

Dr. Lorraine Ryan, Dr. Juliet McMahon & Dr. Jonathan Lavelle
June 2026

Public Procurement and Collective Bargaining in Ireland

Imprint

Published by

Friedrich-Ebert-Stiftung Ireland
an Imprint of Friedrich-Ebert-Stiftung UK
31 / 32 Parnell Square
Dublin D01 YR92
Ireland

Responsible

Luise Rürup
Director Friedrich-Ebert-Stiftung Ireland & UK
Phone +44 207 612 1900

To order publications

info.dublin@fes.de

Layout

Rohtext, Bonn

The views expressed in this publication are not necessarily those of the Friedrich-Ebert-Stiftung e.V. (FES). Commercial use of the media published by the FES is not permitted without the written consent of the FES. FES publications may not be used for election campaign purposes.

June 2026

© Friedrich-Ebert-Stiftung e.V.

ISBN 978-1-0687360-6-3

The FES Dublin Office is part of the international network of FES. It was established in 2023 to promote better understanding of Irish-German relations, mainly by means of seminars and reports on political trends in Ireland and Germany.

For more information please visit:

➤ ireland.fes.de

Dr. Lorraine Ryan, Dr. Juliet McMahon & Dr. Jonathan Lavelle
June 2026

Public Procurement and Collective Bargaining in Ireland

Contents

1. Introduction	4
Aims of the Research Project	5
2. Collective bargaining and the social clause of the existing EU public procurement legal framework	6
The European Directive: An Overview	6
Discussion	10
Collective Bargaining / Collective Agreements	10
Ireland	12
The Netherlands	15
The UK	19
Scotland	21
Germany	22
3. Collective Bargaining and Public Procurement in the AMWD	25
Overview	25
Ireland	29
The Netherlands	31
Germany	32
4. Collective bargaining and public procurement in the forthcoming proposed revision of the public procurement directives	34

5. Potential Reforms to Ireland’s Policy, Regulatory and Industrial Relations Context – Options and Obstacles	36
1. Statutory trade union recognition for the purposes of collective bargaining.	36
2. Extend collective bargaining so that sectoral provisions become a mandatory part of the prevailing ‘applicable obligations’ in the field of labour law.	36
3. Including collective bargaining arrangements as a positively weighted criteria for the award of public contracts	37
4. Strengthening compliance with employment regulations and obligations	38
6. Conclusion	39
Bibliography	40
Glossary of Key Terms	43
About the Authors	44

Abstract

This report investigates the capacity of public procurement, through social clauses, to promote collective bargaining in Ireland. It examines policy, legislative and industrial relations contexts that shape the use of social clauses in both Ireland and Europe. Drawing on comparative country case studies in Ireland, Germany, the Netherlands and the United Kingdom, the research analyses how public procurement frameworks can be used as a policy tool to achieve social as well as economic objectives. Public procurement has been identified as a potentially important opportunity for the enhancement of collective bargaining in line with European social objectives.

The selected case studies provide in-depth nuanced insights into different institutional approaches, legal mechanisms, and policy designs that link public contracts to the achievement of social objectives, including workers’ rights to representation and decent work. These include measures that incentivise or require collective bargaining in public contracts across different national contexts. It also highlights the practical and legal challenges to these.

The report focuses on two key areas shaped by European Directives – public procurement rules and the promotion of collective bargaining as a means to achieving adequate minimum wages. It analyses the obligations and options Ireland has in respect to the promotion of collective bargaining through public procurement and shares insights from other countries across these spheres.

Building on these findings, the report evaluates both existing provisions and potential reform pathways for Ireland’s policy, regulatory and industrial relations context that would strengthen the role of public procurement in supporting collective bargaining. These include statutory trade union recognition for the purposes of collective bargaining; extension of sectoral bargaining and the inclusion of collective bargaining arrangements as a positively weighted criteria for the award of public contracts.

1. Introduction

Background: Discussions concerning collective bargaining have gained increasing prominence in public policy and academic circles in recent times (De Spiegelaere, 2025; Doherty, 2025). A central objective of the EU Adequate Minimum Wages Directive (AMWD) (Directive (EU) 2022/2041) is to promote and expand collective bargaining on wage setting. As part of that directive, Member States with collective bargaining coverage below 80% must provide a framework of enabling conditions for collective bargaining and establish an action plan, with the involvement of the social partners, to promote collective bargaining and to increase collective bargaining coverage. The Irish Government has thus developed Ireland's Action Plan to Promote Collective Bargaining 2026-2030¹ through a range of measures. Among other key issues, this contemporary policy context draws attention to opportunities for the enhancement of collective bargaining through social clauses in public procurement.

Social clauses in public procurement are not a new initiative and have been used in many jurisdictions over the years, including in post-apartheid South Africa, as a mechanism for advancing redistributive policies, in Northern Ireland to pursue fair employment, and in the United States during the New Deal². The EU public procurement framework envisages a number of options for incorporating social objectives into procurement. In particular, the 'social clause' of the EU public procurement directives,³ adopted in 2014, makes it mandatory for contracting authorities to enforce applicable labour and social laws and collective agreements in their procurement activities. Furthermore, contracting authorities may exclude an economic operator from a public procurement procedure where they can demonstrate that the operator has violated applicable social or labour obligations⁴. However, in its 2020 impact assessment for its proposal for the AMWD, the European Commission acknowledged the 'lack of data' on the implementation of the social clause in all Member States⁵.

The capacity of social clauses to help expand collective bargaining has thus re-emerged as an area of interest among social partners and academics (Doherty, 2025). Such clauses have been cited in both the AMWD and the Government's Action Plan as one potential means for promoting collective bargaining. In particular, Action Item 6 of the Government's Action Plan commits to:

'Conduct exploratory research, including a Regulatory Impact Assessment and SME test, regarding the potential of the introduction of a pilot to include collectively bargained agreements as a weighting in a public procurement project.'

The corresponding success indicators of this action item are that a 'pilot is concluded' and 'learnings identified'.

Action Item 11 seeks to:

'Examine the role of Joint Labour Committees (JLCs) in government-funded sectors'

The corresponding success indicators for this action item is noted as the 'Number of active JLCs and frequency of negotiation'; the 'Number of EROs' and 'Positive Labour Court Reviews'.

Action Item 12 seeks to:

*'Liaise with the Department of Finance on a proposal to re-introduce tax relief for trade union subscriptions'*⁶

The corresponding success indicator for this action item is that an 'impactful mechanism' is developed.

Furthermore, forthcoming revisions to both the EU's 2014 public procurement directives as well as the Irish National Public Procurement Strategy means that a research review of this area is both timely and important.

¹ Ireland's Action Plan to Promote Collective Bargaining 2026-2030

² For a comprehensive discussion, see McCrudden, C. (2007). *Buying social justice: Equality, government procurement, & legal change*. OUP Oxford.

³ Directive 2014/24/EU on public procurement (Article 18(2)) ('Public Contracts Directive') ; Directive 2014/25/EU on utilities (water, energy, transport, postal services) ('Utilities Directive') (Article 36(2)) ; and Directive 2014/23/EU on concessions (Article 30(3)) ('Concessions Directive').

⁴ Public Contracts Directive, Article 57(4)(a).

⁵ European Commission (October 2020), Impact Assessment accompanying its proposal for a directive on adequate minimum wages, SWD (2020) 245 final, Table A9.5,

⁶ The authors take the reference in Action Item 12 'as a weighting in a public procurement project' as a typo that is not intended to be there. If this interpretation is incorrect, we would ask Government to clarify how it envisages the action item, as set out, working in practice.

Purpose: The purpose of this report is to examine public procurement and its capacity to promote collective bargaining in Ireland.

Aims of the Research Project

- To review academic literature, legal frameworks, and policy documents on the implementation of social clauses in relation to collective bargaining in public procurement in Ireland and other selected European countries.
- To provide a comparative analysis of measures, both implemented and planned in the selected countries in relation to the promotion of collective bargaining in public procurement.
- To provide an overview of the possibilities for improving the implementation of social clauses in Ireland, (within both existing and forthcoming European frameworks) drawing on insights from the analysis of other country cases.

The European countries selected for comparison are the United Kingdom (UK), the Netherlands and Germany. The remainder of the report is structured as follows.

Section 2 examines the existing EU public procurement legal framework. It provides comparative insights into how social clauses have been transposed and implemented in Ireland, the UK, the Netherlands and Germany.

Section 3 examines the AMWD's key provisions on public procurement and collective bargaining. Using synopsis case studies, it sets out measures taken (or planned) in Ireland and other European countries to transpose and implement these. The section also examines action items in Ireland's Action Plan to Promote Collective Bargaining 2026-2030 and the responses of other European countries, as well as relevant insights from Ireland's Strategic Public Procurement Roadmap.

Section 4 examines the key provisions concerning collective bargaining and public procurement in the European Commission's forthcoming proposed revision of the EU public procurement directives.

Section 5 examines the potential legal changes in Ireland to actively promote collective bargaining through public procurement, the barriers to these changes and how they might be overcome. It draws on comparative insights between Ireland and the other European country case studies examined in this report.

Section 6 sets out the principal conclusions of the research.

2. Collective bargaining and the social clause of the existing EU public procurement legal framework

The European Directive: An Overview

In an era of increased outsourcing of public services through procurement, there has been a corresponding increase in interest by many stakeholders in how Member States indirectly contribute to a potential diminution of working conditions through the procurement of services from the private sector, where the risk of precarious work can be higher.⁷ Of course states also have the power to determine the rules of engagement with respect to public procurement and can influence the outcomes for workers through the use of social/labour clauses in the awarding and subsequent performance of contracts. The approach of Member States in this regard is influenced by the EU procurement directives.

In 2014, three procurement directives were adopted by the EU. A Directive is defined as: ‘a model law agreed at the EU level which sets out the basic parameters and objectives of legislation that then must be transposed into the national laws of the 27 Member States⁸’. Article 288 of the Treaty on the Functioning of the European Union (TFEU) provides that a directive ‘shall be binding, as to the result to be achieved’ but ‘shall leave to the national authorities the choice of form and methods’. This means that Member States have a certain amount of freedom in transposition of Directives.

The procurement directives provide a number of possibilities for the incorporation of social objectives (sometimes described as ‘secondary policies’), including: (Article 18(2) in the Directive 2014/24/EU on Public Procurement, Article 36(2) in the Directive 2014/25/EU on utilities (water energy transport, and postal services) and Article 30(3) in the Directive 2014/23/EU on concessions). In relation to social considerations such as observance of collective agreements, the Directives contained a mix of obligations on Member States/contracting authorities and discretionary actions (discussed in more detail below). The Directives were perceived by many as a step forward from earlier procurement directives in promoting labour rights and collective bargaining in the awarding of public contracts. As one

commentator noted, ‘there are about 40 references to the word ‘social’ in the body of Directive 2014/24 (excluding annexes) as compared with four in the 2004 directive’ (Barnard, 2017).

As is common with EU directives, the Articles which constitute the legal instrument of the directive are preceded by a series of recitals. Recitals in European directives are generally considered to be preambles and are important for explaining the substantive elements of the directive, the Articles or operative provisions. Recitals to EU laws are not in themselves legally binding, in the same way that the operative provisions are. However, where an EU law is ambiguous, the recitals can be important in interpreting the ambiguous provision. This is because the Court of Justice of the EU (CJEU) has in the past taken what is known as a ‘purposive’ approach to interpretation to EU law. That is, if the text is not clear, the CJEU will examine the aim or spirit of the relevant provision and interpret it according to that spirit/aim.

In this overview, due to similarities between all three in relation to the subject matter of the report, we focus on one of the directives: Directive 2014/24/EU on Public Procurement, which deals with procurement in the public sector generally (the Public Contracts Directive). The following sections provide an overview of the recitals and articles, their relevance with respect to Member States/contracting authorities obligations or discretion with respect to including social issues. This is followed by a brief discussion of the Directive including the implications for collective bargaining.

A simple word search shows that ‘collective bargaining’ is mentioned specifically in Annex X and ‘collective agreements’ appears 8 times. However, certain recitals and Articles have implications for collective bargaining/collective agreements (and other aspects of labour law provision). Table 1 below provides a summary of the potential relevance of articles and selected recitals⁹.

⁷ Jaehrling, K., Johnson, M., Larsen, T.P., Refslund, B. and Grimshaw, D., 2018. Tackling precarious work in public supply chains: A comparison of local government procurement policies in Denmark, Germany and the UK. *Work, Employment and Society*, 32(3), pp.546-563.

⁸ Halloran D (2020) *Evaluating Social Value in Social Clauses: Tensions in Public Procurement Regulation and Horizontal Considerations*, PhD Thesis, School of Law, National University of Ireland, Galway Accessed online 17/04/2026

⁹ It should be noted that there are other provisions in the Public Contracts Directive that allow for pursuing a variety of social objectives. The focus here is on those provisions with potential relevance for bargaining and collective agreements only.

Article Number	Text	Relevance
Article 18 (2)	Member States shall take appropriate measures to ensure that in the performance of public contracts , economic operators comply with applicable obligations in the fields of environmental, social and labour law established by Union law, national law, collective agreements or by the international environmental, social and labour law provisions listed in Annex X.	Article 18 confers an obligation on Member States and economic operators to comply with collective agreements in the performance of public contracts. However, this is limited to performance not the awarding of contracts.
Article 56 (1)	Contracting authorities may decide not to award a contract to the tenderer submitting the most economically advantageous tender where they have established that the tender does not comply with the applicable obligations referred to in Article 18(2).	Article 56 refers to the awarding of contracts. It indicates that the decision not to award a tender due to non-compliance with Article 18(2) is at the discretion of the contracting authority. This arguably weakens the position of collective bargaining / collective agreements at the award stage of tendering.
Article 57 (4) (a)	Contracting authorities may exclude or may be required by Member States to exclude from participation in a procurement procedure any economic operator in any of the following situations: (a) where the contracting authority can demonstrate by any appropriate means a violation of applicable obligations referred to in Article 18(2);	This indicates that while it is discretionary for a contracting authority to exclude a supplier from entering the tendering process based on evidence of violations of Article 18 (2), the Member State in which the contracting authority operates may make it a requirement. Thus, it seems it is open to Member States such as Ireland to effect clear obligations regarding compliance with article 18(2) for suppliers wishing to enter the tendering process in the first place.
Article 67	<p>1. Without prejudice to national laws, regulations or administrative provisions concerning the price of certain supplies or the remuneration of certain services, contracting authorities shall base the award of public contracts on the most economically advantageous tender.</p> <p>2. The most economically advantageous tender from the point of view of the contracting authority shall be identified on the basis of the price or cost, using a cost-effectiveness approach, such as life-cycle costing in accordance with Article 68, and may include the best price-quality ratio, which shall be assessed on the basis of criteria, including qualitative, environmental and/or social aspects, linked to the subject-matter of the public contract in question.</p> <p>3. Award criteria shall be considered to be linked to the subject-matter of the public contract where they relate to the works, supplies or services to be provided under that contract in any respect and at any stage of their life cycle, including factors involved in:</p> <p>(a) the specific process of production, provision or trading of those works, supplies or services; or</p> <p>(b) a specific process for another stage of their life cycle, even where such factors do not form part of their material substance.</p>	This allows contracting authorities to include social aspects (potentially collective agreements or bargaining provision) as part of the award criteria, provided that those criteria are linked to the subject matter of the contract. Article 67(3) provides guidance on the concept of being 'linked to the subject matter of the contract'. This question was also the subject of recent CJEU case of Case C-210/24 AESTE v Ayuntamiento de Ortuella.
Article 69 1 and 2(d) and Article 69 (5) in relation to abnormally low tenders (only relevant text extracted)	<p>Article 69 (1) Contracting authorities shall require economic operators to explain the price or costs proposed in the tender where tenders appear to be abnormally low in relation to the works, supplies or services</p> <p>2. The explanations referred to in paragraph 1 may in particular relate to:</p> <p>(d) compliance with obligations referred to in Article 18(2)</p> <p>Article 69 (3) Contracting authorities shall reject the tender, where they have established that the tender is abnormally low because it does not comply with applicable obligations referred to in Article 18(2).</p> <p>Article 69 (5) Upon request, Member States shall make available to other Member States by means of administrative cooperation any information at its disposal, such as laws, regulations, universally applicable collective agreements or national technical standards, relating to the evidence and documents produced in relation to details listed in paragraph 2.</p>	This relates to the awarding of tenders, rather than the performance. While it is open to contracting authorities to award contract on a lowest cost basis under the MEAT model, where tenders appear to be abnormally low, contracting authorities are obliged to investigate and seek explanations. If there is evidence that low costs are connected to non-compliance with Article 18(2), the directive is clear that the contracting authority is obliged to reject the tender. Of course, this only applies in cases of 'abnormally' low tenders, not in cases of what would be considered 'normally' costed tenders. In those cases, it is at the discretion of the contracting authority to include scoring criteria social clauses that might include collective agreements/collective bargaining arrangements. Deciding what constitutes abnormally low should be possible in a cross comparison with the other tenders.

Article Number	Text	Relevance
Article 70	(1) Contracting authorities may lay down special conditions relating to the performance of a contract, provided that they are linked to the subject-matter of the contract within the meaning of Article 67(3) and indicated in the call for competition or in the procurement documents. Those conditions may include economic, innovation-related, environmental, social or employment-related considerations.	Article 70 relates to the performance of the contract, and permits the contracting authority to include contractual performance clauses that can include 'social or employment-related considerations', provided these are 'linked to the subject matter of the contract' in the same way as social award criteria specified pursuant to Article 67 must be.

The sections below provide an overview of the recitals.

Recital Number	Text	Relevance
Recital 37	With a view to an appropriate integration of environmental, social and labour requirements into public procurement procedures it is of particular importance that Member States and contracting authorities take relevant measures to ensure compliance with obligations in the fields of environmental, social and labour law that apply at the place where the works are executed or the services provided and result from laws, regulations, decrees and decisions, at both national and Union level, as well as from collective agreements, provided that such rules, and their application, comply with Union law. Equally, obligations stemming from international agreements ratified by all Member States and listed in Annex X should apply during contract performance. However, this should in no way prevent the application of terms and conditions of employment which are more favourable to workers.	This is a recital rather than an article but can inform interpretation of the articles of the Directive. It is relevant that this recital (in relation to performance) specifies that the determinant factor regarding compliance is the rules that apply at the place where the works are executed or the service provided. So, if the work is to be executed in Ireland for instance the rules that pertain in Ireland apply. However, if the service or works are to be performed in another country for an Irish contracting authority then the rules/collective agreements etc. of that country apply. The recital is also clear that it is acceptable to apply terms that are more favourable to workers than might be stipulated by the rules
Recital 39	The relevant obligations could be mirrored in contract clauses. It should also be possible to include clauses ensuring compliance with collective agreements in compliance with Union law in public contracts. Non-compliance with the relevant obligations could be considered to be grave misconduct on the part of the economic operator concerned, liable to exclusion of that economic operator from the procedure for the award of a public contract.	This recital relates to the awarding stage of a contract. The obligations it refers to are environmental, social and labour. However, the language reflects the overall thrust of the directive in that inclusion of requirements relating- in this case to collective agreements- at the award stage are optional for the contracting authority. This could be argued to weaken the position of collective agreements/collective bargaining in public procurement as such considerations need not be included in the award stage scoring criteria and not considered (unless the tender is costed at an abnormally low rate).
Recital 98	It is essential that award criteria or contract performance conditions concerning social aspects of the production process relate to the works, supplies or services to be provided under the contract. In addition, they should be applied in accordance with Directive 96/71/EC, as interpreted by the Court of Justice of the European Union and should not be chosen or applied in a way that discriminates directly or indirectly against economic operators from other Member States or from third countries parties to the GPA or to Free Trade Agreements to which the Union is party.	This came under scrutiny in Case C-210/24, AESTE v Ayuntamiento de Ortuella) where a scoring system around the intention to collectively bargain was analysed by the court with respect to the possibility that it exceeded the subject matter of the contract. It was concluded that the award criterion was acceptable.

