

## **New study on pay and other social clauses in European public procurement from EPSU**

(Press Communication, 13 December 2012) The week before an important vote in the European Parliament on public procurement, EPSU's study (\*) provides timely insight into the importance of pay and other social clauses in public contracts. In 2010 EU Member States spent more than 2,400 billion Euros on buying works, goods and services through public procurement.

As Eurobarometer surveys show, most Europeans want that this money to be spent 'socially' and over half of EU Member States support the inclusion of social criteria in public contracts through a range of measures. Austria, Belgium, Denmark, France, Germany, Italy, the Netherlands and the UK have all included social considerations in their National Action Plans on public procurement. Among all social considerations, the most important are the wages of workers hired by the contracting companies.

In labour intensive industries wage costs are the most important cost factor and so they also play a major role in determining the price of the tender process. The EPSU study looks at the history of pay clauses in public procurement and focuses on five countries (Denmark, Germany, Norway, Switzerland and the UK). The study provides ample evidence and examples of the positive impact of pay clauses, which are also enshrined in an International Labour Organisation (ILO) Convention ratified by 10 EU Member States (\*\*).

By requiring all bidders for public contracts to respect locally established standards there is no downward pressure on wages and working conditions and a level-playing field for competition. The study shows that pay clauses are not only important for the 10 EU Member States that have ratified the ILO Convention, but also those that have not ratified it, especially where there is no erga omnes system or where the extension of collective agreements is limited to a small number of sectors. In some respects, pay clauses in procurement can be seen as a substitute for legal extension mechanisms.

In Europe, however, the continued use of pay clauses in public procurement is being

challenged by the lack of political will to address the Rüffert judgment (C-346/06) from the European Court of Justice (ECJ), which ruled that such clauses are only in conformity with EU law when they are backed by the European Posted Workers Directive (96/71/EC).

According to the study's main author, Thorsten Schulten, "it is rather paradoxical that the ECJ allows pay clauses in procurement only when they refer to statutory minimum wages or to universally applicable collective agreements, while in practice they have their highest relevance especially in those countries where collective agreements are usually not universally applicable."

EPSU's General Secretary Carola Fischbach-Pyttel said, "the revision of the EU rules on public procurement provides the opportunity to redress a situation where an important international labour standard is being allowed to 'whither on the vine' through the ambiguous and incomplete Rüffert ruling. EU law is more than internal market law. MEPs from various political parties have tabled amendments to include in the new procurement rules a clear and positive reference to the ILO Convention and the use of pay clauses. EPSU supports wholeheartedly such a clarification as it will dismiss any concerns that pay clauses are not compatible with the EU's internal market."

The future scope for using pay clause in public procurement therefore urgently requires confirmation that ILO Convention 94 and the use of pay clauses in public procurement is consistent with EU law, thereby asserting the EU's commitment to fair and socially just competition in Europe and beyond. The study sets out the many reasons and arguments that support this demand.

As the ILO has pointed out: "Today, more than ever before, fierce competition for public contracts constrains tenderers to lower costs and as part of this process to economize on labour costs including workers' pay and other costs related to working conditions. The incessant quest for ways to maximize profit by minimizing production cost, exacerbated by the forces of globalization, finds in this Convention a most compelling check. By proposing statutory regulation of the social aspects of public procurement, the Convention aims at counteracting extensive price competition based on costs of working conditions, skilled jobs and quality services. It introduces a truly level playing field for public procurement in so far as labour standards are concerned and puts tenderers on notice that there can be simply no "comparative advantage" at the expense of workers' employment and working

conditions.”

(\*) **For the study see the [EPSU website](#)**

(\*\*)ILO Convention 94 on Labour Clauses in Public Contracts

For more information contact: Pablo Sanchez , + 32 4 74 62 66 33,  
[psanchez@epsu.org](mailto:psanchez@epsu.org)

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