorets et al. 2019, Schroeder et al. 2020).

This is despite the fact that, parallel to the increase in state legislation in the area of wages (general and industry-specific minimum wages), state capacities for controlling and enforcing labour standards have been more strongly bundled and successively expanded since the first industry-specific minimum wages was introduced in 1996 for the construction industry (cf. Bosch et al. 2023, chapter 5). Since 2004, the sole responsibility for controlling compliance with legal minimum wages is with the 'Finanzkontrolle Schwarzarbeit' (FKS), an administrative unit of the Customs authority. The FKS has far-reaching inspection rights. However, their personal capacities did not keep pace with the growth in tasks (more minimum wages) and the increased efforts for controls due to the fragmentation of companies (wages more difficult to control due to proliferation of subcontracting chains and (bogus) solo-selfemployment). Furthermore, the task profile of the FKS leaves two relevant protection gaps:

¹⁰ Pursuant to § 80 (1).1 of the Works Constitution Act, the works council must "ensure that the laws, ordinances, accident prevention regulations, collective agreements and company agreements applicable in favour of the employees are implemented".

Firstly, unlike in other countries (cf. Bosch et al. 2023), workers do not receive any support from the labour inspection authorities to claim their outstanding wages. In the case of violations, the FKS only enforces that companies pay the outstanding contributions to the social insurance funds. Companies can also be fined (up to € 500,000) and, in the case of particularly serious violations, prosecuted under criminal law. But workers must individually sue for the wages withheld from them; the burden of proof lies with them. Secondly, the FKS does not control for compliance with wages *beyond* the statutory and the industry specific minimum wages (extended to all companies including foreign-based companies via the national law on POW). Hence the FKS does not control compliance with the higher *procurement-specific* pay clauses or wages and other stipulations in *collective agreements* (whether these are declared generally binding or not).

A recurrent finding of evaluations on the effectiveness of pay clauses in public contracts has therefore been the lack of control capacities. When contracting authorities contractually oblige companies to comply with certain wages and other working conditions, they are formally also responsible for controlling these contractually agreed provisions; this is what the procurement laws state. But they usually don't have any capacities and know-how to do so effectively. Even to the contrary: The information asymmetries – a lack of information on the side of the public customer about how work is effectively performed and rewarded – has in turn been used to justify a 'hands-off'-approach of public buyers, i.e. to justify an abstention from voluntary measures to secure labour standards in contracted companies, given that their effectiveness is difficult to control. Hence an illustrative example for a 'vicious circle' – a lack of capacities to control and enforce higher standards delegitimizes efforts to raise standards.

Nevertheless, the legal development – the renaissance of procurement specific minimum wages and 'real' prevailing wage laws in the last few years – has greatly expanded the scope of pay clauses for public contracts. This in turn has increased the gap between state standard-setting and the lack of capacity to monitor these standards. The 'experimentation' in Berlin highlighted in this case study can also be understood as an attempt to close this gap.

Brief description + key objectives

This case study looks at efforts to ensure compliance with pay clauses and other mandatory working conditions in public contracts. These mandatory wages and working conditions can be laid down either in procurement laws, or in collective agreements, or in general labour laws.

Over the past ten years, a few federal states in Germany (Bremen, Berlin, Saarland) have set up centralized agencies that carry out controls with their own employees or that commission auditors to do so on their behalf. This case studies' main focus is on the control agency in Berlin, titled 'Kontrollgruppe nach dem Berliner Ausschreibungs- und Vergabegesetz – BerlAVG (~ control unit according to the Berlin law on public procurement; hereafter referred to as 'task force'). The task force in Berlin is a unit within the Senate Department for Economics, Energy and Public Enterprises of the Federal state of Berlin. Its core responsibility is to control compliance with the social and ecological clauses laid down in public contracts. This includes pay clauses who are a mandatory element of each public contract. These pay clauses oblige contracted companies to pay their employees – at least for the time they are performing work for a public contract - either the procurement-specific minimum wage (since 2021: € 12,50, since 2023: € 13,00) or the wages of a collective agreement declared generally binding, whichever is higher. The task force thus complements existing state labour inspection capacities (the FKS) and thereby contributes to close an

enforcement gap. Unlike the FKS, it controls not only the lowest wages that are mandatory for all companies by the law (general minimum wage and industry specific minimum wages according to the POW law), but also wage *supplements* and wages above the lowest pay group.

Next to these state agencies, there are also a few voluntary business associations that were specifically set up to enhance self-enforcement of quality standards and labour standards among their members. Two of these associations that are operating in the contract cleaning industry will be included here for comparative purposes, to discuss advantages and shortcomings of the state agency.

Origins of the experimentation

The federal state of Berlin has pioneered the introduction of pay clauses in public tenders, with the introduction of a prevailing wage law in 1999 (for the construction industry only) and a procurement-specific minimum wage in 2008 (for all industries). It was therefore a consequential step, in 2014, to set up a task force responsible for carrying out spot checks on compliance with pay clauses among its contractors. A similar unit already existed at that time in the federal state of Bremen.

The procedures and competencies granted to this task force as specified in the procurement law of Berlin and administrative regulations however revealed to be insufficient. A reform in 2019 made changes that expanded the competences of the task force and clarified rights and procedures (see below). In addition to reform impulses from the learning processes in the first years of the task force, legal developments also gave rise to amendments improving proper enforcement of pay clauses. For the increased competencies for the task force were part of a more encompassing legal reform that also decided to raise the procurement-specific minimum wage significantly (to €12.50 starting from 2020). This wage was not only above the statutory minimum wage (2020: € 9,35; 2021: € 9,50), but also above the lowest collectively pay grade in many industries in which public contracts play an important role. This was also the case in the cleaning and security services sector; the hourly wage for their lowest pay grade (cleaning 2020: € 10,80; security services: € 10,70) was outpaced by the new procurement-specific minimum wage. Workers in both sectors are thus among the workers who stood to benefit most from this increase - provided it is properly enforced.

Actors involved and strategies/resources

The core elements of the reform in 2019 was, firstly, to overall increase the control activities of public purchasing bodies (by fixing the quorum of contracts (above € 10.000) that have to be controlled each year at 5%) and, secondly, a change in the control strategy.

To begin with the second element: The reform increased the scope for the task force to carry out controls on their own initiative and according to their own criteria - instead of primarily acting upon request of the purchasing bodies. Carrying out controls even without concrete suspicions or complaints and targeting inspections on certain industries and types of companies that are particularly prone to non-compliance are core elements of what is referred to in the academic literature on enforcement as proactive control strategies, as opposed to a reactive, complaint-based strategy. There is also widespread consensus in the debate that the efficiency of resources devoted to labour inspection is enhanced by proactive strategies (cf. Bosch et al. 2023). This assessment was also shared by the head of the Task force on the basis of experiences in the previous years:

"Before, the contracting authorities simply either selected cases for us themselves or sent us their overviews and said, 'you pick samples'. But it was a whole range of different audits. And then at some point we realised: We can't really gain any insights from such a wide range of examinations". (Head of Task Force),

In order to facilitate the work of the control force, the reform in 2019 also clarified that the purchasing bodies are obliged to provide them with a list of all contracts issued in the previous year, and in case a company is selected for a spot check, to hand over all documents (tender documents, contracts) necessary to carry out the control. Moreover, it clarified that the task force is authorized to request pay slips and other documents from the companies under inspection.

As mentioned above, the new law also stipulates that at least 5% of all public contracts (above € 10,000) have to be controlled every year, starting in 2022. The responsibility for reaching the 5% target is with each purchasing body, NOT the task force. The task force acts independently and its controls are counted as part of the 5%, but the large majority of controls will have to be carried out by the purchasing bodies on their own. The individual contracting authorities in Berlin are therefore also expected to develop control procedures and provide the personnel resources for this purpose. In this context, it was the task of the Control Authority to draw up an ordinance defining the rules + procedures for the control activities of the individual contracting authorities and to provide assistance by developing soft law (guideline, calculation tools). However, this process took a very long time. The corresponding ordinance was not passed until the end of 2022, i.e. three years after the reform was passed, not least because it required extensive and time-consuming coordination between a number of authorities.

The *improved institutional resources* (competencies) of the task force has allowed it to select focus industries. This is seen as a big improvement by the interviewees. In the years 2020 and 2021, the cleaning and the security services where 2 out of just 3 focus industries. This meant that all companies in these industries with a public contract in 2020 or 2021 were selected for controls. A total of 318 inspections were carried out in 2020 and 2021 (104 of which were of subcontractors), and another 286 inspections in 2022.

Infrastructural resources remain limited, though. The significantly more extensive control tasks have so far been accompanied only to a very limited extent by an increase in additional personnel resources. Overall, 8 full-time posts (in addition to the head of the task force) are assigned to the task force, but in fact only 4 employees worked in the control group at times, due to fluctuations and difficulties in recruiting staff. In the procurement office of one governmental department with which an interview was conducted, a half-time position was established for the controls - which, according to the interviewee's assessment, is an exception so far among the other government departments of the federal state.

(lack of) networking resources: There were also no changes regarding the involvement of the social partners or other stakeholders. Trade unions and employers associations are not involved— there are no consultations ex-ante or during controls, or information given to or requested from trade unions/employers associations in case of doubts or detected non-compliance.

Obstacles, constraints, conflicts and learning processes

The reform has somewhat improved the control capacities of contracting authorities, but important deficits remain, which are partly due to the legal basis and the lack of human resources, partly also to the overarching legal framework and the fragmented control architecture, and partly also to the approach of the implementers in public authorities.

Sluggish implementation, not least due to lack of resources and fears of too much ‘red tape’

As mentioned above, the ordinance transposing the new law into administrative practice for the other purchasing authorities took almost 3 years. Therefore, according to the assessment of our interview partners from the administration (2 from the Task force, 1 from the purchasing body of a government department), only very few contracting authorities had taken steps to implement the new requirements of a 5% control quota by the end of 2022. During that time, however, there was an intensified exchange between the control group and some contracting authorities on how to carry out controls. According to the interviewees, the reform was perceived by the contracting authorities as a clear signal that they now actually have to carry out controls, whereas the previous legal formulation remained rather vague in this respect. Many contracting authorities continue to have considerable reservations about this new requirement. On the one hand, because of a lack of human resources - the bottleneck here is not so much a lack of budgetary means, but rather the recruitment of appropriately qualified personnel. Moreover, the contracting authorities see the large number of standards and regulations that have to be observed as a problem (see ¹¹). This gives rise to fears that this will scare off in particular smaller companies as potential bidders – which are already scarce in some public tenders(in a similar vein assessments by politicians and representatives of the construction industry at a hearing in the Berlin Parliament (Abgeordnetenhaus Berlin 2022) . The same reservations were also expressed by representatives of the employers' associations in the construction industry during the political discussion in the Berlin parliament at the end of 2022

Between ‘soft’ and ‘hard’ approach to monitoring and control

The approach of the task force is similar to that of the FKS/customs authority in that it targets controls at selected industries. However, the low staffing levels do not allow for a specialisation among staff members. According to experts and the employers' associations themselves, industry expertise is an important prerequisite for uncovering non-compliance (see also the discussion in Berlin's House of Representatives) ¹².

In addition, there are a number of other limitations that distinguish the approach of the task force from a ‘hard’ strategy, i.e. one based on controls, tangible sanctions and deterrence. Against the background of the above-mentioned fears that too much bureaucracy and hard sanctions in the event of a control could deter even more companies from bidding for public contracts, the control body is very concerned to keep this burden low, both for the companies and for the staff of the contracting authorities (and the task force itself). This affects both the way controls are carried out and the measures taken in case of detected non-compliance.

Controls are only carried out based on paperwork. Unlike the FKS, the task force is not authorized to do unannounced inspections on-site. Instead, the standard procedure is to request companies to send over pay slips and working time documentation for their employees over a 3-month period. The main tasks of the staff of the taskforce then is to check these documents for inconsistencies. In case of serious doubts regarding compliance with pay clauses, the company (usually the HR department) is approached and

¹¹ as illustrated by one interviewee using the example of a tender for catering services with a contract value of less than 50,000 €: For the obligations on the subject of the environmental and ILO core labour standards, the tender documents comprised 25 documents with a total of 150 pages.

¹² Berliner Abgeordnetenhaus: Wortprotokoll WiEnBe 19/13, 12. Oktober 2022 <https://pardok.parlament-berlin.de/starweb/adis/citat/VT/19/AusschussPr/web/web19-013-wp.pdf>

asked for clarification. There is no provision for consultation with the shop steward (where they exist) or trade union representatives. In case the doubts persist, the task force cannot impose sanctions themselves. They merely write a report that is sent to the purchasing body (i.e. the responsible party to the public contract) and that may recommend them to impose sanctions.

There is also not yet a routine procedure by which the task force gets to know if and which sanctions have been imposed. For the task force, the case is thus closed as soon as the report is written and handed over the contracting authorities. This is going to change somewhat in the future, as the new ordinance implementing the law requires the contracting authorities to document the measures they took in cases of detected non-compliance.

The fragmented control architecture and a lack of coordination between the FKS and the task force also tends to diminish the effectiveness of control activities. The task force so far does not receive information from the FSK in case they detect wage theft in firms with public contracts. On the other hand, the task force is asked to provide information to the FSK whenever they detect non-compliance with the statutory minimum wages or industry specific minimum wages, because this is the remit of the FKS. They however never receive feedback on what happened with this information, i.e., whether the FKS then went on to inspect the company. The Task force itself - or rather the contracting authorities – have also restricted possibilities to sanction companies in these cases (they can only terminate a contract, not impose fines), as this is the remit of the FSK and has been outruled by courts in order to avoid double sanctions.

As the interviewed control agent explains, there is however a certain reluctance on the part of both the contracting authorities and on her own part, to sanction companies over non-compliance issues considered minor.

“I once had controlled a construction company, a big contract, and I found something. The [public] client asked me to check the company again on two other construction sites and to check the minimum wages. And everything was right and that was the end of it.” (Controller, Task force)

Next to terminating a contract or financial fines, another sanction in case of issues of non-compliance is that the companies have to be reported to a business directory (list of registered contractors and suppliers)¹³ administered by another administrative unit. However, registration in the business directory is not a prerequisite for obtaining public contracts. Rather, it is a kind of ‘positive list’ that serves contracting authorities to select potential bidders in the case of restricted tenders. Even in the (exceptional, see below) case that fines and contract terminations are issued by the contracting authorities, this does not yet carry the risk of being excluded from future tenders. This possibility was not yet in place at the beginning of 2023, but is currently being developed (Abgeordnetenhaus Berlin 2023).

There is also no link to the new central state ‘competition register’ - which from 2022 onwards replaced ‘corruption registries’ that had previously existed at federal state level, including in Berlin. An entry can only be made if there has been a final conviction or penalty orders issued by criminal courts a), either in case of non-compliance with the statutory minimum or with the industry specific minimum wage, but only provided that the criminal fine exceeds 90 daily rates or a minimum administrative fine of € 250,000 ; b) or in case that social security contributions have not been paid to the social funds (see Section 2 of the Competition Register Act – Wettbewerbsregistergesetz, WRegG).