Article Number	Text	Relevance
Recital 105	<p>It is important that observance by subcontractors of applicable obligations in the fields of environmental, social and labour law, established by Union law, national law, collective agreements or by the international environmental, social and labour law provisions listed in this Directive, provided that such rules, and their application, comply with Union law, be ensured through appropriate actions by the competent national authorities within the scope of their responsibilities and remit, such as labour inspection agencies or environmental protection agencies. It is also necessary to ensure some transparency in the subcontracting chain, as this gives contracting authorities information on who is present at building sites on which works are being performed for them, or on which undertakings are providing services in or at buildings, infrastructures or areas, such as town halls, municipal schools, sports facilities, ports or motorways, for which the contracting authorities are responsible or over which they have a direct oversight. It should be clarified that the obligation to deliver the required information is in any case incumbent upon the main contractor, either on the basis of specific clauses, that each contracting authority would have to include in all procurement procedures, or on the basis of obligations which Member States would impose on main contractors by means of generally applicable provisions. It should also be clarified that the conditions relating to the enforcement of observance of applicable obligations in the fields of environmental, social and labour law, established by Union law, national law, collective agreements or by the international environmental, social and labour law provisions listed in this Directive, provided that such rules, and their application, comply with Union law, should be applied whenever the national law of a Member State provides for a mechanism of joint liability between subcontractors and the main contractor. Furthermore, it should be stated explicitly that Member States should be able to go further, for instance by extending the transparency obligations, by enabling direct payment to subcontractors or by enabling or requiring contracting authorities to verify that subcontractors are not in any of the situations in which exclusion of economic operators would be warranted. Where such measures are applied to subcontractors, coherence with the provisions applicable to main contractors should be ensured so that the existence of compulsory exclusion grounds would be followed by a requirement that the main contractor replace the subcontractor concerned. Where such verification shows the presence of non-compulsory grounds for exclusion, it should be clarified that contracting authorities are able to require the replacement. It should, however, also be set out explicitly that contracting authorities may be obliged to require the replacement of the subcontractor concerned where exclusion of main contractors would be obligatory in such cases.</p>	<p>Recital 105 is important as many public contracts involve complex subcontracting chains. A key case that illustrates the problematic nature of ensuring compliance in such situations is the Irish case involving the pay and working conditions of a group of Portuguese workers working for a sub-contractor to the successful tenderer for construction work on an Irish motorway¹⁰.</p>
Annex X	<p>ILO Convention 98 on the Right to Organise and Collective Bargaining</p>	<p>Ireland is a member of the International Labour Organisation (ILO) and has ratified the Fundamental Conventions concerning Freedom of Association and Protection of the Right to Organise Convention, (No 87) and Right to Organise and Collective Bargaining Convention, 1949 (No. 98). However there has been controversy over the years with respect to what constitutes collective bargaining leading to a landmark case in Ireland: the 2007 case of Ryanair vs the Labour Court¹¹ which in turn led to legislative amendments in 2015. However, Ireland largely maintains a voluntarist model. With respect to public procurement Thomas (2022) maintains that an overt focus on securing value for money and a rather narrow interpretation of EU regulations has ensured that traditionally there has been a degree of reticence in using social clauses in public procurement such as those relating to collective bargaining. Thus, there may be antipathy to including issues such as collective bargaining in scoring systems even though their use by other countries such as the Netherlands and Germany demonstrate that this is possible</p>

¹⁰ Da Silva v Rosas Construtores S.A. [2017] IEHC 365. For detailed analysis see O’Sullivan, M. and MacMahon, J., 2022. Migrant Workers and Wage Theft: Is Legal Action an Effective Form of Collective Action?. *Industrial Law Journal*, 51(4), pp.927-954.

¹¹ [2007] IESC 6

Discussion

A conundrum is presented with respect to social clauses within public procurement directives in that there exists a tension between two objectives of the EU. The first is the functional objective of regulating to create an economically competitive procurement process which facilitates access across borders, abolishes barriers to trade and disallows discriminatory action favouring domestic suppliers. The second set of objectives are the social and environmental objectives driven by such declarations as the Lisbon Treaty of 2009 which saw the introduction of a Charter of Fundamental rights and the 2017 proclaimed European Pillar of Social Rights and.¹² Commentators have highlighted this tension, observing that policy debates at national and European level have long revolved around the compatibility of labour clauses with European and national competition law.¹³ As O'Halloran 2020 puts it: *How social objectives are balanced against economic objectives in the EU is the question at the root of establishing the democratic legitimacy of EU policymaking. It goes to the heart of who defines the space given to Member States to pursue social policies in their procurement decision-making and how this pursuit is exercised in practice* (Halloran, 2020:67).

On a positive note, it is generally-accepted that the 2014 procurement directives represented a move away from a trend between 1980s and 2000s which favoured liberalisation and very limited focus on social clauses,¹⁴ and that the 2014 Public Procurement Directive (2014/24/EU) provided 'the green light for social creativity in procurement and a strong indication that the EU / the European Commission would now be supportive of targeted social initiatives' (Barnard, 2017). Such indications are strengthened by supporting documents from the European Commission such as the guidance document Buying Social¹⁵ which explicitly acknowledges and indicates such support.

Collective Bargaining / Collective Agreements

Issues present themselves from a trade union/employee representative point of view with the Directive. On one hand, the Directive is indeed a step forward in that Article 18 (2) imposes unambiguous obligations with respect to collective agreements (and labour law) in the performance of contracts. On the other hand, the awarding of tenders presents a more complex and more discretionary latitude of Member States/ contracting authorities. This is because it is at this point that the tension between potential hin-

drance of access / discrimination in terms of a competitive market is at its highest. Thus, national obligations in the field of social and labour law must always be applied consistently with EU law and with the principles of transparency, non-discrimination and equal treatment with respect to Articles 34, 56 and 49 TFEU¹⁶ Member States. How does this play out within the terms of the Directive? It is useful to consider this question from the perspective of the different stages of the procurement process and to reflect on how the various Articles identified above operate. As will be seen, the impact of the Public Contracts Directive varies according to the relevant procurement stage.

Thus, at the stage of **contractor qualification**, Article 57(4) (a) applies, and as noted above, **permits** contracting authorities to exclude from participation in a procurement procedure any economic operator that the contracting authority can demonstrate by any appropriate means to have violated the applicable obligations envisaged by Article 18(2). As already set out, Article 18(2) includes an obligation on economic operators, in the performance of public contracts, to comply with applicable obligations, including social and labour law obligations under Union, national and international law and collective agreements. An economic operator that can be demonstrated not to have complied with this obligation in a prior public contract **may** be excluded by the contracting authority from qualifying for a procurement for a later public contract pursuant to Article 57(4)(a). However, it is clear that there is no obligation to exclude the economic operator.

Also of some relevance is Article 57(1)(f), which is more prescriptive, and which provides that contracting authorities **shall** exclude an economic operator that has been the subject of a conviction by final judgment for child labour and other forms of trafficking in human beings as defined in Article 2 of Directive 2011/36/EU of the European Parliament and of the Council.

At the stage of contract award, a number of provisions are relevant. Article 67 addresses the setting of **award criteria**. Article 67(1) provides that contracting authorities **shall** base award of the public contract on the most economically advantageous tender. Critically, Article 67(2) permits a price-quality ratio to be assessed on the basis of criteria, which can include 'social aspects, linked to the subject matter of the public contract in question.'

12 Dignity, Equality, Freedom (including freedom of association), solidarity, citizens' rights and justice

13 Arnholtz, J., Jaehrling, K., Larsen, T.P. and Refslund, B., 2025. Tensions and experimentation in setting, extending and enforcing working conditions: case studies of labour clauses in public procurement. *Transfer: European Review of Labour and Research*, 31(2), pp.161-177.

14 Nicolaidis K and Schmidt SK (2007) Mutual recognition 'on trial': The long road to services liberalization. *Journal of European Public Policy* 14(5): 717-734.

15 European Commission, (2021) Buying Social - a guide to taking account of social considerations in public procurement (2nd edition), Brussels, Belgium. <https://ec.europa.eu/docsroom/documents/45767>

16 European Commission, (2021) Buying Social - a guide to taking account of social considerations in public procurement (2nd edition), Brussels, Belgium. <https://ec.europa.eu/docsroom/documents/45767>

Thus, the Directive does not, in general, subject Member States to any obligations regarding social aspects (including collective bargaining) in the award mechanisms but offers them the *option* of including such aspects. It therefore remains open to contracting authorities to score tenders purely on a lowest cost basis at this highly competitive stage when stakes are high for tenders.

The critical qualifying concept for incorporation of social criteria for evaluating the award of the contract is the linkage ‘to the subject matter of the public contract’. That concept is explained further in Article 67(3), which requires that any social criteria must ‘relate to the works, supplies or services to be provided under that contract’. The concept of linkage is complex and has been explored in a number of cases over the years.

Most recently, Case C-210/24 AESTE v Ayuntamiento de Ortuella,¹⁷ decided on 5 March 2026, explicitly explored questions around collective bargaining, and must be viewed as a positive indicator of the interpretation of the CJEU in situations where contracting authorities do wish to promote collective bargaining by including specific provisions in tender award criteria. The CJEU reasoned that in the absence of an exhaustive list of award criteria, Article 67(2) of the Public Contracts Directive allows the contracting authority to establish award criteria that include social aspects, provided that the criteria relating to those aspects are linked to the subject matter of the public contract concerned¹⁸. The CJEU also referred to earlier case law in which it had held that contracting authorities are entitled to choose award criteria based on considerations of a social nature, which may concern the persons using or receiving the services which are the object of the contract but also other persons¹⁹.

On the complex concept of linkage to the subject matter of the contract, the CJEU held that the award criteria are deemed to be linked to the subject matter of the public contract where they relate to the services to be provided under the contract in any respect and at any stage of their life cycle, including the factors involved in the specific process of providing those services and even where those factors do not form part of their material content²⁰.

Ultimately, the CJEU ruled that a criterion for the award of a public contract which takes into consideration a tenderer’s intention to bargain for a higher wage than the sectoral collective agreement in force fell within the concept of the ‘most economically advantageous tender’.

The CJEU noted:

... Article 67(1) of Directive 2014/24 must be interpreted as meaning that a criterion for the award of a public contract for social services without accommodation which takes into consideration an increase, above the level resulting from the application of the sectoral collective agreement in force, in the total payroll that the tenderer proposes to apply to the staff performing the contract, allows the contracting authority to identify the most economically advantageous tender, within the meaning of that provision²¹.

Also relevant to the award of the contract is the unequivocal obligation on contracting authorities to scrutinise abnormally low tenders and an obligation to exclude such tenders if such an examination finds non-compliance with Article 18 (2). However, this only applies to abnormally low tenders.

Regarding the **contract performance conditions**, Article 70 applies and permits contracting authorities to lay down special conditions relating to the performance of a contract, provided that these conditions are ‘linked to the subject-matter of the contract within the meaning of Article 67(3)’, thus, incorporating the same concept of linkage at this stage. Article 70 explicitly states that the conditions may include ‘social or employment-related considerations’.

Finally, at the stage of **contract performance**, the critical provision, Article 18(2) applies, and imposes an **obligation** on Member States to take appropriate measures to ensure that economic operators comply with social and labour obligations, as well as collective agreements and specified international social and labour provisions in their performance of public contracts.

Against this background of the overarching EU law framework, in the following section, we outline the country case studies which discuss the various policy, regulatory frameworks, industrial relations contexts and practices in relation to public procurement and collective bargaining. The case studies provide in-depth examples of how public procurement Directives have been transposed across these countries and the implications of this for collective bargaining.

¹⁷ C-210/24, AESTE v Ayuntamiento de Ortuella

¹⁸ Case C-210/24, AESTE v Ayuntamiento de Ortuella, para 38.

¹⁹ The CJEU referred at para 39 to Case C-368/10 Commission v Netherlands.

²⁰ Case C-210/24, AESTE v Ayuntamiento de Ortuella, para 44.

²¹ C-210/24, AESTE v Ayuntamiento de Ortuella) para 56

Ireland

Irish Context

The Irish industrial relations system has historically been described as 'voluntarist' in orientation (Wallace et al, 2020), characterised by an absence of legal interventionism on the part of the state. Although the state has provided institutional support in terms of voluntary dispute resolution mechanisms (i.e. the Workplace Relations Commission and the Labour Court), and introduced some legislation governing industrial disputes, it has generally stopped short of introducing statutory union recognition rights²². Irish workers do have the right to join trade unions (a right conferred by the Irish constitution), but there is no obligation on employers to recognise unions. Thus, as Eustace and Kenny (2024:1) note 'while the Irish Constitution confers the right of freedom of association to join a trade union, these organisations currently have no legislative right to be recognised in the workplace for collective bargaining purposes, and employees have no right to make representations to their employer through their union'. Collective agreements where negotiated are generally not legally binding on either party²³.

A system of social partnership and centralised collective bargaining existed between 1987 and 2009. However, after the collapse of social partnership in 2009, collective bargaining in the private sector has returned to a decentralised model. This coincided with a continuous decline in union density, that had begun in the 1980s. Currently, trade union membership in Ireland is at around 22%²⁴ from a peak of around 60% in the early 1980s. Much of this membership is concentrated in the public sector. Geary and Wilson (2022) estimated collective bargaining coverage at around 43%, whereas ICTU estimated it in 2024 at about 34%²⁵. This and other developments in the Irish industrial relations landscape has led to union leaders re-evaluating the efficacy of the current system in Ireland calling it an 'employer veto' system rather than a voluntarist system²⁶ and calling for the government to strengthen collective bargaining rights in Ireland.

In recent years, outsourcing of public services to private sector suppliers has become a feature in Ireland (for instance, care services, utilities, catering among many others) and this in turn has had an impact on union density and the pay and conditions of many workers²⁷. Exposure to precarious work can become even more pronounced when successful contractors subcontract work as has been evidenced in several cases in Ireland²⁸.

Ireland and Public Procurement

European Directives relating to procurement have been transposed into Irish law through various statutory instruments (SIs). They are as follows:

- the European Union (Award of Public Authority Contracts) Regulations 2016 (SI 284/2016) (Public Contracts Regulations) which implement Directive 2014/24/EU into Irish law;
- the European Union (Award of Contracts by Utility Undertakings) Regulations 2016 (SI 286/2016) (Utilities Regulations) which implement Directive 2014/25/EU into Irish law;
- the European Union (Award of Concession Contracts) Regulations 2017 (SI 203/2017) (Concessions Regulations) which implement EU Directive 2014/23/ EU into Irish law; and
- the European Union (Award of Contracts Relating to Defence and Security) Regulations 2012 (SI 62/2012) (Defence Regulations) (as amended) which implement Directive 2009/81/EC into Irish law.

The regulations apply to tenders that are above a certain value threshold. This is updated regularly and is available to view at: <https://www.gov.ie/en/office-of-government-procurement/publications/thresholds/>

The legislation applies to contracting authorities and contracting entities.²⁹

²² Some attempts at extending collective bargaining such as the 2004 Industrial Relations Act and the 2015 Industrial Relations Acts aimed at employers who do not otherwise engage in collective bargaining has weak/mixed results. See Eustace, A. (2024). Dancing at the crossroads: Lessons from Ireland on collective labour law reform. *Industrial Relations Journal*, 55, 303–325. <https://doi.org/10.1111/irj.12430>

²³ With some limited exceptions. Registered Employment Agreements (REAs), Sectoral Employment Orders (SEO) and Employment Regulation Orders (EROs) exist in very limited circumstances with respect to very limited groups of workers and are legally enforceable once registered with the Labour Court.

²⁴ www.CSO.ie 2024 figures accessed on 21/04/2026

²⁵ ICTU 2024 Opening statement to Oireachtas Joint committee on enterprise trade and employment on the regulatory and legislative changes required for the transposition of the AMWD.

²⁶ <https://www.siptu.ie/union-access-legal-limits-and-ir-convergence-to-the-fore-at-the-irn-conference/>

²⁷ See for instance Mercille, J. and O'Neill, N., 2021. The growth of private home care providers in Europe: The case of Ireland. *Social Policy & Administration*, 55(4), pp.606-621; Murphy, C. and O'Sullivan, M., 2021. Running to stand still? Two decades of trade union activity in the Irish long-term care sector. *Transfer: European Review of Labour and Research*, 27(3), pp.383-397 2022.

²⁸ O'Sullivan, M. and MacMahon, J., (2022) Migrant Workers and Wage Theft: Is Legal Action an Effective Form of Collective Action?. *Industrial Law Journal*, 51(4), pp.927-954.

²⁹ The public body that is awarding a contract for goods, services or works. Governance Global Practice. This may include individual Government Departments or Offices; local or regional authority; any public body, commercial and non-commercial State bodies, and private entities which are subsidised 50% or more by a public body, when awarding contracts for goods, services or works. (Extracted from The ABCs of Public procurement published by the Office of Public Procurement <https://www.gov.ie/en/office-of-government-procurement/publications/abcs-of-public-procurement/>)

This section focuses on S.I. No. 284/2016 - European Union (Award of Public Authority Contracts) Regulations 2016³⁰. The 2016 SI represents a 'copy out' (Halloran, 2020) of the Public Procurement Directive 2014/24 in that its provisions mirror those of the Directive. The regulations apply to Contracting Authorities.

From a social perspective, unsurprisingly, it is the provisions implementing the relevant articles of the Public Contracts Directive that are the most important. A similar approach will be adopted here to that adopted in the previous chapter, considering how the Regulations apply at different stages of the procurement process.

At the **contractor qualification** stage, as under Article 57 of the Public Contracts Directive, contracting authorities **may** make a decision to both exclude a supplier from tendering or to eliminate a tenderer during the award process where they have evidence of non-compliance with/violation of the obligations identified in Regulation 18 (4). However, it is not generally mandatory for the contracting authority to do so. This is encapsulated in Regulations 56 (2) and 57 (8). Regulation 56(2) provides as follows:

*A contracting authority **may** decide not to award a contract to the tenderer submitting the most economically advantageous tender where the authority has established that the tender does not comply with applicable obligations referred to in Regulation 18(4).*

Meanwhile, Regulation 57(8) provides that:

*Subject to paragraphs (13) and (20), a contracting authority **may** exclude from participation in a procurement procedure any economic operator in one or more of the following situations: (a) where the contracting authority can demonstrate by any appropriate means a violation of applicable obligations referred to in Regulation 18(4);*

Another ground for mandatory exclusion regarding tender applications from a social consideration point of view is found in Regulation 57(1)(f), which provides:

*Subject to paragraphs (6), (7), (13) and (18), a contracting authority **shall** exclude an economic operator from participation in a procurement procedure where it has established, by verifying in accordance with Regulations 59, 60 and 61, or is otherwise aware that the economic operator concerned has been convicted of one or more of the following offences:*

...

(f) child labour and other forms of trafficking in human beings, within the meaning of Article 2 of Directive 2011/36/EU⁴¹ of the European Parliament and of the Council of 5 April 2011 on preventing and

combating trafficking in human beings and protecting its victims and replacing Council Framework Decision 2002/629/JHA.

With respect to the **contract award**, again, the Directive is followed, and the awarding of contracts is light touch with respect to social aspects. In general, contracts are awarded according to the MEAT model (most economically advantageous tender). This is stipulated in Regulation 67(1) of the Public Contracts Regulations. As with the Directive, the Public Contracts Regulations permit the contracting authority to incorporate social considerations (including those pertaining to collective agreements) in the award scoring criteria, though this is not mandatory (i.e. awards can be made on the basis of cost alone with no consideration of social aspects). Any social criteria must be linked to the subject matter of the public contract. This concept is interpreted in the same way as it is interpreted under Article 67 of the Directive and in Case C-210/24 AESTE v Ayuntamiento de Ortuella, discussed above. In this regard, Regulation 67(2) provides as follows:

The most economically advantageous tender from the point of view of the contracting authority shall be identified on the basis of the price or cost, using a cost-effectiveness approach, including life-cycle costing in accordance with Regulation 68, and may include the best price-quality ratio, which shall be assessed on the basis of criteria, including qualitative, environmental or social aspects, linked to the subject matter of the public contract in question.

