PROCUFAIR COUNTRY REPORT

ITALY

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

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Introduction

Over the past decades, public authorities have increasingly resorted to contracting-out as a way to provide previously internally provided functions. This produced a transformation in the role played by the State in influencing and shaping employment in public services, broadly in line with the shift from an "interventionist" to a "regulatory" role as highlighted by the literature. On the one hand, in fact, outsourcing hollows out the direct control of public authorities - exercised through their unilateral initiatives or by participating in collective negotiations - over the definition of the terms and conditions of employment applied to workers employed in contracted-out services (Cunningham and James 2009, Hermann and Flecker 2012). On the other hand, however, public authorities can still exert considerable (albeit indirect) influence through both their market power and their regulatory function (Grimshaw et al. 2015). Hence, there has been an increasing interest in the literature on the role played by the State in shaping employment relations in contracted-out public services as a "third actor" in a triangular employment relationship. This has, in particular, translated into questions around how public procurement affects labor governance (Donaghey et al. 2014). Extant studies have shown that this influence can take the form of "market-making" (usually with negative impacts on the terms and conditions of employment of workers employed in contracted-out public services), but also of "market-embedding" (with more positive consequences on employment conditions when social and ethical considerations are embedded in contracting relations with private providers) (Jaehrling 2015). Socially responsible public procurement and has, thus, acquired increased relevance both in the academic literature and in public debates.

It Italy, the discussion around this issue has been dominated by labour law scholars, which have in particular explored the role of labour clauses (called social clauses in Italy, Forlivesi 2016, Montaldo 2015, Novella 2020, Pallini 2016). Sociological accounts on the functioning of practices for buying decent work (BDW) and the politics of their development do instead, to the best of our knowledge, by now not exist. However, empirical examples of procurement specific initiatives aimed at BDW are widespread.

Through a case study analysis of the Italian cleaning and security industries we will explore these initiatives, analyse to which protective gaps they respond to, the form they assume, and their potentials and limits. **What is distinctive of the Italian BDW policies is the particularly important role played by trade unions in the set-up, design and functioning of these experimentations**. In fact, it is often trade unions that are pushing for harnessing public procurement as a way to improve conditions of a remarkably precarious workforce segment such as contracted-out workers in public services and for developing policies aimed at BDW. **As a consequence of this peculiarity in the politics of BDW, the design of these initiatives often gives trade unions an important role, focusing not only on substantive, but also on procedural aspects of the regulation of public procurement**. Moreover, trade unions do play a key role in the enforcement of these initiatives and their effectiveness strongly depends on their capacity to "use" these instruments.

This report will explore in how far these forms of regulation and these experimental strategies of "market-embedding" can "compensate" the negative effects of State's "market making" initiatives in public procurement. We will show that these initiatives have proved important, but also that they are constantly constrained by the rules and processes of "market-making" and therefore provide only a limited compensation for the pressures exerted by public procurement onto working conditions in the two industries.

PROCURFAIR Project – Research questions and design

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

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

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

(2) **Strategies**: Which tools and resources do actors mobilise for this purpose; to what extent do they seek to build alliances (between peer organisations; between representatives of employers, employees, customers, public purchasers and other types of organisations involved in socially responsible public procurement (e.g. control agencies, inspectorates)?

[1] The project was funded by the European Commission – DG for Employment and Social Affairs (Call 'Improving expertise in the field of industrial relations', Grant VS/2021/0211) and managed by Mark Bergfeld at UNI Europa's Property Services office which covers the services sectors of industrial cleaning and private security. The scientific coordination of the project was assumed by Karen Jaehrling at the University of Duisburg-Essen's Institute for Works, Skills and Training (IAQ), Germany.
For a more detailed account of the research design and methodology, key concepts and findings from the cross-national analysis see the comparative report (Jaehrling 2023).
The comparative report, as well as all 6 country reports of the PROCURFAIR project are available at: https://www.uni-europa.org/procurfair/.

(3) **Learning processes**: What kind of conflicts and obstacles arise in the process and how do actors cope with them?

(4) **Institutional constraints and support**: What role do regulative and budgetary constraints play? To what extent and how has the new EU procurement regime stimulated new experiments? To what extent does subnational, national and European legislation and jurisdiction inhibit a stabilization of experiments or force actors to adjust their strategies?

(5) **Overall lessons**: What are the lessons for trade unions, employers, local authorities and governments in how to more effectively use public procurement for securing\g decent work?

To address these research questions, this report draws on a total of 34 interviews with trade unions (15), employers' associations and individual companies (7), institutional bodies and contracting authorities (10), experts (2), as well as findings from a national workshop with key stakeholders (see the full list of interviews in the Annex). The data material has been triangulated with desk research of relevant policy documents, collective agreements, statutory labour and public procurement laws.

Structure of the report

The report is divided into three parts:

- **PART ONE briefly aims to identify the most important protective gaps for workers** within the two industries under study, with a view to assert where 'buying decent work' (in the following: BDW) practices could make a difference and compensate for gaps in protection that are left by labour law, collective bargaining and other efforts to secure decent work.
- **PART TWO gives an overview on the recent legislative and administrative infrastructure for BDW practices**: How does it support or, on the contrary inhibit measures targeting decent work in public contracts? This includes an analysis of the most important changes in the legislative framework that were implemented after the revision of the European Procurement Directives in 2014. It also looks at the development of soft law and other efforts to professionalise public procurement, with a view to foster the uptake of socially responsible public procurement, and deals with the wider political and societal debates with regard to the most important current challenges and conflicts around the issue of BDW and public procurement and outsourced public services more in general.
- While the first two sections thus deal with the general framework in which the 'experimentation' of public authorities with BDW practices takes place, **PART THREE is devoted to the experimentation itself, based on the case studies**.

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

1.1. General overview of firms and employment structure.

General overview

The cleaning (NACE 81.2) and the private security (NACE 80.1) industries display a rather different configuration from a dimensional perspective (see Table 1).

The cleaning industry embodies a large economic sector, that has known an important expansion over the last decade. In 2020 (the last data available) it employed 410,437 workers, the 3% more compared to 2010. What it is striking to underline, however, is the sharp decline reported in the employment in full time equivalent (FTE), decreasing by 25% in 10 years. This drop can be explained by the **remarkable and growing share of workers employed with part-time and occasional contracts** (see Table 5 below). The number of enterprises operating in the sector increased in the same timespan by 27%, moving from 28,918 to 36,605. The turnover has grown by 4% in the last decades, amounting to more than 14 million euro in 2020.

Conversely, the private security industry represents a smaller economic sector, whose number of enterprises declined over the last decade by 15%. In 2020 there were 1,217 active enterprises, employing a growing number of employees (7% more between 2010 and 2020), amounting to 71,274 in 2020. The decline in the number of enterprises associated with the simultaneous increase in the workforce employed might led to contemplate a process of companies' merge and acquisitions.

Table 1. Main data on the number of enterprises and employees in the cleaning and the private security industries

	Private security activities (NACE 80.1)			Cleaning activities (NACE 81.2)		
	2010	2020	2010-20	2010	2020	2010-20
Number of enterprises	1,431	1,217	-15%	28,918	36,605	27%
Turnover or gross premiums written - million euro	3,181.7	3,610.9	13%	13,979.6	14,552.7	4%
Wages and Salaries - million euro	1,500.5	1,469.8	-2%	4,974.0	5,150.4	4%
Number of employees	66,676	71,274	7%	398,389	410,437	3%
Employees in full time equivalent units – number	62,378	63,427	2%	295,994	222,197	-25%

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

The turnover in the sector, amounting to 3,6 million euro in 2020, displayed a marked increased by 13% over the last decade, accompanied by a simultaneous decline by 2% in salaries in absolute terms, spread across a grown workforce, both in absolute as well as in FTE terms. This dynamic implies a clear and strong loss of earning in relative terms over the last decade in the industry (see the remaining of the report for further details).

In terms of **firm size** in the two industries, we can observe that the cleaning sector is dominated by micro (less than 10 employees) and small (less than 50 employees) enterprises, in line with the trend observed in the whole economy. More in detail, with the 60.9% of the entire Italian workforce declaring to work for a micro or small enterprise, the 68.3% of cleaners in general cleaning services, 59.7% in industrial cleaning, 67.6% in other cleaning activities declare to work for a micro or small company (for more details see Table 2). Despite relevant, the share of employees in the private security sector reporting to work in companies with less than 50 employees stands below the national average, amounting to 43.4%, especially concentrated in small enterprises (the 31.4%). In this industry, on the contrary, medium (50-249 employees) and large (250 or more) are rather widespread, outscoring the national threshold: almost 30% of personnel in private security activities declared to work in a company with 50-249 employees, while 12.5% with more than 250 employees.

Table 2. Firm size in the cleaning and private security industry (in terms of number of employees declaring to work in companies of that size) (years 2014-20)

	1-10	11-49	50-249	250 or more	Don'tknow butup to 10	Don't know but morethan 10
General cleaning of buildings (8121)	32.65	35.64	16.41	6.11	2.64	6.55
Other building and industrial cleaning activities (8122)	18.63	41.05	23.58	6.55	2.04	8.15
Other cleaning activities (8129)	32.19	35.37	16.76	5.03	2.10	8.55
Private security activities (8010)	12.02	31.38	29.70	12.46	2.22	12.22
All sectors	33.72	27.14	18.80	11.37	2.81	6.16

Source: European Union Labour Force Survey (EU-LFS)

Labour force composition

As far as the composition of the labour force in the two industries is concerned, a first relevant dimension to consider is the **gender distribution** (see Table 1a in the Annexes). It is interesting to notice the different gender distribution within the cleaning sector. **Women are over-represented in the general and non-specialized cleaning of building activities** (NACE 8121 – including e.g., cleaning of building as

houses, apartments, shops, and offices) **where they constitute 76.4% of the total workforce. The male presence, instead, is prevalent – albeit with a more limited differential – in specialized and industrial cleaning activities (58.5%)** (NACE 8122 – including e.g., exterior cleaning of building, cleaning of industrial machinery) and in other cleaning activities (56%) (NACE 8129 – e.g., swimming pool cleaning and maintenance activities; cleaning of trains, buses, planes; cleaning of the inside of road and sea tankers). **The private security industry (NACE 8010), conversely and expectably, is largely dominated by men, who represent 87.7% of the workforce.**

A second relevant dimension regards the workforce composition **by origins** (see Table 2a in the Annexes). **In the cleaning industry, the quota of migrant workers is noticeable, representing 29.7% of the whole workforce in the general cleaning (NACE 8121) and 27.7% in the industrial cleaning activities (NACE 8122). The large majority of the workers employed in the private security industry (NACE 8010), instead, are native**: the migrant quota, in fact, barely reaches 6% of the total labour force in the sector.