¹³ see <https://ssl.stadtentwicklung.berlin.de/ULVAuskunft/index.shtml>.

Both the bite and deterrence effect of sanctions and the benefit to employees is furthermore limited by the fact that employees of companies who have been found to violate pay clauses are neither informed nor do they automatically receive outstanding wages. As is the case with the customs authority FKS, the legal mandate simply does not provide for this.

"That is not our responsibility, it is not our task to check whether they pay in arrears. We used to see it a bit differently in the past, when they [the companies] were actively requested to pay in arrears. But now we actually only establish that it is a case of non-compliance and have it clarified" (controller, Task force)

Companies do sometimes commit themselves to pay back wages (and document this towards the purchasing bodies). But the incentive to do so is less evident for employers after the reform: In the past, the task force used to consider a case as 'solved', hence did not recommend any further sanctions, when companies had paid back wages. This is however no longer the case, i.e. even then, the report will document the non-compliance and can recommend sanctions.

No non-compliance or no detection of non-compliance?

The resulting statistics provide little indication of major problems with wage frauds. According to the information provided by the task force, sanctions have been an exception so far, based on the feedback they had from the purchasing bodies (on a voluntary basis). In 2020 and 2021, there were a total of 328 companies under inspection (a large share from the security and cleaning services industry). In 19 cases, the task force found issues of non-compliance, but not only with pay clauses, also with 'green clauses' and other social clauses (e.g. relating to gender equality). In the cases of non-compliance with pay clauses, these were rather minor issues – such as not having paid certain mandatory wage supplements in the security services industry. Over the two years, just one company (out of 327) had been sanctioned (with a contract termination). For 2022, the result has not changed, according to another source (Abgeordnetenhaus Berlin 2023): The Task force had recommended sanctions in 20 cases (out of 286 companies controlled) and received a feedback on 15 of these cases (1 contract termination, 1 financial fine under consideration, no sanctions in the other 13 cases, yet merely 3 warning notices) .

With a view to the paper-based inspections and the reluctance to impose sanctions, it is questionable however if these figures do indicate the almost absence of an enforcement gap or rather a limited effectiveness of the controls. For comparative purposes: In the same two-year period (2020/2021), the FKS controlled 152 companies in the cleaning industry in Berlin¹⁴. In 32 cases, it initiated an investigation for non-compliance with the general or the industry minimum wage. In addition, there were more than 75 criminal proceedings for violations of the obligation to pay social security contributions (see Deutscher Bundestag 2021 and 2022). There is no data on how many investigations ended with financial fines (but overall sum of fines for minimum wage-related non-compliance was roughly € 660.000 for all industries in Berlin), but it certainly indicates that there were problems with non-compliance. For the security service

¹⁴ Data for security services industry are not available

industry as well, a recent case brought to light the fraudulent behavior of a company that had long been contracted with providing security services for buildings of the Berlin police (sic!) and for refugee homes.¹⁵

In fact, many of our interviewees, including from the employers side, expressed their doubts with regard to the effectiveness of the new control strategy. There are over all three different concerns voiced:

- 1) **paper-based controls not effective in detecting fraud.** In line with findings from other studies on the enforcement of minimum wages, even companies violating the minimum wage get their paper work right (Bosch et al. 2023, p. 212), i.e. pay their employees the number of documented working hours; but cheat on the working hours. According to one interviewee:

"Again and again we hear about piecework specifications in the cleaning industry by which the time that is recorded is shorter, because of allegedly unfulfilled piecework specifications".(employee from a consulting center for migrants in Berlin (BEMA). A typical practice, according to this interviewee, is that the working time entered by the employees in pencil is subsequently changed by the employer" (Interview BEMA, 11/2022).

A different approach – similar to the one by the FKS – is taken by the two business associations (one in Hamburg, one in Berlin) that commit their (voluntary) members to regular checks by external auditors. The check comprises both inspection of the work sites and the accounting department.

As a rule, we do the facility inspection first and check: how is the time recorded there? Are there manual lists, is it done electronically? (...) We also ask the staff directly when they are on site: Do you really write down when you come and when you leave? When exactly is your start time, when exactly is your end time? If the time recording is working properly in the building and could be displayed without any deficiencies, we check in the payroll accounting: do these times feed one-to-one into the payroll? Does the payroll show the collectively agreed wage and is it paid properly? So you have a very good flow." (Interview RAL-Gütegemeinschaft Gebäudereinigung, Managing director)

- 2) **No co-enforcement and a lack of publicity = underutilization of networking resources and expertise of stakeholders**

Despite the fact that the task force has selected the cleaning industry and the security services industry as focus industries in 2020 and 2021, even the interviewed social partners in Berlin (trade union for cleaning industry, IG BAU, and for security services (Ver.di) and employers association for security service industry, BDSW) were not aware of this. They had not been consulted or informed, even less was there any public information about these activities. It is therefore little surprising, that according to the staff of the Task force, they have not yet been approached by trade unions or employers associations business with any indications of possible violations or requests to examine certain awards. Contact details can be found on a the website of the Berlin administration¹⁶, and very occasionally individual workers have contacted the Task force, but so far this has not resulted in detected frauds. One interviewee from a government

¹⁵ s. <https://www.abendblatt.de/hamburg/polizeimeldungen/article235005361/zoll-hamburg-razzia-sicherheitskraefte-schwarzarbeit-hamburger-unternehmer-soll-millionenbeträge-veruntreut-haben.html> ; and <https://www.bz-berlin.de/berlin/berliner-polizei-muss-sich-jetzt-selbst-bewachen> . According to these press reports, the Customs spokesperson informed the press that the company had withheld wages since 2017 and is alleged to have failed to pay social security contributions for more than a hundred workers he employed as security guards

¹⁶ <https://www.berlin.de/sen/wirtschaft/wirtschaftsrecht/kontrollgruppe/artikel.552183.php>

financed agency in charge of consulting migrants reports that she has once contacted a contracting authority about a case of wage fraud brought to its attention in a public child care facility (cleaning services), yet was not called back and asked for further details but merely informed that the contracting authority would take care of it (BEMA). The agency then decided to bring this case to the attention of media and individual politicians; as a result, the contract with that company was not extended. The interviewee would welcome more exchange of information with politics and administrative bodies involved in public procurement.

In a similar vein, representatives of the construction industry recommended to make better use of the (self-) control capacities and inspection activities developed by the social partners in that industry at a hearing in the Berlin Parliament:

“Sure, I can also conjure up really great pay slips. They look great. I can send them or they can be collected from me, but that has nothing to do with auditing or checking the contract. That can only be done on site, not a question at all. Neither the control group can do that, you can't increase their personal resources by that much; nor can all the isolated contracting authorities in Berlin. That can only be done with the support of third parties. The joint institutions [of the construction industry] are not the only ones where there are social partners. Elsewhere there is also support from both employers and employees. If it works in neighbouring countries, why shouldn't it work in Germany?” (Representatives of the “Sozialkasse des Berliner Baugewerbers”, a bipartite fund in charge of specific social benefits in the sector, quoted after Abgeordnetenhaus Berlin 2022)

In addition, supplementary controls, including the various approaches to self-monitoring of quality and working conditions – such as those carried out by the Hamburg ‘Prüf- und Beratungsstelle’ (~Monitoring and Advisory Centre) or the RAL GGGR – are expedient.

Overall, this position is in line with parts of the academic literature that emphasizes the benefits of “co-enforcement” approaches that are more actively and consciously involving stakeholders in the implementation of control strategies (Bosch et al. 2019; Fine/Barley 2019; Iskander/Lowe 2021), instead of resorting to more ‘soft’ approaches or to more ‘market-based’ solutions (e.g. Boersma /Berdfoed 2021). These are rather seen as a complement, not as an alternative to direct state enforcement capacities.

3) Ex-post controls counteracted by persisting practice to select cheapest bidders.

This is a concern voiced in particular by the interviewed employers and employers representatives. While the expansion of state controls are in general welcomed by the organized companies (i.e. members in employer associations) – see e.g. also the BDSW and BIV press releases welcoming the targeting of controls of the FKS, including on their own industry), several interviewees gave examples and reported of experiences where the contract was awarded to a company that later on had problems to recruit and retain enough staff for the contract they had secured through offering the lowest (im)possible price (Interview Security Company 2) or where the contracting authority had to terminate the contract after just two weeks into the contract due to quality concerns. This is even the case where the prices is not weighted at 100%, but at ‘only’ 30%, since according the interviewees’ assessment, contracting authorities are satisfied with having companies ‘tick boxes’ on quality related aspects or submit vague concepts, instead of properly checking the reliability of these written promises. As a result, it is repeatedly claimed by employer representatives that companies who care about quality and are covered by collective agreements often do not take part in public tenders if it is perceivable that the price will (nominally or de facto) be the only criterion. The lack of bids, which is a concern of many public authorities, seems thus less to be an effect of companies shying away from ‘too much red tape’ for securing the compliance with social clauses,

but rather an effect of frustrating experiences with the selection criteria (see also the debate in Berliner Abgeordnetenhaus 2022)

Outcomes + (expected) impact on work

The task force does contribute to fill an enforcement gap, in that it a) increases inspection frequencies and b) also controls for wage levels above the minimum wages. But it also replicates weaknesses in the approach by the state labour inspection FKS (no co-enforcement; no support for wage claims of employees). Moreover, due to legal constraints, very limited personal resources and a generalized fear of scaring off bidders, the checks are carried out in a very formalized way. The procedure might be well adjusted to administrative routines on both sides (companies and task force), but it raises questions with regard to the impact of controls, even among those who are carrying out the controls or are being controlled. The planned 'negative list' that will allow to exclude companies for non-compliance issues from public tender for up to 3 years might somewhat add to the deterrence effect, once it is in place. More exchange with social partners, more publicity and a higher visibility of the Task force and of the increased control activities (5% quorum) could also increase the deterrence effect and at the same time help identify wage fraud and improve the effectiveness of controls. But it would seem to be an equally necessary and promising strategy to carefully select and check bids, and to design tenders in a way suited to attract companies are covered by collective agreements, so as to *ex-ante* reduce the need for controls in the longer term.

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Interviews

Date (M/Y)	Organisation (Interviewees' role)
6/2022 + 8/2022	Kontrollgruppe nach dem Berliner Ausschreibungs- und Vergabegesetz (BerlAVG) = Task force in charge of controlling public contracts according to the procurement law of the federal State of Berlin (<i>Head of Task force + (Control agent)</i>)
9/2022	Company SECURITY 1 , Berlin (<i>Quality manager</i>)
9/2022	„Beauftragte für Gute Arbeit“ = Commissioner in charge of implementing ‘Good work’ in the administration of one district in Berlin
11/2022	BEMA („ Berliner Beratungszentrum für Migration und Gute Arbeit“) = a consulting +support center for migrants in Berlin (<i>staff member</i>)
11/2022	BDSW - Regional employer association for security services, Berlin (<i>Managing director</i>)
12/2022	contracting authority within a state department, federal state of Berlin (<i>staff member in charge of implementing controls</i>)
12/2022	IG BAU, Berlin-Brandenburg = regional trade union for cleaning industry (<i>trade union secretary</i>)
1/2023	Company SECURITY 2 , Berlin (<i>Managing director</i>)
9/2022	Joboption Berlin' (https://www.joboption-berlin.de) – a project financed by the Department of Employment (“Senatsverwaltung für Integration, Arbeit und Soziales”) of the Federal State of Berlin, with a focus in improving working conditions in the cleaning, horeca + retail industry (<i>staff member</i>)
10/2022	Prüf- und Beratungsstelle für das Gebäudereiniger-Handwerk Hamburg https://www.pbst.de/ = business association control and advisory agency for the cleaning industry (<i>2 interviewees: Managing director + control agent</i>)
2/2023	RAL-Gütegemeinschaft Gebäudereinigung (https://www.gggr.de/)= Business association /Quality assurance association which is entitled to control wages and contracts among member firms (<i>Managing director</i>)

CASE GER-2: Daytime cleaning

Brief description and key objectives

More daytime cleaning has been and is being tested in different municipalities in Germany¹⁷. In the following, the experiences with daytime cleaning are presented using the example of an initiative to promote more day cleaning in Hamburg (2017-2019). The findings from the interviews conducted are supplemented with results from interviews with actors at the national level.

In Hamburg, the initiative for more daytime cleaning was launched by the contracting authority at the City of Hamburg. The aim was to promote the acceptance of cleaning buildings during normal business hours (during the day) among the users of the building and to raise awareness of the advantages, as well as to raise the public profile of cleaning work and the people who do it. It was intended to benefit the workers on the one hand, but also the cleaning companies, who expected more daytime cleaning to be an advantage in attracting staff.

The initiative consisted of two approaches: On the one hand, there was an information and appreciation campaign to make cleaning work and the employees in this profession visible and to increase the recognition for the work in the public perception (starting in 2019). On the other hand, cleaning services were partially converted to daytime operation at four schools in order to gain experience, increase acceptance and identify obstacles (2017-2019). The experiment of day cleaning in Hamburg has ended, but as a topic day cleaning remains present, as our interviews showed. However, there is no institutionalised continuation of this approach and no fundamental policy change in the tenders. This is what the company representatives we interviewed deplored.

Situation before the experimentation

In order to improve working conditions in contract cleaning, the promotion of more daytime cleaning is considered an important starting point. In recent years, trade unions as well as associations or advisory institutions have launched information campaigns, held expert dialogues¹⁸ and other events¹⁹, also for contracting authorities, issued joint declarations²⁰ or commissioned their own studies on the economic efficiency and sustainability of daytime cleaning (cf. Annex to this case study: section Resources). The aim of these initiatives is to increase the share of day cleaning, which is currently at about 15% in Germany (Grömling 2007). The aim is to improve working conditions in the sector, increase the visibility of this work and make it easier to recruit staff. However, the trade unions' expectations regarding more daytime cleaning in Germany are limited. This concerns, for one thing, the spread of this form of work:

"So on the subject of daytime cleaning we actually don't know of many other cases where we could say 'Okay, this has actually spread around'" (Interview IGBAU Bundesvorstand).

¹⁷ <https://www.kij.de/de/864959> ; <https://www.arbeitgestaltengmbh.de/assets/projekte/Joboption-Berlin/Veranstaltungen/2022/20220615-FD-TagesreinigungDoku.pdf> ;

¹⁸ <https://www.tagesreinigung.berlin/>

¹⁹ <https://zukunftsforum.holzmann-medien-events.de/programm/>

²⁰ https://www.efci.eu/wp-content/uploads/2020/09/2007-03-02_Joint-declaration-on-daytime-cleaning_EN.pdf

The employers association (BIV) shares this view:

"But I think these are still tender saplings that are still under observation. Because, as I said, we once ploughed through this country with mini-jobs. And of course we said: "Very late in the evening or very early in the morning and you don't see the employees. [...] But you get a ready-made service and that's it. And getting away from that to daytime cleaning is probably also a process that needs a bit more time and persuasion. Because you have to limit yourself somewhere, even if you only leave your office for five minutes, but you have to get out first [...]. But the shortage of staff also makes the whole thing smoother, I think" (Interview BIV., 8/2022).