Also relevant to the award of the contract is Regulation 69, dealing with abnormally low tenders. Regulation 69 **requires** contracting authorities to investigate and seek explanations for abnormally low tenders. Among the dimensions included here are obligations relating to Regulation 18(4)(a). Regulation 69(1) provides:

A contracting authority shall require economic operators to explain the price or costs proposed in a tender which appears to be abnormally low in relation to the works, supplies or services.

(2) The explanations given in accordance with paragraph (1) may relate to, amongst other things, the following:

...

(d) compliance with applicable obligations referred to in Regulation 18(4);

If it emerges from the explanation/investigation that there is evidence that Regulation 18 (4) of the Public Contracts Regulations has been breached in order to arrive at the low cost, then the contracting authority is **obliged** to exclude the tenderer.

30 <https://www.irishstatutebook.ie/eli/2016/si/284>

With respect to **contract performance conditions**, Regulation 70(1) provides that a contracting authority **may** lay down special conditions relating to the performance of the contract where those conditions are 'linked to the subject matter within the meaning of Regulation 67(5)' and 'indicated in the call for competition or in the procurement documents'. Regulation 70(2) provides that the conditions 'may include economic, innovation related, environmental, social or employment related considerations'. Again, the position here is optional.

Finally, with respect to **contract performance**, key part of the Public Contracts Regulations is Regulation 18(4)(a) and (b) which states:

*(4)(a) In the performance of a public contract, an economic operator **shall** comply with applicable obligations in the fields of environmental, social and labour law that apply at the place where the works are carried out or the services provided that have been established by European Union law, national law, collective agreements or by international, environmental, social and labour law listed in Schedule 7³¹*

(b) A contracting authority shall ensure that public contracts entered into by it require that the obligations referred to in subparagraph (a) are complied with.

Thus, in Ireland successful tenders are required to comply with the obligations identified in Regulation 18(4)(a) in the performance of their contracts. This includes adherence to any collective agreements or arrangements for collective bargaining. The relevant international obligations are listed in Schedule 7 to the Public Contracts Regulations.

Implications for Collective Bargaining

The Public Procurement Directives do provide contracting authorities with a vehicle to achieve social objectives and do make explicit the scope to take social issues into account at the relevant stages of the procurement process. Indeed, a recent report commissioned by UNI Europa and Friedrich-Ebert-Stiftung³²(FES) (2025) found that 76.7% of Irish respondents were of the view that in public procurement, authorities should prioritise companies that have a collective agreement, negotiated with a trade union in place for their workers. However, in the main³³ Ireland

adopts a 'soft law'³⁴ (Cunningham et al 2023) approach to social clauses aspects of procurement. Perhaps the strongest aspect is the more 'hard law' approach reflected in the mandatory obligation on successful tenderers to comply with applicable obligations in the fields of environmental, social and labour law that apply at the place where the works are carried out or the services provided. However, the Public Contracts Regulations (like the Directive from which they are transposed) adopts a much lighter touch with respect to social considerations in the awarding of tenders. This raises the tension that inherently exists between the social aims of the EU and the commitment to a competitive cost-effective internal market allowing bidders from across the EU access to compete on a level playing field for tenders.

In principle, it would seem the Irish government supports social clauses in public procurement and has stated this in the Information Note Incorporating Social Considerations into Public Procurement:³⁵

The Government is committed to driving an ambitious reform programme designed to modernise the public sector and improve public service delivery. Public procurement is a key element of this programme. In addition to its potential to assist in the delivery of improved public services, it can also act as a platform to add value by maximising the public policy impact that procurement can have in enabling wider community benefits in areas such as employment, training, assisting SMEs, promoting innovation, environmental and social considerations. In this regard, contracting authorities are encouraged to consider how social issues can appropriately be integrated into the procurement process³⁶

Since 2012, a number of bills have been proposed by a number of parties to introduce more ambitious regulation in relation to labour clauses as part of public procurement, including, for example, the most recent of these was the Public Procurement (Collective Bargaining and Collective Agreements Criteria) Bill 100 of 2024 proposed by Paul Gavan and Fintan Warfield. This lapsed in 2024. A number of other bills have lapsed or been defeated at various stages. For example, a Private Members Bill entitled: Quality in Public Procurement (Contract Preparation and Award Criteria) Bill 32 of 2021 (Sponsored by: Alice-Mary Higgins; Lynn Ruane; Frances Black; Eileen Flynn) was defeated by one

³¹ Schedule 7 lists a number of international conventions including: a) ILO Convention 87 on Freedom of Association and the Protection of the Right to Organise; and (b) ILO Convention 98 on the Right to Organise and Collective Bargaining.

³² UNI Europa and Friedrich-Ebert-Stiftung (FES). (2025) Making Better Use of Public Procurement, UNI Europa and Friedrich-Ebert-Stiftung (FES). Brussels, Belgium.

³³ Arrowsmith, S., 2023. The Evolution of Procurement Law in the United Kingdom: A Common Law Perspective on Regulating Contract Award Procedures. Available at SSRN 4756144.

³⁴ The term soft law is used to denote agreements, principles and declarations that are not legally binding. Soft law instruments are predominantly found in the international sphere. UN General Assembly resolutions are an example of soft law. Hard law refers generally to legal obligations that are binding on the parties involved and which can be legally enforced before a court. (definition taken from the European Centre for Constitutional and Human Rights (ECCHR) <https://www.ecchr.eu/en/glossary/hard-law-soft-law/>)

³⁵ <https://assets.gov.ie/static/documents/social-considerations-information-note-december-2018.pdf>

³⁶ <https://assets.gov.ie/static/documents/social-considerations-information-note-december-2018.pdf>

vote at the 8th stage in February 2026.³⁷ There are currently two Bills still undergoing consideration: the Transparency and Social Value in Public Procurement Bill (Bill 90 of 2024) sponsored by Mairead Farrell and currently before Dáil Éireann 2nd stage. This Bill seeks to provide for certain reporting functions in relation to procurements to which the Public Contracts Directive applies. This could be an important piece of legislation if passed as a lack of monitoring of contractors' adherence to agreed/required employment aspects has been identified as a weakness of the public procurement regime in several countries including Ireland (Arnholz et al, 2025; O'Sullivan and MacMahon, 2022). Indeed, this is highlighted repeatedly in the debates with respect to this Bill³⁸. The second Bill is Public Services and Procurement (Workers' Rights) Bill 2017 (Bill 83 of 2017) sponsored by: Bríd Smith; Richard Boyd Barrett; Gino Kenny and which is currently before Dáil Éireann 2nd stage. This Bill would include the objectives of removing wages and working conditions of employees from being used as elements of competition among bidders for public contracts and resisting any downward pressure in wage rates and workers' rights. In the various debates surrounding the Bills, issues and concerns that have been raised repeatedly are compliance by tenderers in respect of employment related issues, award of contracts on lowest cost base only with little regard for social clauses, and lack of oversight and follow through to ensure that successful contractors are abiding by commitments to employment related legislation or agreements.

The Netherlands

Introduction

The Netherlands is a key EU case study to examine the links between public procurement, regulation, collective bargaining and job quality. Expenditure on public procurement in the Netherlands has long been the highest among EU and OECD countries currently representing 21 per cent of GDP and 45 per cent of government expenditure (Tros et al, 2025). In 2005, the Dutch national government accepted a motion in the House of Representatives to act as role model by using their spending power to stimulate the market for sustainable goods and services (Grandia and Voncken, 2019). This led to the development of a multidimensional policy in relation to environmentally friendly and socially responsible procurement that includes green issues, social criteria, social return on investment, innovation and the circular economy. These apply to the national government, municipalities, provinces and district water boards in the Netherlands.

The Ministry of Economic Affairs has the primary responsibility for procurement policy. Public procurement is increasingly used by contracting authorities in the Netherlands as a strategic tool to achieve policy goals such as environmental, social or employment-related impact (Ministry of Economic Affairs and Climate Policy, 2021). The government's established goals in 2005 for sustainable public procurement initially focused policy on environmental concerns and sustainability requirements. However, in 2012 'social conditions' (incorporating international labour standards) which suppliers are also expected to comply with were added. Consequently, since 1 January 2013, all tender contracts from the national government that exceed the European threshold (the amount above which work must be contracted out within Europe) *must* include the social conditions. The integration of social standards into the entire procurement cycle, from technical specifications to contract performance is underpinned by this national policy focus.

Despite these long-standing measures however, public procurement has in some cases been associated with precarious work outcomes with cases of employment rights breaches drawing much public attention (Cremers, 2014; Kuijpers et al, 2024). Furthermore, research suggested a lack of clarity on how policies concerning social conditions were applied at national and local levels (ten Kate, 2014). A study of 25 tenders in four labour intensive sectors (electronics (phones), work clothing, coffee and natural stone) in 2013 showed significant variation in how the social conditions were considered and applied in practice. While some referred to basic ILO standards, there were differences in how these were assessed and most notably, a significant number of cases studied did not specifically address social aspects at all (ten Kate, 2014). This study by the SOMO research group³⁹ drew attention to the fragmented implementation of social conditions among procurers. However, the study also highlighted practices that went beyond policy in a positive way. The natural stone project by the municipality of Utrecht incorporated international labour standards at all stages of the procurement process and applied additional labour standards in relation to working hours, health and safety in the workplace and wages. It was recommended that this case could be used as an example in the 'Handleiding sociale voorwaarden' – a manual for procurers which provides tools for including social criteria during the various steps of public procurement. The research further recommended that the Dutch government seize the opportunity offered by implementation of the Procurement Directives to include social criteria at all stages of the procurement process (ten Kate, 2014). Thus, the Netherlands has long been viewed as a country that seeks to pursue ambitious measures in relation to social clauses in public procurement.

37 <https://www.oireachtas.ie/en/bills/bill/2021/32/>

38 <https://www.oireachtas.ie/en/debates/debate/dail/2025-06-26/45/>

39 SOMO is a research organisation based in Amsterdam which advocates for adoption of socially responsible and sustainable public procurement policies. It conducts research, builds alliances with similar interest groups worldwide and advises public institutions in the Netherlands on operationalising the Dutch government's policy for socially responsible public procurement. About Us - The Centre for Research on Multinationals - SOMO

The Industrial Relations Context

The Dutch Public Procurement Act is set in a context of relatively strong (albeit weakening) existing institutional support for collective bargaining and social dialogue between the social partners. In the Netherlands, national level structures are characterised by two main institutions – the Socio-Economic Council (SER) established in 1950 and the Labour Foundation (Star) established in 1945. Within both institutions, national employer organisations and trade union confederations negotiate and agree on a broad range of socio-economic issues. This is done on a bi-partite basis within the Labour Foundation with ‘crown members’ (independent experts proposed by the government and appointed by the king) also participating in the SER. These national level institutions which have been active for many decades play a central role in Dutch labour relations (see Boumans & Keune, 2018). The collective bargaining system forms the ‘backbone’ of this neo-corporatist system, the legal foundations of which date back to before the Second World War. The law on the collective agreement 1927⁴⁰ and the law on the extension of collective agreements of 1937⁴¹ regulate collective agreements (*Collectieve Arbeidsovereenkomst*, CAO). These are primarily negotiated at sectoral level between sectoral employers’ organisations and representatives of the main trade union confederations, although company level agreements also exist. The Ministry of Social Affairs and Employment can declare a CAO binding on all employers within a sector (*algemeen verbindend verklaard*, AVV)⁴² which includes companies that are not a member of the employers’ organisation that negotiated the agreement. Such an extension is granted semi-automatically when the employers involved in the original agreement cover at least 55 percent of the employees in the sector (Boumans & Keune, 2018). The 1927 Act states that an employer or employers’ association can conclude a collective agreement with *any trade union*, irrespective of the number of its members and its independence, which then basically applies to all employees of the (organised) employer(s) (de Beer, 2025). This has implications in the context of declining union power whereby some employers are negotiating agreements with smaller (weaker) trade unions outside of the main national level union (Oude Nijhuis, 2023) resulting in arguably less favourable (for employees) collective agreements in certain sectors.

However, collective bargaining coverage is still relatively high at 72% (Müller & Schulten, 2025) and employers may generally only deviate from CAOs if such a deviation is favourable for their employees. This context is an important underpinning for public procurement rules given the Directive specifies compliance with ‘applicable labour and

social laws and collective agreements in their procurement activities’. In other words, the existing Dutch legal system means that sectoral collective agreements which are binding on all employers within a sector must be complied with under Article 18(2) of the Directive. However, as de Beer (2025) notes, to date, public procurement does not include specific clauses on collective bargaining. The reason is that collective bargaining is considered to be purely voluntary and therefore should not be required by the government. Furthermore, the CAO system has been described as ‘showing signs of strain’ by Dutch employers’ organisations, with support for collective agreements eroding in newer sectors of the economy and legal disputes from employers being ‘forced’ to join sectoral CAOs.⁴³

The Dutch Public Procurement Act

On 1 July 2016, the Dutch Public Procurement Act (the amended *Aanbestedingswet* 2012) entered into force, implementing the latest Procurement Directives (2014/23/EU, 2014/24/EU and 2014/25/EU). The Act applies to all procedures below and above the EU procurement thresholds and applies to both national and European procurement procedures. The Act seeks to ensure a balance of competition and quality of services and the 2016 law included more possibilities to include societal, environmental and innovation-related objectives in public procurement. The key features of the Act with relevance for social clauses are now outlined.

To prevent contracting authorities focusing on lowest price, the Dutch Public Procurement Act stipulates that contracting authorities, in principle, *must* award contracts based on the best price–quality ratio. In line with national policy, social value is increasingly used as an award criterion. The contracting authority may award the contract based solely on price or life-cycle costs *only if* it expects that factors concerning quality will not influence its’ choice between the tenderers; it must then substantiate this decision in the tender documents. This provision ensures that considerations of quality (beyond cost considerations) must be taken into account at the awarding stage. Article 1.4(2) states that ‘the contracting authority ... is responsible for the delivery of *as much social value as possible* for public funds when entering into a written agreement as referred to in the first paragraph’.

Under Article 2.8 of the Act, contracting authorities may impose specific conditions on the performance of a contract, provided they are related to the subject matter mentioned in the tender documents. These can include social, employment-related, or environmental considerations. Fur-

40 [wetten.nl - Rules - Law on collective agreements - BWBR0001937](#)

41 [wetten.nl - Regulation - Law on declaring provisions of collective agreements universally binding and ineffective - BWBR0001987](#)

42 [CAO: Collective Labour Agreement | Business.gov.nl](#)

43 [Dutch CAO system is under pressure, warns employer body - DutchNews.nl](#)

thermore, reservation of certain contracts for sheltered workshops or economic operators whose main aim is the social and professional integration of disadvantaged persons is permitted. Increasing labour participation for people with a vulnerable position in the labour market such as those with disabilities or the long-term unemployed is viewed as an important social goal referred to as 'social return' (SR). The inclusion of an SR component is mandatory for national government contracts that have a value exceeding €250,000 and a minimum contract term of 6 months. Typically, 5% of the wage bill or of the total contract value must be spent on people who are at a distance from the labour market. Article 2.82 stipulates that the contracting authority 'may prohibit participation in a procedure for the award of a contract of public procurement reserved for sheltered workshops and for economic operators who have social and professional integration of disabled or disadvantaged people as the main objective'. This is a clear example of the inclusion of social clauses to achieve social policy objectives which are not deemed to breach competitiveness criteria.

Article 2.81 stipulates that contracting authorities are required to ensure that suppliers comply with obligations in relation to environmental, social and labour law during contract execution. The '*applicable social and labour obligations*' include collective agreements, which as discussed above have wide coverage and are legally binding on all employers in a sector. Article 2.81(2) states that 'A contracting authority shall ask tenderers or candidates to indicate that: they have taken into account the obligations ... in the field of environmental, social and labour law under the law of the European Union, national law or collective agreements or pursuant to provisions of international law listed in Annex X to Directive 2014/24/EU. environmental, social and labour law. The national law and extension of collective agreements in the Netherlands thus help ensure that collectively agreed terms and conditions within the relevant sector will be applied.

The Accompanying Proportionality Guide

The Act is accompanied by the Public Procurement Decree (Aanbestedingsbesluit) which designates the Proportionality Guide (Gids Proportionaliteitsgids) as mandatory guidance. The law deems the principle of proportionality to be one of the fundamental principles of public procurement. The Proportionality Guide has been well-received even outside of the Netherlands as it addresses problems common to all European countries and has thus been translated to English (IBR Publicaties, 2016). The guide seeks to help tenderers comply with European regulations through ensuring requirements and criteria are more predictable, understandable and proportional.

The Proportionality Guide has been described as 'both unique and farther reaching than is required in terms of the 2014 Procurement Directive' (Halloran, 2020). In essence the Guide seeks to ensure that all requirements, criteria and contract terms are proportionate to the nature and scope of the contract. This helps ensure that both large and small companies have a fair chance to compete for contracts without facing disadvantage due to requirements. Compliance with the Proportionality Guide within the Netherlands is mandatory and legally binding on contracting authorities. Non-compliance requires advance notice in tender documentation and justification – the 'comply or explain' principle.

Respecting International Labour Standards (such as ILO conventions) is mandatory for public contracts and contractors must ensure that these standards are met throughout their supply chains. It is mandatory to include the International Social Conditions (ISV) in tenders, and the Government has drawn up standard specification texts for these to be included as a contract condition. By applying ISV, the government focuses on preventing and tackling abuses for people and the environment in the supply chain. Contractors are expected to exercise due diligence during the term of the contract. A six-step process is outlined (based on OECD and UN Guidelines on responsible business conduct) which includes: embedding responsible business conduct into policies and management systems; submitting a risk analysis to the contracting authority; addressing or mitigating adverse impacts through a plan of action; tracking implementation and results; communicating how adverse impacts are being addressed and providing or cooperating with remediation. These steps are especially important in value chains considered risk categories (i.e. they carry a significant risk of abuses in the areas of human rights, working conditions and the environment).⁴⁴

Other Policies and Institutions

The Dutch context is further characterised by policies and institutions which support the procurement process and help ensure compliance with procurement rules and standards. In 2015, the government further embedded the inclusion of social conditions in public procurement through the Sustainable Procurement Manifesto (Maatschappelijk Verantwoord Inkopen, MVI) which builds on previous agreements and *requires* public organisations to ensure that effects on people, planet, and profit/prosperity are taken into account when procuring products, services, and works. The MVI seeks to support sustainable procurement and help achieve policy objectives, such as preventing climate change, achieving a circular economy, stimulating innovation, preventing human rights violations, stimulating minimum living wages and improving working conditions in worldwide value chains, and social return (Halloran, 2020).

44 tender_specifications_international_social_conditions-sep2025.pdf

Within the Ministry of Economic Affairs, there is a dedicated procurement expertise centre (PIANOO) which seeks to professionalise procurement and tendering with governments to help contribute to policy and provide value for taxpayers' money.⁴⁵ The Netherlands also utilises a central fully digitalised hub, TenderNed⁴⁶ for all procurement notifications and documents. The TenderNed platform is free to use and helps ensure transparency where economic operators have a single site to apply for tenders and ask questions to the contracting authority, while information, instructions and advice are provided to businesses via the platform. While breaches of procurement rules are normally dealt with through the civil courts tenderers can also submit complaints to the Committee of Procurement Experts (CvAE) (Commissie van Aanbestedingsexperts)⁴⁷ for informal resolution. This is an independent committee, established in 2013 as an accessible alternative to legal proceedings. It issues non-binding opinions on complaints in procurement procedures. Other organisations such as the Netherlands Enterprise Agency (Rijksdienst voor Ondernemend Nederland), provide information about sustainable procurement. These institutional structures provide important supports for the effective functioning of public procurement and help foster adherence to policy goals.