Use of non-standard forms of employment

The composition of the labour force in the two industries can be further analysed by looking at the organisational and contractual dimensions of jobs, with a specific focus on the spread of non-standard forms of employment (part-time; fixed-term contracts, self-employment). **In both sectors, the large majority of the personnel works as subordinated employee**. This is especially true in the private security services where the subordinated workforce represents around 98%, while in the different segments of the cleaning services it constitutes approximately, on average, the 91% (for details see Table 3a in the Annexes). Overall, the share of self-employed workers in the two industries, although remarkable compared to the situation in other countries, is still marginal in the Italian case (9.5% in general cleaning – NACE 8121; 8.5% in in industrial cleaning – NACE 8122) remaining far below the average rate observed in the whole economy, where it reaches the 24.3%.

In line with the rest of the Italian economy (85.1%), **the large majority of the personnel in the two industries is employed with an open-ended contract**, with residual differences among sub-sectors: 86.5% in general cleaning (NACE 8121), 87% in industrial cleaning (NACE 8122), 83.6% in private security services (NACE 8010). The only exception is represented by the workforce engaged in other cleaning activities (NACE 8129) where the spread of fixed-term contracts is higher (23%) than the share observed in the whole economy (14.9%) (see also Table 4a in the Annexes). By looking at the data on the reasons why almost a quarter of the workers in other cleaning activities (e.g., swimming pool cleaning and maintenance activities; cleaning of trains, buses, planes; cleaning of the inside of road and sea tankers) is employed with a fixed-term contract, the main determinants trace back to the seasonality of their job (35.3% of fixed-term workers) and to the occasional configuration of their job (36.7%) (for further details see Table 5a in the Annexes). Nevertheless, it is worth to recall the generally unvoluntary nature of this

choice, primarily imposed by the enterprises in the cleaning industry. Thus, this latter explanation should be considered as merely illustrative.

An especially relevant dimension, characterizing in particular the cleaning industry, regards instead the widespread presence of part-time work, pointed out as one of the main protective gaps in the sector, being primarily unvoluntary (for further detail see below paragraph 1.2.2.). **71% of the personnel in general non-specialized cleaning (NACE 8121) and 41% in specialized and industrial cleaning (NACE 8122) works part-time**. Conversely, the share of part-time workers is far more limited in the private security services (NACE 8010), even below the national average in the whole economy (see Table 3). The average amount of working hours per week also varies greatly across subsectors, with general cleaning as the one with the most limited amount of working hours (less than 25 per week) and private security as the one with the highest (39), well above the average of the whole economy (see Table 4).

Table 3. Percentage of employed in cleaning and private security industries by full-time\part-time contracts (years 2014-20)

.	Full-time	Part-time
General cleaning of buildings (8121)	28.92	71.08
Other building and industrial cleaning activities (8122)	59.05	40.95
Other cleaning activities (8129)	70.59	29.41
Private security activities (8010)	86.95	13.05
All employed individuals	80.96	19.04

Source: European Union Labour Force Survey (EU-LFS)

Table 4. Working hours (mean per week) per each sector (years 2014-20)

.	Mean per week
General cleaning of buildings (8121)	24.67 (SE=0.11)
Other building and industrial cleaning activities (8122)	32.79 (SE=0.46)
Other cleaning activities (8129)	32.68 (SE=0.30)
Private security activities (8010)	39.01 (SE=0.17)
All employed individuals	36.42 (SE=0.01)

Source: European Union Labour Force Survey (EU-LFS)

Relevant differences between the cleaning and the private security industries by looking at the organization of working time in terms of hours of work, overtime, night work, as well as weekend work: these dimensions might provide a general overview of the discomfort conditions to which the personnel is subject.

As reported in the Table 5, while the vast majority of cleaners have their shifts scheduled during the day (i.e., before 11 p.m.) (96.8% of works in general cleaning, 88.3% in industrial cleaning, 89.6% in other cleaning activities), conversely, more than half (57.5%) of the personnel in private security services work at night (of which 47.2% at least two days or more per week; 10.3% less than two days per week).

Table 5. Percentage of personnel in cleaning and private security industries working at night (after 11 p.m.) in the last 4 weeks (years 2014-20)

	Working at night, 2 daysor more per week	Working at night, less than 2 days	No\Don't know
General cleaning of buildings (8121)	2.24	0.91	96.85
Other building and industrial cleaning activities (8122)	8.91	2.79	88.30
Other cleaning activities (8129)	7.00	3.42	89.59
Private security activities (8010)	47.24	10.31	42.45

Source: European Union Labour Force Survey (EU-LFS)

Differences between the two industries emerge also in relation to overtime. Overtime work is not particularly widespread in the cleaning services, involving on average (across NACE 8121, 8122, and 8129) only the 3.5% of the personnel (for details see Table 6). This data might however hide the widespread use of supplementary work (i.e. overtime work for part-time workers) reported by trade unions. In the private security activities, instead, 1 worker out of 10 works more hours than defined by his\her contract, and, more precisely, around 9 hours more as a weekly mean.

Table 6. Percentage of employees working overtime in the last week and hours of overtime (mean per week) (years 2014-20)

	Overtime (%)	Mean per week
General cleaning of buildings (8121)	3.37	7.29 (SD=0.34)
Other building and industrial cleaning activities (8122)	4.87	7.30 (SD=1.42)
Other cleaning activities (8129)	2.24	6.95 (SD=0.94)
Private security activities (8010)	9.77	9.13 (SD=0.42)

Source: European Union Labour Force Survey (EU-LFS)

Wages

Jobs in the cleaning sector are, in general, low paid, and this is remarkable especially for workers employed in general non specialized services (NACE 8121), where nearly half of the workforce lies in the first decile of the wage distribution (see Table 7). Considering also the cleaners in the second and third decile, the share of low paid workers amounts to more than the 85% of the workforce in the general cleaning services. The other two segments, the industrial cleaning activities (NACE 8122) and the other cleaning activities (NACE 8129), despite being less skewed towards the low-paid pole of jobs, are still very poor in terms of material

rewards. This condition traces back to especially high rate of part-time workers employed in the sectors, as shown in Table 4.

The wage distribution in the private security industry, instead, is concentrated in the central deciles: around 60% of workers lies between the third and the sixth decile, while the lowest deciles (first and second) turn to be much less populated compared to the cleaning industry. Conversely, a higher concentration in well-paid jobs can be observed in the private security activities, even though still much below compared to the national average. While such distribution might seem surprising, given the extremely low hourly wage rate paid according to the main National Collective Agreement, it might be explained by the high hourly volume recorded by the workers in the sector, characterized by widespread overtime work (see Table 6).

Table 7. Monthly wage decile per each sector (percentage of employees) (years 2014-20)

	1	2	3	4	5	6	7	8	9	10
General cleaning of buildings (8121)	48.79	24.65	12.63	6.38	2.79	1.92	1.05	0.90	0.54	0.35
Other building and industrial cleaning activities (8122)	21.31	17.66	17.35	13.39	10.35	4.11	6.09	4.72	3.04	1.98
Other cleaning activities (8129)	15.40	14.80	13.08	14.63	12.74	9.55	8.35	5.34	4.73	1.38
Private security activities (8010)	7.24	9.47	14.61	14.95	14.98	12.72	9.03	8.18	5.55	3.28
All employed individuals	9.64	9.76	9.86	10.04	9.77	10.18	10.32	10.42	10.11	9.89

Source: European Union Labour Force Survey (EU-LFS)

1.2. Protective gaps and challenges in the cleaning and security services industry and the potential role of BDW

Industrial relations in the cleaning and the security industry

Industrial relations in the two industries are characterized by the pluralism and voluntarism which characterize Italian industrial relations in general.

Three trade union organizations (FILCAMS-CGIL, FISASCAT-CISL and Uiltrasporti-UIL), all belonging to the three main Italian confederations, are the main actors on the side of labour. Differently than in other sectors, autonomous and grassroots unions do not play a particularly significant role in the two sectors.

No data are available on unionisation. According to our interviewees, however, the cleaning industry is characterized by a relatively strong unionization, especially in large public contracts. This has been connected by our informants to the very significant role played by trade unions in the management of changes of contractor in case of tender renewals. Workers, in fact, need assistance when moving to new contractors and the centrality of trade union support for ensuring that employment conditions are safeguarded in the transfer is a strong incentive to become a union member. According to several interviewees, workers in the cleaning industry are also quite open to conflict, which is something very important in a sector characterized by limited structural power. On the contrary, unionization of the security industry is very peacemeal: workers are often isolated and work alone for long hours, reducing the interpersonal contacts that usually form the basis of unionization.

The employer side is even more fragmented, with nine employer organisations in the cleaning industry (Agci Servizi, Fise Confindustria, Federlavoro-Confcooperative, FNIP Confcommercio, Legacoop Servizi, Unionservizi Confapi, Casartigiani, Claai, Confartigianato) **and six in the security industry** (Anivip, Assiv, Univ, Legacoop Produzione e Servizi, Agci Servizi e Confcooperative Lavoro e Servizi). Still, collective bargaining is less fragmented in the two industries compared to the rest of the economy, with only two main collective agreements (industrial and artisanal) in the cleaning industry and one in the security industry. As common in the rest of the economy, the main collective agreements are surrounded by a plethora of other minor collective agreements signed by smaller trade unions and employer associations. Overall, the national repository of CNEL (Consiglio Nazionale dell'Economia e del Lavoro, National Council of Economy and Work) counts 28 national collective agreements for the industrial cleaning sector and 18 national collective agreements for the private security sector. No information is available on the coverage of these minor agreements in terms of companies and workers, but they are significantly less relevant than those signed by major trade union organisations and employer associations. As we will see below, the two industries have, however, been characterized by difficult collective bargaining processes over the last decade, with very long renewal times of the major collective agreements.