On the other hand, daytime cleaning does not solve the problem of work intensification, as is made clear in the joint statement of the Berlin-based "[Alliance for Clean Schools](#)". The representatives from the trade unions' IG BAU national board were also sceptical whether daytime cleaning can solve the fundamental problem of price pressure and the resulting work intensification in the sector:

"What is negative is the work intensification. (...) Customers are often not willing to accept the price increases. (...) That means that the employees get more space to clean in the time they work. And that is a topic, work intensification, which we have been focusing on since 2015. We already agreed something in 2015, something in 2017 on occupational health and safety in this direction, but that is too little. (...) We need regulations for this. No further work intensification, on the contrary more time for cleaning. And then it may also cost the customer more money" (Interview IG Bau Bundesvorstand, 2/2022)

Research also points out that cleaning work (in buildings, but also in public spaces) - because in many countries (including Germany) it is mainly carried out during off-peak hours or at night - is literally not 'seen' as service work (cf. Duda 1990; Sardadvar 2019, p. 86; Gather et al. 2005; Karafyllis 2013; Nagle 2013; Ansorge 2022). This is because, due to the temporal offset in working hours, there is hardly any contact between the cleaners and the employees who work in the buildings mainly during the day (exceptions: hospitals, airports, etc.).

However, social science research in the tradition of Goffman also points out that 'visibility' of people and their work must be understood as a situational social construct. The mere fact that people are present and do their work in the presence of others does not necessarily lead to the social visibility of work or workers. A service can be performed as if no social beings were present (Goffman 1973, p. 325). Rabelo & Mahalingam (2019), for example, show in a qualitative study that cleaners often feel unseen precisely when they are doing their work in the presence of others but are actively ignored by them ("They really don't want to see us"). It is therefore not an automatism that daytime cleaning actually leads to more visibility of cleaning work and cleaners, and it is even less clear what follows from potential visibility for workers.

On the part of the cleaners, the current working hours at off-peak times often lead to split shifts (early in the morning, late in the evening, or at night), dispersed work locations, also to part-time employment or mini-jobs, and to low wages due to the low number of hours (cf. Sardadvar 2017). Employers and contracting authorities also see these problems, especially as they now have difficulties finding staff.

"Then we heard again and again: "It is so difficult to recruit staff!" The service providers are indeed getting to their limits there. The working hours make it difficult. Then, of course, there is also the issue of socially acceptable employment. Cleaners often work not only in mini-jobs, but also in part-time jobs - but not for six or seven hours or so, but often for three or four hours. And many of them have to work in two places, for example. There are cleaners who clean the gym in the morning from 5 to 7 a.m. That's a classic time, two hours in the morning, and then they have to take a

break at noon or go home again. And in a big city, the commute is of course not really acceptable in our view" [Interview Leitstelle].

Employers, trade unions and intermediary actors hope that different cleaning times will improve working conditions, make it easier to reconcile work and family life, and thus also have an advantage in recruiting staff.

Origins of the experimentation in Hamburg

In Hamburg, the image and appreciation campaign started in September 2019 and the piloting of daytime cleaning at four Hamburg schools ran from 2017-2019. The initiative had been launched by the City of Hamburg.

Two administrative departments were in charge:

- the "Leitstelle Gebäudereinigung" which is in charge of supervising cleaning tenders from a technical/professional angle, and maintains contact with the external service providers, and the
- "Zentrale Vergabestelle" i.e. the Central Procurement Office at the Hamburg Finance Authority, Building Cleaning Services Department", which carries out the tenders and is in charge of contract management).

The local employers association was also involved, and according to its own was in close contact with the Leitstelle. The project was also supported (but not initiated) by the local government. The daytime cleaning project has been pursued by the Leitstelle since at least 2012, when a first information leaflet was published (interview with Leitstelle). The most recent initiative was triggered by discussions between the 'Leitstelle' and the external companies, which pointed out that they had problems in recruiting and retaining staff for working hours at the edges of the day or during the night. The external service providers hoped that a shift in working hours would improve working conditions for their employees.

Actors involved + strategies

Involving and informing the users: Continuous discussions with users and persuasion by the Leitstelle in the schools concerned: This persuasion work was also necessary, according to the Leitstelle, because the users ultimately have to decide what is possible in their school or in their department.

"Before, it was like this: "Cleaning time from 4 pm to 8 pm". In schools, for example, that was the rule. Nobody really questioned that. Now we ourselves have become a bit more insistent. On the one hand, it is now more known among caretakers and school headmasters - well, sometimes not, because they don't know about the campaign for some reason, but it has become more familiar to both sides. And again, the focus is simply to talk more about it and not to accept these 4 to 8 p.m. cleaning times, but to consider where else we can do something about the cleaning times. But there are also schools and departments that simply don't want that" (Interview Leitstelle).

But there was and is no formal political decision in Hamburg for more daytime cleaning, because:

"We have excluded from the outset to say that we are now going to specify the topic or that it must be implemented, because we have always reckoned that it will not work in practice. We don't want to force the departments and the people to implement daytime cleaning. We want to convince them. And for that it was not necessary to make a formal document or something, but to

first secure the support of the minister, who also thought it was good" (Interview Tagesreinigung_00:07:03).

According to the Leitstelle, it was also not necessary to change the tender documents. The fact that the service is to be carried out as daytime cleaning can be stated in the tender under 'specifications ("besondere Spezifikationen")'. The interviewed companies have a slightly different view, more on this below. Legally, there are no obstacles to including daytime cleaning in the tender. One is free to do so in the tender:

"We practically specify how we would like to have this cleaning. And then either daytime cleaning is integrated or not. But there is no special legal examination for this or anything, not at all" (Interview Leitstelle_00:15:13).

Involving and informing the wider public: Another starting point was the media campaign "Clean Together". It went public in September 2019 (shortly before the Covid 19 pandemic). It was also initiated by the Leitstelle. It complemented the ongoing discussions with the stakeholders. The campaign aimed to improve the visibility and appreciation of cleaning work and the workers in the sector in the general public. It consisted of the following elements:

- Posters that were put up in the buildings of the city.
- Information leaflets on daytime cleaning and valuing cleaning work, which were also displayed in the buildings.
- Youtube videos with interviews about daytime cleaning in schools and the work of cleaners.
- The campaign was accompanied by press work of the city of Hamburg, which pointed out the start of the campaign.

The campaign website is no longer online, but the elements of the campaign can still be found on the website of the advertising agency that developed the campaign (<https://www.dierueckemaenner.de/wertschaetzungskampagne-fuer-hamburgs-reinigungskraefte/>)

Example poster motifs



Without going into the details, it is clear that the visibility problem mentioned above is tackled by making workers visible: People are depicted with their tools in a clean environment - and not just the clean rooms. The people depicted look directly at the viewers of the posters, and the references on the posters ('people in Hamburg say thank you' (left) and 'cleaning- there is more to it' (right)) refer to the fact that someone is doing this work, that these people have faces and names, and that they can expect recognition for it.

Alliance with potential users: Through model trials in four schools (2017-2019), an attempt was also made to forge an alliance with potential users. The trials were intended to create acceptance and identify pitfalls.

"And these were not typically schools that only run super well, but there was one school, for example, where we said: "Okay, maybe it doesn't always run smoothly, in terms of cleaning and communication, but we'll try to use daytime cleaning as an opportunity to improve things. (...) We have accompanied this very closely. So we have regularly exchanged ideas with the service providers, with the school management, with the caretakers" (Interview Leitstelle).

The four schools were selected for a pilot project to test the daytime cleaning concept. The four locations were selected together with reliable and experienced cleaning companies (external companies but also one cleaning company owned by the city). In these four schools, part of the cleaning work was shifted to the day. Daytime cleaning was not meant to cost more and was not meant to be an additional service (that only came with the pandemic) (Interview with Leitstelle).

"The conclusion of the whole thing was that it worked quite well in two schools, so they kept it, and in two schools it didn't work so well. They returned to the old system. But one has to say that the reasons are also complex. We found that a lot of it was down to the communication with the school directors and with the acceptance of the whole thing. And some of the reservations were already strong beforehand. And we didn't necessarily manage to change these reservations through the piloting. But that is also a lesson learned" [Interview_ Leitstelle_00:20:18].

So far (as of 2022), a total of 16 properties (five schools, two universities and eight departments/office buildings) have been put out to tender for daytime cleaning in Hamburg and currently one property (school) is still being put out to tender (information given by "Leitstelle", autumn 2022).

Additional legitimacy from the Covid 19 pandemic: The Covid 19 pandemic also contributed to the implementation of daytime cleaning, according to all interviewees, although there had previously been great reservations about this in the schools or other buildings in the city. The image and appreciation campaign coincided with the Covid-19 pandemic and the hygiene measures that were mandatory at the time. Daytime cleaning received an unexpected boost as a result, according to interviewees in the cleaning companies and the Leitstelle. For during this period, when daytime cleaning was suddenly possible and widespread, the interviewed company representatives noted, for example:

"I never had problems finding daytime cleaners. An above-average number wanted it. Most of them want to work 6 to 8 hours a day and that is when the children are also in care, not these split services" (Interview Company BLUE).

"It is indisputably easier to get one cleaner to work from eight to 12 than to find two people, from six to 8:00" (Interview Company WHITE, 8/2022).

A change in working hours thus made it easier to find workers at this stage. It has to be said, however, that daytime cleaning during the Covid 19 pandemic was usually added on top of the regular cleaning, it was also paid extra, and it was perhaps popular among workers for that reason. They were able to work more hours in 'their' building and thus got more hours without having to add another property. BLUE reports that this extra work was also reflected in the quality of the cleaning services. During this time, the quality inspections were always very good. The pandemic has helped to dispel concerns about daytime cleaning:

"During the pandemic, the issue of intermediate cleaning arose. Especially in the schools, because of all the disinfection requirements, that a cleaner, a daytime worker, is there for two hours or so during the day and "wipes through" again. So we found out afterwards that, strangely enough, it worked everywhere. So no one complained. Of course, schools were also closed. But during school hours, during the day, integrating a person who is there during the day was, funnily enough, possible in all schools at once. This is perhaps an idea that also stands out again, that during the pandemic it became apparent that if necessary, a cleaner could be integrated during ongoing operations" (Interview_Leitstelle, 5/2022).

A similar hope – the pandemic as initial spark for more daytime cleaning? – is expressed in the joint declaration of Uni Europa and EFCI (Resources: Joint declaration on daytime cleaning).

Obstacles, constraints, conflicts and learning processes

The interviewees on different levels perceive the problems and opportunities in implementing more daytime cleaning. In their statements, the interviewed Hamburg companies as well as the Leitstelle mainly refer to the experiences from the pilot projects in the participating schools, while the national employers association (BIV) and the trade union (IG BAU) representatives as well as the representative of a team of experts ("Kompetenzteam") are rather based on experiences from beyond the region.

Daytime cleaning as a communicative and organisational challenge

Similar to other publications and handouts on the topic of daytime cleaning, the stakeholders in the Hamburg example agree that the issue of communication is fundamental for a successful shift of cleaning work

to normal working hours during the day. It must be possible to integrate cleaning into the workflows on site. For this, communication on different levels is crucial: this concerns communication in the schools, on site, between the cleaning staff and the caretakers, between the Leitstelle and the school management or also between the front line management (Objektleitung) of the cleaning company and the school director or caretaker on site (interview Leitstelle). Or as the representative of the WHITE company puts it:

"It really doesn't work without the involvement of the users. They have to know that something is changing in the building. Of course, a bit of convincing has to be done in advance" (Interview company WHITE, 8/2022)

The cleaning companies need much more information about the properties (occupancy plans in schools or office buildings) in order to be able to draw up suitable schedules for their employees that take into account of the situation on site and of the needs of the users. But the companies hardly receive this information from schools, or only very slowly. Acceptance is not particularly high there. Overall, the opinion prevails in the schools that classrooms and also the teachers' rooms cannot be cleaned during the day, according to the unanimous assessment of the Hamburg companies BLUE and WHITE.

Overall, the respondents state that there is an acceptance problem when cleaning work becomes visible and takes place during normal business hours. There is a fear of disturbances caused by vacuuming or other noisy work, for example.

"This fear is not justified in the sense that with customers where we actually do daytime cleaning and where there was even some scepticism at the beginning, it has turned out that when it has become routine, it goes down quite well" (Interview company WHITE, 8/2022).

The problem with daytime cleaning (especially in schools) is that it is a fluid process, the school is never "completely" clean. This has to be taken into account in the quality controls. In Hamburg during the inspections by the SGG, this is usually the case (Interview Company BLUE, 10/2022).

Daytime cleaning is usually more expensive, according to the management of company BLUE. This is because the employees cannot usually work through the cleaning areas in one go during the day, but they always have to clean where it is organisationally possible. Depending on the building, this would result in more walking distances. In fact, the performance figures should be lower, but the customers would rather have the hourly volume stay the same. The employees who are deployed for this purpose must also be appropriately experienced and equipped: With closed cleaning trolleys so that nothing happens in busy buildings, with mobile phones so that they can be reached in the building in the event of spontaneous soiling etc.

Problems from the point of view of service providers and external experts regarding daytime cleaning

The interviewed managers at the BLUE company regretfully note a decreasing interest in the topic of daytime cleaning on the part of the City of Hamburg. There are still individuals in the relevant departments who promote this, but overall much more should happen.

There are only a few calls for tenders in which daytime cleaning is explicitly requested. In their view, a fundamental decision is needed from the top of the administrative hierarchy that daytime cleaning should be implemented as far as possible. But it must also be acknowledged beforehand that this will cost more (interview with BLAU). For daytime cleaning is more expensive (see above) because the cleaners need more time (more walking or removal of spontaneous soiling during operation).

In an interview with a 'publicly appointed and sworn expert' (see → CASE STUDY 3 on workloads) who, among other things, supports purchasing authorities in carrying out tender procedures for cleaning services, it emerges that, in her experience, the topic of daytime cleaning is only very rarely explicitly included in tenders. She points out this possibility to the client, but she observes reluctance on the part of the client, the service provider and also the cleaning staff to actually go down this path (Interview Kompetenzteam Gebäudereinigung, 9/2022).

Outcomes + (expected) impact on work; lessons

According to the actors in Hamburg, it has proven difficult to successfully introduce daytime cleaning (in schools). In the end, it is the buildings' users who decide whether they want daytime cleaning or not - in the absence of a general political decision. There were no unexpected side effects of the experiment, but the result was not a breakthrough for daytime cleaning in schools in Hamburg. In some it is done, in others not. And where there are reservations among the users (by the headmasters, the caretakers), it is difficult to refute them.

The experiment was not institutionalised in Hamburg. There was and is no principled decision to have public buildings cleaned only or predominantly during the day. According to the Leitstelle, no changes in the tendering procedures and documents would be necessary for this, the users would only have to want it. However, the interviewed companies expressed the opinion that a political decision was needed, because daytime cleaning is more expensive and time-consuming for the users during the changeover phase.