Implications for Collective Bargaining

While the Dutch procurement legislation does not explicitly mandate collective bargaining, the system incorporates several mechanisms as identified above that strengthen the role of collective agreements in public contracts. These include strong policy commitment to balancing economic and social responsibilities in procurement, social clauses, compliance obligations, award criteria, and social return instruments. For example, procurement rules indirectly enforce collective bargaining coverage wherever CAOs have been declared binding, by making compliance (with applicable labour conditions) a mandatory condition of performing public contracts. Policies and rules in relation to social return seek to enhance participation in the labour market of disadvantaged workers. Such individuals must then receive terms and conditions in line with binding CAOs thus shifting public procurement away from low-wage competition towards inclusivity of marginalised groups. The Proportionality Guidelines also help balance these requirements for all employers. Social considerations may also be included in technical specifications, award criteria and contract performance conditions under Dutch law. This includes links to quality employment practices, enabling authorities to prioritise bidders that meet or exceed CAO standards. The recent CJEU ruling in the *Ortuella* case as discussed, further embeds the possibility to prioritise com-

panies that negotiate pay and conditions with trade unions which would *not* be considered to violate non-discrimination or proportionality requirements if tied to contract quality. The existing laws on collective bargaining and wider industrial relations system underpin this possibility rather than the procurement legislation *per se*.

Notwithstanding the extensive provisions of the Dutch legislation and the seemingly strong underpinning national level institutions and traditions, there has also been evidence of non-compliance (Creamers, 2014; Kuijpers et al, 2024), fragmented implementation (ten Kate, 2014) and a vagueness in relation to certain terms in the legislation. For example, Halloran (2020:132) notes that the Act does not provide much clarity about the interpretation of the concept of 'social value'. Nor has it been defined what 'as much as possible' means. Furthermore, declining union strength and a general weakening of influence over collective bargaining (Boumans & Keune, 2018) may compromise the potential of the Act to achieve its social objectives.

The Netherlands has demonstrated a long-standing policy commitment in principle to the use of procurement as a tool for social or employment related impact and has been described as a 'front-runner' among European countries in this regard. There are mixed assessments however of the success of the Netherlands approach to public procurement since the introduction of the amended legislation, in terms of its impact on job quality. O'Halloran (2020:131) notes that although there is a lack of empirical studies on the application of social procurement policies in the Netherlands, evidence suggests that compliance with existing social procurement policy is high among Dutch contracting authorities. However, Kuijpers et al's (2024) study in four sectors in the Netherlands show procurements' negative impacts across all aspects of job quality dimensions. Manunza & Meershoek (2020) also suggest that in the Netherlands during the last decade, public procurement procedures have frequently been the subject of negative media coverage in which the contracting public authority broke the public procurement rules.

Nonetheless research also suggests evidence of certain experimental forms of procurement and regulation are developed by actors aiming to reverse the negative relationship between public procurement and job quality (Tros et al, 2025). Thus, notwithstanding the limitations outlined, the regulatory environment within the Netherlands provides several examples of best practice in relation to socially responsible public procurement and its' capacity to enhance employment conditions for workers. Some of these could be adopted in the Irish context while others may be more complex in term of the legislative environ-

⁴⁵ See [About PIANOO | PIANOO - Expertise Centre for Procurement](#)

⁴⁶ [Dutch government's online tendering system | TenderNed](#)

⁴⁷ What is Commission of Procurement Experts? | TenderGrowth Knowledge Base, <https://www.tendergrowth.nl/kennisbank-begrippen/commissie-van-aanbestedingsexperts#>

ment and industrial relations context. This is further discussed in Section 5 below.

The UK

The UK presents an interesting case with respect to the nexus between public procurement and social clause provisions. Firstly, whilst the Directive was transposed into UK law in 2015 through SI 2015/102, unlike some other European countries, the UK did not include Article 18(2) in its transposition, although references to social aspects relating to performance, awarding and exclusion appear in various sections of the SI. Secondly the UK has recently (2023) revised its public procurement laws in the post Brexit context ostensibly strengthening the relationship between procurement and social considerations. Finally, there is not a totally unified approach in the UK as Scotland deviated from the approach adopted in England and Wales with respect to the social clause element and has embedded wider social considerations, including collective bargaining more explicitly into its procurement legislation.

UK Collective Bargaining Context

Trade union membership in the UK has declined over the past four decades, though the fall has slowed in recent years. In 2024, 6.67 million employees were members of a trade union. As a proportion of all employees, this is a fall from 28.8% in 1995 to 19.9% in 2024. Public sector membership stood at 3.9 million in 2024 (49.9% of employees) compared with 2.5 million in the private sector (11.7% of employees). In general, collective bargaining in the private sector is characterised by decentralised organisation level bargaining. There is statutory provision for union recognition where this cannot be agreed between an employer and a union and where a union can show that a majority support for representation. However up to 2026, the rules governing statutory union recognition was described as a ‘huge disappointment’ in that it was overly complicated and the process was open to diversionary and undermining tactics on the part of employers resulting in a ‘game of snakes and ladders with more snakes than ladders’⁴⁸.

In recent years outsourcing of public services has been accelerated in the UK.⁴⁹ This has been linked to the fall in

collective bargaining coverage,⁵⁰ with jobs formerly situated within a more highly unionised public sector being transferred to private sector operators where collective bargaining coverage is much lower. This in turn has resulted in many UK workers being subjected to more precarious working conditions (such as zero-hour contracts) and relying on minimum-wage legislation for wage setting in comparison to higher standards achieved through collective bargaining for those directly employed in the public sector.⁵¹

In 2026, the Employment Rights Act 2025 became operational. This Act contains a number of revisions governing trade union recognition and industrial disputes including simplification of the recognition process, a change in rules in relation to accessing workplaces, protection of union reps, and easing of a number of conditions relating to taking industrial action.⁵² A recent analysis by Dukes (2026) provided a mixed review of the Act’s potential to extend collective bargaining. Whilst she acknowledges some positive developments for unions such as (among others) amendments to existing recognition procedures that aim to make it easier for unions to make applications and win recognition ballots, she is more critical of other aspects such as a failure to address employment status issues (which in turn affects recognition and collective bargaining rights), and a (proposed) exclusion from the access procedure of employers with fewer than 21 workers and the retention of that same exclusion from the recognition procedure. Given the recency of the legislation and the extended timeframe for full implementation,⁵³ it remains to be seen what the effect of this will be on union recognition, membership and collective bargaining coverage.

Public Procurement Regulation

There has been a significant update in UK procurement policy and regulation since 2023. This is reflected in three inter-linked developments. These are: The national procurement Policy Statement which was introduced in February 2025⁵⁴, The Procurement Act 2023, and the Procurement Regulations 2024 (SI 692 of 2024⁵⁵). The Procurement Act came into force in the UK in 2025. The Act has been welcomed by some as moving from a ‘Most Economically Advantageous Tender’ (MEAT approach) to a more multi-dimensional ‘Most Advantageous Tender’ (or MAT model). This signals a move away from an emphasis on ‘economic’ considerations to

48 Collins H., Ewiing, K.D. and McColgan A. (2026) Labour Law 3rd Edition, Cambridge, Cambridge University Press

49 Godino Pons, A. and Molina Romo, Ó., 2019. The impact of outsourcing on collective bargaining coverage: A comparative analysis in six countries

50 Extracted from speech by Lord J Hendy during second reading and debate of Public Procurement Bill, May 2022 (<https://lordsbusiness.parliament.uk/ItemOfBusiness?ItemOfBusinessId=112177§ionId=40&businessPaperDate=2022-05-25#>).

51 Jaehrling, K., Johnson, M., Larsen, T.P., Refslund, B. and Grimshaw, D., 2018. Tackling precarious work in public supply chains: A comparison of local government procurement policies in Denmark, Germany and the UK. *Work, Employment and Society*, 32(3), pp.546-563.

52 For comprehensive details see The Employment Rights Act 2025 (<https://www.legislation.gov.uk/ukpga/2025/36>) and for summary see Employment Rights Overview Fact sheet: (<https://researchbriefings.files.parliament.uk/documents/CBP-9785/CBP-9785.pdf>)

53 <https://assets.publishing.service.gov.uk/media/6981e6e4e833d031a3158f87/implementing-the-employment-rights-bill-roadmap.pdf>

54 <https://www.gov.uk/government/publications/national-procurement-policy-statement>

55 <https://www.legislation.gov.uk/uksi/2024/692/contents>

allowing contracting authorities to consider including wider public benefit and ESG objectives. Similarly to the European Directives on public procurement, the Procurement Act 2023 retains⁵⁶, Procurement Policy Note 002: The Social Value Model, and procurement Regulations (SI 2024/692). Also in the frame is the Public Services (Social Value) Act 2012 (c. 3), which requires all public sector contracting authorities to consider how the services they commission and procure (above a threshold) might improve the social, economic and environmental well-being of the area.

The national procurement policy statement explicitly references 'high quality jobs that offer fair wages and good working conditions' as part of the Government's mission in kickstarting the economy. The statement is linked to the Procurement Act 2023, in that under Section 13 (9) contracting authorities are legally required to 'have regard' to it. This ostensibly strengthens the 'social value' aspects of public procurement.

Relevant Sections

Section 13 provides for the publication of the Government's national procurement policy statement (NPPS) and the review, amendment and/or replacement of the same. As already highlighted, pursuant to Section 13 (9), contracting authorities must have regard to the procurement statement.

Section 12 stipulates that, when awarding contracts, contracting authorities must 'have regard to the importance of maximising public benefit'. Whilst this is a broad term, it does offer contracting authorities scope to include social aspects within their scoring systems for public tenders.

Section 26 provides that in assessing tenders, a contracting authority must disregard any tender from a supplier that is an 'excluded supplier'. The definition of an 'excluded supplier' is found in Section 57(1), and applies where the contracting authority considers (a) that a mandatory exclusion ground applies to the supplier or an associated person, and the circumstances giving rise to the application of the exclusion ground are continuing or likely to occur again, or (b) the supplier or an associated person is on the debarment list by virtue of a mandatory exclusion ground. Schedule 6 provides the grounds for mandatory exclusion. In this are included such offences as the offence of refusing or wilfully neglecting to pay the national minimum wage, an offence under the Gangmasters (Licensing) Act 2004 (offences relating to gangmasters), an offence under Section 139 of the Employment Rights Act 2025 (failure to comply with labour market enforcement order). Schedule 7 provides for discretionary exclusion for suppliers previously convicted of child labour/trafficking or breaches of labour law.

As is evident from Section 57(1), suppliers can be excluded by reference to the status of their associated suppliers and subcontractors, not just their own performance. Section 19(3) of the Procurement Act 2023 provides that a contracting authority 'may disregard any tender that offers a price that the contracting authority considers to be abnormally low for performance of the contract'.

In relation to outsourcing, Section 83C, in Part 5A of the Act makes provision for protection of outsourced workers, providing that:

An appropriate authority may by regulations specify provision to be included in a relevant outsourcing contract for the purpose of ensuring that –

(a) transferring workers of a specified description are treated no less favourably as workers of the supplier or a sub-contractor than they were as workers of the contracting authority, and

(b) workers of the supplier or a sub-contractor who are not transferring workers and are of a specified description are treated no less favourably than those transferring workers.

For all central government departments, executive agencies and non-departmental public bodies (NDPBs) in the UK, the PPN 002 social value model⁵⁷ is mandatory under the Procurement Act and has been in force since October 2025. Contracting authorities who come under the scope of this model must ensure that a minimum of 10% of overall score for tenders applies to inclusion of social value aspects. The Social Value Model provides a menu of outcomes, award criteria and metrics that the suppliers can select and tailor to each contract.¹ The framework has three critical features:

- Mandatory weighting – A minimum 10% of the evaluation score must relate to social value.
- Measurable commitments – Suppliers must make specific, time-bound pledges, which are then written into the contract as terms or KPIs.
- Ongoing accountability – Commitments must be reported on and monitored, ensuring social value is delivered in practice and not just promised at the bid stage.

Public Procurement and Collective Bargaining

In the National Procurement Policy Statement (NPPS), one of the stated aims of the Procurement Act 2023 is to 'Kick-start economic growth through high quality jobs that offer

⁵⁶ <https://www.gov.uk/government/publications/national-procurement-policy-statement>

⁵⁷ <https://www.gov.uk/government/publications/ppn-002-taking-account-of-social-value-in-the-award-of-contracts/procurement-policy-note-002-the-social-value-model-html>

fair wages and good working conditions'. Whilst as noted above, Section 13 of the Act requires contracting authorities to have regard to the statement and Section 12 requires contracting authorities to have regard to maximising public benefit, these are broad scope requirements. In comparing the 2023 Act to previous procurement UK legislation Act, the Statutory Instrument and the statement have in fact dropped any references to those specific standards identified by ILO convention 98 (including collective bargaining) which existed in the previous procurement Act. There is no explicit reference to collective bargaining anywhere. In summary, whilst there has been a very specific upward swing in the inclusion of broad social considerations in English public procurement, there seems to be a watering down of specific references to collective bargaining.

A more potentially robust source for certain workers' rights in relation to public procurement may be Part 5A of the Employment Rights Act 2025 which covers outsourcing and protection of workers. Much public procurement involves the outsourcing of services and the transfer of workers. Section 83D of the Employment Rights Act requires that:

An appropriate authority must prepare and publish a code of practice containing guidance to contracting authorities for the purpose of ensuring that, where a contracting authority carries out the procurement of a relevant outsourcing contract –

(a) transferring workers of a description specified in the code are treated no less favourably as workers of the supplier or a sub-contractor than they were as workers of the contracting authority, and

(b) workers of the supplier or a sub-contractor who are not transferring workers and are of a description specified in the code are treated no less favourably than those transferring workers.

This re-introducing a 'two-tier code' with respect to outsourcing is designed to ensure that employees from the private sector working on outsourced contracts will be offered terms and conditions broadly comparable to those transferred from the public sector. However, this covers a limited numbers of situations. Furthermore, questions remain as to how monitoring and ensuring compliance (which has proved problematic in the past) will operate and be resourced (Dias-Abey 2025).

The Employment Rights Act 2025 also includes a number of provisions designed to strengthen the ability of unions

to access workplaces, gain recognition and protect union representatives. Whilst not directly related to public procurement, strengthening the ability of unions and collective bargaining within the UK may indirectly impact on public procurement.

Scotland

Finally, it is worth drawing attention to differences between the UK generally and public procurement rules in Scotland. Public procurement in Scotland is informed by the Public Procurement Strategy for Scotland 2023-2028.

Section 9 of the Procurement Reform (Scotland) Act 2014 places an obligation on a contracting authority, to consider how it can improve the economic, social and environmental wellbeing of the area in which it operates through its procurements. The Statutory Guidance, published under the Act, states that a contracting authority should consider including a statement in its strategy outlining its commitment to implementing the Scottish government's Fair Work First policy.⁵⁸ This policy aims to drive high quality work across the Scottish labour market by applying fair work criteria to public contracts including trade union recognition and representation. The Scottish Government also established the Fair Work Convention, to advocate for fair work and to make recommendations for change. It is comprised of representatives from employers, trade unions and academic experts. As part of its remit, it has undertaken inquiries into work in social care (2019) and construction (2022) and in the hospitality industry.

Section 15 of the Procurement Reform Act requires certain public bodies to develop an organisational procurement strategy and report against its delivery at the end of each financial year. The strategy should set out how the organisation intends to carry out its regulated procurement and must include a statement of the contracting authority's general policy on payment of a living wage to individuals involved in the delivery of a contract. Since October 2021, companies bidding to win Scottish Government contracts must pay at least the real living wage⁵⁹ where it is a proportionate and relevant requirement.

There are mixed views as to the success or otherwise of the Scottish Procurement regulatory framework⁶⁰ with respect to unintended outcomes and fair work⁶¹. Similarly, monitoring contractors in respect of their employment practices and ensuring compliance has been identified as an issue resulting in calls for the establishment of a moni-

58 <https://www.gov.scot/publications/fair-work-first-guidance-3/pages/5/>

59 The real living wage is an independently calculated wage based on a bundle of costs that workers need to pay to attain a decent standard of living and is higher than the UK Government calculation of the living wage. For more detail see: <https://scottishlivingwage.org/what-is-the-real-living-wage/> and also <https://www.resolutionfoundation.org/our-work/labour-market/living-wage/>

60 for more detail on individual legislation governing public procurement in Scotland see: <https://www.gov.scot/publications/scottish-procurement-policy-manual/>

61 Cunningham, I., James, P., Baluch, A. and Cullen, A.M., 2023. Introducing Fair Work through 'soft' regulation in outsourced public service networks: Explaining unintended outcomes in the implementation of the Scottish living wage policy. *Industrial Law Journal*, 52(2), pp.312-341.

toring and compliance agency⁶². A number of commentators⁶³ have observed that the UK (like Ireland) has adopted a 'soft law' approach in relation to social clauses (including collective agreements/collective bargaining) in general with some 'hard law' aspects (for instance in relation to excluding tenders).

Germany

German Industrial Relations System

Germany is a coordinated market economy (Hall and Soskice, 1999) exemplifying strong labour market institutions, sectoral level collective bargaining and traditionally high collective bargaining coverage. There are several key features of the German industrial relations system (Brehens, 2021; Keller and Kirsch, 2021). The German industrial relations system is highly codified with legislation forming a key part of the industrial relations framework. Comparatively, there is also a high degree of representativeness of trade unions and employer organisations, both playing significant roles within the regulation of industrial relations in Germany. Trade unions are organised at industry level, with three main confederations Confederation of German Trade Unions (DGB), the German Civil Service Association (DBB) and the Christian Confederation of Trade Unions in Germany (CGB). Trade union density is currently 14% (OECD) and has been declining since the 1990s for a variety of reasons including the fading appeal of trade unions, low levels of perceived effectiveness, trade union issues in recruiting members, growth of the private sector, and the potential for free-riding as workers are covered by sectoral collective agreements (Brehens, 2020; Keller & Kirsch, 2021). Employer organisations in Germany play a prominent role in IR, largely due to industry level collective bargaining model. However, despite positive views about employer organisations, like trade unions, they have suffered losses in membership in recent times. A key response to this has been, and permitted by the State, a split membership route for employers – employers can now join and be covered by a collective agreement, or they can join without having to accept the binding stipulation of collective agreements ('OT-Status'). Another key feature of the German industrial relations system is the dual structure of interest representation. Workers in Germany can be represented by trade unions (primarily in relation to collective bargaining) and works councils.

In relation to collective bargaining, again legislation sets out a clear framework with the Collective Agreement Act 1949 setting out the legal parameters for collective bargaining – collective bargaining can only take place between trade unions and employer or employer associations. Social partners in Germany enjoy 'bargaining auton-

omy' with the State staying out of collective bargaining. Collective bargaining traditionally has taken place at industry level between trade unions and employer organisations and is now best described as an organised decentralised and coordinated model (Traxler, 1995). Industry agreements often set out the broad parameters of the collective agreement, with room then at local level for further negotiation. In recent times opening clauses have also become common whereby sectoral agreements allow companies to negotiate agreements with works councils that can deviate from the industry agreement. For example, 21% of workplaces covered by collective agreements reported the presence of opening clauses in their agreements (Amlinger and Bispinck, 2016). Procedures to extend collective agreements exist in the German system however these are used sparingly, primarily because of employer opposition and their right of veto on the use of such mechanisms (Muller, 2025). Collective bargaining coverage is currently 49% and has been declining for the last number of years. For example, in 2000, collective bargaining coverage stood at 68%. A key factor contributing to the decline in collective bargaining coverage has been the change in membership route for employer organisations as mentioned above. Employers are not obliged to engage in collective bargaining, however if they are a member of an employer organisation that has negotiated a collective agreement they must apply it – unless they choose the 'OT-Status' membership.

Public Procurement in Germany

Public procurement in Germany is characterised by high level of activity, a decentralised model and a complex legal and regulatory framework. Germany has one of the largest public procurement markets within the EU. Estimates suggest that Germany spends between €300 - €500 billion per year on public contracts, representing 13%-15% of GDP (OECD, 2019). Overall, public procurement accounts for 35% of general government spending in Germany well above the average of 29% in OECD countries (OECD, 2019). Public contracts are categorised into supply contracts, service contracts and works contracts. Approximately half of all public contracts are work contracts primarily in the construction sector. About 12% of public contracts are above the EU threshold level of which European public procurement rules apply (Schulten, 2025).

Another characteristic of public procurement in Germany is its decentralised model. Germany is a federal state, with power shared between national/central government, regional governments called Lander – there are currently 16 Lander in Germany – and municipalities. About 50% of public contracts are awarded by municipalities, 30% by federal states (Lander), 11% are awarded by national (federal

⁶² Carolan, J., Dukes, R., Ewing, K., Kirk, E. and McCorkindale, C., 2019. A Charter of Workers' Rights for Scotland.