As typical of the voluntarist Italian industrial relations systems, collective agreements are not mandatory and there are no mechanisms for their extension beyond signatory parties. National Collective Agreements are regulated according to private law and apply only to enterprises and workers associated to signing parties. **However, for more than 60 years in all sectors, there has been a jurisprudential orientation that has extended minimum pay rates set by national collective agreements also to workers and companies which are not affiliated to the signatory organisations**. This is done according to Art. 36 of the Italian Constitution which states that "workers have the right to remuneration commensurate with the quantity and quality of their work and in any case such as to ensure them and their families a free and dignified existence". A long-established jurisprudence identifies in collective agreements the measure to define the principle of "commensurate" and "sufficient" remuneration established as a constitutional right of every citizen (Orlandini and Meardi 2023, Menegatti 2019). **The national collective agreement,**

therefore, represents the de facto wage norm to be referred to for all workers and enterprises in a sector, guaranteeing a potential coverage of minimum wage levels of 100%. If an enterprise pays lower salaries than those established in the National Collective Agreement which should be applied in the sector, workers can appeal to court. However, there are no rules connected to the selection of the collective agreement that companies can apply and this produces the risk of contractual dumping, both among collective agreements signed by most representative and non-representative actors and among different sectoral collective agreement. Contractual dumping of the last sort is not a major issue in the two industries, however, as the reference collective agreements are rather poor ones (and are often used by companies as social dumping instruments in sectors, such as logistics or environmental services, which have richer collective agreements).

Most important protective gaps

The main protective gaps which can be detected in the two industries refer to both the setting and the enforcement of standards.

A lack or low level of standards: pay

First, **in both sectors, regulatory standards (both statutory or set by collective agreements) are rather low. This is particularly the case with regards to wages**. As it is well known, Italy is one of the few countries in Europe lacking a statutory minimum wage and basing its regulation of minimum wages on collective agreements. As we have seen above, although no *erga omnes* provision exist in the country, minimum wage levels set by sectoral collective agreements are *de facto* extended universally by the action of labour courts. Still, despite universal coverage of minimum wage levels set in collective agreements, average yearly wages in the two sectors are rather low in comparative perspective. This is the result of several factors.

First, minimum wages set in the two sectoral agreements are very low, particularly in unarmed security services (so-called servizi fiduciari, see table 8. below), and significantly lower compared to wages paid in the public sector. In fact, they are positioned significantly below the national low-wage threshold, which is 7.70€/hour.

For this reason, **minimum wage levels of the collective agreement of the security industry have been protagonists of several court rulings. Different courts have, in fact, deemed them as not in line with the principles of a "commensurate" and "sufficient" remuneration, asking for their disapplication** (Razzolini 2021). More generally, the two industries are often taken up as (negative) examples by supporters of the introduction of a statutory minimum wage in Italy, which often point at the low wage levels in these and other collective agreements to argue that collective agreements are no longer capable of granting adequate remunerations.

Moreover, wage dynamics in the two industries have been very modest over the last years, in line with the overall situation in the country. In the cleaning industry, wages increased

by less than 10% over the past 10 years, while in the security industry they increased by 10,8% for the armed component and 13,6% for the unarmed one. All increases have remained below the level of inflation registered (+13,8% over the period 2013-2022), producing a reduction in real wages in contexts already characterised by low wage levels. Such moderate increase dynamics have also been determined by the complex renewal process of the two collective agreements**. The cleaning and multiservices collective agreement was not renewed for 8 years (from 2013, when it expired, until 2021), and the same was true for the collective agreement of the security industry (from 2015 to 2023).** Over that time, wage levels were de facto frozen. It is important to note that, although not being the only (and probably even not the most important) issue explaining the stalemate in negotiations, employers' reluctance in providing increases in wages was also connected by several interviewees to the situation in public tendering. The limited resources provided by public authorities and the lack of mechanisms for aligning tariffs for services to increases in collectively agreed wages, made, in fact, employers more reluctant in accepting economic demands put forward by trade unions.

Table 8. Hourly and monthly wages in the lowest collectively agreed pay grade in the cleaning and security services industry (2013-2023, as of December)

	2013	2019	2020	2021	2022	2023 (June)	2013-2023
Cleaning (Level 1)	1.104,88	1.104,88 (not renewed)	1.104,88 (not renewed)	1.164,52	1.182,87	1.210,39	+9,5%
	6,39	6,39 (not renewed)	6,39 (not renewed)	6,73	6,84	7,00	
Cleaning (Level 2)*	1.158,50	1.158,50 (not renewed)	1.158,50 (not renewed)	1.223,50	1.243,50	1.273,50	+9,9%
	6,70	6,70 (not renewed)	6,70 (not renewed)	7,07	7,19	7,36	
Security services (armed)	1.029,48	1.072,24	1.072,24 (not renewed)	1.072,24 (not renewed)	1.072,24 (not renewed)	1.112,24	+10,8%
	5,95	6,20	6,20 (not renewed)	6,20 (not renewed)	6,20 (not renewed)	6,43	
Security services (unarmed)	745,51	797,14	797,14 (not renewed)	797,14 (not renewed)	797,14 (not renewed)	847,14	+13,6%
	4,31	4,61	4,61 (not renewed)	4,61 (not renewed)	4,61 (not renewed)	4,90	
Public services (local government)	1.359,55	1.430,75	1.442,05	1.477,85	1.477,85	1.503,70	+10,6
	8,71	9,17	9,24	9,47	9,47	9,64	

** We report here both level 1 and level 2 because level 1 only applies to newly hired workers for the first 9 months of employment. The passage to level 2 is automatic after 9 months of employment, so it might be argued that the effective lowest level of the job grading in the sector is level 2.*

Source: own elaboration

Beyond the (low) levels set in the collective agreements signed by the most representative trade unions, a further source of wage compression is competition by collective agreements signed by alternative trade unions, often with limited representativeness. Such collective agreements foresee significant wage differentials, in some cases even by 15% (Lucifora and Vigani 2021). The Italian system of industrial relations is based on voluntarist principles and has only limited instruments to select which collective agreement has to be applied.

To be noted is also that wage dumping through practices of arbitrage in the application of collective agreements is increasingly performed by companies also by applying the collective agreement of the security industry over alternative collective agreements. This is, for example, the case of workers employed in museums or in public libraries, which are most often applied the collective agreement of the security industry instead to others – more convenient to workers – such as the one of the cultural industries.

Working time and unsocial working hours

In the cleaning industry, yearly average wage levels are low also due to the limited number of working hours worked by employees. As we have seen above, most workers are employed part-time and the mean level of working hours in the industry is less than 25 hours per week. Hence, a significant share of the workforce earns a very low monthly income (less thank 8-900€ per month).

On the contrary, in the security industry low hourly wage levels push workers to systematically work long hours in order to earn a sufficient amount. As we have seen above, those declaring to work overtime on a steady basis report more than 9 hours on average.

Unsocial working hours (work at night (after 23), on Saturdays and on Sundays) are distributed differently in the two industries, in particular for what concerns night work. Indeed, working at night is a rare circumstance in the cleaning industry, while it is very common in the security industry. According to Labour Force Survey data, more than half of the workers in the industry reported to have worked at night at least one day per week over the past 4 weeks. 47% of them 2 days or more per week. This sector is also the one where people are quite likely to work in the week-end, with over 80% working on Saturdays and 70% working on Sunday. Week-end work is, instead, less common in the cleaning industry, but still very present, although in line with what happens in the rest of the economy.

Table 9. Unsocial working hours in the last 4 weeks

	Night	Saturdays	Sundays
Cleaning	3	44	18
Security	58	82	71
Total labour market	11	46	22

Source: Labour Force Survey

Employment stability

A further issue in both industries but especially in the cleaning industry is limited employment security. TUPE legislation, in fact, does not apply automatically in case of change of contractor. The issue of employment security was particularly significant in the years around/following the Great Financial Crisis, when austerity programs aimed at reducing public spending significantly curtailed the amount of resources for cleaning activities.

According to our interviewees, in most recent years (and especially during/after the Covid pandemic, which made cleaning services central for the policies of reduction of contagion and, therefore, ensured an increase in the amount of resources allocated) the issue is less connected to employment security per se, and more to the security of employment conditions (Pedaci and Di Federico 2016). Because of changes in the contractor and the connected interruption of the employment contract, employees may lose entitlements tied to seniority, such as wage increases. In several cases, pressures for cost reduction on the side of client companies or efficiency-seeking cost savings performed by cleaning companies in order to win tenders might translate into reductions in weekly working hours assigned to workers (with a connected reduction in monthly wages) or increases in workloads (i.e., pressures to do more work in the same working time) (Toffanin and Vianello 2020). **The centrality of employment security during change of contractors has also been addressed by reforms in public procurement regulation, such the introduction of the obligation to set labour clauses for occupational continuity in public tenders by art. 50 of the "Code of public contracts"** (see below). However, as visible in the standard format produced by ANAC, labour clauses are often not strictly specified and their vagueness does not ensure a stable protection of employment conditions. This is also connected to an element which will be discussed below, and namely the need to ensure a balance between social goals (in this case ensuring occupational stability) and the principle of freedom of enterprise.

In both industries, several conflicts connected with occupational security and the deterioration of working conditions due to contract changes and changes of contractors (*cambi appalto*) were reported by our interviewees.

Enforcement

There is a lack of data concerning violations of provisions set by law or collective agreements in the two sectors. According to our interviewees, common violations are connected to unpaid overtime, wrong job grading and in some cases wage theft. However, in the cleaning industry this is most often connected to small workplaces/cleaning contracts, while it is quite rare that in larger ones (such as hospitals) there is this type of violations, as they are much more subject to the scrutiny of employee representatives.

Procurement as a downward pressure on working conditions

What has been often highlighted by our interviewees is the role of some procurement practices in favouring non-compliance with the (already limited) standards foreseen in the law and in collective agreements, and/or causing an exacerbation of the problems deriving from the lack of provisions.

As we have seen above, **austerity measures and the spending review process introduced after the Great Financial Crisis, produced a dramatic reduction in available resources and a pressure by public authorities to contain costs. This often impinged negatively on employment stability, on income stability (particularly with regards to the number of hours worked), and on work intensity (with workers required to do the same amount/more work in less/the same amount of working hours).**

Moreover, the goal of cost containment increased competition among companies, which were forced to compete on prices and offer strong rebates on auction bases (*basi d'asta*) in order to win tenders. According to interviewees, this problem is not necessarily solved by the introduction of the "economic most advantageous" principle in recent procurement regulations. In fact, even in cases in which price only represent 30% of the award points, it is not uncommon that it remains the *de facto* award criterium. This is because often quality criteria are interpreted by public authorities as purely formal, "a ticking the box effort", thereby making it quite difficult to have much differentiation in the points awarded to different offers and therefore making the price the actual awarding criteria. This ultimately facilitates success of low-cost operators in tenders.

This translated into different phenomenon, such as the participation to (and victory of) public tenders by companies which adopted problematic (although not necessarily illegal) practices (such as the application of "pirate" collective agreements, i.e., collective agreements not signed by the most representative unions and foreseeing lower standards); or the incapacity of winning company to actually ensure the re-hiring of workers and/or their re-hiring at the same employment conditions. Hence, a key focus of BDW initiatives in Italy has revolved around the goal of making sure that procurement (and most specifically the way in which tenders are designed) did not produce negative pressures on employment conditions.