There are attempts to promote daytime cleaning, also in other municipalities (Jena, Berlin). However, it often remains at the level of model projects or expert dialogues on the topic. But a model invitation to tender is currently being drawn up to pave the way for more widespread use of daily cleaning in Berlin (see <http://joboption-berlin.de/gebaudereinigung>).

The promotion of more daytime cleaning naturally leads to different working hours that are more likely to correspond with childcare/school hours. Employees can potentially be offered other working time models, possibly more hours in one property. This does not necessarily make the cleaning work itself any easier. As mentioned above, daytime cleaning is more complex to organise (not all rooms can be cleaned at all times), it requires more communication with the users, language skills are important for this, and also the appropriate work equipment (mobile phones). Qualification concepts (e.g. language courses, organisation of own cleaning activities) that companies have and implement for their employees become even more important in the context of daytime cleaning. Protection gaps are not eliminated by daytime cleaning.

Resources and References

Interviews

Date (M/Y)	Organisation (Interviewees' role)
1/2022	IG BAU trade union, national level
5/2022	Leitstelle Gebäudereinigung , Hamburg = Municipal task force for procurement of cleaning services, unit within ministry of Finance + Zentrale Vergabestelle , Finanzbehörde Hamburg, Abteilung Gebäudereinigungsdienstleistungen = Central Procurement Office, division for cleaning services at Department of Finance, Hamburg
8/2022	Bundesinnungsverband Gebäudereinigung (BIV) = employers association cleaning industry, national level
10/2022	Landesinnung der Gebäudereiniger Nordost = employers association cleaning industry, regional level, Hamburg
8/2022	Cleaning company 'WHITE' (pseudonym), Hamburg
9/2022	Kompetenzteam Gebäudereinigung = Consultancy that provides expertise and support in public + private procurement processes (on criteria of decent workload and reasonable concepts and budgets)
10/2022	Cleaning company 'BLUE' (pseudonym), Hamburg
10/2022	Prüf- und Beratungsstelle für das Gebäudereiniger-Handwerk Hamburg (~Control and advisory agency for the cleaning industry Hamburg; https://www.pbst.de/) = business association / quality assurance association which is entitled to control wages and service quality among member firms. Membership is obligatory for bidding companies in Hamburg (2 interviewees: Managing director + control agent)

Documents

- <https://www.dierueckemaenner.de/wertschaetzungskampagne-fuer-hamburgs-reinigungskraefte/>
- <https://www.arbeitgestaltengmbh.de/assets/projekte/Joboption-Berlin/FaltblattTagesreinigung.pdf>
- [BIV Customer flyer A5 Daytime-Cleaning.pdf](#)
- [Broschuere Leitfaden Tagesreinigung Argumentation.pdf](#)
- *Report about workshop between social partners and public procurement:* <https://www.arbeitgestaltengmbh.de/assets/projekte/Joboption-Berlin/Publikationen/AG-Tagesreinigung-OnlineVersion-ES.pdf>
- *Statements of social partners*
- <https://gemeinden-bb.verdi.de/++file++628e435a531a31303c99ec64/download/Saubere%20Schulen+Hintergrundpapier%20PK+25.05.2022.pdf> (critical about the effectiveness of daytime cleaning on the working conditions of cleaners)

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CASE GER-3: Work pace in the cleaning industry

Brief description and key objectives

The experiment in this case study is that (some of) the companies and social partners develop performance standards for the industry. The aim is to re-establish a consciousness for the need of and a method to determine reasonable performance standards. This has been lost to the sector in the course of cut-throat competition. The standards are intended to convey to companies and to the contracting authorities that performance figures must not be determined at will and at ever increasing levels. Instead, they should always be tailored to the specific building and the scope of services required. In order to spread this basic concern, trade unions and professional associations rely on consultation, further education and information.

The standards developed by the organisations include approximate (bandwidth) performance figures for different types of premises - e.g. 160 to 230 sqm/hour for offices. These are to be used by the companies themselves when preparing tenders (self-regulation), but also by public purchasers as a benchmark, both when preparing tender documents and when evaluating bids. The aim is to prevent competition for public contracts from being fought on the basis of ever higher performance values (i.e. lower hourly rates) to the detriment of working conditions, service quality (and profit margins!). The aim is to dampen price competition in the interests of all parties and thus end the 'wild', uncoordinated cost-cutting practices in the public sector. It remains to be seen whether a) this will succeed and b) whether all sides will benefit equally.

Situation before experimentation: Too high performance indicators as a vehicle for wage cuts and work intensification

Performance figures are an important component in the calculation of projects and, in addition to the hourly rate, serve to enable a quantified comparison (Heintz 2010) between the bidding companies in the award procedure. Performance figures express the relationship between surface and time in which the employees must provide certain services. These services (e.g. how often windowsills are to be wiped) are listed in the tender specifications. In theory, it is obvious that the performance figures vary: the more (time-consuming) services a cleaner has to perform in a certain amount of time, or the more difficult the surface is to work on (e.g. stairs), the less square meter per hour the cleaner will manage. In practice however, performance figures are also a strategic factor for companies in the bidding process. They can keep their prices low in the calculation by setting very ambitious performance figures and thus gain a competitive advantage over other bidders. There are therefore performance figures that can be justified in terms of a realistic workload and that are determined based on operational experience or by specific methods (e.g. REFA method). But there are also "market-related" performance figures that are not oriented towards the principle of feasibility but merely serve to outbid competitors; or serve contracting authorities to keep down the costs for the purchased services (Interview RAL GGGR, 2/2023).

Thus, practitioners involved in procurement procedures report that they come across performance figures in service providers' offers that seem to be more in the realm of fantasy. They are set far too high and do not stand up to a feasibility check:

"Not uncommon are performance figures in the lower three-digit range: 115 sqm/h for sanitary cleaning, and for stair cleaning from 200 sqm/h upwards, which corresponds to about 13 storeys or 260 stairs including landings. This is generally difficult to understand" (Büttner 2015, p. 64).

Unrealistic performance figures, which translate into a very low bid price, are a problem for contracting authorities, even though they are required to take the most economical bid. This is because they must also ensure that they do not award a contract to an abnormally low offer (Büttner 2015, p. 64).

On the part of the companies, unrealistic performance figures and hourly rates in the calculation mean that they don't acquire adequately remunerated orders; and for the sector, it means that it has been characterized by a "ruinous competition" for years (Eigenstetter et al. 2016, p. 12).

The calculated performance figures (and hourly rates) are also relevant because they are likely to have an impact on the working conditions of cleaners. If they are set unrealistically high, less paid working time can be assigned to the facility than was calculated in the offer. It is then left to the employees on site (facility managers and cleaners) to either nevertheless provide the promised service (by working faster), or to negotiate deviations (if hygienically permissible) on a situational basis (cf. Latzke 2018, p. 258), or to accept quality losses. For decades, the danger of work intensification for cleaning workers has been repeatedly emphasized in this context by various parties (Gather et al. 2005, p. 22; BMAS 2011, p. 75, Eigenstetter et al. 2016, p. 12) and has also been the subject of a trade union campaign (see IG BAU „Sauberkeit braucht ihre Zeit“²¹ (~cleanliness requires its time)).

In view of this problem (unrealistic performance figures), the question arises as to how 'reasonable' performance figures are determined. A distinction must be made between the discussions on performance figures in general and the role of performance figures in the award process and in tender documents. The following section (Actors and strategies) looks at how and by whom performance figures in general are determined and promoted by the actors; the following section (outcomes, obstacles) looks at how they are used by purchasing authorities.

Actors and Strategies

There are no general binding standards for performance figures in maintenance cleaning. This is because performance figures depend on a variety of factors:

- the type of surfaces (carpet, stone surfaces, etc.)
- the spatial conditions (e.g. stairs)
- the services to be provided
- user behaviour
- the qualifications of the staff
- the cleaning technology and equipment used
- etc.

Opinions therefore differ among key players in the sector regarding the definition of performance figures:

The employers association BIV is rather critical of performance figures as a basis for calculation and is reluctant to publish and disseminate such figures. The corresponding brochure "performance figures in

²¹ <https://igbau.de/Sauberkeit-braucht-ihre-Zeit.html>

the cleaning trade: A Guide for Tenders and Contract Awards" by the BIV does not contain any recommendations for precise values or ranges. Rather, examples are used to show which parameters are to be used to calculate an appropriate performance measure depending on the conditions on site.

"General key figures for the tendering of cleaning services will therefore not help you. Define what exactly is to be cleaned in which room. Define your cleaning needs and thus the cleaning frequency. Define which quality standards are important to you." (BIV-Brochure „Leistungskennziffern im Gebäudereiniger-Handwerk. Ein Wegweiser für Ausschreibungen und Auftragsvergaben")

The RAL Gütegemeinschaft Gebäudereinigung e. V. (RAL GGGR), on the other hand, regularly publishes performance figures for individual room groups that were determined according to the REFA method – a method of time and motion studies involving both management and employee representatives. For the first time, RAL GGGR issued recommendations for performance figures in 2011 together with IG BAU - which is represented in the respective RAL committee - at the request of industry representatives. They were aware that such figures could be misunderstood in practice, which is why they had previously refrained from issuing recommendations. The brochure was intended as a very rough guide for those outside the sector. In an interview, the managing director comments on the publication of performance figures by the quality association as follows:

"Basically, we always produce such leaflets when we feel there is a need for them. That the sector needs it, or that clients also have a need for it. And so it was in 2010/2011 that we were repeatedly approached to at least make recommendations on the topic of performance indicators. And anyone who deals with performance indicators knows that there is no such thing as THE performance indicator, but that there is always a range. And this has also led to the fact that for years people did not want to publish such figures. Because it is so individual that no matter what you write, it is often not the right number. At that time, it was decided to publish a corridor, which in some cases has a 100 % range, in order to provide a very rough framework for the unsuspecting, who are not familiar with building cleaning, so that they can orientate themselves a bit." (Interview RAL GGGR, 2/2023).

In the current version, the Quality Association assumes the following performance figures, for example in schools (in addition, there are also guideline values for general administration or the health sector):

Example: Recommended performance figures for schools

Room Type	m ² /h
office	160-230
meeting room	150-280
toilet, washroom, shower room	60-90
kitchenette	80-150
lounges	120-190
changing rooms, dressing room	160-280
lift	90-150
hallways, manual cleaning	250-350
hallways, mechanical cleaning	300-650

Entrance hall incl. porches, foyer	250-600
stair cases	130-200
side rooms	250-350
teaching rooms	180-300
sports- and multipurpose halls, manual cleaning	250-400
sports- and multipurpose halls, mechanical cleaning	300-650

Source: RAL Gütegemeinschaft Gebäudereinigung e. V. (2020): *Empfehlungen zur Ermittlung von Leistungszahlen in der Unterhaltsreinigung*.

In addition, the interviewed representative of the RAL GGGR emphasises that performance figures depend on the services that are actually to be provided. The addition of the smallest of tasks to the scope of services, such as the cleaning of windowsills, can lead to differences in the performance figures and thus have a significant influence on the tender price. The RAL GGGR also wants to make contracting authorities aware of how performance figures are arrived at - but also to offer orientation values for people outside the trade, the "completely clueless", who have to carry out invitations to tender and assess bids (Interview RAL GGGR).

We are thus dealing with a relatively **broad range of approaches to self-regulation of the market** by stakeholders – including social partners, specific Quality associations (RAL GGGR) and consultancies such as the 'Kompetenzteam Gebäudereinigung' <https://www.kompetenzteam-gebaeudereinigung.de/>. Stakeholders draw on institutional resources, such as recognised methods of determining performance figures (REFA method). The actors try to support this form of self-regulation with additional resources (here: buying power of the contracting authority) by getting contracting authorities to take this as a basis for tenders and even to demand it authoritatively (by setting upper limits).

This is facilitated by the fact that the contracting authorities sometimes use external experts to prepare and carry out tenders for building cleaning services. A certain market for consultancy services has developed here. The organisations we interviewed (RAL GGGR, Kompetenzteam Gebäudereinigung), for their part, also emerged partly in reaction to rather windy consultancies that had established themselves in an early phase.

There is also the institution of the 'Öffentlich bestellter und vereidigter Sachverständiger in der Gebäudereinigung' (~ 'publicly appointed and sworn expert'), who is appointed through an administrative procedure and registered with the chambers of crafts - i.e. a corporatist element based on a specific legislation. This institution equally serves to distinguish serious or "real" experts from self-appointed experts, as the website of the Chamber of Industry and Commerce explains.

*"The term expert is not legally protected in Germany. As a result, experts who are not sufficiently qualified also call themselves experts and operate on the market. In order to distinguish real experts from such providers, German legislation provides for public appointment."*²²

²² <https://www.ihk.de/schleswig-holstein/recht/sachverstaendige/sachverstaendige/oeffentlichebestell/oeffentlich-bestellte-vereidigte-sachverstaendige-1370058>

The BIV offers a database on its website where interested clients can search for experts with relevant specialisation in the respective region.

Outcomes, obstacles, constraints

Performance figures in tender documents

In public tenders for cleaning services, performance figures appear in different forms. There are tenders in which performance figures are not mentioned at all. In this case, the bidders can set their own value.²³ Or they appear in the form of a maximum value that companies are not allowed to exceed. Or a "corridor" is specified in the tender within which performance figures can range.

If performance figures are given, it is important, according to the interviewees, that these performance figures have been checked for each individual case.

"It is not enough to simply take the performance figures or our values as a corridor. You have to deal with the topic much more, because, as I said, it is only a corridor that gives you a first indication" (Interview RAL GGGR, 2/2023).

The representative of the Kompetenzteam also points out that corridors with performance figures are actually not useful. When experts of the Kompetenzteam prepare tender documents for municipalities, these are drawn up specifically for an object on the basis of an on-site inspection, the room book and the bill of quantities. The resulting tender documents do not contain corridors, but maximum values that the bidding companies are explicitly not allowed to exceed; otherwise they will be excluded from the bid (Interview Kompetenzteam Gebäudereinigung, 9/2022).

A similar development is observed by an expert from the RAL GGGR, who sees an increasing tendency among contracting authorities to have maximum performance figures determined. These performance figures are then included in the tender documents:

"In other words, experts were consulted and told: 'Determine the maximum feasible performance figure for our system, for our cleaning, for our properties.' That was then done, and these were set as the upper limit. And the service provider was not allowed to exceed them. This is almost a small cry for help from the public clients: That the service provider, who is actually an expert, must be limited in his creativity" (Interview RAL GGGR, 2/2023).

Example of Hamburg

If one takes a look at actual tender documents, there is a wide range from "no specification of performance figures" to the specification of a maximum value that bidders are not allowed to exceed. To give an example, in the following tender from the city of Hamburg, a maximum performance figure is specified for room group C (sanitary rooms, washrooms, showers and changing rooms).

²³ The performance figures published by RAL GGGR might still be used as a reference value for the assessment of incoming bids by contracting authorities, even if they are not explicitly stated in documents.

"A maximum performance figure of 70 m²/hour is specified for room group C, which may not be exceeded. Exceeding the maximum performance figure will result in the exclusion of the tender from further evaluation." ²⁴

In the same tender, no maximum performance figures and no possible corridor of performance figures are specified for other room groups, such as room group A (classrooms, group rooms, etc.). Theoretically, the providers are free to calculate here what they want.