⁶³ Arrowsmith, S., 2023. The Evolution of Procurement Law in the United Kingdom: a Common Law Perspective on Regulating Contract Award Procedures. Available at SSRN 4756144. See also Cunningham, I., James, P., Baluch, A. and Cullen, A.M., 2023. Introducing Fair Work through 'soft' regulation in outsourced public service networks: Explaining unintended outcomes in the implementation of the Scottish living wage policy. *Industrial Law Journal*, 52(2), pp.312-341.

government) and 7% by other public organisations and companies (Schulden, 2025). This means that almost 80% of procurement activity takes place at the sub-central level in Germany which is well above the OECD average of 63% for decentralised spending on procurement (OECD, 2019).

At the federal and state levels in Germany, responsibility for public procurement primarily resides with the Federal Ministry of Economy and Energy (BMWi). The Federal Ministry of the Interior, Building and Community (BMI) also plays a role, particularly in relation to e-procurement and the procurement of public works (OECD, 2019). Another key feature of the German Public Procurement model is the existence of public procurement committees. These committees are made up of stakeholders from federal, Länder and municipal levels, the private sector, chambers of industry and commerce, and unions (OECD, 2019) and provide a forum for each stakeholder to contribute to public procurement, including the drafting of any legislation.

The legislation governing public procurement in Germany is complex largely due to the three divisions of Government (federal, Länder and municipal levels) (OECD, 2019) and different laws that apply depending on whether a tender falls above or below the EU thresholds. (OECD). The German Federal state sets out the overarching framework for public procurement, but municipalities and Länder have significant autonomy to shape and create their own public procurement laws (OECD, 2019). Furthermore, unlike most countries that have a single law regulating public procurement, Germany is an outlier with procurement covered in both competition and budgetary law (OECD, 2019). This creates a complex legal and regulatory framework for public procurement (OECD, 2019).

The three Procurement Directives in 2014 represented an opportunity and the catalyst for the reform and modernisation of German public procurement laws in 2016 (OECD, 2019). Key priorities of the reform included a modern legislative framework, an effective institutional framework, a system that works with integrity, inclusion of strategic goals, an accessible system for suppliers and a transparent and quantifiable process (OECD, 2019). An OECD report observed that Germany went even further than the EU directives required; they used the EU directives as an opportunity to improve several aspects of the German procurement system (OECD, 2019).

A key element of the reform of the regulatory framework in Germany was the introduction of the Act for the Modernisation of Public Procurement Law (Gesetz zur Modernisierung des Vergaberechts – Vergaberechtsmodernisierungsgesetz–VergRModG). This piece of legislation introduced a number of changes to different pieces of legislative instruments covering public procurement, including the Law against Restraints on Competition (GWB). The GWB is the primary piece of legislation in German public procurement legal framework. Part 4 of the GWB covers public procurement across all levels in Germany when awarding public

contracts above EU thresholds. The GWB sets out the rules in relation to public procurement in Germany, seeking to ensure fair competition, transparent, efficiency and equal treatment. The GWB mainly lays down the general principles of procurement procedures, such as transparency, equal treatment and non-discrimination against bidders. It also defines the contracting authorities and the nature of public contracts. Moreover, it regulates the tendering process and sets out the basic criteria for the award of contracts, including consideration of environmental or social aspects. There also a range of other legislative instruments that support the GWB, including the Ordinance on the Award of Public Contracts (VgV), the Ordinance on the Award of Concession Contracts (KonzVgV) and the Ordinance for Specific Utilities (SektVO). Finally, a similar regulatory framework for public procurement below the EU threshold exists, with the Code of Procedure for Procuring Supplies and Services below the EU Threshold (UVgO) mirroring the regulatory framework of the GWB.

In relation to labour clauses in public procurement rules in Germany, the starting point is the regulations set out in the GWB. According to section 127 GWB, the contracting authority is obliged to award the contract to the ‘most economical’ offer, which is not based solely on price but may also take other criteria such as quality, innovation, and sustainability into account. Section 97 of the GWB regulates ‘General Principles for Making Awards’, where it is stated that ‘in making the award, aspects of quality and innovation, as well as social and environmental aspects shall be considered’. The use of labour clauses in German public procurement has a very long tradition (see Schulden, 2025 for a fuller review). Schulden (2025) identifies three phases of labour clauses in German public procurement. The first phase, Pre-Rüffert phase (1999-2008) saw labour clauses becoming embedded within public procurement. Some German Federal States started to introduce regional procurement laws with labour clauses which stated that public contracts could only be awarded to companies that followed local collective agreements. These were introduced initially in the construction sector, but soon spread to other sectors before featuring as the norm. However, a key moment came with the CJEU decision in the Rüffert case (C-346/06) in April 2008 which found that a procurement law in the German federal state of Lower Saxony, which required that contracting companies comply with local collective agreements was not in conformity with EU law, breaching the EU principle of freedom to provide services. This had an immediate effect with labour clauses referring to local collective agreements coming to an end. The Post-Rüffert phase (2008-2019) saw a reform of labour clauses, with a greater focus now on broader social and environmental issues including minimum wage, the promotion of unemployed or disabled workers and equal pay/equal opportunities but any labour clauses related to collective bargaining were only permitted to collective agreements that are universally applicable – which companies were bound by anyways (Schulden, 2025). Germany has now entered a third, Post-Post-Rüffert, phase (2019-) character-

ised by a return to classic labour clauses in public procurement. Influenced by a series of CJEU judgments - RegioPost judgement (C-115/14) of 2015, Sähköalojen ammattiliitto case (C-396/13) of 2015 – new or revised directives from the EU – including the Procurement Directives in 2014, the revision of the Posted Workers Directive in 2018 and the Directive on Adequate Minimum Wages in the European Union - has led to a view that the old restrictions on labour clauses have now been removed (Krause 2019; Rödl 2020; Klocke 2021). However, Schulten (2025) notes that some legal experts (c.f. Hartmann 2023a, 2023b; Caspers 2024) continue to dispute this suggesting that those labour clauses may continue to apply).

We also see variation across different federal states in Germany in relation to labour clauses. 14 out of 16 German federal states have regional procurement laws with some form of labour clause referring to compliance with collective agreements – Bavaria and Saxony being the exceptions. Schulten (2025) identifies two groups within these federal states. The first group includes eight federal states that still have regional procurement laws from the post-Rüffert phase, with labour clauses limited to compliance with universally applicable collective agreements (Schulten, 2025). The second group contains six federal states and those that have recently revised their public procurement laws where we find a more comprehensive use of labour clauses referring to prevailing, but not necessarily universally applicable collective agreements (Schulten, 2025).

While the Procurement Directives and their implementation have had significant impact in terms of social clauses in each country, other Directives also play an important role particularly in respect of shaping the regulatory context for collective bargaining. In the next section we examine the AMWD and explore its transposition and implementation across the relevant countries.

3. Collective Bargaining and Public Procurement in the AMWD

Overview

The EU Directive on Adequate Minimum Wages has been described as a ‘fundamental paradigm shift in European labour policy’ (Schulten & Müller, 2021:2). In this regard, scholars (Hassel, 2023; Lillie, 2023) have contended that previously, the Commission had pursued a neoliberal agenda which viewed minimum wage regulation and strong collective bargaining systems as institutional barriers for the functioning of free markets, thereby negatively impacting the development of growth and employment. It was this view that shaped interventions by the Troika for example to decrease statutory minimum wages in Ireland and Greece following the financial crisis in 2009-2010 (Schulten and Müller 2015). However, the Directive on Adequate Minimum Wages provides a clear indication of the distinct shift in policy thought on this issue. The successful economies of EU Member States with strong collective bargaining coverage and wage regulation have perhaps shaped this shift in policy, demonstrating that thriving economies and strong regulation on collective bargaining and wage levels can reinforce one another.

This change in views on minimum wage interventions parallels the changes in views on public procurement policy. Historically, the priority of the EU in relation to public procurement was dominated by market considerations and the importance of open competition with limited social considerations in assessment of public tenders (see Section 2). While free competition remains an important objective, social considerations have in recent years become more central to the EU policy in numerous spheres. This includes collective bargaining and public procurement, paving the way toward a more Social Europe which strives for high levels of social protection, quality of life and wellbeing, including decent work.

While the Adequate Minimum Wage Directive seeks to address the level and scope of minimum wages in Europe, it has perhaps received more attention for its recognition of the important role of collective bargaining in achieving this aim (De Spiegelaere, 2025, Doherty, 2024; Müller & Schulten, 2025; Müller, 2025). Indeed, a simple word search shows ‘collective bargaining’ is mentioned 60 times in the text of the directive – interestingly the same number of

times as ‘minimum wage’ (60), while the term ‘collective agreements’ appears 53 times⁶⁴. While obviously a rudimentary technique, this nonetheless shows how intertwined collective bargaining and adequate wage levels are perceived to be in the Directive.

Following a challenge to the legality of the Directive by Denmark⁶⁵ (supported by Sweden), the CJEU upheld the validity of the majority of its provisions. As Prendergast (2025a) notes - what was arguably the most pertinent part of the Directive for Ireland, Article 4 – ‘Promotion of collective bargaining on wage-setting’ – was not found to have direct interference on the freedom of association by the Court. A Labour MEP has suggested that the ruling put ‘beyond any doubt that fair pay and collective bargaining are at the heart of the European social model’ (Connelly, 2025). Article 4 of the Directive obliges Member States with collective bargaining coverage of below 80% to provide a framework of enabling conditions for collective bargaining and to establish action plans to promote collective bargaining, with the aim of progressively increasing bargaining coverage. The underpinning rationale is that collective bargaining is an important mechanism for ensuring better living and working conditions, including adequate minimum wages which benefits workers, businesses, society and economies.

As noted in Recital 7 of the Directive ‘Addressing large differences in the coverage and adequacy of minimum wage protection contributes to improving the fairness of the Union’s labour market, to preventing and reducing wage and social inequalities, and to promoting economic and social progress and upward convergence’. Thus, the Directive very clearly reflects the wider objective of the EU to return collective bargaining to the centre of European labour market policy. However, as Müller (2025:10) notes ‘its real impact in terms of achieving its principal objectives depends heavily on effective transposition and implementation at national level’. The impetus to increase collective bargaining coverage through the provisions of the AMWD are linked with relevant provisions of the Procurement Directive as discussed above.

In this next section, we examine the transposition and implementation of the AMWD at national level in each of

64 Public procurement is referenced 6 times.

65 *Kingdom of Denmark v European Parliament and Council of the European Union* Case C-19/23 (ECLI:EU:C: 2025:865).

the countries examined in this report – Ireland, the Netherlands and Germany, focusing on implications for public procurement. The UK since Brexit is no longer bound by the requirements of EU Directives and the various relevant regulations within the UK with regard to collective bargaining and public procurement regulation have been outlined in Section 2 above. First, we outline the key provisions of the AMWD with relevance for collective bargaining and public procurement. While several recitals and Articles within the Directive are relevant to collective bargaining generally, Table 2 below highlights the key provisions with relevance in the context of public procurement⁶⁶. We then review each country case study in turn examining the implementation of the Directive including reaction from relevant social partners and the planned initiatives under proposed national action plans. The section concludes with a summary table (Table 3) which synthesizes the key features of each country in relation to the policy context, regulatory approach, and institutional arrangements for collective bargaining and public procurement.

⁶⁶ For an in-depth review of the potential implications of the Directive for collective bargaining more broadly in the Irish context, see Doherty, 2025.

Key Provisions of the AMWD for Collective Bargaining and Public Procurement

Article Number	Text	Relevance
Article 1(4) 4	The application of this Directive shall be in full compliance with the right to collective bargaining. Nothing in this Directive shall be construed as imposing an obligation on any Member State:	While the provisions here do not prevent Member States from declaring collective agreements universally applicable, neither do they oblige them to do so.
Article 3(3)	This provision defines ‘collective bargaining’ as: all negotiations which take place according to national law and practice in each Member State between an employer, a group of employers or one or more employers’ organisations on the one hand, and one or more trade unions on the other, for determining working conditions and terms of employment	The definition of what constitutes collective bargaining has been a key stumbling block in the Irish voluntarist context. Here the Directive reinforces the view of collective bargaining as being conducted <i>with trade unions</i> . This is important as it does not consider for example engagement with employer organised or controlled bodies as constituting collective bargaining.
Article 4(1) (b)	Seeks to ‘encourage constructive, meaningful and informed negotiations on wages between the social partners, on an equal footing, where both parties have access to appropriate information in order to carry out their functions in respect of collective bargaining on wage setting’	This emphasises the need for parties engaged in collective bargaining to have an equal footing to be able to carry out their functions. However, the wording seeks to encourage rather than mandate this. Nonetheless, an expert group from the European Commission has clarified ‘As regards Article 4(1) (b), the reference to social partner being able to negotiate on an equal footing is intended to prevent the undermining of one side of the social partners in conducting collective bargaining and is in line with the spirit of the ILO Conventions mentioned in recital (24), in particular Convention 98 on the Right to Organize and Collective Bargaining’ ⁶⁷ .
Article 4 (2)	Each Member State in which the collective bargaining coverage rate is less than a threshold of 80 % shall provide for a framework of enabling conditions for collective bargaining, either by law after consulting the social partners or by agreement with them. Such a Member State shall also establish an action plan to promote collective bargaining. The Member State shall establish such an action plan after consulting the social partners or by agreement with the social partners, or following a joint request by the social partners, as agreed between the social partners. The action plan shall set out a clear timeline and concrete measures to progressively increase the rate of collective bargaining coverage, in full respect for the autonomy of the social partners. The Member State shall review its action plan regularly and shall update it if needed. Where a Member State updates its action plan, it shall do so after consulting the social partners or by agreement with them, or, following a joint request by the social partners, as agreed between the social partners. In any event, such an action plan shall be reviewed at least every five years. The action plan and any update thereof shall be made public and notified to the Commission.	This article in the Directive in relation to collective bargaining has received significant attention in terms of its potential capacity to enhance collective bargaining. Ireland’s collective bargaining coverage is below the 80% threshold and so the Irish government has published its Action Plan to promote collective bargaining. The plan includes several measures, including a commitment to examine collective bargaining in public procurement. It should also be noted that there is an obligation on Member States (with coverage rates below the threshold) to provide for a framework of enabling conditions for collective bargaining.

⁶⁷ European Commission (2023) Report Expert Group Transposition of Directive (EU) 2022/2041 on adequate minimum wages in the European Union, Brussels: European Commission.

Article Number	Text	Relevance
Article 9	In accordance with Directives 2014/23/EU, 2014/24/EU and 2014/25/EU, Member States <i>shall</i> take appropriate measures to <i>ensure</i> that, in the awarding and performance of public procurement or concession contracts, economic operators and their subcontractors comply with the <i>applicable obligations</i> regarding wages, the right to organise and collective bargaining on wage-setting, in the field of social and labour law established by Union law, national law, collective agreements or international social and labour law provisions, including ILO Freedom of Association and the Protection of the Right to Organise Convention No 87 (1948) and ILO Right to Organise and Collective Bargaining Convention No 98 (1949)	This article directly relates to public procurement and outlines the obligation on Member States in this regard. The wording here is quite explicit in relation to the right to organise and collective bargaining on wage setting. However <i>applicable obligations</i> in relation to collective bargaining have heretofore been interpreted through ‘soft law’ by the Irish judicial system. The difficulty is that the term ‘applicable obligations’ does not appear to create any new legal obligations; it merely makes provision for those obligations that are already ‘applicable’. Nonetheless references here to the ILO conventions combined with the recent decision of the CJEU in the <i>Ortuella</i> case supports the possibility of promoting collective bargaining in public procurement criteria. Chapter 3.1 of the expert group report notes that non-compliance with the social clause appears to be a significant phenomenon in many countries. While there is no specification on <i>how</i> Member States should comply with Article 9, the expert group provides examples of measures that could be taken (see European Commission, 2023:46).

The sections below provide an overview of the recitals.

Recital Number	Text	Relevance
31	The effective implementation of minimum wage protection set out by legal provisions or provided for in collective agreements is essential in the awarding and the performance of public procurement and concession contracts. Non-respect for collective agreements providing for minimum wage protection may indeed occur in the execution of such contracts or in the sub-contracting chain, thereafter, resulting in workers being paid less than the wage level agreed in the sectoral collective agreements. To prevent such situations, in accordance with Articles 30(3) and 42(1) of Directive 2014/23/EU(8), Articles 18(2) and 71(1) of Directive 2014/24/EU(9) and Articles 36(2) and 88(1) of Directive 2014/25/EU(10), of the European Parliament and the Council, public procurement contracting authorities and contracting entities are to take appropriate measures, including the possibility to introduce contract performance conditions , and ensure that economic operators apply to their workers the wages provided for in collective agreements for the relevant sector and geographical area and respect the rights of workers and trade unions arising from ILO Freedom of Association and the Protection of the Right to Organise Convention No 87 (1948) and ILO Right to Organise and Collective Bargaining Convention No 98 (1949), as referred to in those Directives, in order to abide by applicable obligations in the field of labour law. However, this Directive does not create any additional obligation in relation to those Directives.	This recognises the possibilities for breaches of collective agreements in sub-contracting chains and seeks to ensure Member States take measures to prevent this.
32	For applicants for financial support from Union funds and programmes under Regulation (EU) 2021/1060 of the European Parliament and of the Council (11) and the enabling conditions therein, the rules for public procurement and concessions should be applied adequately, including with regard to compliance with collective agreements provisions.	Again, compliance with collective agreements is mentioned specifically in relation to procurement.

Ireland

The AMWD has been much discussed among Irish social partners, policy makers and academics (Doherty, 2024, 2025; Prendergast, 2025a, 2025b, 2025c; Murphy and Ryan, 2024), particularly with regard to the collective bargaining provisions given Ireland's comparatively low rate of coverage within the EU. According to Müller and Schulten (2025), Ireland is one of 19 countries that needed to take action to promote collective bargaining in line with Article 4(2) of the AMWD. The legislation was described by a trade union leader as 'the most significant and progressive to emerge from the European Union in a generation and, if transposed and implemented as intended, to be potentially transformative and enormously beneficial for industrial relations in Ireland'⁶⁸.

The decision of the CJEU to uphold the validity of the majority of the Directive's provisions following the challenges from Denmark was welcomed by Irish trade unions (Malone, 2025). Employer response to the Directive has however been more circumspect. In many instances, employer commentary has focused on the strict preservation of voluntarism in the Irish industrial relations context and the insistence that no employer can be compelled to engage in collective bargaining. This is seen for example, in relation to the public consultation that formed part of the development of the government's action plan to promote collective bargaining⁶⁹.

Prendergast (2025b) reports on a submission by an employment consultancy firm which warned that to impose new compulsory measures on employers, such as 'good faith engagement', would be 'reckless' in the context of uncertainty in the trading relationship between Ireland/EU and the USA. Furthermore, at a panel of experts discussing the Directive in March 2026, a representative from employers' body Ibec noted that 'it does not mandate, nor could it mandate collective bargaining. And it's very clear from the [European] Commission's Expert report on the transposition of the directive that it is an obligation of effort, not outcome, and there'll be no sanctions in terms of a failure to increase collective bargaining' (Prendergast, 2026).

Transposition of the Directive

The Directive was transposed on 15 November 2024, meeting the transposition deadline⁷⁰. The Department for Enterprise, Trade and Employment was of the view that no new primary legislation was required on foot of the AMWD. The Department noted that the Low Pay Commission 'was

already largely in compliance with the provisions of the Directive', although there were some minor amendments required. It was necessary to amend Ireland's National Minimum Wage Act 2000 to give effect to the Directive. This was done by way of an SI, entitled European Union (Adequate Minimum Wages) Regulations 2024 [no.633/2024]. It is worth noting that the Government had committed to the introduction of a living wage set at 60% of the median wage of all workers – this includes both full-time and part-time workers which is in contrast to organisations such as the EU and OECD who use only full time workers when considering the median wage with regard to adequate wages. However, the Irish Government has since postponed that commitment back to January 2029 (McNally, 2025). In relation to public procurement, Article 9 of the AMWD essentially reinforces the provisions of existing public procurement legislation, noting that Member States *shall* take appropriate measures to *ensure* that the right to organise and collective bargaining on wage-setting is upheld.