Strategies to address protective gaps

Before turning to the exploration of how BDW interventions might help in addressing the identified protective gaps, we will focus on non BDW initiatives developed to address such gaps, in particular on the side of trade unions.

Setting standards through sectoral collective bargaining

A first area of intervention has been through the classical means of collective bargaining and the negotiation of protective measures in sectoral collective agreements. For example, **the cleaning and multiservices collective agreement includes provisions to ensure the continuity of**

employment and of employment conditions in case of change of contractor, and thereby govern contract changes. These are based on two pillars: information and consultation rights for trade unions and workplace employee representatives, and a labour clause of occupational continuity. As to the first, within the 15 days preceding the termination of the contract, outgoing companies must deliver a communication of termination of the contract to workplace employee representatives and territorial trade unions. This communication needs to entail information on the number of employees employed in the contract during the last 4 months, their names, and their respective weekly timetable. The incoming company must give notice of its takeover of the contract as quickly as possible, before the start of the new management, in good time and in any case at the request of the local trade union organizations signing the collective agreement. Secondly, the collective agreement foresees a clause of occupational continuity which differentiate two scenarios. If the terms and conditions of the service are unchanged, the clause compels incoming companies to hire the workers already in service. If the terms and conditions of the services are different, incoming companies are obliged to confer with trade unions and workplace employee representative in order to harmonize the changed technical-organisational aspects of the contract with the maintenance of employment levels. A similar labour clause is present also in the collective agreement of the security industry, but it is weaker compared to the one of the cleaning industry.

The multi-services collective agreement also entails some provisions connected to part-time workers and the wide diffusion of involuntary part-time work with a very low number of working hours. Art. 33 of the CA, in fact, foresees a minimum number of working hours to be granted to part-time workers, which cannot be less than 14 hours, 60 hours per month and 600 hours per year, with a minimum of 2 hours per working day. As we have seen above, the average working time in the industry is around 25 hour/week (see table 4), thereby confirming the overall enforcement of the measure. However, not all these hours might be set in the individual contract of employment as trade unions report a relevant incidence of overtime work. The cleaning and multiservices collective agreement also entails a provision which grants to trade unions the right to be informed about the number of overtime working hours worked by workers each year and mandates cleaning companies to negotiate with employee representatives on the consolidation of overtime work (i.e. increase the contractual number of working hours according to how much overtime work each worker has performed). This measure also aims to address the issue of discretionality in granting working hours and thereby to intervene on power relations between workers and their employers. In fact, extant research in the cleaning sector has shown that since the granting of overtime hours is subject to the discretion of the company, the workers are put in competition with each other, further reducing their power position (Nizzoli 2017).

According to the interviewees these are all important instruments (e.g., the labour clause for occupational continuity set in the cleaning and multiservices agreement is the most advanced among all Italian collective agreements). The main problematic issue is connected with incumbent companies not applying the collective agreement which sets these provisions, but other collective agreements.

Support for the management of individual grievances and enforcement of standards on an individual basis

A further way in which trade unions act on the protective gaps is through the support for the management of individual grievances and the enforcement of standards on an individual basis. This is the role undertaken by trade unions through the action of dispute resolution support services (*uffici vertenze*). These bodies assist workers in all the problems concerning the employment relationship - with particular regard to disciplinary matters and employers' non-compliance with legal and contractual obligations. Typical issues are uncorrect reporting of working hours, late payments, uncorrect job grading (i.e., recognition of a lower job level compared to the one established by the collective agreement for certain tasks). This is a fundamental function of trade unions, one which ensures the enforcement of provisions set in laws and collective agreements. However, it is also a limited activity, which, even when effective has significant drawbacks, such as being limited in scope and often incapable of translating into long-lasting improvement of working conditions for workers beyond those immediately involved in the individual support. It is also considered to trigger a passive stance of workers towards trade unions (Nizzoli 2017).

Support/monitoring of the process of changing contract (cambio appalto)

Beyond the individual management of grievances, trade unions also deal with collective disputes. Among those of particular relevance for the Procurfair project is the **involvement of trade unions in the procedures of change of contractor (*cambio appalto*) and the negotiation of the conditions according to which workers are transferred to the new contractor.** As we have seen above, the sectoral collective agreements of both sectors grant unions procedural rights (information and consultation) in this phase. The actual involvement of unions in these procedures is often key for ensuring that workers do not lose their jobs and that working conditions are preserved. According to our interviewees, this is one of the reasons why the cleaning sector shows higher levels of unionization compared to other low-wage private service sectors (e.g., the retail sector).

Trade unios also often resort to conflict in order to avoid detrimental consequences of a change of contractor (such as redundancies, reduction in working hours, cut of seniority entitlements) and to strengthen their bargaining power over these issues. Several examples of such conflicts (in the form of strikes and public demonstrations) were mentioned during the interviews.

Although crucial, these initiatives have often to face the limitations set by external constrains. In fact, several interviewees highlighted how, trying to address issues *ex post*, when tendering conditions have already been set/contractors have already been selected, often provides limited room of manouvre. Many relevant issues (e.g., allocated resources, type of service required and organistion of the service) that crucially affect employment security and working conditions are, in fact, defined in the procurement contracts or during the procurement process. For example, rebates on the auction basis are a crucial element to win tenders, even when the principle of the economically most advantageous offer apply. Hence, according to several interviewees, competition on the technical side of the offer is often not particularly relevant in highly standardised services, such as cleaning and security, making the price offered the actual awarding criteria. This ultimately facilitates success of low-cost operators, which might present

offers that are hardly compatible with the protection of employment conditions. Moreover, in several cases, the room of manouvre of private companies in ensuring the continuation of employment conditions is strongly constrained by the content of public tenders and, in particular, by the amount of resources public authorities are willing to provide for specific services. Particularly during the years following the Great Financial Crisis they were massively reduced in the search for public spending reduction.

This is why trade unions consider it important to act *ex ante*, i.e., before the tenders are published and contractors are selected, and ask to be involved in the drafting of procurement documents and in the management of the procurement process. On the one side, this allows unions to ensure that the conditions set in tenders/procurement contracts (budget, labour clauses) allow to grant workers adequate conditions. On the other side, it provides a more favourable bargaining context, since unions (usually through their confederal structures) can leverage positive relations with public authorities, much more "stable" and politically visible interlocutors compared to cleaning companies.

Potential role of BDW policies and practices

There are several protective gaps which might be positively influenced by BDW initiatives.

First, as we have seen above**, limited employment security and security in employment conditions is strongly related to procurement dynamics (change of contractor, length of tenders, amount of resources, competition between companies) and can, therefore, be addressed through socially responsible public procurement. This issue has been addressed through the introduction of labour clauses for occupational continuity in public tenders, which have been made mandatory by 2016 Public Contracts Code**.

Second, the two sectors are characterised by the presence of different collective agreements, some of them signed by trade unions and employer organisations with limited representativeness. The existence of competing collective agreements favours social dumping and a race to the bottom in employment conditions. This issue has been addressed by several provisions, some of which entailed in the 2016 Public Contracts Code, that set criteria for the identification of the "reference" collective agreement whose terms and conditions need to be applied by companies in public procured services.

Lastly, gaps in enforcing standards and the violation of provisions set by law and collective agreements (such as underpayment, wrong job grading, non payment of some working hours) are an (albeit more limited) issue in the two sectors. As we have seen, procurement practices (and particularly limited resources allocated by public authorities and their willingness to save on the cost of service provision by favouring competition between private companies) might make it more difficult for private providers to correctly apply the (already limited) provisions set in the law and in collective agreements. This issue might be addressed through BDW provisions by, e.g. embedding social considerations in tenders, or limiting the relevance of the price criteria in awarding contracts. Particularly important for ensuring the effective functioning of the principle of the "most advantageous" are very technical details, such as the different mathematical "formulas" used to balance price or technical/quality criteria in the award of tenders.

All these issue are addressed by experimentations at the local level, but also by initiatives of trade unions at the national level, such as lobbying activities when new normative intervention are drafted or joint initiatives with other bodies (e.g. ITACA), which we will explore in greater detail below.

Table 10. Overview Table: Setting, extending and enforcing standards:

CORE QUESTIONS	SETTING STANDARDS	EXTENDING STANDARDS	ENFORCING STANDARDS
1) most important protective gaps	a lack or a low level of standards • wages • working hours • employment security • conservation of employment conditions across tenders "pirate' collective agreements setting lower levels than main CAs	application of "pirate" collective agreements misclassification of activities in order to 'legally' apply cheaper CA	a lack of enforcement of these standards procurement specific mechanisms producing downwards pressures
2) Policies and efforts to diminish these gaps (*apart from*. BDW)	efforts to conclude/renew CAs and include provisions, e.g. on minimum working hours bargaining over/mobilizing against negative consequences of change of contractor		individual assistance and union control of correct application of CAs/laws
3) Potential role of BDW to diminish the gaps?	labour clauses for occupational security identification of collective agreements to apply and benchmark bids against pre-defined labour costs based on the selected CAs tenders foreseeing scores for "socially responsible" behaviour		involvement of unions in the formulation of tenders/procurement process and in the management of change of contractors

Part TWO: Policy developments relevant for BDW in Italy

2.1 The main regulatory framework for BDW in Italy

In Italy, the legislative and administrative framework regulating public procurement has long remained fragmented and complex. In general terms, in the Italian legal system, the matter of public procurement is regulated by the Civil Code, and in particular by articles no. 1655-1677bis.

The turning point for the regulation of the sector was determined by the issue of the Legislative Decree no. 163/2006, i.e., the so-called *Public Contracts Code* (or Public Procurement Code - *Codice dei contratti pubblici*).

The Public Contracts Code was drafted to respond to a twofold reason (Melandro *et al*. 2020). On the one hand, and importantly, *it implemented the European Directive 2004/18/EC on public procurement*, then repealed in favour of the new Directive 2014/24/EU. On the other hand, the issuing of the Public Contracts Code represented a significant change within the Italian legislative and administrative infrastructure since it systematized the regulatory framework in the sector and replaced the previous Legislative Decree no. 163/2006, i.e., the so-called de Lise code.

The 2016 Public Contracts Code underwent a series of modifications: the first with the corrective Legislative Decree no. 56/2017; then with the legislative decree n. 32/2019, the so-called "*Sblocca Cantieri*" decree (converted into Law no. 55/2019). More recently, the Government has approved a revised version of the Public Contracts Code contained in the Legislative Decree no. 36/2023, issued on March 31st, 2023.