The interviewed cleaning companies in Hamburg welcome these maximum values:

"In the city, two to three room groups are sometimes assigned maximum performance figures, but the sanitary area has only recently been assigned. [...] That was also absolutely necessary" (Interview Company BLUE, 8/2022).

Otherwise, there was a danger that unrealistic bids would be submitted just to win the contract. According to our interviewees, in some cleaning companies, unfortunately, there are financial incentives for the employees in the sales department to do everything just to get the contract. In their view this leads to offers that distort competition because they are completely unrealistic.

Selection of bids: Checking the performance figures in offers

In the text quoted at the beginning of the case study report, from a trade journal for the contract cleaning industry (Büttner 2015), it became clear by way of example that the figures in the incoming bids are also checked and further processed by the contracting authorities. After all, the contracting authorities have to make a reasoned selection.

This further processing can be purely immanent and number-based: Maximum and minimum bid prices are first excluded. Then a mean value is calculated from the remaining bid prices. In the further selection process, only those bids are considered whose bid price is within a defined corridor around this mean value. In other words, numbers are correlated with other numbers via defined procedures (averaging, etc.) and the bids are regrouped. This creates a basis for argumentation so that 'outliers' do not have to be considered further. An interviewee from a contracting authority reports:

"Anyone who deviates 10 % from the mean is also excluded because it is then assumed that the cleaning cannot be effective" (Interview Leitstelle Gebäudereinigung, 5/2022).

A similar number-based procedure can also be used to determine specific, spatial performance measures (cf. Büttner 2015). In this procedure, the numbers themselves are not examined any further, i.e. the way how they were calculated is not checked.

A second strategy, at a later stage of the award procedure, is to "externalise the figures" [here: performance figures, hourly rates] "and trace them back to their original operations" (Heintz 2010, p. 173). This means that a plausibility check takes place and the stated performance figures and hourly rates are questioned: Can the required services in the specific property be provided at all in the stated time? Several possibilities were mentioned in the literature and in the interviews:

²⁴ Tender documents: Leistung: Glas- und Gebäudereinigung im Zentrum für Erwachsenenbildung, Holzdamms 5, 20099 Hamburg ab dem 02.01.2024; Vergabe-Nr.: FB 2022002220; Offenes Verfahren (EU) (VgV) Online verfügbar: <https://fbhh-evergabe.web.hamburg.de/evergabe.bieter/eva/supplierportal/fhh/subproject/ca75f233-9226-4a9c-8ae1-d6fb47ab38d7/details>, p. 101 – 103.

- Trial and error: Experts who advise contracting authorities point out that one can also check the appropriateness of performance figures oneself. This is even something people who have no expertise in cleaning are capable of doing. One can carry out the cleaning work 'in one's head' on the basis of the service specifications on site, in the actual property, and time it (Interviews with Kompetenzteam Gebäudereinigung 9/2022 and RAL GGGR 2/2023). This would provide the contracting authority with a rough overview of what is possible.
- Commission experts to check offers and performance figures: External consultants can also be commissioned to check offers. This also happens, as was confirmed to us in the interviews (see above). From the point of view of the Kompetenzteam, however, there are still too many consultants who are only after their own profit and are not oriented towards contributing to fair conditions in publicly commissioned cleaning. This leads to undercutting competition, which in the end is to the detriment of the employees.

"When I tender according to price, it is always at the expense of the employees. I can't get that out any other way. I really have to make sure that the clients are aware of this" (Interview Kompetenzteam Gebäudereinigung, 9/2022).

If the information does not seem plausible after examination, the bidders can be asked to explain calculation items that are not comprehensible (e.g. performance figures). If the clarification questions are not answered satisfactorily, the companies concerned can be excluded.

Management of the contract: Controlling performance figures

Even with fixed upper limits, companies still have room for manoeuvre to organise their work in such a way that the employees have less time for the areas than agreed with the client. This is then either at the expense of quality of service, or quality of work, or both (Interview RAL GGGR, 2/2023). In any case, it is not an automatism that workers are really given more time for their work.

In some cases, attempts are made to ensure this through controls - but these controls are controversial. For example, in Hamburg there are so-called "attendance books" in the cities' buildings, in which it is noted when workers of external companies are in the building. In the past, these books became an instrument for time keeping for the caretakers of the buildings who then demanded from the cleaning companies to stick to the contractually agreed hourly volume, in case the attendance times were lower. In the interviews with the companies BLUE and WHITE in Hamburg it became clear that the city is of the opinion that cleaners have fixed attendance/working hours. The companies see it differently. In their view, they owe a piece of work (=agreed cleaning service for the surface specified in the contract) and not fixed attendance times.

In fact, it is a legally contested issue, whether a cleaning contract is a contract for work. In 2018, a court ruled that it can even be a mix of both and found it to be lawful that a contract between a hospital required the contractor both to deliver clean rooms AND a contractually specified number of attendance time of its workers²⁵ (see also Kösling 2021 for a similar view). In practice, however, it seems that the issue is not settled. In the view of the companies, this interpretation of a cleaning contract as a contract of services is not only detrimental to a companies' internal flexibility (to occasionally compensate additional =not calculated and invoiced hours used for one building through a reduction of hours (where possible without

²⁵ OLG Hamm, Urteil vom 28.11.2017 - 24 U 120/16, see also Rödl and Partner 2018

detriment for cleaning quality) in another building. Moreover, they also underline that this deprives workers of the opportunity to leave earlier when the work is done. It is difficult to assess (without access to employees assessments and the companies' books) how often in fact this would be possible; and if this would then also mean that employees would actually benefit from NOT being controlled (as they would be paid more hours than they worked). With a view to the overall assessment of industry experts, that performance figures continue to be unrealistically high in most cases, we assume that this would be rather the exception.

Lessons and open questions

The problem for **contracting authorities** is that the whole process is based on comparing figures. Decisions based on figures are easier to justify (cf. Heintz 2010, p. 177). However, this approach reaches its limits due to various factors: If maximum values are specified in tenders for all room types, then it is to be expected that all offers will approach this value. This eliminates performance figures as a factor that can make a difference between bids. The specification of corridors probably does not solve the problem either, because here too there is a tendency for companies to approach the upper limit. The more specifications a tender contains, the fewer differences it will generate (=the numbers will hardly differ) and the more difficult it is to justify decisions. On the other hand, not specifying and waiting to see what companies offer can open the door to unrealistic bids.

Workers are not guaranteed to benefit from realistic performance figures. It is still possible that other factors in the calculation of the overall price such as company-related overhead costs are set too low. As a consequence, the workers might have to compensate for this by providing more services in a shorter period of time. Overall, from the workers' perspective, realistic and fair performance figures are rather a necessary but not a sufficient condition for better working conditions.

However, in combination with other approaches, fair performance figures can lead to better working conditions. As one industry expert explains:

"I believe that if I make a good offer, if I have a good room book, if my performance figures are in order, if I have planned enough control and organisational units, if I have checked the hourly rate and not just gone for the price: Then I also have the chance to get a reasonable cleaning for both sides." (Interview Kompetenzteam Gebäudereinigung, 9/2022).

It remains to be said that a fundamental problem in the awarding process is that numbers have a 'home advantage' in the process because of their "intrinsic media quality" (Heintz 2010, p. 177). It seems more plausible and easier to compare numbers (thus also the price in the end) than soft quality concepts that are only available in text form. Even if all the actors are of good will, there is still a downside in the procedure itself to ultimately justify decisions on the basis of numbers (bid price) and to avoid the more time-consuming way of comparing written cleaning and quality concepts.

It is precisely this – the inclusion of 'soft' factors, i.e. quality concepts, and their independent weighting *beyond* price (and performance figures) – that is necessary according to the assessment of our interlocutor at RAL GGGR. In addition, supplementary controls, including the various approaches to self-monitoring of quality and working conditions – such as those carried out by the Hamburg 'Prüf- und Beratungsstelle' (~Monitoring and Advisory Centre) or the RAL GGGR – are expedient.

Resources and References

Interviews

Date (MM/YY)	Organisation (+ interviewees' role)
01/2022	IG BAU trade union, national level
05/2022	Leitstelle Gebäudereinigung , Hamburg = Municipal task force for procurement of cleaning services, unit within ministry of Finance + Zentrale Vergabestelle , Finanzbehörde Hamburg, Abteilung Gebäudereinigungsdienstleistungen = Central Procurement Office, division for cleaning services at Department of Finance, Hamburg
08/2022	Bundesinnungsverband Gebäudereinigung (BIV) = employers association cleaning industry, national level
09/2022	Kompetenzteam Gebäudereinigung https://www.kompetenzteam-gebaeudereinigung.de/ = Consultancy that provides expertise and support in public + private procurement processes
10/2022	Cleaning company 'BLUE' (pseudonym), Hamburg (manager)
8/2022	Cleaning company 'WHITE' (pseudonym), Hamburg (manager)
10/2022	Landesinnung der Gebäudereiniger Nordost , Hamburg = regional employers association
10/2022	Prüf- und Beratungsstelle für das Gebäudereiniger-Handwerk Hamburg (~Control and advisory agency for the cleaning industry Hamburg; https://www.pbst.de/) = business association / quality assurance association which is entitled to control wages and service quality among member firms. (2 interviewees: Managing director + control agent)
02/2023	RAL-Gütegemeinschaft Gebäudereinigung (RAL GGGR) (https://www.gggr.de/) = Business association /Quality assurance association which is entitled to control wages and contracts among member firms (Managing director)

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CASE GER-4: Re-insourcing cleaning and improving the management of contracted out services

Brief description + key objectives of the experimentation

The city of Düsseldorf started a project titled 'Neue Reinigung' in 2017 with the aim to increase the share of in-house cleaners from ~20% to a minimum of 50% by the end of 2020. The driving force behind the project was the staff council of the city of Düsseldorf (representing around 10.000 employees), supported by the trade union Ver.di and the mayor (Social Democratic Party), despite the latter's initially contrary intention to fully outsource cleaning activities. The key goal of the project was a dual one: to improve the quality of cleaning services and to improve wages and working conditions for cleaners by bringing a larger proportion of them back under the better terms of the public sector collective agreement. The support of the local government was however tied to the condition that the project had to be 'economically viable' ("wirtschaftlich"). This basically implied the goal to avoid cost increases as far as possible by re-organising in-house cleaning and increase efficiency of cleaning procedures so as to level-up with the quantitative standards set by private sector cleaning companies. At the same time, quality standards were to be more clearly defined and raised; thus the project also included a re-organisation of the tendering procedures with a view to secure a better service quality. Working conditions of *outsourced* cleaners were by contrast not a priority of the project. As the case study shows, they are nevertheless affected by the experimentation, with ambiguous results.

Context and situation before the experimentation

Like many other cities, the city of Düsseldorf had gradually outsourced its cleaning activities from the 1980s onwards. While the city had once employed around 1.200 cleaners (headcount), their number had decreased to around 240 by 2006 (Interview Staff Council, 7/2023). As a result of its privatisation policies and other cost-cutting measures, the city was the second German city to declare itself debt-free in 2007 and was hailed as a role model at the time.

While the aim had thus long time been to save costs through simply outsourcing cleaning services, the pressure on prices for external companies was further increased by efforts to comply with the marketized procurement law. As explained above, the German government had been forced by the European legislation and jurisdiction to transfer its procurement related regulations from the budgetary law into the competition law, the new '*Gesetz gegen Wettbewerbsbeschränkungen*' (GWB) from 1999. At the same time - also at the request of the European level - a new legal procedure was introduced, which gave bidders the possibility to claim their right to 'unrestricted competition' in award procedures.

According to the representative from the municipal authority, the new procurement law changed the character of buying external services, since at some point the local audit office (*Rechnungsprüfungsamt*) demanded that the cleaning contracts be regularly re-tendered, in particular to comply with the public procurement law – while in the past, the contracts had obviously been renewed with the same providers for quite a long period.

The more frequent re-tendering procedures accentuated price competition; according to the recollection of representatives from the local employers association this had been much more moderate in the 1980s

and 1990s. The accentuated price competition was not merely an effect of more frequent tender procedures, but also of the administrations' anxiety (fear of being sued by unsuccessful bidders) to take into consideration quality related criteria.

„So the public procurement law: may be that it has saved money for the municipalities, but it has not improved many things for our companies, but since it was introduced, prices have fallen. You really have to say that. So that has brought a lot of disadvantages as well. The municipalities are afraid of lawsuits, of proceedings under public procurement law, which also delay everything, even if you win [the lawsuit] afterwards. But you do lose, from time to time, and municipalities are terrified of that. They no longer take any risks with regard to procurement law; they only do what is absolutely safe. But the absolutely safest thing, in terms of procurement law, is 'I'll take the cheapest one', so no one can complain anymore. And these are the things that bother us.“ (Interview Gebäudereinigerinnung Düsseldorf, 3/2023)

On the side of the public client, the municipal authority was increasingly confronted with problems and complaints about the cleaning quality.

“That is, we have increasingly contracted out and have noticed that the cleaning companies undercut each other with prices, and as a result, poor quality has been the outcome. It has become cheaper and cheaper in terms of price. On the one hand, that was good for the city, but of course we got a lot of complaints and had to follow up on that.” (Interview Amt für Zentrale Dienste, 3/2023)

Thus, the increasingly pressing quality-related problems can be regarded as a result of both local austerity policies and the more stringent application of the marketized procurement law.

Next to these quality-related issues, another relevant context of the project is the decreasing wage gap between the public and the private sector for cleaners, and thus diminished financial incentives to outsource. In 2006, a fundamental overhaul of the collective agreement for the public sector included the introduction of a new entry level wage group (“Entgeltgruppe 1 (EG 1)”) for “lowest” skilled tasks. At the time, this found the support of the trade union ver.di which thereby hoped to prevent further outsourcing of ancillary services from the public sector. It was a contested issue from the beginning whether it was appropriate to classify cleaners into this new wage group for “lowest” skilled tasks, and it was handled differently by municipalities. The city of Düsseldorf at any rate made use of the new wage group for its remaining in-house cleaners and continued to do so until at least 2021 (see Kösling 2021: 43). The financial incentive to continue outsourcing was further reduced by relatively strong wage increases as a result of the introduction and increases of the national minimum wage from 2015 onwards, and of the commitment of social partners to offer wages above the minimum wage (see section 2.3).

Origins of the experimentation: how an outsourcing project was turned into a re-insourcing project

The project started in 2015 with the local governments efforts to reduce public spending. The major from the Social Democratic Party originally sought to continue on the path taken and launched the project titled “Verwaltung 2020” (“administration 2020”) with the goal to reduce the municipal staff by a further 20% – not least through the means of fully outsourcing the remaining inhouse cleaning services. At the time, they accounted for 128 full time equivalents, corresponding to a share of 21% of overall employees involved in cleaning public buildings (BUND-Verlag 2021).