In relation to collective bargaining, it was claimed that: 'There were no legislative changes on the collective bargaining and enforcement side because (1) the relevant provisions ... are already being given effect and (2) the formulation of the action plan to promote collective bargaining does not need a legislative underpinning (DETE, 2025:50). The transposition was largely criticised by unions as being minimalist in nature (Müller, 2025) making no reference to the collective bargaining provisions of the Directive. With regard to public procurement and collective bargaining, therefore, the main relevant instrument is the National Action Plan for the Promotion of Collective Bargaining developed by the Government after consultation with the social partners ICTU and Ibec and a four-week public consultation.

Ireland's Action Plan for Collective Bargaining

As noted above, Article 4(2) requires each Member State in which the collective bargaining coverage rate is less than the 80% threshold to provide for a framework of enabling conditions for collective bargaining and to establish an action plan to promote collective bargaining (see Table 2). Ireland's Action Plan to Promote Collective Bargaining 2026–2030 was published on 5th November 2025⁷¹. In its announcement of the plan's publication, the Department said it was 'designed to reinforce Ireland's long-standing system of voluntary industrial relations'. The plan emphasises a deep respect for the 'legacy of Ireland's commitment to employment rights and social partnership' and recognises the stability for businesses and the capacity to

68 Joint Committee on Enterprise, Trade and Employment debate - Wednesday, 24 Jan 2024

69 The Department of Enterprise, Trade and Employment ran a public consultation from 14 April 2025 to 12 May 2025 to gather views from relevant stakeholders in relation to the action plan. The consultation received 80 valid submissions. See: [Public Consultation on Ireland's Action Plan to Promote Collective Bargaining Report](#)

70 EU Directives – Tuesday, 29 Apr 2025 – Parliamentary Questions (34th Dáil) – Houses of the Oireachtas, https://www.oireachtas.ie/en/debates/question/2025-04-29/717/#pq_717

71 Ireland's Action Plan to Promote Collective Bargaining 2026–2030

respond to challenges that well-functioning collective bargaining creates. Indeed, the plan praises collective bargaining, when pursued voluntarily and in good faith, as ‘a strategic tool for building resilient enterprises and a more equitable society.’ The plan notes on p3:

When collective bargaining functions well it creates a foundation of respect and stability that helps businesses attract and retain talent; adapt, innovate and respond more effectively to shifting markets, global competition, and the challenges of the new world of work such as new and emerging technologies.

There is a strong emphasis in the text of the action plan on the voluntarist nature of Ireland’s industrial relations system. Terms relating to voluntarism appear 16 times in the 30 pages of the document. However, the plan is positive in terms of both the economic case for collective bargaining and the wider societal benefits as well as its capacity to foster stable labour relations and industrial peace. There are 22 action points in the plan which address four key themes:

- Empowering and Encouraging
- Promoting
- Protecting
- Supporting the Industrial Relations Institutions

As noted at the outset of this report the key provisions of Ireland’s action plan in relation to collective bargaining and Public Procurement are as follows:

Action Item 6 of the Government’s Action Plan commits to:

‘Conduct exploratory research, including a Regulatory Impact Assessment and SME test, regarding the potential of the introduction of a pilot to include collectively bargained agreements as a weighting in a public procurement project’.

The corresponding success indicators of this action item are that a ‘pilot is concluded’ and ‘learnings identified’.

Action Item 11 seeks to:

‘Examine the role of Joint Labour Committees (JLCs) in government-funded sectors’

The corresponding success indicators for this action item is noted as the ‘Number of active JLCs and frequency of negotiation’; the ‘Number of EROs’ and ‘Positive Labour Court Reviews’.

Action Item 12 seeks to:

‘Liaise with the Department of Finance on a proposal to re-introduce tax relief for trade union subscriptions’⁷²

The corresponding success indicator for this action item is that an ‘impactful mechanism’ is developed. In Section 5 below we outline the different regulatory options that would be possible in the Irish context to help promote collective bargaining in public procurement. We draw on comparisons from initiatives in the case studies presented, as well as legal precedents and cases interpreting both the spirit and the application of the relevant directives.

National Public Procurement Strategy

National policy documents can provide important contextual insights into a country’s approach and objectives for public procurement. In Ireland, a new national public procurement strategy is currently being developed. The Office of Government Procurement notes that ‘The Government’s long-term vision for public procurement is to enable sustainable, innovative, transparent and cost-effective public procurement that meets the needs of the State and delivers greater benefit to the public’.⁷³

It is also noted that this ‘policy arena is further complicated by the introduction of non-procurement-related legislation aimed at leveraging public procurement to enable broader social and environmental priorities’. This links to Article 9 of the AMWD which creates an onus on Government to take social considerations into account both in its revised public procurement policy objectives and its execution of the commitments made in the National Action Plan on Collective Bargaining. While the national public procurement strategy is still being developed, the Strategic Public Procurement Roadmap⁷⁴ is part of its broader development. The roadmap (p6) notes that ‘at present, Government policy regarding innovation procurement and socially responsible public procurement is set out by way of circular rather than through a dedicated strategy’. The corresponding circular makes more reference to Green public procurement than social considerations. However, it does note that:

While procurement is primarily focused on enabling the delivery of public services in a sustainable manner by ensuring value for money and broad access to public procurement opportunities for businesses, there are also possibilities for public bodies to deliver wider social aims through their procurement processes. This can be achieved through the inclusion of social considerations as requirements throughout the process, from

⁷² See Footnote 66 regarding the wording of this Action Item

⁷³ Policy statement: developing a new public procurement strategy for Ireland

⁷⁴ [irelands-strategic-public-procurement-roadmap.pdf](#)

*business case and specification stages through to the selection, award and contract management stages*⁷⁵.

This suggests that, in line with the *Ortuella* case ruling from the CJEU that engagement in collective bargaining (to deliver the Government's wider social aim of promoting collective bargaining) can be considered and prioritised as a factor throughout the public procurement process.

On 14th April 2026, Deputy Mairéad Farrell asked the Minister for Public Expenditure, Infrastructure, Public Service Reform and Digitalisation to provide an update on the National Procurement Strategy; the timeline for its publication; and if he will make a statement on the matter. The response⁷⁶ from Minister Jack Chambers indicated that the new National Public Procurement Strategy is currently being finalised and expected to be brought to Government in the coming weeks. The finalised text of this strategy will provide more in-depth insights in relation to plans for regulation of public procurement and the extent to which it is linked to the actions outlined in the action plan in respect of workers' rights and collective bargaining.

The Netherlands

As noted previously, the Netherlands has had a strong tradition of social partnership and a long history of successful collective bargaining. However, in recent years the Dutch collective bargaining system has experienced considerable erosion, including declines in trade union density and collective bargaining coverage (Boumans & Keune, 2018; Oude Nijhuis, 2023). Indeed historically, the Netherlands has been one of the countries with the highest coverage of employees by collective agreements, consistently above 80%. However, recent declining collective agreement coverage to 72% meant that it fell into the category of countries below the 80% threshold and so is also covered by the obligations under Article 4(2) of the AMWD. In the political context, the country has also seen a change of government in recent years. On 2 July 2024, what has been described as a 'right-wing government' took office, which may have implications for policy and regulatory decisions in relation to employment rights and collective bargaining, including within public procurement. The change in government also contributed to delays in the transposition of the Directive (Franca, 2025) with the Netherlands being described as a 'laggard' in this regard. Müller (2025:20) notes that 'governments that were not very interested in an ambitious transposition in the first place used the pending court case [the Danish challenge] and the Advocate General's recommendation to annul the Directive as a justification to delay the transposition process'.

The transposition of the Directive comes therefore a critical juncture in the Dutch employment relations context. In addition to declining union density, an increasing number of employers are not joining employers' organisations in recent years, thus potentially weakening the existing underpinning industrial relations institutions. Because the Dutch industrial relations system has a strong voluntary character, there is no obligation for employers to engage in collective bargaining with trade unions (de Beer, 2025). There is also no legal right for unions to access the workplace and trade union representatives have increasingly been refused access (Oude Nijhuis, 2023). Historically, social partners have been willing to engage in collective bargaining (and collective agreement extension), recognising the stability that the system brings for all parties. Indeed, it is the employer association (the AWWN) that has called for 'urgent maintenance' of the CAO system, noting that 'without CAOs, we risk a race to the bottom. Nobody wants that'⁷⁷. There are several emerging factors however that are weakening the system, arguably requiring the need for stronger state intervention. Yet the requirement to create an action plan for the promotion of collective bargaining has been described as a 'new challenge' for the Dutch Government, 'since the Dutch system of collective bargaining is essentially a liberal one, leaving it completely to the social partners whether and how to negotiate' (Pennings, 2023). At the time of writing, no standalone action plan on the promotion of collective bargaining has been adopted in the Netherlands.

The transposition of the Directive has focussed on the minimum wage rather than collective bargaining provisions. Like Ireland, the transposition has involved minimal adjustments to minimum wage legislation only (the Minimum Wage and Minimum Holiday Allowance Act) with no regulatory changes in relation to collective bargaining. Schreurs (2025) notes that 'when the ministry initiated the transposition of the Minimum Wage Directive in late 2023, it opted for 'pure implementation', that is, with no changes other than 'strictly necessary'.

Implications for Collective Bargaining

The Minister of Social Affairs and Employment informed Parliament that he had started an 'exploration' of the current state of the collective bargaining system by consulting representatives of trade unions and employers' associations and a number of experts. This consultation is in compliance with Article 4(2) of the Directive which requires Member States to 'establish such an action plan after consulting the social partners or by agreement with the social partners, or, following a joint request by the social partners, as agreed between the social partners'.

75 Circular 20/2019: Promoting the use of Environmental and Social Considerations in Public Procurement

76 Departmental Strategies – Tuesday, 14 Apr 2026 – Parliamentary Questions (34th Dáil) – Houses of the Oireachtas, <https://www.oireachtas.ie/en/debates/question/2026-04-14/1092/#pq-answers-1092>

77 Dutch CAO system is under pressure, warns employer body - DutchNews.nl

The Dutch collective bargaining system is strong but weakening. The government has framed implementation of the AMWD as reinforcing existing collective bargaining infrastructure, not replacing it. Several challenges are emerging in recent years in relation to this infrastructure including declining union and employer association density as well as employer avoidance tactics such as increasing use of non-standard work and employer sponsored 'unions'. Such challenges are arguably incompatible with the country's (lack of) legislative arrangements for trade union access to workplaces, protection of union representatives and guarantees against interference (and independence) from employers. It has been argued that legislative changes to ensure trade union representativeness and freedom from employer interference in line with obligations under the ILO Right to Organize and Collective Bargaining Convention (No. 98) may be an important step towards strengthening the Dutch collective bargaining system (see Oude Nijhuis, 2023). Article 4(1) of the AMWD is also clear that Member States shall take measures to promote rights to collective bargaining on wage setting including protection of workers and trade union representatives from discrimination or interference when they seek to engage in such.

Germany

As a member of the EU, Germany is required to transpose and implement the AMWD. As noted previously, there are two main parts to the AMWD – one part deals with minimum wages, ensuring that they are set at an adequate level and the second part deals with the promotion of collective bargaining for wage setting. In particular the focus is on countries with a collective bargaining coverage rate of less than 80%, that they must provide a framework of enabling conditions for collective bargaining and put in place an action plan to enable collective bargaining. German authorities have responded to the AMWD with some key changes noted below. For example, in relation to minimum wages element of the directive, the German Minimum Wage Commission in 2025 has sought to align the statutory minimum wage rate in Germany in line with 60 percent of the median wage as the formal reference point. This is in response to the provisions around ensuring an adequate minimum wage for workers in Member States. In relation to the requirements under the collective bargaining provisions of the AMWD, Germany has also recently sought to take action in an effort to boost collective bargaining coverage. Currently collective bargaining coverage in Germany is 49%, which puts it below the 80% threshold noted in the AMWD. Whilst an action plan has not yet been set out, the German government have chosen to make some legislative changes to support collective bargaining. This legislative change has occurred in relation to public procurement – addressing Article 9 of the AMWD.

Initially drafted by the previous German government (SPD, Greens and FDP) but not implemented whilst it was in power, the Federal Collective Bargaining Compliance Act (Bun-

destariftreugesetz – BTTG) was, in early 2026, introduced by the current coalition government (CDU, CSU and SPD) has in early 2026. It links federal public procurement to compliance with collective agreements. This piece of legislation states that companies applying for federal contracts must apply collectively agreed wages and working conditions including working time, leave entitlements and other collectively agreed benefits. The legislation represents a clear policy response to the decline in collective bargaining coverage in Germany – thereby contributing to meeting its obligations under the AMWD – and ensuring that there are fair competition and avoidance of diminution of wages in publicly funded contracts. For the first time at federal level, compliance with collective agreements is a critical award criterion as well as a performance criterion. Companies must certify that they will comply with collective agreements before being considered for the award – thus it is a key eligibility criterion rather than simply forming part of an overall scoring system in the award process. The legislation also applies to subcontractors to remove any potential legal loopholes. The inclusion of compliance with collective agreements is novel within the context of social clauses in public procurement in Germany at federal level. Whilst social clauses have been legislated previously in Germany – see GWB legislation – the Federal Collective Bargaining Compliance Act specifically mandates compliance with collective agreements. In many ways, this new legislation at federal level mirrors what has been happening at federal state level as noted above. In response to the introduction of the legislation, Bärbel Bas, the Federal Minister of Labour and Social Affairs, said that collective agreements were 'the basis for decent wages and good working conditions' and that the legislation was expected to incentivise collective bargaining across the Germany economy (Pinsent Mason, 2026).

Whilst the new piece of legislation is welcomed in many circles, there have been some criticisms of its introduction. Employers and their representative bodies have challenged the need for such legislation, arguing that it increases the burden and bureaucracy on companies when applying for public procurement contracts (BDA, 2025). However, this claim has been contested by Jaehrling and Schulten (2026), pointing in particular to a study on the evaluation of the Berlin Collective Bargaining Agreement Act in which it was found that there was little empirical evidence to support the claim that collective bargaining regulations created bureaucratic burdens for companies or deterred them from applying. It is also claimed that the legislation has been 'watered down' compared to previous drafts of the legislation (Pinsent Mason, 2026), whilst Jaehrling and Schulten (2026) suggest that the scope of the new legislation is severely limited and therefore its effectiveness is likely to be limited. In this regard Jaehrling and Schulten (2026) point towards concerns around the thresholds set for compliance with collective agreements and the exemption of public contracts for the German Armed Forces. The legislation only applies to public contracts worth €50,000 or more (this threshold raises to €100,000 for start-ups). Citing a German Trade Union Confederation (DGB) study

(DGB 2025), Jaehrling and Schulten (2026) outline that 23% of all construction contracts, 28% of all supply contracts, and almost 31% of all service contracts will not be covered. Furthermore, public procurement in the defence and security sectors have also been exempted from this legislation. Finally, this piece of legislation only covers public contracts at federal level but may provide the catalyst for similar changes to occur at federal state levels.

Notwithstanding these criticisms, trade unions have broadly welcomed the new legislation as a response to boosting collective bargaining coverage in Germany. For example, Chairman of Ver.di Frank Werneke said: ‘This sends an important signal to all employers and employees: price

dumping and poor working conditions no longer pay off when bidding for federal contracts’ (UNI Europa, 2026a). Similarly, UNI Europa Regional Secretary Oliver Roethig commented: ‘The German government’s law shows that EU countries see the need to promote collective bargaining through public contracts. We expect the European Commission to facilitate and promote such initiatives through the upcoming proposal for EU procurement reform. No taxpayers’ money should go to companies that engage in social dumping.’ (UNI Europa, 2026a). Ver.di have suggested that this new Act should be the catalyst for the German Government to put in place a more specific Action Plan to boost collective bargaining coverage in Germany.

Comparison of Policy, Regulatory and Industrial Relations Contexts

Table 3

	Ireland	Germany	The Netherlands	The UK
Policy Context	Some policy commitment to ensuring social value in public procurement. National public procurement policy currently being revised.	Strong policy commitment to ensuring social value in public procurement	Strong policy commitment to ensuring social value in public procurement	Strong policy commitment to ensuring social value in public procurement
Implementation of Procurement Directives⁷⁸	‘Soft law’ approach with respect to awarding ‘Hard law’ approach with respect to performance and also exclusions for exceptionally low tenders where employment law breaches are the cause	‘Hard law’ with respect to awarding ‘Hard law’ with respect to performance	‘Moderate / Hard law’ with respect to awarding ‘Hard law’ with respect to performance	Procurement Act 2023 not bound by Directive. ‘Soft law’ approach with respect to awarding ‘Hard law’ approach with respect to reporting of KPIs and exclusions for breaches of employment law
Transposition of the AMWD	No legislative changes to collective bargaining	Federal Collective Bargaining Compliance Act introduced 2026	No legislative changes to collective bargaining	Not bound by the Directive
Existing levels of trade union density⁷⁹	20.2% (2024)	14.1% (2024)	13.8% (2023)	21.7% (2022)
Existing levels of collective bargaining coverage⁸⁰	34% (2017) (well below 80% AMWD threshold)	49% (2024) (moderately below 80% threshold)	72.1 % (2024) (just below 80% threshold)	40.2 % (2024) (Threshold n/a)
Existing IR institutions	Moderate to weak social partnership institutions and minimal extension of collective bargaining	Strong social partnership institutions and tradition of sectoral bargaining and extension mechanisms.	Strong social partnership institutions and tradition of sectoral bargaining and extension mechanisms.	Weak social partnership institutions and minimal extension of collective bargaining
National Action Plan on Collective Bargaining	Strong emphasis on Ireland’s voluntarist tradition. Relevant Action Items 6, 11 & 12 have particular relevance for promoting collective bargaining in public procurement.	Legislation introduced instead of Action Plan (see above)	No specific action plan yet published. Consultation underway with social partners.	Directive n/a but new provision for union recognition under Employment Rights Act 2025.

78 ‘Hard law’ here refers to mandatory requirements where terms such as ‘must’ and ‘shall’ are used whereas ‘soft law’ allows for more discretion and terms such as ‘may’ and ‘can’ are used.

79 Source: The OECD/AIAS database on Institutional Characteristics of Trade Unions, Wage Setting, State Intervention and Social Pacts (ICTWSS) which provides comprehensive and comparable information on the evolving nature and scope of collective bargaining in OECD and EU countries. Note: these are the most recent comparable estimates across the four countries. Current CSO statistics estimate 2026 union density levels in Ireland at 22% as noted on p20 above.

80 Source: The OECD/AIAS database on Institutional Characteristics of Trade Unions, Wage Setting, State Intervention and Social Pacts (ICTWSS)

4. Collective bargaining and public procurement in the forthcoming proposed revision of the public procurement directives

The EU Commission President, Ursula von der Leyen, announced plans for a revision of the public procurement directives in the EU as part of the Commission's 2024-2029 political agenda. The key objectives of the revision were set out as follows (European Commission):

- Make public procurement more efficient by simplifying procedures, bringing greater legal consistency and coherence to regulations and creating a digital EU procurement marketplace
- Give preference for European products in public procurement – 'Made in Europe' – to strengthen economic security, sovereignty and resilience.
- Align public procurement with broader EU strategic objectives such as green, social and innovation.

As part of the revision process, the EU Commission announced a major evaluation process of the existing public procurement directives including consultation with stakeholders and several external studies were also conducted. A final evaluation report summarising all the findings and conclusions was published in October 2025 (European Commission, 2025). The evaluation process focused on the effectiveness, efficiency, relevance, coherence and EU added value of the directives. In terms of the effectiveness of the directives, results showed mixed views on whether the directives had led to greater legal clarity in procurement procedures, the partial achievement of making procurement procedures simpler and flexible, partially effective in maintaining competition in the EU public procurement market, mixed results on the directives encouraging green, innovation and social aspects in public procurement and whilst respondents suggested transparency had improved, corruption and data gaps remained a concern. The efficiency of public procurement was assessed using direct and indirect costs and benefits. **Overall, the evaluation suggested that direct and indirect costs for contracting authorities and businesses were compensated by direct as well as wider societal benefits generated by the Directives.** In relation to coherence, the evaluation suggested that coherence was improved but problems with the introduction of procurement provisions in other EU legislative instruments caused problems. Furthermore, it was noted that because the enforcement of environmental, social and labour law obligations is left to the discretion of Member States, this had led to variations in their application across EU member states. Finally, in relation to relevance, it was observed that the aims and objective of the

public procurement directives remain highly relevant and possibly even more so today given the competitive environment and environmental challenges that Europe faces.