The main provisions to protect labour standards in public procurement however were set in the 2016 Code, with some relevant modifications for BDW introduced by the 2023 revision (Legislative Decree no. 36/2023). Thus, it currently represents the framework of reference for BDW. The main provisions concern a set of different aspects and phases of the public procurement process.

In general terms, the protection of labour standards and costs is ensured by the Code through three different and interrelated mechanisms/procedures involving both the contracting authorities and the economic operators during consequential phases of the call for tenders.

In what follows the main legislative provisions pursuing BDW in the Italian regulatory framework are presented and critically discussed in light of the main jurisprudential orientations in the field of administrative and labour law. Importantly, both the provisions established by the 2016 as well as the 2023 versions of the Code will be presented. In fact, while the 2023 Code is the one in force at the time of

drafting this report, the 2016 represented instead the regulatory framework of reference when the experimentations presented in the Case Studies took place.

Design of the call for tenders

A first set of provisions to BDW in public procurement as established by the 2016 Public Contracts Code (and not modified by the 2023 version of the Code, article 41, c.13) concerns the phase of *design of the call for tenders.* During this preparatory phase, the public administrations as the *contracting authorities* are involved and demanded to preliminary comply with a set of provisions established to safeguard labour costs in the call for tenders (*article no. 23, c.16*).

- **In the call for tenders, the contracting authorities have to *indicate labour cost of reference* – including the hourly gross wage and the non-wage labour costs – for the supply of work and services *determined according to the national tables of standard labour costs provided by the Ministry of Labour and Social Policies*** (in the Annexes the last available national tables of standard labour costs in the cleaning and security industries are attached). Regulated by the Legislative Decree no. 50/2016 (article no. 23, c.16), these national tables report the average labour cost for each economic sector computed on the basis of:

  i) the wage levels defined by the national collective agreement signed by the comparatively more representative trade unions and employers' organisations in the economic sector of reference;

  ii) the national regulation on social security and assistance;

  iii) the different economic sectors and the different territorial areas.

- In case of absence of an applicable national collective agreement to refer to for the definition of the national standard labour costs, the labour cost shall be determined by referring to the national collective agreement of the closest economic sector to that taken into consideration in the tender.

- The economic operators, in the preparation of their bids, have to comply with the standard labour costs provided by the contracting authorities in the call for tenders.

A few *critical dimensions* were reported by the interviewees regarding the reference of the Public Contracts Code to the national tables of standard labour costs as a parameter to observe for the preparation of the bids.

- **A first concern regards the late renewal of the national tables of standard labour costs provided by the Ministry of Labour and Social Policies. The national tables, in fact, are often not timely renewed every year – as they should be according to the Legislative Decree no. 50/2016 (article no. 23, c.16) – to ensure a fair, proportionate and coherent reference for the actual labour cost the economic operators have to comply with**. The underestimation of the labour cost indicated in the national tables indirectly allow

the economic operators to lower their bid by including a lower labour cost in a potentially detrimental spiral for wage levels and working conditions in public procurement. For instance, while the last renewal of the national table in the cleaning industry refers to the year 2022, in the security industry refers instead to the year 2016.

- **A second limitation concerns the actual enforcement of the standards set by the Ministry of Labour and Social Policies in the national tables of standard labour costs**. According to the doctrine, they represent a benchmark for the labour costs to include in the bids: therefore, they cannot be considered mandatory minimum thresholds that the economic operators have to include in their bids. The labour law expert interviewed explained that:

  it is also possible to deviate from the famous ministerial tables which provide for the total cost of the contract, since there is freedom of choice. Therefore, it is an important rule but one which does not completely protect from economic reductions in the labour costs. […] The doctrine retains that in any case they are not so binding, that is, that deviations are possible, because in the end what is binding is the law. So, these tables give you a basic idea, but they are not so immediately binding (Interview Labour law expert 3/2022).

Contract award: checks and criteria

A second set of provisions regards the phase of contract award wherein *the economic operators/contractors as well as the contracting authorities* are involved. In this phase, the 2016 Code provides for checks on labour costs contained in the bids and specific criteria to award the tender.

- In the economic offers submitted by the **contractors/economic operators, they must clearly *declare their expected labour costs*** and the costs for the fulfilment of the contractual provisions concerning health and safety at the workplace *(article 95 c. 10).*
- **Before awarding the contract, the contracting authority have to execute a *check on the labour costs indicated by the economic operators in their bids*** (article *97, c. 5*). The contracting authority is allowed to request to the contractors the submission of the written *explanations of the labour costs that they declared in the bid when they are abnormally low.* According to the article 97 (c. 5), based on this check, the contracting authority is allowed to exclude those offers where the evidence provided to explain their labour costs does not justify sufficiently the low level of prices or labour costs offered. In particular, if the labour costs indicated in the bid is lower than the minimum levels indicated in the tables provided by the Ministry of Labour and Social Policies (see point 1 - article 23, c.16) the bid should be excluded. This provision of the Public Contracts Code should ensure the exclusion of all the bids that potentially may envisage a lower economic offer based on excessively low labour costs.

- Nevertheless, according to the consolidated orientation of the administrative jurisprudence and as already explained in the previous paragraph, **when the contracting authority verifies the anomaly of the offers, the discrepancy of the labour cost indicated in the bid from that reported in the ministerial tables does not represent a decisive determinant to draw the conclusion of the incongruity of the offer, thus automatically excluding that offer**. The tables, indeed, according to the administrative jurisprudence, constitute only a parameter to evaluate the economic adequacy of the bid. Accordingly, deviations from the standard costs reported in the tables are permitted and it is actually up to the contracting authority to assess whether these represent significant and completely unjustified deviations as to be able to compromise the overall reliability of the offer. Only in this case, the offer is then excluded due to the abnormally low labour cost (see Cons. State, section III, 9 June 2020, n. 3694; III, 17 January 2020, n. 414; V, 29 July 2019, n. 5353).
- In the *evaluation of the bids to award the tender*, in relation to labour-intensive services, the Codes provides a specific criterion to apply in line with BDW goals (Article 95, c. 2-3, not modified by the Article 108, c. 1-2 of the 2023 Code). Generally, the Italian regulatory framework for public procurement allows to apply the criterion of the most economically advantageous offer identified on the basis of the best quality/price ratio or based on the price or cost element. However, **in case of labour-intensive services, the exclusive price or costs considerations (i.e., maximum reduction) cannot be applied, while *the best quality/price ratio has to underpin the evaluation to promote social and technical consideration*. The adoption of this criterion should induce the contractors to include social and technical considerations in their offer, instead of simply leveraging on reductions on the economic offer based on, in turn, reduction in labour costs.**

Execution of the contract

The Public Contracts Code envisages also measures to implement BDW priorities during the phase of *execution of the contract,* regarding in particular (i) the safeguard of occupational stability in case of change of contract; (ii) the application of fair and proportionate working conditions in outsourced services; (iii) constraints to subcontracting.

First, as far as occupational stability is concerned, the regulatory provisions regarding the adoption of social clauses in calls for tenders has been modified by the recent reform of the Public Contracts Code issued in 2023. **The 2016 Code (the one in force when the experimentations selected for the case studies analysis took place), at the article no. 50 established the *inclusion of specific social clauses aimed at promoting the employment stability* of the staff employed for the assignment of concession and procurement contracts of works and**

services other than those of having an intellectual nature/content, and *with particular regard to those relating to labour-intensive activities*. The Code considers labour-intensive services those in which the labour cost is equal to at least 50% of the total contract amount**. The 2023 reform of the Code modified the provision (article 57, c.1): by eliminating the explicit reference to labour-intensive services, it made the inclusion of the social clause mandatory in all contracts for works and service**, other than those of an intellectual nature.

- Thus, if on the one hand the adoption of social clause to safeguard the occupational stability is compatible with the EU law, the Italian administrative jurisprudence suggests an elastic interpretation as a way to strike a balance between social considerations in public procurement and freedom to provide services/freedom of economic initiative for private operators. According to a recent ruling by the State Council (Ruling by the V section - April 7th, 2023, n. 3628) the *social clause must be formulated and interpreted in a flexible manner*, thus leaving to the competing economic operators even the *discretion regarding the absorption of the workers employed by the previous contractor*. According to the ruling, only a flexible interpretation of the social clause can comply with the orientation of the administrative jurisprudence, according to which the obligation to maintain the employment levels of the previous contract must be reconciled with the freedom of enterprise and with the interrelated inherent discretion of the economic operators to organise the service efficiently and coherently with one's own production organisation, in order to achieve cost savings to be exploited for competitive purposes in the procedure for awarding the contract.

  concerning the employment stability, the administrative jurisprudence has said that you cannot force a subject who wins a tender to rehire your employees, because it submits its bid with its organization, it wins the tender with its organization…why do you want to influence its organization? This is somewhat the perspective of administrative jurisprudence. So, balancing - because this is an issue of balancing - must be done [between employment stability and freedom of organization]. Thus, the interpretation must be elastic: it is important to reach the basic objective, the employment stability, but without influencing too much the economic freedom and the determination of its organizational structures of the company (Interview Labour law expert 3/2022).

Second, the regulation of social clause is strictly intertwined to the provision concerning the *application of coherent and fair national collective agreements* aiming to BDW. The 2016 Code, in fact, included different references to the discipline on collective agreements and working conditions in public contracts. First, in the article no. 50 relating to social clauses, **the Code established that the call for tenders have to include specific social clauses, providing for the successful tenderer to apply the national sectorial collective agreements of reference signed by the comparatively most representative trade unions at the national level** (according to the Legislative Decree no. 81/2015, art. 51, recalled by the article 50 of the 2016 Code).