The staff council of the city of Düsseldorf however opposed this, supported by the trade union Ver.di, first in internal meetings with the mayor and as participants in the organisational unit that had been set up to implement the ‘Verwaltung 2020’ project; thus making use of their institutionalized consultation rights. Next to using these **institutional resources**, **networking and narrative resources** proved to be decisive in order to win the support of the local government. One very important incident was an annual staff meeting (with over 4.000 employees) where employees working in schools and public child care facilities strongly scandalized the problematic cleaning quality by private providers (Kösling 2021a, Interview Staff Council 8/2023). According to the interviewees, the fact that it was possible to link the question of insourcing with the issue of the quality of cleaning (narrative resources) made a decisive contribution to the acceptance and continuity of the project. This also automatically involved an external actor, namely the users of the buildings (in this case the parents). Against the background of problems with service quality, the reduced wage gap, and partly ambitions to combat precarious employment, the topic of re-insourcing cleaning services, or to at least stop a further outsourcing, had also been on the political agenda of other municipalities, including in the wider region (Mülheim, Dortmund), which is likely to have created a certain sensitivity and attention to the issue.

The staff council finally won the support of the mayor; the result was the inverse experimentation: instead of fully outsourcing the remaining in-house cleaners, the city decided in 2017 to re-increase the share of inhouse cleaners from roughly 20% to a minimum of 50% until the end of 2020. After the decision was taken, the mayor and its office actively supported the project; according to the staff council this **support from the political top** was also very important in order to overcome obstacles within the administration.

Actors and strategies

For the implementation of the project, the staff council used its institutionalised right to involve **external expertise**, in this case a consultancy (‘Urbane Infrastruktur’) with expertise in municipal infrastructure management, which had already previously been called in by staff councils in other municipalities in order to assist them in decision making processes on the issue of insourcing cleaning activities (DGB / FES 2021). The staff council thereby wanted to avoid having to rely solely on information from the administration on cleaning operations and on contracting when implementing the project. According to the interviewees, this expertise was equally of decisive importance as it allowed them to better assess and sometimes correct statements made by the administration, which in turn created room for manoeuvre that had not previously been seen by the administration. One example here was the issue of working hours, as well as the question of quality controls and sanctions (see below)).

The project involved both a **re-organisation of in-house cleaning** and a **change in tendering procedures and contract management** for external service providers. The two re-organisation processes were however interlinked, as the following analysis shows.

Four main elements and associated challenges relevant for working conditions can be identified

(1) Performance values

One of the core challenges was to agree on the higher performance standards to be met by in-house cleaners. As stated above, the starting point and condition for the project was that the in-house cleaning should be ‘economically viable’. A shared understanding among the parties however was that this did not rule out cost increases for the cleaning services or higher costs for in-house cleaners, at least not in the short-term. Instead, as the interviewee from the municipal authority tasked with the implementation of the project underlined, it was agreed that an *economic comparison* should take place between in-house

and outsourced cleaning services, based on both costs and quality, and that, based on this comparison, in-house cleaning "can be presented as economically viable" ("kann wirtschaftlich dargestellt werden") (Interview Amt für Zentrale Dienste, 3/2023). This basically implies that the costs between in-house cleaning and external cleaning should not diverge too much; and that there is a political consensus in favour of somewhat higher costs for in-house cleaning staff and thus better working conditions due to lower performance values and higher wage and ancillary wage costs. Still, according to the new internal directive for cleaning services from 2020, there is still the expectation that costs divergences will disappear in the medium term:

"As far as possible, the costs and cleaning quality of in-house cleaning and external cleaning will be adjusted to the same level by the Municipal Cleaning Department in the medium term. The changeover process, which will take several years, will be carried out successively on the basis of standardized specifications as part of the reassessment of cleaning in each property." (City of Düsseldorf, Geschäftsanweisung Gebäudereinigung, 11/2020)

The higher performance figures and further aspects were negotiated and fixed in an agreement between the works council and the Mayor in 2020, after two years of intense consultations including representatives from various administrative units and users of the buildings (DV Gebäudereinigung 2020). The result was a "compromise" (Interview Municipal authority, 3/2023) between external standards, among which the RAL GGGR corridors (see Case study 4), standards that "would be normal, even with external companies", but also the performance values that previously applied to inhouse cleaning staff which were considerably below the usual standards for the industry. In order to facilitate higher performance values, the municipality also invested in better cleaning machines and other materials and implemented additional measures suggested by the technical manager, a certified master craftsman of the cleaning trade.

The agreement with the staff council (DV Gebäudereinigung) provides corridors of performance values for each type of room (see annex of the case study). These have to be adapted for each object, also depending on the conditions on site (e.g. type of floors). These object-specific performance standards then provide the basis to calculate the (fictive) costs for in-house and external service providers, based on the *same* pre-defined performance values, but different hourly costs – the latter are equally pre-defined in the agreement, with the one for in-house cleaners even slightly below the one for external cleaners²⁶. This (fictive) cost comparison then provides the basis, together with other criteria laid down in the agreement (see point 4 below), for the 'make or buy' decision (see point 4). Due to the *lower* pre-defined hourly costs for in-house cleaners and the fiction of equal performance values, the costs should however by definition seldomly intervene as an argument against in-sourcing.

It should be noted that the assumption of *lower* hourly costs for inhouse cleaners contrasts with empirical assessments of inhouse vs. outsourced cleaning costs per sqm (see e.g. the example of the city of Karlsruhe in 2023²⁷; and further examples and benchmark figures given in Kösling 2021: 36ff), and is also

²⁶ In the first version of the DV Gebäudereinigung, these fictive hourly costs are set at € 21.60 for in-house cleaners and € 22.70 for external cleaners. The DV Gebäudereinigung also provides that these fictive hourly costs are to be adjusted based on real costs over the following years.

²⁷ In February 2023, the City of Karlsruhe rejected a proposal (by the Social Democrats and Greens) to re-insource cleaning activities, based on calculations by the administration that inhouse cleaning would lead to cost increases of 44% even if the so far lower performance figures for inhouse cleaners could be raised by 20%. (Stadt Karlsruhe 2023)

contradicted by the empirical values calculated by the City of Düsseldorf itself (see section 'outcomes' below).

(2) Defining and controlling service quality: Improving quality, crowding out low-cost providers

One, if not *the* key element of the re-organisation of both inhouse and outsourced cleaning services was the implementation of a range of measures aimed at securing quality standards. This includes

- the introduction of service quality as a selection criterion in tenders for contracted out cleaning services. Quality-related criteria are weighted at 60% (vs. 40% price). This required defining quality criteria in line with procurement law, which was somewhat of a challenge (see below)
- a precise definition of a quality standard that is mandatory for all (inhouse and outsourced) buildings. The standard was developed based on pre-existing quality norms published by several organisations (RAL GGGR, the employers association, the DIN association)²⁸, and is fixed in the new municipal directive (GA Gebäudereinigung) from 2020 developed as a mandatory part of the service description for each tender.
- The quality standards is also the basis for a quality management system that provides for regular and obligatory controls of the performance of both inhouse cleaning services and those of external companies. As part of this quality management system, a new form of complaint management has been introduced to ensure that deficiencies are reported quickly and can then also be rectified quickly – or also lead to contract termination.

The enhanced focus on cleaning quality has several reasons: firstly and most obviously, it aims to respond to the problems with service quality that had spurred the experimentation in the first place. Secondly, it was also actively requested from the Staff Council as a tool to prove the economic viability of in-house cleaning, by not only comparing costs but also the service quality between inhouse cleaning and external cleaning companies – an achievement the Staff council claims for himself in a brief project description:

In the steering group meetings of "Administration 2020", the Staff Council was able to ensure that the discussion of the reorganization of in-house and external cleaning was not just reduced to a price aspect, but that the economic aspect should be considered in conjunction with quality standards" (Personasrat Düsseldorf 2020)

As the Staff Council explains, a very important element of the re-organisation was not merely to define uniform quality standards, but in fact also to monitor them – and thereby also to effectively crowd out external companies with "dumping prices" that had only been able to compete on these low prices as long as they were not sanctioned for the low quality

But what has been added [...] is that we have not only set quality standards, but also monitored them. As a result of the fact that the invitation to tender was redesigned, as were the contracts with the cleaning companies, the screw clamps were of course tightened a little more when things didn't go smoothly. And that of course led to the fact that they could no longer maintain their

²⁸ As the municipal directive on cleaning (GA Gebäudereinigung) where the quality standard is fixed: "The quality standard specified in the service description is based on the Workplace Ordinance, the recommendations of RAL Gütegemeinschaft für Gebäudereinigung e.V., the guidelines for the awarding of contracts and invoicing in the building cleaning trade and, in the school sector, at least DIN 77400." (Stadt Düsseldorf 2020a)

dumping prices. Basically, it has to be said that the entire cleaning process has become more expensive, because they have now had to adapt their quality and thus also their working conditions and everything to what is required. And that didn't make it any cheaper. But we didn't want cheap. We wanted the cleaning to be economically good and of the same quality. And ultimately, working conditions [...] have actually improved and changed for the better for the cleaning staff at external companies as well" (Interview Staff Council, 7/2023).

The same logic - increasing the quality, and accordingly the price of the external service providers, thereby a) contributing to reduce cost differences between inhouse and outsourced cleaning and thus legitimate the economic viability of inhouse cleaning and b) potentially also benefit external employees – was also inherent in the Staff Councils support for quality-related selection criteria, such as the vocational education of team managers:

„Of course, if the external company says: "I have not hired a building cleaner [with at least a 3-year vocational education or a certified training as an 'Objektleiter'] here as a facility manager, (...) then there are fewer points. So the application is possible, but that is then taken into account with the point allocation accordingly. That leads exactly to that, namely if necessary also to an increase in price of the offered services, which was however quite naturally the goal" (Interview Staff Council, 7/2023)

The interviewees from the municipal management share the impression that word has gradually got around that the city carries out quality controls and that this can actually have the consequence that the contract is terminated. Overall, their assessment is "that things have improved, i.e., that the service providers are also becoming slower, so that they are scheduling more hours, so to speak" (Interview Municipal Authority, 3/2023) . The claim of the Staff Council that the crowding out of low-cost competitors also has a positive effect on working conditions of employees working for external companies is difficult to empirically verify, but can claim some plausibility. The effect of the project on overall working conditions of external cleaners will be discussed in a bit more detail below.

At this point, it should be emphasized that the effective monitoring of service quality and in particular the sanctioning of companies for substandard cleaning quality was also perceived as one of the major challenges and achievements by the interviewees from the municipal administration. According to the Staff Council, the municipal administration had previously been very reluctant or pessimistic about their ability to terminate contracts with providers due to low service quality; this was one of the issues where the Staff Council could rely on the support by the external consultant in order to overcome obstacles within the administration and expand their scope for action (Interview Staff Council, 7/2023). According to the figures provided by the municipal authority, in 2022 6 contracts were terminated without notice for poor performance and approximately 13 warning letters were issued (the first stage before terminating a contract).

Another challenge was the definition of quality-related criteria that would be compliant with procurement law. The administration for this aim also consulted the local employer's association. As a result, the tender documents ask companies to provide information on certain issues who will then be awarded more or less 'quality' points. One of them is the request to have a certified facility manager in charge of carrying out regular training for their employees, another trickier one is to request 'precinct plans' ("Revierpläne") by which bidders must explain how exactly (procedures, rotation, materials) they intend to clean the specific buildings. This basically requires that they have visited the buildings before submitting their bids. For reasons of public procurement law, these site visits cannot be prescribed, according to the interviewees from the municipal authority. However, the quality of the precinct plans differed greatly in some cases, and it is possible to tell from them whether someone has inspected the objects. In the past, at the

request of the local employer's association in Düsseldorf, the submission of precinct plans was dispensed with for a while, as this is a lot of work, especially for large properties, and especially if companies don't win the bid, it is a cost for them that is not offset by any income. However, it was then noticed that more companies were participating in tenders again from across the country, which were also not members of the employers association, and which competed for the contracts with very low-priced offers. Therefore, it was decided to make precinct plans obligatory again.

(3) Working hours

Another element of the re-organisation of in-house cleaning services was the clustering of buildings, i.e. the forming of groups of properties in relative proximity to each other and (if possible) with different types of use. This served multiple goals: allowing for higher hourly volumes for employees, supporting internal flexibility (by facilitating substitution of staff in cases of sickness or holiday related absences), dissolve one-sided workloads (e.g. only cleaning staircases), or also to promote internal ties or the "team spirit" among in-house cleaners (see Kösling 2021; DV Gebäudereinigung 2020). The agreement with the Staff Council further notes:

"In properties or clusters with at least 4 cleaning staff, foremen/team leaders are generally appointed. On a voluntary basis, several objects can be cleaned in succession. In the case of deployment in several objects, these are spatially located within a cluster. Deployment across clusters is only possible in justified exceptional cases. In the case of redeployment within a cluster, the approval of the Staff Council is deemed to have been granted." (City of Düsseldorf, DV Gebäudereinigung 2020).

This also allows to redeploy employees in cases where the hours assigned to a building are cut due to the higher performance standards. In these cases, it was agreed with the Staff Council that employees have to be offered the same amount of hours within the cluster, or else within another cluster in proximity to their place of living (Kösling 2021: 26).

It was part of the Staff Council's main goals to indeed offer in-house cleaners higher hourly volumes – at least 20 hours per week (corresponding to a pre-existing municipal resolution to refrain from marginal part-time jobs and concluded contracts of at least 20 hours per week), but preferably more. Here, the Staff Council in his own account greatly benefitted from the support of the external consultant to overcome opposition from the administration. They had, according to the interviewees, always heard from the municipal administration that cleaners cannot work full time jobs:

"A cleaner can actually only work half days, because then she is basically physically checkmated, so to speak. And if she does it for longer and for years, then it doesn't work". With the support of the external consultant, the Staff Council has contributed to at least a rudimentary rethinking in this regard, according to the interviewees: "A cleaner must be able to work 39 hours [...] just like any other worker and must also be able to grow old in the job".

However, the Staff Council acknowledges that this goal has not been achieved to date, but that the majority of staff still works around 20 hours per week. In the assessment of the Staff Council, this often fails for practical reasons, e.g. because the cleaning hours do not match the cleaners availability or would require split shifts which in turn makes it unattractive to combine multiple jobs in different buildings even if the properties are in spatial proximity to each other. The figures are corroborated by the municipal authority: At the time of the interview, the large majority worked 20-22 hours, only 17 out of 280 employees worked full time (39 hours) – but the explanation provided is somewhat different. According to the Municipal authority, all in-house cleaners were asked at the beginning of the project 'Neue Reinigung' for

their preferences. A part of them indeed chose to increase their hours. However, it often became apparent after a while that the employees could not cope with this, and their working hours were then reduced again at their request. According to the interviewees from the municipal authority, one of the reasons for this was that employees did not want to work in more than one building. Therefore, the Municipal Authority tries to take this into account when deciding which objects are to be outsourced and which are to be cleaned in-house:

"If I now have a property where I only have to clean for two hours every evening, we would not like to do that ourselves, because we have at least 20-hour contracts. This is then an object that is put out to tender as part of a lot. If the service provider has two other properties next door, he can do it with one person"

Apart from the slightly different explanations offered (Staff Council: limited attractiveness due to split shifts; Municipal Authority: overall reluctance to combine multiple jobs across different buildings), it seems worth noting that the municipal management seems to assume that multiple jobs in different building are feasible for employees of external service providers, but not for their own in-house cleaners – which also points to difference in treatment and is a cause for dissatisfaction on the side of external service providers (see next point)

(4) Make or Buy decision: Cherry Picking of 'good' buildings?