As part of the evaluation process of the public procurement directives the European Commission also launched a series of specific studies from external consultants. Of relevance to public procurement and collective bargaining was the study by Janssen (2025) on the coherence of public procurement legislation in the European Union. Any revision of the Public Procurement Directives in relation to collective bargaining will have to take into account the recent AMWD. Article 9 of the AMWD sets out the specific provisions for public procurement in relation to wages and collective bargaining:

Article 9: 'In accordance with Directives 2014/23/EU, 2014/24/EU and 2014/25/EU, Member States shall take appropriate measures to ensure that, in the awarding and performance of public procurement or concession contracts, economic operators and their subcontractors comply with the applicable obligations regarding wages, the right to organise and collective bargaining on wage-setting, in the field of social and labour law established by Union law, national law, collective agreements or international social and labour law provisions, including ILO Freedom of Association and the Protection of the Right to Organise Convention No 87 (1948) and ILO Right to Organise and Collective Bargaining Convention No 98 (1949).'

Recital 31 of the AMWD provides the justification and intention behind this provision, outlining the importance of following minimum wage legislation or collective agreements as essential criteria in the awarding and the performance of public procurement and concession contracts. Furthermore, it outlines that 'public procurement contracting authorities and contracting entities are to take appropriate measures, including the possibility to introduce contract performance conditions, and ensure that economic operators apply to their workers the wages provided for in collective agreements for the relevant sector and geographical area and respect the rights of workers and trade unions'.

As evidenced above, the provisions within the AMWD are similar to those in Article 18(2) Directive 2014/24/EU and its equivalents in the other Directives, indicating in many ways strong coherence between those regulations. However, there are some differences as noted in the Janssen (2025) study. The provisions in the AMWD more specifically attempt to

strengthen the link between public procurement and collective bargaining. For example, the AMWD makes specific reference to wages and collective bargaining as compared to the more general references to social and labour law in the public procurement directives. A potentially important difference between the AMWD and public procurement directives is the inclusion of collective bargaining as an awarding criterion. The AMWD sets out that Member States shall put in place appropriate measures that ensure that wages and collective bargaining are assessed in both the awarding and performance of public procurement contracts - this contrast with the reference to performance only in the public procurement directives. The inclusion of wages and collective bargaining as an award criterion reinforces their importance in public procurement. Furthermore, in the Case C-346/06 Ruffert, it was established that where public contracts are required to comply with collective agreements, they must meet three conditions (1) collective agreements must be observed by all; (2) they must be within a specific geographical area and; (3) in profession or industry concerned.⁸¹ However, in Recital 31 of AMWD, only two of these conditions are referenced – compliance with collective agreements in the relevant sector and geographical area – thus removing reference to the need for a collective agreement to be observed by all thereby broadening the scope for the application of collective agreements (Janssen, 2025).

Given the substantial overlap between both the AMWD and public procurement directives, it is immediately not clear on what changes may be made in the revised public procurement directives in relation to collective bargaining. Janssen (2025) identifies two potential areas for consideration:

1. The need for greater clarity around what is meant by ‘appropriate measures’ in Article 9. An explanation of appropriate measures could bring more certainty to this area and perhaps consistency in the directives application across member states.
2. The AMWD does not include any reporting obligation in relation to public procurement, and this might be an area that could be covered in a revision of the public procurement directives.

The European Commission Expert Report 2023 also identifies areas of improvement with regard to public procurement and collective bargaining. These include examples of various measures that Member States could implement to ensure stronger compliance including a requirement that economic operators would respect the right to organise and collective bargaining, collective agreements are respected and any economic operators found to have breached social and labour rights be excluded from public procurement contracts for a particular period of time. Other suggestions that were also mentioned include incorporating measures for public procurement into national action plans to promote

collective bargaining, switching the monitoring of the public procurement directives away from Member States to the European Commission and the conclusion of a collective agreement as an award criterion for public procurement contracts (European Commission, 2023).

The ETUC are lobbying hard for stronger regulation in the revision of the EU Public Procurement Directives. For example, they have set out several changes they would like to see in the revised public procurement directives (Eolas, 2025):

- Mandatory criteria for collective bargaining: Introduce significant, mandatory award criteria that give preference to companies whose workers (and subcontractors) are covered by collective agreements.
- Legal clarity for public authorities: Giving legal certainty to contracting authorities that want to promote quality jobs and collective bargaining through public procurement.
- Respect for collective agreements: Ensuring that all bidders comply with relevant collective agreements, at sectoral, regional, or national level.
- Exclusion of non-compliant bidders: Exclude companies that violate workers’ and trade union rights from public procurement processes.
- Ban the use of price-only contracts: Eliminate the ability to award contracts based solely on price and introduce conditions that prioritize quality jobs and collective bargaining.

The ETUC also call for stricter regulations in relation to subcontracting in public procurement, noting that this is an area that can serve as a loophole for avoiding labour standards. Furthermore, the ETUC have referred to the recent ruling in the CJEU (Case C-210/24) (the *Ortuella* case), where it was found that tendering for a public contract can favour employers who will collectively bargain on workers’ wages under the contract. The ETUC has called on the EU ‘to use its revision of the public procurement directives to consolidate this ruling, making sure that companies whose workers are covered by collective agreement are given an advantage in the awarding of public contracts.’ (ETUC, 2026). Similarly, on the back of this ruling, UNI Europa have called for a new framework regarding public procurement and collective bargaining [UNI Europa, 2026b):

- Collective bargaining coverage is promoted as standard award criteria in all public tenders.
- Compliance with applicable collective agreements is a minimum requirement for participation in public procurement.
- Contracting authorities are supported with clear guidance on how to design social award criteria that promote quality jobs.

⁸¹ Case C-346/06 Ruffert, para 21.

5. Potential Reforms to Ireland's Policy, Regulatory and Industrial Relations Context – Options and Obstacles

Ireland is currently at a crossroads and has a long and complicated history in relation to collective bargaining. There are several contemporary policy and regulatory changes afoot with potential to reshape the collective bargaining landscape both in Ireland and the EU. In particular, the implications of the AMWD for collective bargaining more broadly (which are beyond the scope of this report) will likely be impactful. Numerous researchers are evaluating emerging policy and regulatory changes across EU countries in this regard, which should be closely watched. The active promotion of collective bargaining through public procurement depends not only on regulatory reforms and procurement policy, but a suite of measures that can strengthen collective bargaining more broadly and would thus apply in public procurement activities. These include improvements to workers access to trade union representation, more robust oversight of regulations such as monitoring and enforcement measures, as well as strong dissuasive penalties for non-compliance with rights to representation. Such measures have been discussed by colleagues in previous research (see O'Sullivan and Murphy, 2024).

Notwithstanding these caveats, the AMWD, combined with the Directives on Public Procurement and the strategy and policy documents discussed in this report, present several options for consideration for the active promotion of collective bargaining through public procurement. In this section, we outline these options, drawing on comparative insights between Ireland and the other European country case studies examined in this report.

In relation to public procurement and collective bargaining we note the following possibilities:

1. Statutory trade union recognition for the purposes of collective bargaining.

The right to collective bargaining is institutionalised and embedded in European countries such as the Netherlands and Germany. This means that any legislation (such as procurement legislation) that includes labour standards within its remit is, in these countries, already within a system where collective bargaining is deeply rooted and collective agreements applied.

Voluntarist systems like Ireland and UK however, without similar institutional underpinning supporting collective bargaining rights, present issues. Our case study on the UK highlights efforts to strengthen trade union recognition and collective bargaining through the new Employment Rights Act 2025. Whilst the Act has been welcomed by commentators in terms of closing some loopholes of earlier recognition legislation, it has also received significant criticism from labour law scholars (Dukes, 2026) in that it is still possible for employers to evade the legislation, as outlined in Section 2 above.

In Ireland, to date, any discussion on the introduction of compulsory trade union recognition legislation and rights to collective bargaining have been met with strong employer opposition. Whilst Government have acknowledged the positives of collective bargaining in the Action Plan, there is currently no plan for legislative changes to the existing system. Furthermore, any efforts to introduce such legislative changes have not been successful. For example, a private members Bill proposed by Richard Boyd Barrett 'The Trade Union Recognition Bill 2021' was defeated by vote on 5th May 2021⁸².

2. Extend collective bargaining so that sectoral provisions become a mandatory part of the prevailing 'applicable obligations' in the field of labour law.

Notably, Müller & Schulten (2025) suggest that one of the key factors in promoting high collective bargaining coverage is the dominant level at which collective bargaining takes place. They note that all countries with collective bargaining coverage of 80% or more have a comprehensive sectoral bargaining system. Furthermore, Article 4(1)(a) of the AMWD stipulates that Member States shall promote the building and strengthening of the capacity of the social partners to engage in collective bargaining on wage-setting, *in particular at sector or cross-industry level;* (emphasis added).

In our study, we also note strong sectoral bargaining systems in the Netherlands and Germany but weaker systems in the UK and Ireland (and consequently, lower collective agreement coverage). These embedded factors have an impact, not just in the promotion and strength of collective

⁸² Trade Union Recognition Bill 2021 – No. 65 of 2021 – Houses of the Oireachtas

bargaining and coverage generally in a country, but also the possibilities for increasing and promoting collective bargaining through public procurement.

In addition to traditions of sectoral bargaining, extension mechanisms are a key feature of other European industrial relations systems such as the Netherlands and Germany. For example, in the Netherlands, CAO collective agreements are generally (legally) binding on all employers within a sector. Therefore the ‘applicable obligations’ under Article 18(2) of the Procurement Directive includes adherence to these collective agreements.

In contrast, in Ireland, collective bargaining generally does not take place at sectoral level and extension mechanisms are limited. Existing institutions such as Sectoral Employment Orders (SEO) and Employment Regulation Orders (EROs) have been challenged through the Courts and participation in JLCs is limited. The LEEF Report⁸³ has recommended several steps that might improve the ‘robustness and effectiveness of this statutory mechanism’. Indeed, the LEEF report (p7)

‘Considers that properly functioning JLCs can be an effective, evolving, and flexible system of sectoral regulation, that can contribute to the progressive development of different sectors of the economy, support more sustainable and inclusive high-quality employment, and also help to address other employment relations policy challenges’.

There is currently a private members Bill before the Dáil at stage 2 of the consideration process, namely, the Industrial Relations (Boycott of Joint Labour Committees) Bill 2025 sponsored by George Lawlor,⁸⁴ which seeks to amend the provisions relating to the constitution of joint labour committees (JLCs). In policy terms, in line with the recommendations of the LEEF report to improve the functioning of JLCs, Action Item 11 of the Action Plan to Promote Collective Bargaining commits to ‘Examine the role of Joint Labour Committees (JLCs) in government-funded sectors’. The operation of JLCs across sectors will be impacted by the outcome of this examination.

Thus, as with the previous point, this option is dependent on changes to existing industrial relations institutions and regulations rather than public procurement specifically. As seen in the comparative case studies, strong underpinning for sectoral collective bargaining and extension mechanisms are key in achieving high levels of collective bargaining coverage. Pursuing this option would strengthen Ireland’s underpinning industrial relations context in relation to collective bargaining and application of collectively agreed terms and conditions of employment more broadly

and within public procurement as part of the ‘applicable obligations’.

3. Including collective bargaining arrangements as a positively weighted criteria for the award of public contracts

The previous two options address fundamental changes in Ireland’s industrial relations system that would help embed collective bargaining and extension of collective agreements. Compliance with existing collective agreements is already mandatory in the performance of procured contracts in Ireland under Regulation 18(4)(a) of the Public Contracts Regulations as discussed in Section 2. However, at the award stage it is up to contracting authorities to decide whether to include social clauses as part of the scoring criteria.

The *Ortuella* case clarified that contracting authorities can include an intention to engage in collective bargaining as a weighting in award criteria and that this does not impinge on competitiveness obligations or constitute discrimination. This option has already been raised with the Office of Government Procurement by Government. This office highlighted that guidelines for public procurement could be amended so that a collectively bargained agreement in the workplace is something that contracting authorities may consider in their criteria⁸⁵. The Government could take this further in line with the spirit of Article 9 of the AMWD and make it a *mandatory requirement* that contracting authorities give higher weighting, at the award stage of the procurement process, to tenderers who provide evidence of their intention to engage in collective bargaining with a trade union. Furthermore, Regulations 56(2) and 57(8) of Public Contracts Regulations could be strengthened by *requiring* contracting authorities not to award contracts to tenderers who have not complied with obligations referred to in Regulation 18(4) (*demonstrated by any appropriate means*) including non-compliance with collective agreements. It could also be made *mandatory* to exclude such tenderers from participation in a procurement procedure, and not only in cases of abnormally low tenders.

A potential obstacle to positively weighting collective agreements in the award process relates to SMEs and their participation in public tenders. Ibec has suggested for example that this option raises concerns around competitiveness for SMEs. In a discussion with Industrial Relations News, an Ibec representative noted - ‘I think there are big competition issues around it [Action Plan Item 6]. It’s already hard enough for small domestic companies to be able to tender for larger public contracts. If you introduce a weighting that would give preference to collectively bar-

83 [final-report-of-the-leef-high-level-working-group-on-collective-bargaining.pdf](#)

84 <https://www.oireachtas.ie/en/bills/bill/2025/25/>

85 Public Consultation on Ireland’s Action Plan to Promote Collective Bargaining Report

gaining, you would further exclude Irish organisations from being able to do that, which could have a real chilling competitive impact for domestic firms’ (Prendergast, 2025c). However, given Ireland’s relatively low coverage, engaging in collective bargaining with trade unions may be an opportunity that could actively help SMEs compete for tenders i.e. those SMEs who have a collective agreement or commit to engaging in collective bargaining with a trade union would score higher on the award criteria. While some research indicates that SMEs believe they do not have the bandwidth to engage in collective bargaining (O’Sullivan et al, 2024), there is also evidence in some sectors (e.g. the gaming industry) of smaller organisations voluntarily engaging with trade unions to negotiate living wage agreements for example (Prendergast, 2022). The proportionality guidelines as used in the Netherlands may also be considered (in all aspects of procurement) to help address the SME Test. Importantly, the *Ortuella* case has clarified that from a legislative perspective, the inclusion of collective bargaining arrangements in scoring of tenders at award stage *is legitimate* in determining the most economically advantageous tender being linked to the ‘social aspects’ that can be considered in line with Article 67 (2) of the Directive on Public Procurement.

4. Strengthening compliance with employment regulations and obligations

Regardless of the approach taken to promoting collective bargaining in public procurement, an important issue that has been raised is in relation to compliance with employment issues once tenders have been allocated.

A 2025 preparatory study for the Commission concluded that the social clause provisions in the existing directives ‘leave it to the Member States the choice as to the means to enforce those obligations,⁸⁶ while the Commission’s 2025 evaluation of the directives acknowledged that they ‘do not establish rules on the enforcement of environmental, social and labour law obligations [and that] the lack of a harmonised approach creates a fragmentation of the legal framework and *undermines the achievement of strategic objectives*.⁸⁷

Our comparative case studies highlight the importance of compliance mechanisms as a key component of procurement in relation to employment standards. This was cited in one study (Wright et al, 2023) as the ‘Golden Thread’ i.e. a robust oversight to ensure compliance is threaded throughout all stages of the procurement process. This is particularly important in relation to subcontractors to the main tenderer as outlined in Article 9 of the AMWD. In the Irish context, there is currently a private members Bill

before the Dáil at stage 2 of consideration process. This is the Transparency and Social Value in Public Procurement Bill 2024 sponsored by Mairead Farrell. This could be an important piece of legislation to help ensure compliance with procurement commitments and employment obligations.

⁸⁶ R. Caranta, *Coherence in the EU Public Procurement Directives, Research Report for the EU Commission*, August 2025, p.107

⁸⁷ European Commission (14.10.2025), *Evaluation of Directive 2014/23/EU on Concessions, Directive 2014/24/EU on Public Procurement and Directive 2014/25/EU on Utilities*, pages 56-57

6. Conclusion

The primary objective of EU public procurement regulation is to ensure fair and transparent market access while preventing barriers to trade and open competition. However, social policy both in the context of the EU and national Member States is also a critical consideration. Indeed, the importance of social policy in achieving not only social objectives but in contributing to competitive labour markets and strong economies (including through public procurement) has increasingly been recognised at European level.

More broadly, there has been an increased impetus from the EU to return collective bargaining to the centre of European labour market policy. The incorporation of objectives to increase collective bargaining coverage in the AMWD is a strong indicator of this. The Directive recognises the established link between collective bargaining, wage levels and decent work which helps prevent in-work poverty, and contributes to equality, worker well-being, sustainable businesses and economic growth in line with SDG goals and the European Pillar of Social Rights.

Recital 1 from the AMWD states as follows:

Pursuant to Article 3 of the Treaty on European Union (TEU), the aims of the Union are, inter alia, to promote the well-being of its peoples and to work for the sustainable development of Europe based on a highly competitive social market economy, aiming to ensure full employment and social progress, a high level of protection and improvement of the quality of the environment, while promoting social justice and equality between women and men.

Recital (7) from the AMWD recognises the need to balance the objectives of free and open competition and social considerations for decent work which need not necessarily be mutually exclusive, providing that:

Competition in the internal market should be based on high social standards, including a high level of worker protection and the creation of quality jobs, as well as on innovation and improvements in productivity, while ensuring a level playing field.

In this context, the role of public procurement in enhancing collective bargaining and collective bargaining coverage is important. This report has examined this issue within four countries – Ireland, Germany, the Netherlands and the UK.

The case studies show clear connections between each country's policy context, industrial relations institutions, and the capacity to promote collective bargaining in public procurement regulations.

Regulation on public procurement and collective bargaining is complex and currently evolving. While the Directives on Public Procurement and Adequate Minimum Wage reflect policy ambitions to promote collective bargaining, the true impact of these is very much dependent on transposition and implementation at national levels in each Member State. While EU Directives provide critical roadmaps for Member States there is an important distinction between what Member States are *obliged* to do and what they *may* do in terms of incorporating social consideration in their public procurement regulations.

As our case studies show, the impact of transposition and implementation of the Directives in different countries is strongly shaped by existing industrial relations systems and regulations on union recognition and rights to collective bargaining. In countries such as Germany and the Netherlands where rights to collective bargaining and extension of sectoral level agreements are already well established both in practice and in law, the transposition and implementation of these Directives serve to reinforce existing practices in public procurement procedures.

In contrast, in Ireland and the UK, existing weaker institutions mean that some of the possibilities for strengthening collective bargaining in public procurement require more fundamental changes to underpinning institutions. We identify three key options following our comparative case study analysis.

- Statutory trade union recognition for the purposes of collective bargaining
- Extension of collective bargaining so that sectoral provisions become a mandatory part of the prevailing 'applicable obligations' in the field of labour law
- Including collective bargaining arrangements as a positively weighted criteria for the award of public contracts

The Government's Action Plan to Promote Collective Bargaining has already made a policy commitment to examining these possibilities as outlined in this report. There is also evidence of strong public support for prioritising col-

lective bargaining in public procurement. Emerging regulations, case rulings and policy documents will further shape these and other possibilities.

Bibliography

Amlinger M. and Bispinck R. (2016) Dezentralisierung der Tarifpolitik – Ergebnisse der WSI Betriebsrätebefragung 2015, WSI-Mitteilungen, 69 (3), 211–222

Arnholtz, J., Jaehrling, K., Larsen, T.P. and Refslund, B., 2025. Tensions and experimentation in setting, extending and enforcing working conditions: case studies of labour clauses in public procurement. *Transfer: European Review of Labour and Research*, 31(2), pp.161-177.