- Furthermore, in the article no. 30 (c.4), the 2016 Code provided that to the personnel employed in works and services constituting the core activity of a public contract the national and territorial collective agreement in force for the sector and area of reference is applied, signed by the trade unions comparatively most representative at the national level and whose scope of application is closely connected to the activity constituting the core activity of the contract executed by the undertaking also in a prevalent manner.
- **Importantly, the 2023 new Code tightens this provision by restricting the range of potentially applicable national collective agreements**. Indeed, the article no. 57 on social clauses established that the formulation of these specific clauses has to foresee as a mandatory requirement for the bidders the application of sectorial national and territorial collective agreements signed by the comparatively most representative trade unions and employers' associations in the sector of reference and whose scope of application is closely connected to the core activity object of the contract carried out by the economic operator. Thus, the 2023 Code introduced the consistency of the NCA applied with respect to the main object of the contract as a strict limitation to the discretion of the economic operator in the choice of the NCA to apply, thus limiting dumping on terms and conditions of employment in outsourced services.
- **Another important innovation for BDW introduced by the 2023 Code is contained in the article no. 11 titled "Principles on the application of the national sectorial collective agreements"** (ex art. 30 of the 2016 Code). **It first provides (art. 11, c. 1) that the sectorial national and territorial collective agreements signed by the comparatively most representative trade unions and employers' associations in the sector of reference and whose scope of application is closely connected to the core activity object of the contract carried out by the economic operator has to be applied to all the workforce employed in the contract**. The contracting authority (art. 11, c. 2) has to point this specific NCA out in the call for tenders. Nevertheless, the Code allows (art. 11, c. 3) the bidders to include a different national collective agreement, as long as it provides for the same economic and normative conditions ensured by the NCA indicated by the contracting authority. This holds true also for all the workers employed in subcontracted activities (art. 11, c.5).
- This provision represents a watershed for the BDW regulatory infrastructure in the Italian public procurement system since, for the first time, it establishes a clear reference to the economic and normative conditions to be applied in public contracts, thus preventing the dumping of labour cost by the economic operators. In fact, the formulation contained in the 2016 Code concerning the application of the national collective agreement of reference in the sector, according to the administrative jurisprudence had to be interpreted following a clear orientation supporting the freedom for the economic operators to choose the national collective agreement to apply.

Third, the 2016 Public Contracts Code provided for *restrictions to the possibility of subcontracting*, as a measure to prevent the risk of a lowering in working conditions applied by the subcontractors. Article no. 105 (c.1) stated in fact that, under penalty of nullity of the contract, the complete execution of the services or work covered by the contract cannot be entrusted to third parties, as well as the prevalent execution of the work relating to labour-intensive contracts, namely the share of subcontracted work cannot exceed 50%.

- Still relating to the matter of subcontracting, the 2016 Code already tried to ensure *continuity in employment standards in case of subcontracting* (including the NCA). Article 105 specifies that (c. 14) for the services subcontracted, the subcontractor must guarantee the same quality and performance standards set out in the contract and recognize the workers an economic and regulatory treatment no lower than those that the main contractor would have guaranteed, including the application of the same national sectorial collective agreement. As reported in the previous section, the 2023 revision of the 2023 revision tighten this provision by foreseeing that the subcontractors have to apply the same economic and normative conditions ensured by the NCA indicated by the contracting authority (art. 11, c.5).
- **Overall, the 2023 Code ensures the same economic and normative conditions to the workforce employed along the whole chain of subcontracting**.

Competitive dialogue

Competitive dialogue **embodies a further mechanism foreseen in the 2016 Code (and not modified by the 2023 revision of the Code) to promote BDW. It consists of a procedure for choosing the contractor and awarding the public contract in which the contracting authorities launch a preliminary dialogue with the economic operators interested in the tender**, before awarding the tender. The goal is to develop one or more solutions that meet the needs and the requirements of the contracting authority and on the basis of which the selected candidates are invited to submit offers. The procedure can only be activated under specific conditions indicated in art. 59, c. 2.

- In this case, the contracting authorities indicate and define their needs and requirements in the call for tenders.
- Any economic operator can request to participate in the competitive dialogue by replying to the call for tender. Only the economic operators selected by the contracting authorities are instead allowed to participate in the dialogue.
- The contracting authorities then initiate the dialogue with the economic operators, aimed at identifying and defining the most suitable solutions to meet their needs.

- After having declared the dialogue concluded and having informed the economic operators, the contracting authorities invite them to present their respective offers on the basis of the solutions proposed and specified in the dialogue phase.
- The contract is awarded solely on the basis of the *criterion of the offer with the best quality/price ratio*, identified on the basis of objective criteria (qualitative, environmental or social aspects, connected to the object of the contract).

2.2 Developments with regard to procurement practices

ANAC – National anti-corruption authority

The article 213 of the 2016 Public Contracts Code conferred to ANAC – National anti-corruption authority a general regulatory and monitoring responsibilities with regards to public procurement practices. The Code conferred to ANAC the following specific tasks:

- Supervision of public contracts for works, services and supplies, including those of regional interest acquired through centralised regional procurement agencies, in both ordinary and special sectors;
- Supervision of the qualification system for economic operators, including sanctioning powers. The qualification of the economic operators relates to the overall capacity to perform the activities contracted out. The definition of the specific criteria the economic operators have to demonstrate to possess is in charge of the contracting authorities (article 134 of the 2023 Code);
- "Collaborative supervision" through the signing of memorandum of understanding with contracting authorities, to give support in the preparation and management of tenders, in order to prevent criminal activities;
- Advisory function through the issuing of consultative or binding opinions on legislation and pre-litigation cases;
- Regulatory function through the *adoption of guidelines, standard documents on tenders, and other soft regulatory tools, aimed at facilitating the exchange of information, and the development of best practices* (then abolished by the 2023 revision of the Code);
- Management of the qualification system for contracting authorities, and the register of in-house companies in the case of serious violations of the Public Contracts Code, ANAC can contest the contracting authorities' measures before the Administrative Judge. ANAC has also inspection powers and the power to request the exhibition of documents. In addition, ANAC may impose pecuniary sanctions on the economic operators who refuse to provide such information.

More in detail, **according to the 2016 Code, ANAC could adopt regulatory instruments with binding effectiveness and consisting of a series of "flexible regulation" acts (*soft law*), such as:**

- ***Binding and non-binding guidelines are issued by ANAC after consultation with the main stakeholders*** (14 so far) e.g.: Guidelines n. 10 - Entrusting the private security service; Guidelines n. 13 containing "The regulatory framework of the social clauses". The guidelines serve as regulatory framework detailing and substantiating the procedures for public procurement practices included in the Code. They guarantee the promotion of the efficiency, the quality of the activity of the contractors, to whom it also provides support by facilitating the exchange of information and homogeneity of procedures administrations and fosters the development of best practices. The 2023 revision of the Public Contracts Code, however, has abolished the issue of these guidelines.
- ***Standard templates for call for tenders*:** increase the standardization of the contracts, limit the discretion of the contracting authorities (exemption to their application must be justified).
- **The "*collaborative supervision*" consists in a particular form of preventive verification of the tendering processes**. This tool aims at fostering a profitable collaboration with the contracting authorities and thus guaranteeing the correct functioning of the tender operations and the implementation of the *contract*, at the same time as preventing attempt of criminal infiltration into the tenders. → Instead of sanctioning illicit behaviour ex post (after the fact occurred), the intervention of ANAC aims at preventing issues ex ante (before facts occur) by guiding the (procuring) authorities towards better and more transparent choices. To this end, several MoUs for the implementation of "collaborative supervision" has been signed up between the ANAC and several contracting authorities.

Overall, ANAC as an administrative authority exerts a monitoring role with regards to the correct enforcement of all the procedures and requirements contained in the Public Contracts Code, including those relating to social clauses and working conditions. Nevertheless, the effectiveness of its role for the proper application and enforcement of BDW provisions contained in the Code can be considered and defined more as a dissuasive and informative one.

ITACA – Institute for innovation and transparency in public procurement

ITACA is a technical body of the Conference of Regions and Autonomous Provinces established in 1996. Among the purposes of ITACA, the issue of the quality of public tenders is crucial, both with reference to the planning and awarding phases, as well as to the execution, transparency and control phases of the contracts.

- The so-called "*Public Contracts working group*" was established within ITACA to carry out in-depth studies and research on public procurement.

- *Legal support service* for contracting authorities was created to promote uniformity in the interpretation of the rules on public contracts, and providing operational solutions.

Professionalised public procurement personnel

The lack of specific competences/skills and the low professionalization are reported by the interviewees as critical issues in the Italian framework in general terms, but it is geared toward improving BDW. No specific role is attributed to professionalization oriented to strengthening BDW.

A recent OECD paper (no. 26/2023) analysed the issue concerning the professionalisation of personnel in public contracting authority, describing the current state of the measures adopted in various countries. The research recognized public procurement as a strategic tool for achieving government objectives in line with the 2030 Agenda for Sustainable Development, with reference to the circular and green economy, the promotion of innovation and support for small and medium-sized enterprises (SMEs).

In particular, three main phases are identified for launching the initiatives: an initial assessment of the degree of professionalisation, the subsequent development of a strategy and a model of skills within a certified system framework and, finally, the activation of incentive mechanisms. With regard to this last aspect, according to the OECD, it is also important to consider the motivation of the staff of the contracting authorities involved in the awarding and management of public contracts, which is essential not only to maintain high performance and productivity, but also to attract talented professionals.

The research also mentions ITACA Institute, as deserving of appreciation for the training activities carried out in the partnership with the Ministry of Infrastructure and Transport, IFEL ANCI Foundation, in collaboration with ANAC, Consip and the Network of Regional Contract Observatories public, through the strategic use of ProcurCompEu, used to better address and solve the gaps of professionalization and ensure the best use of procurement.

Regarding the Italian state of the art, the research reports that “the €191.5 billion Italian recovery and resilience plan (PNRR) contains measures to reform the legislative framework on public procurement and encourage the professionalisation of contracting authorities. As a result, a professionalisation strategy was adopted in December 2021 which includes a number of activities, including the reconnaissance of procurement skills through the application of ProcurCompEU. With the support of OECD, ITACA and the network of regional aggregators have tested the use of ProcurCompEU for three main purposes. First, they gathered a comprehensive view of the skills and competencies within Italy’s most specialized procurement bodies. This initiative will be useful in the general context of professionalization in Italy, in which a large number of buyers will be subjected to a series of professional training activities. Second, the results of ProcurCompEU aim to better adapt the training offer to the aggregating subjects. Third, the first experience with ProcurCompEU in a pilot context can pave the way for a wider integration of its use at national level. In line with the National Professionalisation Strategy, ITACA’s ambition is to use ProcurCompEU, adapted to the Italian context, as a strategic tool for the professionalisation of procurement”.

Also, ANAC, in its commentary of the 2016 Public Contracts Code, has pointed out as fundamental priority to consider the theme of the qualification of the contracting. It would be desirable that *specific competence centres* were established throughout the Italian territory, at a regional, provincial or municipal level, providing for the hiring of young technicians and other experts, capable of assisting and supporting above all small municipalities in carrying out the activities connected with the application of the Code. The resources invested for these hirings would be immediately repaid by the considerable savings that they would be able to produce and by the greater speed of execution of the works and acquisition of goods and services.

Furthermore, those competence centres already established at the regional level could be valorised, by replacing outdated tasks with new tasks connected to the digitization of processes, attributing to them the task of valorising the experience acquired, offering consultancy and accompaniment services to small and medium-sized enterprises, to encourage their participation in public tenders and, consequently, their growth and better structuring, as well as increasing the overall degree of competition in the system.