Another task is to determine which buildings will be selected for inhouse cleaning, and which ones will be contracted out. This decision is taken regularly (every 3 months) for all new surfaces and for those buildings where an external contract for a particular building is about to expire, and the decision is regularly communicated to the Staff Council. In the Agreement between the Staff Council and the municipality, a list of criteria has been fixed for this purpose. This list "serves as a guideline for a consideration to be made by [the municipal authority] as to whether individual objects have good cleaning conditions" (Stadt Düsseldorf 2020b ('DV Gebäudereinigung')). These criteria thus include questions such as:

"In case of several floors, is an elevator available? Are floor coverings suitable for 1-stage mopping? Is the use of machines (including larger corridors) possible? Are water taps/sinks sufficiently/conveniently available? Are the areas heavily cluttered with furniture or other movable objects? Is the amount of cleaning equal to or more than 40 hours/week? Are sports halls also used over the weekend or on public holidays?" Another criterion for NOT selecting a building for inhouse cleaning is: "Single precinct with low number of hours and no clustering possible" (Stadt Düsseldorf 2020b (DV Gebäudereinigung))

This list and the purpose it serves (determine "whether individual objects have good cleaning conditions") seems in fact to serve as a basis to systematically select the 'better' buildings for inhouse cleaners and contract out the more challenging buildings (in terms of working hours, characteristics of the surfaces and the building). This practice has been criticised and labelled as "cherry picking" by the local employer's association (Interview Local Employers Association, 3/2023) and is corroborated by the quote from the municipal authority above (on contracting out buildings with a low volume of working hours). The local employer's association has actively complained about this practice in talks with the municipality as this works to the disadvantage of external companies' ability to offer good working conditions to their own employees, and to recruit employees in the first place, in particular given the increasing labour shortages in this occupation.

Only kindergartens, or only these objects in the evening, late in the morning – we don't always want to have them, because that is also difficult for our people (...) Cleaners are rare, we have too few cleaners, (...) and they also know their value by now. In my own company, I have already

gathered the experience through conversations with colleagues, that cleaners now choose what they want. So, many stairwells, buildings with many WC facilities, a garden office with a lot of dirt (...), that is a challenge" (Interview local employers association, 3/2023).

Nevertheless, the private companies usually succeed in staffing even the more difficult to clean properties, which from their point of view in turn underlines the value of contracting out.

"So, conversely, this shows that the topic of in-house cleaning, if it works at all, it only works when it's selected properties. That actually speaks in favour of us as a service provider (...) which perhaps also shows our strength or our know-how, that we always get the properties filled that are difficult to look after" (Interview local employers association, 3/2023).

In the meantime, as the interviewees confirm, the city is trying to make the tenders a little more attractive, for example by putting different properties in close proximity to each other out to tender together in 1 lot, thus making working hours and working space more attractive.

Obstacles, constraints, conflicts and learning processes

The most important obstacles or challenges in the implementation process were of organisational nature, rather less due to budgetary or legal constraints. Budgetary constraints have so far not played out, which can be attributed to the exceptionally slack budget situation the city of Düsseldorf experienced from 2007 onwards. The first comparative evaluation of price and quality for in-house and external cleaning services has been postponed, due to Covid 19, and had thus not yet provided, at the time of the study, any dependable basis for judging the cost competitiveness of in-house cleaning. However, budgetary constraints may regain importance in the future, since the budgetary situation has changed not least with Covid 19 at the latest; the city of Düsseldorf has begun to accumulate debts again. Moreover, the costs for cleaning services have overall increased by more than 50% over the last years, according to the Municipal Authority. This is explained by the higher quality (and thus higher price) of cleaning services, but also strong wage increases (including for external cleaners) and additional public surfaces that require cleaning services. In this new context, evaluation results that show too high price differences between inhouse and external cleaning services might lead to a reconsideration of the decision to keep 50% of cleaning services inhouse.

Legal restrictions tied to the procurement law also play a role; in particular when it comes to sustainable sanctions for low-quality bidders. In the view of the Municipal Authority, the obligation for companies to seek approval from the City for the use of subcontractors is not sufficient to exclude the 'lemons'. Overall, it is difficult in their experience to exclude companies from the tender procedure, even if they know for a fact that some of them are dubious.

"It's dubious, but if it's true on paper... They're so skilled then, even the dubious ones, that we have no hand in officially excluding them." (Interview Municipal Authority, 3/2023)

It is for instance not sufficient if a bidder received a warning for poor performance in the past, which was then remedied. Or if the bidder in another city had the contract terminated; this is not sufficient under public procurement law, according to the interviewees.

The most important challenge however seems to have been the organisational challenges in setting up new procedures

- to manage a much larger group of inhouse cleaners, which also requires more management resources and expertise, e.g. in staff recruitment and retention, dealing with sickness and holiday related absences, redeploy employees in order to cater to their working hours preferences etc.

- to ensure more quality-oriented cleaning services, both for inhouse and external cleaners.

According to the Staff Council and the external consultant, there was a certain reluctance on the part of the administration to employ more inhouse cleaners again instead of almost exclusively relying on contracts with service providers. Moreover, according to the interviewees, with each new step toward professionalizing the cleaning operation (e.g., through quality management), the long-standing, well-established administrative practice was naturally also implicitly called into question.

"And with every new regulation, with everything that has been newly established, it has also been questioned: What have you actually been doing all this time? Why are the contracts with the private companies the way they are, so that you can't hold them responsible if they don't provide their services and still get their money; that they exploit their cleaning staff, which can't really be in the spirit of a local government. And, of course, it is questioned what the actors have actually done so far and with what goal" (Interview Staff Council, 3/2023)

Despite this initial resistance, according to the Staff Council, in the course of the project there was also an understanding in the administration that there were knowledge gaps that needed to be closed. The external consultant's expertise was ultimately also called upon by the administration in this respect, for example in the design of new invitations to tender, or in the design of the new contracts with the service providers.

Outcomes + (expected) impact on work

The project received an overall positive evaluation by all actors involved, and also by an external audit: It received the „German Staff Council Award“ in 2020, a yearly award for activities of staff councils in the public sector.

- The key goal, to increase the share of inhouse cleaning to 50% had not been reached at the time of the study, but it had increased to 43% (Interview Municipal Authority, 3/2023). The number of inhouse cleaners had almost than doubled (from 250 to 480).
- A larger proportion of cleaners is thus covered by the public sector collective agreement, which provides for higher hourly wages – in particular due to seniority related wage increases – and an additional pension schemes. Moreover, their contracts are permanent.
- Moreover, working hour volumes for inhouse cleaners are higher than in the overall cleaning industry, since the city abstains from marginal part-time employment. The Staff Councils' goal to raise working hours for the (majority of) cleaners substantially above the minimum of 20 hours was not reached, however. Close to 60% of all inhouse cleaners have contracts around 20-22 hours; and there are differing views between the Staff Council and the Municipal Authority whether this is due to cleaners' preferences or due to difficulties to organise coherent work schedules without split shifts

The effects are less clear for the remaining outsourced cleaners. On the one hand, the employers' associations points to persisting higher performance values required from outsourced cleaners. This is perceived as unfair treatment and also as a basis for an unfair comparison regarding the cleaning quality, as it distorts the comparison if this is not taken into account (Interview local employer association, 3/2023). This general concern – and the corresponding scepticism as to whether re-insourcing is the solution – was also expressed by the interviewee from trade union IG BAU (national level):

"Both private and public clients are squeezing prices. That's why we reacted with great indignation when a discussion suddenly arose that public-sector clients wanted to bring cleaning back in-house

because the cleaning companies were not working cleanly. That is not true. The cleaners at the cleaning companies often have too little time for cleaning, and the customer also contributes to this, because the customer, including the public client, does not want to pay for it. It is a difference whether I have 2 hours time for cleaning, or 4" (Interview IG BAU, 2/2021)

Moreover, as mentioned above, the practice of 'cherry picking', i.e. the selection of the 'better' surfaces for inhouse cleaning makes it more difficult for external companies to offer their employees reasonable work schedules and more attractive buildings (in terms of location and other characteristics of the surfaces to be cleaned). On the other hand, all interviewed partners share the view that the pressure on offering too high performance values (which then translates into pressure on work intensity for cleaners) has decreased. This can be considered one reason – next to relatively strong wage increases in the collective agreement for private cleaning companies – that the price gap between inhouse and external companies has diminished over the past years and is expected to decrease even further over the next years, as the figures provided by the external consultant show:

Total costs of maintenance cleaning per m² of annual cleaning area	unity	2019	2020
Inhouse cleaning	Cent	10,49	10,84
External cleaning	Cent	9,14	10,19

Source: City of Düsseldorf, quoted after Kösling 2021: 36

It seems plausible to assume that the crowding out of low-cost providers – through more effective monitoring and sanctioning procedures – will also benefit the overall job quality of outsourced cleaners. However, it was not possible in the course of this research project to obtain an assessment of this from the local trade union responsible for outsourced cleaners (IG BAU). It seems equally safe to assume that in order to improve working conditions for the remaining outsourced cleaners, the practice of 'cherry picking' needs to be replaced by greater efforts to design coherent working time schedules by clustering buildings for both in-house and outsourced cleaners. An open question is also whether the political consensus to organise a substantial share of cleaning services inhouse will persist, even if the first evaluation shows somewhat higher costs, and even if the budgetary situation of the city has deteriorated under the polycrisis.

Resources and References

Interviews

Date (M/Y)	Organisation (Interviewees' role)
8/2022	Staff council (Personalrat) of the city of Düsseldorf (1. Chair 2. member of works council in charge of the reinsourcing project)
3/2023	Municipal Authority (Amt für Zentrale Dienste der Landeshauptstadt Düsseldorf) – organisational unit in charge of infrastructural services for the city of Düsseldorf (2 representatives in charge of reinsourcing project)
3/2023	Local employers association (Gebäudereiniger-Innung) - employers association cleaning industry, local level (Düsseldorf) + regional level (overall 4 representatives)

Documents and references

DGB/FES (2021): Video-recording of a remote workshop on June 15, 2021, organised by German Trade Union Federation (DGB) and the Friedrich-Ebert-Foundation (FES), titled 'Reinsourcing as an alternative to outsourcing of cleaning services' ("Rekommunalisierung statt Vergabe in der Gebäudereinigung") https://www.dgbmedia.de/dgb/Vergabe_Tagung_Plenum_Teil_2_hi.mp4 [Download 3.2.2023]. in the workshop, the external consultant tasked by the Staff Council reported about the experiences in the project. The workshop was part of a conference on 'Public procurement: applying prevailing wages in local government contracting' ("Öffentliche Auftragsvergabe: Anwendung von Tarifreue in der kommunalen Vergabe") (<https://www.dgb.de/uber-uns/dgb-heute/wirtschafts-finanzen-steuerpolitik/++co++52272454-b237-11eb-8e38-001a4a160123>)

BUND-Verlag 2020: „Preisträger Gold: Deutscher Personalräte-Preis 2020: Personalrat der Allgemeinen Verwaltung der Landeshauptstadt Düsseldorf. Projekt: Neue Reinigung <https://www.bund-verlag.de/personalrat/deutscher-personalraete-preis/archiv/preis-2020/Preistraeger-Gold>

Personalrat Düsseldorf 2020: Kurzbeschreibung des Projekts 'Neue Reinigung für Düsseldorf'. Beschreibung für Bewerbung um Deutschen Personalrätepreis (unveröff. Manuskript).

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Kösling, Robert (2021): Qualitätsversprechen der Re-Kommunalisierung in der kommunalen Gebäudereinigung- Kurzstudie im Auftrag der ver.di Bundesverwaltung, Bereich Politik und Planung.

Annex

Time windows for cleaning work assigned to buildings in a tender lot

(Source: Lot 1 in Tender No. DUS-2023-0126 of the city of Düsseldorf, published February 2023)

- offices: Monday to Friday, 06:00 – 08:00 Uhr.
- child care facility: Monday to Friday, 16:30-20:00
- School: Monday to Friday, 12:30-17:30 + part of the building 06:00-09:00; Sport hall: 06:00-7:30

- School: Monday to Friday, 13:30 – 17:30
- Fire Station: Monday to Friday, 8:00-12:00

Buildings 1 to 4 are located in relatively close proximity to each other in the city center, building 5 is located outside of the city center at a 20 min drive by car.

- Buildings 1+2 provide for less than 20hours/week. A combination of these two or other buildings from the lot would imply split shifts for the employees
- Building 4 and 6 each provide for at 20 hours / week, hence a 'traditional' half-day job
- Building 3 offers a minimum of 25 hours. The additional hours in the early morning would either imply split shifts for the same employees. Alternatively, they could theoretically also be combined with building 5 (located however at a 20 min car drive outside the city) and thereby amount to a 6-hours work day.
- Buildings 4+5 could theoretically be combined for a full time job

CASE GER-5: A municipal experiment with pay clauses

Brief description + key objectives of the experimentation

For a long time, the state of Baden-Württemberg has been one of the few German states that does not have a legal regulation on pay clauses (see table x). There is only an administrative regulation ('Verwaltungsvorschrift der Landesregierung über die Vergabe öffentlicher Aufträge (VwV Beschaffung)) from 2018, which, among other things, defines "sustainable procurement" as a principle of procurement; this also includes the goal of "good and safe jobs for all employees". However, more detailed specifications for implementation are missing. At the same time, collective bargaining coverage is also in sharp decline in this federal state (DGB Baden-Württemberg 2022).

Origins of the experimentation: trade union campaign in favour of strengthening collective bargaining coverage

Against this backdrop, the DGB trade union federation in Baden-Württemberg has been campaigning for several years to strengthen collective bargaining coverage, both at the state level and at the municipal level. In the city of Karlsruhe, the DGB succeeded in initiating an experiment in this context in 2020: A cross-party motion in the city council (including from the SPD, the Greens, and the Left Party) instructed the administration to examine and test pay clauses. This initiative was aided by several factors: a well-connected local DGB chairman, active support from the state level of the DGB, and finally an SPD mayor open to these ideas (Interview DGB Baden-Württemberg, 5/2022). In addition, the DGB was able to draw on the support of a lawyer who had just worked out in an expert opinion (for the state of Berlin) the new legal possibilities in favor of pay clauses as a result of the new Posting of Workers Directive. After an initial meeting with the DGB and the responsible administrative units, the mayor therefore advocated using these new legal possibilities. In addition to the direct protective effect for employees of external companies, the DGB at the state level was also looking to achieve a symbolic effect: By referring to this (and, if possible, other) municipal experiments, argumentative pressure was to be generated on the state government to introduce a statutory tariff regulation. However, a corresponding motion by the SPD was again rejected by the state government (CDU/The Greens) in 2023.