Arrowsmith, S., 2023. The Evolution of Procurement Law in the United Kingdom: a Common Law Perspective on Regulating Contract Award Procedures. Available at SSRN 4756144.

Barnard, C., 2017. To boldly go: social clauses in public procurement. *Industrial Law Journal*, 46(2), pp.208-244.

Behrens, M. (2021) Germany in Frege, C.M. and Kelly, J.E. (Eds) (2021) *Comparative Employment Relations in the Global Economy*, Abingdon, Oxon ; Routledge.

Boumans, S., & Keune, M. (2018). Inclusive growth through collective bargaining in the Netherlands. *HIVA Research Institute for Work and Society*.

Caspers G. (2024) Tarifierung bei der öffentlichen Auftragsvergabe, *Zeitschrift für Arbeitsrecht*, 55 (2), 225–244. <https://doi.org/10.9785/zfa-2024-550205>

Carolan, J., Dukes, R., Ewing, K., Kirk, E. and McCorkindale, C., (2019) *A Charter of Workers' Rights for Scotland*.

Collins H., Ewing, K.D. and McColgan A. (2026) *Labour Law 3rd Edition*, Cambridge, Cambridge University Press

Connelly, T. (2025) European Court of Justice upholds legality of EU's minimum wage directive. *RTÉ News*, November 11, 2025. Available: [ECJ upholds legality of EU's minimum wage directive](#)

Court of Justice of European Union (CJEU) 2026, Case C-210/24 (Asociación de Empresas de Servicios para la Dependencia (AESTE) v Ayuntamiento de Ortuella)

Cremers, J. (2014). EU public procurement and social clauses-an overview. *Construction Labour Research News (CLR News)*, 2014(4), 7-15.

Cunningham, I., James, P., Baluch, A. and Cullen, A.M., 2023. Introducing Fair Work through 'soft' regulation in outsourced public service networks: Explaining unintended outcomes in the implementation of the Scottish living wage policy. *Industrial Law Journal*, 52(2), pp.312-341.

De Beer (2025) 'Collective bargaining and minimum wage regime in the Netherlands, in T Müller (ed), *Collective Bargaining and Minimum Wage Regimes in the European Union – The Transposition of the EU Directive on Adequate Minimum Wages in the EU27* (European Trade Union Institute 2025) 86-90.

Department of Enterprise, Trade and Employment (2025), *Ministerial Brief*, Dublin: DETE. Available: [Ministerial Brief January 2025](#)

De Spiegelaere, S. (2025). Policies to strengthen collective bargaining. *European Journal of Industrial Relations*, 31(4), 463-485.

Dias-Abey, M.N., 2025. Labour Market Enforcement: International Best Practices: A Report for the Trade Union Congress.

Doherty, M. (2024). Make me good... just not yet? The (potential) impact of the Adequate Minimum Wage Directive. *Italian Labour Law e-Journal*, 17(1), 211-226.

Doherty, M. (2025). We'll get by with a little help from our (EU) friends... Ireland, the Adequate Minimum Wage Directive, and the Action Plan for Collective Bargaining. *Italian Labour Law e-Journal*, 18(2), 51-61.

Dukes, R., 2026. Collective Rights and the Employment Rights Act 2025: Continuity and Change in the British Labour Constitution. *Industrial Law Journal*, p.dwag009.

Eolas (2025) TRADE UNION DESK: Public procurement must promote collective bargaining. Available: <https://www.eolasmagazine.ie/trade-union-desk-public-procurement-must-promote-collective-bargaining/>

- ETUC (2026) EU court rules public contracts can promote collective bargaining. Available: <https://www.etuc.org/en/pressrelease/eu-court-rules-public-contracts-can-promote-collective-bargaining>
- European Commission (2023) Report Expert Group Transposition of Directive (EU) 2022/2041 on adequate minimum wages in the European Union, Brussels: European Commission.
- European Commission, Buying Social - a guide to taking account of social considerations in public procurement (2nd edition), Brussels, Belgium, <https://ec.europa.eu/docsroom/documents/45767>
- Eustace, A., & Kenny, D. (2023). *Collective bargaining and the Irish Constitution—barrier or facilitator*. Research Report. Irish Human Rights and Equality Commission (IHREC).
- Franca, V. (2025) Report on the transposition of the minimum wage in countries with sectoral Bargaining Model with Medium Coverage (Germany, the Netherlands, Portugal, Slovenia and Luxembourg). 6th Uni Europa Conference, Belfast 2025. Available: [Final-Report-Compilation-MWD-final.pdf](#)
- Geary, J. and Wilson, M. (2022). First findings from the UCD Working in Ireland Survey, 2021.
- Godino Pons, A. and Molina Romo, Ó., 2019. The impact of outsourcing on collective bargaining coverage: A comparative analysis in six countries, RECOVER Comparative report, Brussels, Belgium
- Grandia, J., & Voncken, D. (2019). Sustainable public procurement: The impact of ability, motivation, and opportunity on the implementation of different types of sustainable public procurement. *Sustainability*, 11(19), 5215.
- Halloran, D. (2020). *Evaluating social value in social clauses: Tensions in public procurement regulation and horizontal considerations* (Doctoral dissertation, NUI Galway).
- Hartmann F. (2023a) Unionsrechtliche und verfassungsrechtliche Grenzen für ein Bundestariftreugesetz, Rechtsgutachten für die Bundesvereinigung Deutscher Arbeitgeberverbände e.V.
- Hartmann F. (2023b) Unionsrechtliche und verfassungsrechtliche Grenzen für ein Bundestariftreugesetz, *Zeitschrift für Arbeitsrecht*, 54 (4), 510–560. <https://doi.org/10.1515/zfa-2023-540405>
- Hassel A (2023) Round Table. Mission impossible? How to increase collective bargaining coverage in Germany and the EU. *Transfer: European Review of Labour and Research*, 28(4): 491–497.
- IBR Publicaties (2016) *Proportionality Guide, 1st revision*. Stichting Instituut voor Bouwrecht: The Hague.
- Jaehrling, K., Johnson, M., Larsen, T.P., Refslund, B. and Grimshaw, D., 2018. Tackling precarious work in public supply chains: A comparison of local government procurement policies in Denmark, Germany and the UK. *Work, Employment and Society*, 32(3): 546-563.
- Janssen, W. A. (2025) The coherence of public procurement legislation in the European Union – A study into the external coherence between the public procurement directives and other legislative instruments regulating public procurement, Publications Office of the European Union, <https://data.europa.eu/doi/10.2873/7419429>
- Keller, B.K. and Kirsch, A. (2021) Employment Relations in Germany in Bamber, G., Cooke, F.L., Doellgast, V.L., and Wright, C.F. (Eds) *International & Comparative Employment Relations: Global Crises and Institutional Responses*. Los Angeles: SAGE
- Klocke D. (2021) Mindestlohn und Tariftreue im Landesvergaberecht der Freien Hansestadt Bremen, Arbeitnehmerkammer Bremen.
- Krause R. (2019) Weiterentwicklung des Tariftreurechts, Duncker & Humblot
- Kuijpers S, Keune M and Tros F (2024) Aanbesteden en kwaliteit van werk in Nederland. *Mens & Maatschappij* 99(1): 62–89.
- Lillie N (2023) Round Table. Nordic unions and the European Minimum Wage Directive. *Transfer: European Review of Labour and Research* 28(4): 499–504.
- Malone, E. (2025) ECJ ruling that EU Adequate Minimum Wage directive is valid welcomed by unions, *The Irish Times*, November 11, 2025. Available: [ECJ ruling that EU Adequate Minimum Wage directive is valid welcomed by unions – The Irish Times](#)
- Manunza, E., & Meershoek, N. A. (2020). Fostering the social market economy through public procurement?: Legal impediments for new types of economy actors. *Public Procurement Law Review*, 2020(6), 343-358.
- McCrudden, C. (2007). *Buying social justice: Equality, government procurement, & legal change*. OUP Oxford. McNally, T. (2025) Government to delay introduction of living wages until 2029. *Irish Examiner* April 16, 2025. Available: [Government to delay introduction of living wage until 2029](#)
- Mercille, J. and O'Neill, N. (2021). The growth of private home care providers in Europe: The case of Ireland. *Social Policy & Administration*, 55(4), pp.606-621.
- Ministry of Economic Affairs and Climate Policy (2021) *Public Procurement Monitoring Report of the Netherlands*, Ministry of Economic Affairs and Climate Policy: The Hague.
- Müller, T. (2025). Here comes the sun: the formal transposition and political impact of the European Directive on Adequate Minimum Wages in the EU. *ETUI Research Paper-Report*.
- Müller, T. & Schulten, T. (2025). The road to 80% collective bargaining coverage: The need for ambitious national action plans under the Minimum Wage Directive; ETUI Policy Brief 2025.01.
- Murphy, C., & Ryan, L. (2024). Getting the ball rolling? An analysis of Irish social partner behaviour ahead of transposition of the Directive on Adequate Minimum Wages in the European Union. *Revue de droit comparé du travail et de la sécurité sociale*, (4), 310-315.
- Murphy, C. & O'Sullivan, M., 2021. Running to stand still? Two decades of trade union activity in the Irish long-term care sector. *Transfer: European Review of Labour and Research*, 27(3), pp.383-397.
- Nicolaïdis K and Schmidt SK (2007) Mutual recognition 'on trial': The long road to services liberalization. *Journal of European Public Policy* 14(5): 717–734.
- OECD (2019), Public Procurement in Germany: Strategic Dimensions for Well-being and Growth, OECD Public Governance Reviews, OECD Publishing, Paris, <https://doi.org/10.1787/1db30826-en>.
- OECD/AIAS database on Institutional Characteristics of Trade Unions, Wage Setting, State Intervention and Social Pacts (ICTWSS) <https://www.oecd.org/en/data/datasets/oecdaias-ictwss-database.html>
- O'Sullivan, M., & MacMahon, J. (2022). Migrant Workers and Wage Theft: Is Legal Action an Effective Form of Collective Action?. *Industrial Law Journal*, 51(4), 927-954.
- O'Sullivan, M., Murphy, C., Lavelle, J., Ryan, L., MacMahon, J.,

- Dundon, T. and Ipinnaiye, O. (2024) Work and Employment Transformations in Ireland: A Review of Labour Market and Workplace Relations Challenges. Dublin: Workplace Relations Commission. [work-and-employment-transformations-in-ireland-a-review-of-labour-market-and-workplace-relations-challenges.pdf](#)
- O'Sullivan, M., & Murphy, C. (2024). Trade union access to workers: barriers faced by representatives in Ireland within a comparative European context. Dublin: Friedrich-Ebert-Stiftung.
- Oude Nijhuis, D. (2023). Round Table. Implementing the EU Directive on adequate minimum wages in the Low Countries: the case of the Netherlands. *Transfer: European Review of Labour and Research*, 29(4), 525-531.
- Pinsent Masons (2026). Germany scales back collective bargaining overhaul. Available: <https://www.pinsentmasons.com/out-law/news/softened-tariff-compliance-rules-german-procurement-law>
- Pennings, F. (2023) The impact of the EU Directive on Minimum Wages on Statutory Minimum Wages in the Netherlands. *Revue de droit comparé du travail et de la sécurité sociale*, (1): 69-74.
- Prendergast, A. (2022) First 'living wage' agreement in games sector. *Industrial Relations News*, 39 - 27/10/2022
- Prendergast, A. (2025a) Balanced CJEU ruling upholds subsidiarity and social Europe. *Industrial Relations News*, 41 - 13/11/2025
- Prendergast, A. (2025b) 'Reckless' to force employers to engage with unions – Stratis. *Industrial Relations News*, 19 - 15/05/2025
- Prendergast, A. (2025c) The employer view of the collective bargaining action plan. *Industrial Relations News*, 44 - 04/12/2025
- Prendergast, A. (2026) Union access, legal limits and IR convergence to the fore at the IRN Conference. *Industrial Relations News*, 12 - 19/03/2026
- Reidy, Owen (2024), Opening Statement to Oireachtas Joint Committee on Enterprise, Trade and Employment, on transposition of ADMW
- Rödl F. (2020) Rückkehr zur Tariftreue, Gutachten zur Vereinbarkeit einer landesgesetzlichen Tariftreuregelung mit dem Unionsrecht nach Verabschiedung der Änderung der Entsenderichtlinie, [Legal expert opinion on behalf of the SPD Fraction in the regional Parliament of the Federal State of Mecklenburg-Vorpommern, unpublished manuscript].
- Schreurs, S. (2025). Usages of 'soft' EU labour law: the implementation of the Minimum Wage Directive. *Transfer: European Review of Labour and Research*, 31(4), 485-501.
- Schulden T. (2025) Collective bargaining and public procurement in Germany, Working Paper 2025.03, ETUI.
- Schulden T. and Müller T. (2015) European economic governance and its intervention in national wage development and collective bargaining, in Lehndorff S. (ed.), *Divisive integration. The triumph of failed ideas in Europe – revisited*. Brussels, ETUI, 331-363.
- Schulden, T., & Müller, T. (2021). A paradigm shift towards Social Europe? The proposed Directive on adequate minimum wages in the European Union. *Italian Labour Law e-Journal*, 14(1), 1-19.
- Soskice, D.W. and Hall, P.A. (2001) *Varieties of Capitalism: The Institutional Foundations of Comparative Advantage*, Oxford; Oxford University Press.
- ten Kate, G. (2014). *A review of dutch policy for socially responsible public procurement*. SOMO: Amsterdam, The Netherlands.
- Thomas D., (2022). An Opportunity to Review and Reframe Collective Bargaining and the Industrial Relations Regime, Secretariat Paper No.31 October 2022, Produced for the Labour and Employer Economic Forum's (LEEF) High Level Working Group Review of Collective Bargaining and the Industrial Relations Landscape, Dublin, National Economic and Social Council (NESC)
- Traxler, F. (1995) 'Farewell to labor market associations? Organised versus disorganised decentralisation as a map for industrial relations' in: Crouch, C. and Traxler, F. (Eds) *Organised Industrial Relations in Europe: What future?* Aldershot: Avebury.
- Tros, F., Keune, M., & Kuijpers, S. (2025). Public procurement and job quality in the Netherlands: institutions, actors and experiments. *Transfer: European Review of Labour and Research*, 31(2), 197-213.
- UNI Europa (2026a) Germany strengthens collective bargaining through procurement. Available: <https://www.uni-europa.org/news/germany-strengthens-collective-bargaining-through-procurement/>
- UNI Europa (2026b) EU's top court says procurement can promote collective bargaining. Available: <https://uniglobalunion.org/news/eus-top-court-says-procurement-can-promote-collective-bargaining/>
- UNI Europa and Friedrich-Ebert-Stiftung (FES). (2025) Making Better Use of Public Procurement, UNI Europa and Friedrich-Ebert-Stiftung (FES). Brussels, Belgium
- Wallace, J., Gunnigle, P., O'Sullivan, M. (2020) *Industrial Relations in Ireland* (5th edition) Dublin, IPA.
- Wright, T., Conley, H., Mamode, J. and Sarter, E.K., (2023). *Buying Social Justice Through Procurement*. Report of project findings. Available: [Buying-Social-Justice-final-report-Nov-2023-1.pdf](#)

Glossary of Key Terms

Action Plan to Promote Collective Bargaining (2026–2030): Irish Government strategy outlining measures to increase collective bargaining coverage.

Adequate Minimum Wages Directive (AMWD): EU Directive (2022/2041) aimed at securing adequate minimum wages and promoting collective bargaining across Member States.

Collective Bargaining: All negotiations which take place between an employer, a group of employers or one or more employers' organisations on the one hand, and one or more trade unions on the other, for determining working conditions and terms of employment.

Collective Bargaining Coverage: The proportion of workers whose employment terms and conditions are determined through collective agreements.

Contracting Authority: A public body or publicly controlled organisation that enters into contracts for goods, services, or works through public procurement procedures and is subject to public procurement law.

Economic Operator: A business or organisation that offers goods, services, or works on the market and may participate in public procurement processes.

Employment Regulation Order (ERO): A legally binding instrument in Ireland that sets minimum pay and conditions for workers in specific sectors, based on agreements reached through Joint Labour Committees.

EU Public Procurement Directives: A set of EU laws (revised in 2014) governing how public contracts are awarded, including provisions for integrating social and labour considerations.

Joint Labour Committee (JLC): A statutory body in Ireland which sets legally binding minimum pay and conditions of employment for groups of workers in particular sectors through Employment Regulation Orders.

Labour Court: An independent body in Ireland established in 1946 under the Industrial Relations Act that resolves industrial relations disputes and is the sole appellate body for employment rights.

Member State: A country that is part of the European Union and is bound by its laws and directives.

Public Procurement: The process by which public sector organisations purchase goods, services, and works from external suppliers.

Recitals: Introductory statements in EU Directives which explain the purpose and rationale underpinning the Directive's provisions. Not legal binding but help outline the spirit of relevant provisions.

Regulatory Impact Assessment (RIA): A systematic process used to evaluate the potential economic, social, and legal effects of proposed policies or regulations.

Sectoral Bargaining: A form of collective bargaining where agreements set wages and working conditions across an entire sector or industry rather than at individual firm level.

Small and Medium-sized Enterprise (SME) Test: An assessment used in policymaking to evaluate how proposed measures will affect small and medium-sized enterprises.

Social Clause: A provision included in public procurement contracts requiring compliance with labour, social, or employment standards.

Trade Union Density: The percentage of employees who are trade union members.

About the Authors

Dr. Lorraine Ryan is Associate Professor of Employment Relations and HRM, Department of Work & Employment Studies, University of Limerick. Her research interests include precarious employment and non-standard work as well as democracy and voice at work. Her research has received funding from Horizon Europe and the Irish Research Council as well as from trade unions, Government bodies and the ILO. Her work has been published in European Journal of Industrial Relations, Economic and Industrial Democracy, Industrial Relations Journal and Employee Relations. She is a regular contributor to the Comparative Labour and Social Security Law Journal providing updates on contemporary developments in Irish employment legislation and industrial relations.

Dr. Juliette Mc Mahon is Associate Professor of Employment Relations at the University of Limerick. Her research interests include employment law, precarious work, migrant workers, social dialogue and workplace bullying. She has published in the Industrial Law Journal, Industrial Relations Journal, Employee Relations, Work in the Global Economy Human Resource Management Journal and Gender Work and Organisation. She is a member of CIPD and a fellow of the Learning and Development Institute (L&DI). Her work has received Horizon funding and she has led and participated in projects funded by Irish Government departments, the WRC and the private sector and the British based Resolution Foundation.

Dr. Jonathan Lavelle is Associate Professor of Employment Relations at the University of Limerick. His main research interests are in the field of international and comparative employment relations, particularly in the areas of trade union recognition and avoidance, employee voice and precarious work. He has published in international journals such as Human Relations, Economic and Industrial Democracy, European Journal of Industrial Relations, Journal of International Business Studies and the International Journal of Human Resource Management as well as co-editing two books and a number of book chapters. Jonathan is also an Irish Academy of Management Council Member and Treasurer of the Irish Association for Industrial Relations.

Public Procurement and Collective Bargaining in Ireland

Public procurement strategy at European and national levels has increasingly recognised the importance of incorporating social aims in the delivery of public services. Social criteria in relation to employment are critical to ensuring fairness, transparency and sustainability in public procurement processes. Access to decent work, fair treatment of workers, and non-discrimination in terms and conditions of employment in public contracts are important social aims. Rights to collective bargaining are central to achieving these aims. The promotion of collective bargaining is a fundamental social aim of the European Union. The capacity for public procurement to promote and enhance collective bargaining depends on regulatory, policy and industrial relations contexts. This report explores these contexts in different national settings through case studies from Ireland, Germany, the Netherlands, and the UK. Focusing on EU Directives on procurement and minimum wages, the report analyses the factors that shape collective bargaining and public procurement across these different country contexts. It assesses Ireland's current policies and regulatory frameworks and explores Ireland's obligations and options regarding the promotion of collective bargaining. Potential reforms to strengthen collective bargaining include trade union recognition, expanded sectoral bargaining, and using collective bargaining as a criterion in awarding public contracts.

Further information on this topic can be found here:

➔ ireland.fes.de