2.3 Assessment of BDW in Italy by experts interviewed

- **The enforcement of regulatory provisions concerning BDW objectives seem to be strictly related to the amount of financial resources that the contracting authorities allocate in the call for tenders**. The generally low endowment limits the economic leeway of the bidders to design offers which include social considerations. Various interviews, including those with the employers' associations in both industries, reported the possibility to improve the design of the call for tenders in a socially-sustainable manner only by increasing the budgetary endowment allocated by the contracting authorities to contract the services out in the market.
- **Both TUs and EOs favour the criterion of the most economically advantageous offer identified on the basis of the best quality/price ratio (art. 95 of the Code) as ordinary and preferential criterion to select the best offer**. This criterion allows to value more the technical rather than the economic considerations in the comparative evaluations of the bids, thus enabling to include also the dimension relating to BDW.
- **Need to professionalize the contracting authorities** (see also previous point). A severe obstacle to BDW is reported by our interviewees to be connected to the lack or the limited specific competences the contracting authorities possess regarding public procurement. Given the growing relevance all the activities connected to the draft, preparation, implementation and enforcement of public contracts are taking on within public authorities, the introduction of ad hoc professional profiles and ad hoc training programmes is deemed as necessary. As reported by the Head of the Industrial Relations department of an important employers' association in the cleaning industry (Legacoop):

  > *in Italy no investment has been made to train public operators. […] Then there are so many public tenders, ranging from public works to cleaning, to catering; a large part of the Italian GDP is driven by public spending in procurement, so it is unimaginable to think of having all kinds of*

specializations in a municipality. Also, for this reason, I emphasize, it would be essential to use competitive dialogue, because you have the skills on the market, in companies, it is unimaginable to have them within a contracting authority and often serious errors are also made, in the sense that the tenders are completely wrong compared to the activity one has to carry out and what the market offers (Interview Legacoop 3/2022).

- Strictly relating to the previous point, **resorting to competitive dialogue might improve labour standards: testing the market through preliminary consultations with the economic operators would allow to collect specialised technical information that might support the preparation and the draft of call for tenders in a more coherent way with respect to the characteristics of the service to be provided**.
- In the call for tenders, the contracting authorities have to indicate the labour cost for the supply of work and services determined according to the national tables of standard labour costs provided by the Ministry of Labour and Social Policies and computed on the basis of a set of considerations. Nevertheless, interviewees reported that these national tables of standard labour costs are often outdated and might provide only an indication of the labour costs. The administrative jurisprudence suggests a *flexible adoption of these labour costs, that are not strictly binding*.

PART THREE: Case studies

Introduction: selection of the cases

Against the legal and regulatory background characterizing the Italian labour market and system of public procurement presented in Part A and Part B, the selection of the case studies aimed at pointing out experiences that turned to be successful, transferrable and long-lasting in the promotion of BDW considerations in public contracts.

To this purpose, ad hoc questions were included in the questionnaire submitted during the interviews carried out at the national level with trade unions, employers' associations, institutional dedicated bodies and experts. These actors, through their country-wide and sector-wide perspective (for both the cleaning and the private security services), supported the process of identification of practices and experiences that effectively allowed to improve working conditions for the personnel employed in outsourced cleaning and security services. Despite the attempt to ensure heterogeneity across the four selected cases, in the case of Italy the predominant (and apparently unique so far) mechanism relies on the adoption of ad hoc local – generally regional – regulation (laws, memorandum of understanding) on public procurement. These regulatory interventions specifically target social and employment considerations in public procurement processes, regardless the economic sector, and accordingly introduce devices, procedural arrangement and bodies to pursue BDW goals in all kinds of services contracted out.

The four selected case studies are the following:

(1) Regional procurement law and bipartite technical committee on procurement of the regional health service (Tuscany, Italy);

(2) Provincial law on public contracts and "procurement committee" (Autonomous Province of Trento, Italy);

(3) Regional Memorandum of Understanding on legality and public procurement (region Emilia-Romagna, Italy)

(4) Memorandum of Understanding of the Romagna Local Health Authority (LHA).

While the rationale to promote BDW considerations underpinning the four cases is similar, we differentiated the cases on the territorial level by selecting experiences originating from different areas of the country, i.e., the Trento province, the Emilia-Romagna region, and the Tuscany region. Furthermore, we selected experiences that, despite their sectoral transversal structure, were successfully implemented in both the procurement of cleaning as well as in the private security services.

In what follows, each case will be presented in details based on this common structure:

- Brief description and key objectives of the experimentation

- Situation before the experimentation
- Origins of the experimentation
- Obstacles, constraints, conflicts and learning processes
- Outcomes + (expected) impact on work
- List of interviews and documents

CASE STUDY IT-1: Regional procurement law and bipartite technical committee on procurement of the regional health service (Tuscany, Italy)

Brief description and key objectives

The goal of the experimentation is to ensure decent working conditions in all public procurement services acquired by the Tuscany region, by including social criteria in tendering and developing a permanent bipartite technical committee composed by public authorities and the trade unions, with the duty of jointly drafting tender documents and monitoring the execution of the contracts. In particular, it aims to answer to two protection gaps: the lack of occupational continuity and continuity in employment conditions, and the lack of instruments to identify the collective agreement to be applied by companies performing contracted out services.

The experimentation is based on the regional law n. 18 of 16 April 2019 entitled "Provisions for the quality of work and for the enhancement of good business in contracts for works, supplies and services".

The experimentation entails several elements connected to the protection of employment conditions in outsourced public services. In line with the Code on public contracts, **art. 3 of the regional law sets that (indirect) indications on the collective agreement to be applied by contractors to the personnel employed in the execution of the contract will be specified in tender documents**. In particular, the law states that the collective agreement to be applied is the one stipulated by the comparatively most representative organizations at national level, whose scope of application is closely connected with the actual activities to be carried out under the contract.

Secondly**, art. 5 of the regional law specifies the need to include in tender documents the principle of occupational continuity (in the form of labour clauses)**, setting that "in service contracts, the Region promotes the employment stability of the personnel employed, the uniformity of the contractual treatments and the maintenance of the rights acquired by the workers". **This latter point (re-hiring obligations at the same conditions of employment, including number of working hours, seniority, place of work) is the main innovation compared to the national Code on public contracts**. Moreover, according to the regional ordinance n. 433/2015 (which gives application to the "Protocol for the introduction of labour clauses in the contracts of the Tuscan Health Service") the actual formulation of the labour clauses to be included in the tender documents is defined by a bipartite technical committee composed by the regional administration, the regional procurement

agency for health services Estar[2] and the signatory trade unions. In fact, **the regional ordinance identifies in the pre-emptive technical dialogue between the parties the fundamental tool for the implementation of the social aspects indicated by the regional law on public procurement**. The activities of the bipartite technical committee unfold in several steps and have been formalized in a specific procedure (see Estar 2021). According to the text of the procedure "this procedure regulates what is defined as "in-advance bargaining" for the safeguarding and protecting workers employed in service contracts. The goal is to pursue the maintenance of the rights and the legal/contractual/remuneration regime of origin for those who operate in contracts managed by Estar and guarantee social protection, in collaboration with the trade unions, so as to avoid subsequent difficulties and irregularities regarding employment protection in the management of contract changes" (Estar 2021: 4). A first phase concerns the drafting of the call for tenders: the bipartite technical committee formulates the labour clause for occupational continuity, identifies, where possible, the reference collective agreement to be applied, and develops evaluation criteria (and the relative weighting) to be included in the tender, in order to reward those companies that provide stronger labour protection elements (according to art. 6 of the regional law n. 18/2019). After the awarding of the tender, the bipartite technical committee ensures a continuous communication between the trade unions and the involved companies, in order to grant the correct implementation of the agreed requirements. It is, therefore, also in charge of the monitoring of the correct execution of the contracts and the overall respect of provisions related to labour conditions.

The bipartite technical committee convenes periodically (once in a month) to ensure permanent negotiations between the regional administration, the regional procurement agency for health services Estar and the trade unions on all procurement services managed by Estar. This form of "in-advance bargaining" ensures the involvement of trade unions already in the definition of the specifications of the tenders and, thereby, the possibility for them to exercise ex-ante control on those procurement-specific conditions which, as we have seen in the previous section, often impact on the employment conditions of workers employed in contracted-out services.

[2] Estar is the technical administrative support body of the Tuscan health system of which constitutes the single purchasing center. Goal of the organisation is to support the regional health system in: purchasing goods and services, and managing tender procedures for the maintenance, alienation, concession and lease of the real estate assets of healthcare companies; managing warehouses and distribution logistics, information and communication technologies, and health technologies; dealing with bankruptcy and selective procedures for the recruitment of healthcare personnel; processing salaries of health personnel. The "Goods and services acquisition department" (ABS) is the division of Estar in charge of carrying out the tender procedures for the acquisition of goods and services for all the healthcare companies belonging to the regional health system. At the end of 2022, Estar employed 967 workers, 141 in the ABS department (https://www.estar.toscana.it/index.php/chi-siamo/organigramma-e-persone/).

The experimentation has a general approach, not focused only on cleaning and security services, but rather on all the services procured by the Tuscany region. However, it had peculiar relevance for cleaning services, as they are among the largest tenders awarded at regional level and by the regional procurement agency for health services Estar.

Situation before the experimentation

Before the experimentation (which, as we have seen, started in 2015 with the passing of the "Protocol for the introduction of labour clauses in the contracts of the Tuscan Health Service"), **there were no significant mandatory instruments at national level (e.g. provisions connected to labour clauses) able to make sure that public procurement did not translate into a detrimental pressure onto employment conditions of workers employed in contracted-out public services**. Even after the entry into force of the 2016 Code on Public Contracts, moreover, the provisions introduced set a vague formulation of mandatory labour clauses. This limited regulation translated into cases (perceived as scandals by the public opinion) of procurement negatively affecting employment condition. **The two main issues concerned job stability and the collective agreements applied by winning companies**. First, it proved to be difficult to ensure the re-hiring of workers employed in contracted-out services at the same conditions of employment in case of change of contractor due to new tenders. This was particularly evident when public tenders foresaw a reduction of the budget available for the contracted out services (this was particularly the case for "poorer"/less central services, such as cleaning and security), something that took place with particular strength during the years following the Great Financial Crisis and the connected austerity measures introduced by public authorities (so called *spending review*). Ensuring the transfer of workers to new contractors and safeguarding their employment conditions *ex post*, i.e. after the tender was already awarded, revealed being very difficult for trade unions, also because it was the tender itself, and the resources it allocated, that sometimes impeded this, with the risk that the conditions set in public tenders produce downwards pressures on working conditions. A second issue was that, in order to save on labour costs, awarded companies sometimes applied collective agreements not pertaining to the activity carried out and/or signed by non representative organisations. Again, this was difficulty manageable *ex post*. Hence, trade unions adopted the strategy of pushing for more stringent labour clauses in public tenders, thereby embedding working conditions within the tender itself.