Actors and Strategies

However, the cross-party motion refrained from mandatory pay clauses in every invitation to tender on the recommendation of the consulting lawyer, since procurement law requires a statutory regulation for this, but the municipalities have no legislative competence. The motion therefore only provided for an audit requirement for each contract. The motion was further weakened by a statement from the administration, which referred, among other things, to the lack of resources for monitoring and controlling pay clauses for all contracts. The administration therefore prevailed that the pay clauses would first be tested within the framework of a pilot tender; and only on this basis would a decision then be made on the further procedure.

The administration then selected a contract from the horticultural sector for testing in 2022 - with some delay due to corona. It was a conscious decision to choose a contract in the area below the European value thresholds, because there is no legal recourse for bidders here - so that, to a certain extent, the experiment remained 'under the radar' of the European law. The challenge here, however, was initially to

find out which collective agreement in the area could be considered a "representative" collective agreement. In this context, the contracting authority pointed out that this does not fall within the expertise of the administration and criticized that there is no institutional infrastructure that could be accessed for clarification. Instead, it was only able to obtain clarification through its own research and support from the regional DGB. The result of the research was that quite different collective agreements can be applied in this area. The contracting authority therefore decided against selecting a very specific collective agreement and making it a condition of execution. Instead, the commitment to an "applicable" collective agreement was taken into account as an award criterion. The price of offers from bidders covered by a collective agreement were discounted by 15%. The bidder's adherence to the collective agreement had to be confirmed by an auditor or a works council.

The bids received were relatively close in price. The contract was then awarded to a company that paid its employees in accordance with the collective agreement for the building cleaning trade (wage group for skilled work). However, this bidder would have been awarded the contract even without the collective bargaining agreement because it was the lowest priced bid. Thus, no companies that only pay wages close to the statutory minimum wage participated in the tender. If they had taken part, they would have had to be awarded the contract despite the pay clause because they would have been almost 50% cheaper than the company that has now been awarded the contract; even the price reduction of 15% would not have been able to compensate for this. The fact that no companies with significantly lower remuneration applied is also attributed by the awarding authority to the fact that this activity is a skilled activity. However, no explicit skill requirements were included in the tender specifications or the suitability criteria.

Obstacles, constraints, conflicts and learning processes

At the time of the interviews, no decision had yet been made on whether to continue this experiment. However, the contracting authority evaluates the experience overall critically. In the pilot procedure, the benefit was low (tariff compliance criterion made no difference to selection), while the effort involved was high. In the view of the authority, the benefit is also limited by the fact that procurement law imposes the restriction that any pay clause only apply to the individual contract and may not extend beyond it (due to 'link to the subject matter'-criterion). In addition to the (lack of) control capacities, the effort required to determine the relevant collective agreement is something that overburdens smaller contracting authorities in particular. In the experience of the awarding body, there is also a lack of supporting infrastructure here. However, the register of collective agreements, which the state of Berlin has meanwhile created to implement its own Tariftreuegesetz, is considered useful and a possible model for the state of Baden-Württemberg as well.

Outcomes + (expected) impact on work – and alternatives to pay clauses (including re-insourcing)

The self-assessment by the contracting authority is thus that there are overall limited benefit against substantial efforts attached to introducing pay clauses based on a local level ordinance (rather than based on a state legislation). As an alternative to pay clauses, however, the contracting authority has in the past developed other approaches designed to ensure the actual application of collective agreements and also to improve the quality of the service. In the case of security services, pay can also be controlled by means of specific qualification requirements. In the very first invitation to tender issued by the central contracting authority in 2013, very precise specifications were made on the basis of the collective agreement as to the qualifications required of the personnel and thus which remuneration group the calculation should

be based on. The bidders have to include a differentiated calculation of their hourly rate with the bid, which breaks down the wages and wage components paid. In the building cleaning sector, one of the options used is to set maximum area specifications. Nevertheless, in the experience of the contracting authority, this has hardly made any difference, at least as far as the quality of the cleaning service is concerned. It would also be possible to still undercut the collectively agreed wages despite all these regulations, for example by cutting paid hours.

Presumably also against the background of these experiences, a reinsourcing of building cleaning services is currently being examined by the city at the request of the left-wing parties in the City Council, not least fuelled by a media report about non-compliance with the (generally binding) collective agreement for cleaning staff of external service providers (see SWR 2023). One of the reasons given for the new motion for reinsourcing was that "compliance with collectively agreed wages and working conditions in these companies cannot be monitored by the city as the client, for reasons of cost and capacity" (Die Linke Karlsruhe/KAL 2023, own translation). Despite the additional costs of 25-30% for reinsourcing cleaning services (calculated by the administration), the administration was commissioned to develop a concept for increasing the in-house cleaning share from the current 26% to 50% (similar to → CASE STUDY 3) (see Gemeinderat Karlsruhe 2023). A final decision on this is still pending.

Resources and References

Interviews

Date (M/Y)	Organisation (Interviewees' role)
5/2022	DGB-Baden-Württemberg, 5/2022
5/2022 10/2022	+ Municipal Authority (Zentrale Vergabestelle), City of Karlsruhe (2 representatives)

Documents

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SWR (2023) Bezahlung unter Tarif- und Mindestlohn? Stadt Karlsruhe will Vorwürfe von Reinigungskraft prüfen. SWR, 28.2.2023 <https://www.swr.de/swraktuell/baden-wuerttemberg/karlsruhe/stadt-karlsruhe-will-vorwuerfe-von-reinigungskraft-pruefen-102.html>

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Conclusions

Public procurement has increasingly become the focus of political and public attention, especially since the controversial "Rüffert" ruling of the ECJ in 2008, which overturned Germany's prevailing wage laws. Particularly in the area of pay clauses, there has been considerable momentum at the legislative level since the last major procurement law reform in 2014. However, the impetus has come not so much from the public procurement directives themselves, but from legislative experimentation at the sub-national level and a change in case law, as well as the new Posting of Workers Directive. These have recently led to a return to pre-Rüffert prevailing wage laws, but their implementation is still in its infancy. Moreover, there are still disputes at national level as to whether this second generation of prevailing wage laws is compatible with European law. Further developments will therefore remain uncertain until there is clear clarification from the European level.

For the two sectors in focus here, the procurement specific minimum wages were of greater importance in the past, as they were in part above the level of the lowest collectively agreed hourly wage. It is already the case in both sectors that wage competition is relatively strongly restricted by generally binding collective agreements. This commitment, also on the part of employers' associations, to extend collective agreements is the exception in the German services sector. In addition, the introduction of the national minimum wage in 2015 and its relatively sharp increase to EUR 12 in October 2022 has reinforced the trend of relatively strong wage growth in both sectors over the past 10 years.

At first glance, therefore, both sectors are comparatively heavily regulated by general laws and collective agreements, which is atypical for service industries in Germany. An obvious assumption would therefore be that public procurement is not additionally needed to ensure good working conditions in both sectors. However, this is not the case. As this report shows, there are many areas where BDW practices could, and in some cases do, make a difference.

Although collective agreements restrict wage competition even in the case of purely price-based tenders, the respondents from the employers' organisations in both sectors consider it necessary to take quality criteria into account in order to effectively exclude low-cost suppliers who de facto compete on working conditions (through non-compliance with labour law and collective agreements). Moreover, the enforcement of collective agreements is also seen as a protection gap by trade unions and, to some extent, by employers' representatives. Some municipalities have started to complement the monitoring and sanctioning regime of the general labour inspectorate (Customs / FKS) (see CASE STUDY GER-1). However, these are still the exception, and compared with other countries (particularly Denmark, see the Danish country report), the resources invested and the effectiveness remain limited. Other, equally important 'experiments' set or extend working conditions beyond wages. These include efforts to minimise the use of atypical work or low-hour contracts (CASE STUDY GER-2 and GER-4), to control and reduce the pace of work in contract cleaning (CASE STUDY Ger-3) or to avoid unsocial working hours (CASE STUDY GER-2). The effort that these experiments entail for the contracting authorities is not negligible, and in some cases legal uncertainty also delays a more ambitious approach or the continuation of an experiment (see e.g. CASE STUDY GER-5). In addition to legal uncertainty and fears that this will make procurement more expensive or result in no bidders applying, organisational challenges also play a role. After all, these initiatives involve the contracting authorities as a third party intervening in working conditions. This requires more than just setting requirements on paper. Banning mini-jobs, for example, is unlikely to be very effective if, at the same time, time slots for cleaning public buildings are offered only during short off-peak

periods. Buying decent work practices therefore involves transaction costs - but most respondents believe that these are essential and worth the effort.

Transaction costs and the narrowing of the wage gap between the public and private sectors (due to minimum wage and prevailing wage laws) may also encourage more municipalities to re-insource these services in the future. Some municipalities have already started to re-insource their in-house cleaning services (see CASE STUDY GER-4), thus 'taking back control' of working conditions. As public budgets come under greater pressure from the polycrisis, even in Germany, it remains to be seen to what extent other municipalities will follow suit. However, the benefits of insourcing for employees can to some extent spill over to the remaining outsourced parts of the public sector, if these efforts are based on a conscious strategy of providing equal working conditions for private and public sector employees.

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List of interviews

1	1/2022	IG BAU - trade union, cleaning industry, national level
2	2/2022	Ver.di - trade union, security services, regional level
3	2/2022	BDSW – employers association, national level
4	4/2022	KNB (Kompetenzteam für nachhaltige Beschaffung) – advisory and support center for sustainable public procurement
5 + 6	4/2022 + 12/2022	DGB (Deutscher Gewerkschaftsbund), trade union confederation, national level
7	4/2022	DGB Rheinland-Pfalz/Saarland , trade union confederation, regional level
8	5/2022	DGB Baden-Württemberg trade union confederation, regional level
9 + 10	5/2022 + 10/2022	Central Procurement Unit (Zentrale Vergabestelle), City of Karlsruhe
11	5/2022	Leitstelle Gebäudereinigung - Municipal task force for procurement of cleaning services, Hamburg
12 + 13	6/2022 + 8/2022	Kontrollgruppe nach dem BerlAVG - task force in charge of controlling public contracts, Berlin
14	8/2022	BIV , employers association cleaning industry, national level
15	8/2022	Chair of Works Council , large company in security services
16	8/2022	Staff council (Personalrat) of the city administration, Düsseldorf
17	8/2022	Landesinnung der Gebäudereiniger Nordost , employers association cleaning industry, regional level, Hamburg
18	8/2022	Cleaning company 'WHITE' (pseudonym), Hamburg
19	9/2022	Joboption Berlin' (https://www.joboption-berlin.de)
20	9/22	Kompetenzteam Gebäudereinigung – consultancy for public and private clients purchasing cleaning services https://www.kompetenzteam-gebaeudereinigung.de/
21	9/2022	Company SECURITY 1 , Berlin
22	9/2022 + 5/2023	Beauftragte für Gute Arbeit = Commissioner in charge of implementing 'Good work' in the administration of one district in Berlin
23	10/2022	PBST (Prüf- und Beratungsstelle für das Gebäudereiniger-Handwerk Hamburg) (https://www.pbst.de/)
24	10/2022	Cleaning company 'BLUE' (pseudonym), Hamburg

25	11/2022	BEMA („Berliner Beratungszentrum für Migration und Gute Arbeit“) - a consulting +support center for migrant workers in Berlin https://bema.berlin/
26	11/2022	BDSW - Regional employer association for security services, Berlin
27	12/2022	Contracting authority within a state department, federal state of Berlin
28	12/2022	IG BAU Berlin-Brandenburg (regional trade union for cleaning industry)
29	1/2023	Company SECURITY 2 , Berlin
30	2/2023	RAL-Gütegemeinschaft Gebäudereinigung (https://www.gggr.de/) - Business association /Quality assurance association, cleaning industry
31	2/2023	ELAN (Entwicklungspolitischen Landesnetzwerk Rheinland-Pfalz) – Federation of development policy associations, Rheinland-Pfalz, supporting local authorities to implement fair trade criteria in public procurement
32	3/2023	Amt für Zentrale Dienste der Landeshauptstadt Düsseldorf – administrative unit in charge of infrastructural services for the city of Düsseldorf
33	3/2023	Gebäudereinigerinnung Düsseldorf - employers association cleaning industry, local level + regional level

Annex

Table A- 1 Collectively agreed hourly wages and wage supplements in security services (according to CAs agreed between BDSW and trade unions Ver.di or GÖD (as of Jan. 2022 + 2023)

	Stationary Guard ¹		Guard with training certificate ²		Qualified worker (3 year vocational training) ³		Night supplement	Sunday suppl.
	2022	2023	2022	2023	2022	2023	mostly 8pm - 6 am	
BADEN-WÜRTTEMBERG	11,56	13,00 = +12%	14,98	15,80 = +5%	17,05	17,99 = +6%	15%	35%
BAYERN	10,96	13,50 = +23%	15,28	16,50 = +8%	17,56	18,96 = +8%	23%	26%
BERLIN	11,35	13,00 = +15%	12,80	14,54 = +14%	13,80	15,35 = +11%	10%	25%,
BRANDENBURG	11,35	13,00 = +15%	12,80	14,54 = +14%	13,80	15,35 = +11%	10%	25%
BREMEN	10,75	12,00 = +12%	12,19	12,57 = +3%	12,19	12,57 = +3%	5%	50%
HAMBURG	10,76	13,00 = +21%	12,74	14,40 = +13%	12,74	14,40 = +13%	15%	50%
HESSEN	11,30	13,00 = +15%	13,90	14,75 = +6%	16,22	17,22 = +6%	12% / 25%	25%
MECKLENBURG- VOR- POMMERN	11,05	13,00 = +18%	12,50	14,00 = +12%	13,50	15,00 = +11%	10%	25%
NIEDERSACHSEN (GÖD)	10,90	12,51 = +15%	14,54	15,54 = +7%	14,54	15,54 = +7%	10%	50 % / 25%
NORDRHEIN-WESTFALEN	11,58	13,00 = +12%	17,64	18,87 = +7%	18,05	19,17 = +6%	10%	50%
RHEINLAND-PFALZ / SAAR- LAND	11,15	13,00 = +17%	13,68	14,50 = +6%	13,68	14,50 = +6%	10%	25%
SACHSEN (GÖD)	11,15	13,00 = +17%	12,55	14,30 = +14%	13,15	14,90 = +13%	10%	25%
SACHSEN-ANHALT	11,15	13,00 = +17%	12,63	14,48 = +15%	13,68	15,53 = +14%	10%	25%
SCHLESWIG-HOLSTEIN	10,71	13,00 = +21%	12,23	14,60 = +19%	12,23	14,60 = +19%	10%	10%
THÜRINGEN	11,15	13,00 = +17%	12,04	14,04 = +17%	12,50	14,35 = +15%	5%	15%

1: Objektschutzdienst / Separatwachdienst 2: IHK-Geprüfte Werkschutzfachkräfte / gepr. Schutz- u. Sicherheitskraft (GSSK) → ~60 days full-time training, + min. of 2 years work experience 3: Fachkraft für Schutz und Sicherheit