Origins of the experimentation

The experimentation (regional law n. 18/2029) originated from an agreement between the Tuscany region and the trade unions in 2015 ("Protocol for the introduction of labour clauses in the contracts of the Tuscan Health Service" signed by the Tuscany region, the regional buying institution for socio-health services Estar and the trade unions Cgil, Cisl, Uil), adopted through the regional ordinance n. 433/2015 (which also set up the permanent bipartite

technical committee for negotiations). This first agreement was then followed by another agreement in 2019 which also included some employer organisations ("Protocol for the quality of work and for the enhancement of good business in contracts for works, supplies and services" stipulated in 2019 with the Tuscan association of municipalities (Anci Toscana), the trade unions Cgil, Cisl, Uil, and the employer organisations Ance Toscana, Confcooperative Toscana, Legacoop Toscana, Agci Toscana, Cna Toscana, Confartigianato Edilizia Toscana).

Such protocols arose thanks to strong pressures from trade unions, which, at that time, were also advocating for the mandatory introduction of a labour clause in all labour intensive contracts within the process of revision of the Code for Public Tenders at the national level. Moreover, they were pushing for similar experimentations in other local contexts (such as the Emilia Romagna region and the Autonomois Province of Trento, *Provincia Autonoma di Trento*). We can say that, setting up protocols with labour clauses in public procurement is now the dominant strategy among trade unions in Italy for ensuring better working conditions in public procurement.

In the specific case of Tuscany, the success in setting up such agreement is closely connected to two major elements: first, a series of scandals concerning the negative impact of public procurement on working conditions, which brought the issue under the spotlight and draw massive public attention on the question. Second, the political willingness of the regional administration and the strong territorial tradition of open and positive relations between politics and trade unions that characterize the Tuscan region.

In 2015, two major cases of procurement-related deterioration of working conditions took place in the region. The first case involved the security services of the buildings of the regional administration and the main issue concerned the collective agreement applied to the company which took over the contract. Differently form the incumbent, which applied the collective agreement of the security services, the new one applied the one for guardianship. This implied for the workers involved significantly lower wage levels, in the order of 2-300 euros per month. The second one involved the catering services of the public hospital of Pontedera, where the new winning company refused to hire a part of the workforce, causing the risk of redundancies for around 30 workers (Bucci 2014).

Outrage for these two cases was mobilized by the trade unions, which organized demonstrations attracting the interest of the press, the public opinion, and even regional politicians.

The political willingness of the centre-left regional administration, traditionally close to trade unions and with a strong history of social concertation, was the second factor which brought to the signature of the protocols. In fact, the former regional president decided to make good working conditions in public contracts a part of the program presented in the 2015 electoral campaign for his re-election. As argued by an interviewed trade unionist, the experimentation "was born in 2015, when there was no social clause (…) Who are the actors? The Tuscany Region, the president was Enrico Rossi, of the Democratic Party (PD) (…) the relationship with the CGIL was a good relationship. We came to the elections time, he ran for office

again, he was already President and this was, let's say, the driving force that allowed us to draw up the first protocol (…) in May 2015, just before the elections" (Interview FILCAMS CGIL, 5/2022).

In setting up the experimentation, the dominant actors have been the trade unions (CGIL, CISL and UIL and their sectoral federations), the regional administration and Estar, the procurement agency of the Tuscany region for services connected to the health system. Of particular relevance for the actual functioning of the experimentation is the "Industrial relations office" set up within Estar's "Goods and services acquisition department" (ABS). Goal of the Industrial relations office, which is currently staffed by one full-time employee, is to "coordinate the system of agreements between the social partners to substantiate a global and coordinated vision of the various social issues that emerge in the awarding of labor-intensive contracts (…) and to promote preventive dialogue as a tool for the choice of the best contractual instruments for securing social goals, especially in public procurement of services with a high work impact. (…) In detail, the office responsible for coordinating the bipartite technical committee, taking care of the connection between the health companies that implement the contracts, trade union organizations and awarded companies, in order to guarantee the effectiveness of the labour clause and negotiate solutions that do not negatively impact on the employment of workers in contracted-out activities. It also promotes collaboration and the development of synergies between all the players involved in the tender change process" (https://www.estar.toscana.it/index.php/centrale-di-committenza/relazioni-industriali).

Employer organisations have also signed one of the constitutive protocols, but are in a more marginal position. For example, they are not involved in the bipartite technical committee. This has been explained by our interviewees with reference to two specific issues: first, the difficulty of managing the issues dealt with at the committee in a tripartite setting, due to potential conflict of interests between trade unions and employer organisations (Interview FILCAMS CGIL, 5/2022); second, the conflict potentially arising between the involvement of companies and their representatives and rules on fair competition. As argued by the Head of the Goods and Services Acquisition Department "following the Code, the economic operator participates in the tender, participates in my consultation of the market as foreseen by the Code, but it does not build the tender with me, it cannot build the tender with me" (Interview Estar, 6/2023).

Obstacles, constraints, conflicts and learning processes:

Overall, the evaluation of the instrument is very good among the interviewed trade unions and the purchasing authorities. Some skepticism remain on behalf of the companies, which lament to be excluded from the permanent negotiating table.

Still, some critical issues remain. Some of them are connected to what can be legitimately indicated in the tender according to the regulation of procurement (which we have examined in the previous paragraphs) and its jurisprudential interpretation. For example, the clearcut indication of which collective agreement should be applied by the winning company is not allowed, at least until the passing of the new Code on Public Contracts. As argued by a trade unionist, "one of the requests of modification that we have, but we still cannot get it, is the explicit indication in the tender documents of the contract to be applied. You know that unfortunately there have been several judgements that we have lost in this regard, because the judges

have defined this as a rule in contrast with free competition, the free organization of the entrepreneur" (Interview FILCAMS CGIL, 5/2022).

This issue was confirmed also by the head of the industrial relations office of the regional procurement agency Estar, which argued that "the only critical issue is the collective agreement, because where there is not a single reference collective agreement that can be applied there have been discussions even in recent tenders on the application of the most suitable collective agreement to the activity required in the tender and sometimes some firms have applied a different collective agreement (…) And this is one of the biggest critical issues that we should try to resolve, even if it is not possible to indicate a single collective agreement (…) They (the trade unions) sometimes ask us to specify a leader contract, however it is not possible, because it cannot be done under European legislation, therefore (…) we agreed on a standard format, aware that we cannot go further than that, because otherwise the companies will also challenge the tender, bring it to court, so you cannot push yourself too much here" (Interview Estar, 6/2022). However, this question might have been solved by the reform of the Code in 2023, as described above.

Similarly, **the formulation of more stringent re-hiring obligations in the labour clauses clashes against the principle of freedom of enterprise, as entailed both in the Italian constitution and EU procurement law**. Again, as argued by the head of the industrial relations office of the regional procurement agency Estar "there is a whole body of legislation, even at European level, on the freedom of enterprise, so there is always this discussion, the need to balance requirements to re-hire all the workforce with the freedom of enterprise that companies have, the freedom of organization they have" (Interview Estar, 6/2022).

Some other issues are connected to the more general issue of resources. **The success of these experimentations ultimately depends on the budget dedicated to the outsourced service by public authorities.** An example of this emerges clearly from a case mentioned by the head of the industrial relations units of the regional procurement agency Estar: "the company had made an offer (...) had made an offer, a specific calculation, on the hypothetical need that the public administration had declared when the tender was made; but then the local health agency considerably reduced the services required and therefore the budget, and the awarded company was no longer able to guarantee the re-hiring of all the personnel (…) therefore some services were reduced and social shock absorbers were used where possible (…) The biggest critical issue is this, i.e. that the economic part proposed in the tender no longer corresponds and therefore there is a risk that the company will not be able to re-hire all the personnel" (Interview Estar, 6/2022).

Lastly, a further limit is connected with the availability of human resources to be dedicated to the participation to negotiation work and to the sessions of the permanent technical committee, in particular on the side of trade unions: following the works of the technical table, with its monthly meetings, is a very demanding work, which requires a significant amount of time, not always available, in order to be carried out effectively.

Outcomes + (expected) impact on work

The evaluation of the outcomes of this experimentation is overwhelmingly positive among our interviewees, both within the trade unions and the public administration. They consider this as the most extensive regulation in Italy with regards to the social dimension of public procurement, because it not only sets up a stringent labour clause, but accompanies it with a permanent voice channel for the trade unions on the procurement process.

The setting up of a mandatory clause on occupational continuity and the pre-emptive involvement of trade unions in procurement is considered particularly important by the parties involved (both the trade unions and the public administration) because it allows to address potentially critical aspects of public procurement before they become a working conditions problem.

As a proof of the effectiveness of this experimentation the interviewed head of the industrial relations unit of the public procurement agency Estar named that "since I am here, all the jobs have been kept at the same working conditions and this is a reason for satisfaction for the job we are doing" (Interview Estar, 6/2022). A significant example, in this sense, has been the tendering process for the contract of cleaning activities of the regional public hospitals in the year 2019, which involved over 1,300 workers, transferred to the new companies without any change in their employment conditions.

According to our interviewees, the permanent technical table has been particularly important also for the management of the contracts and for the monitoring of the actual implementation of the provision included in the tenders. In fact, the technical table provided a negotiation space for addressing issues possibly arising in the carrying out of the services. Several examples of intervention on critical aspects of working conditions arising during the duration of the contracts have been highlighted by our interviewees. In some cases, these even extended the issues addressed by the parties. For example, through discussions at the permanent table, the trade unions were able to require the modification of the organization of work in the contracted services, making working time more in line with the requirements of the workers. As argued by one official at Estar "in cleaning services, through the monitoring of the service we noticed that people had to interrupt the service in several time slots and therefore we asked the company an organization of working times more suited to the needs of the involved workers" (Interview Estar, 6/2022).

Resources and references

List of interviews

Date (MM/YY)	**Organisation** + details/explanation (+ *interviewees' role [where necessary/useful])*
02/22 and 05/22	**Filcams CGIL** trade union, national level (and former regional level)
05/22	**Filcams CGIL – Toscana** trade union, regional level, participant to Estar technical committee
06/22	**Estar (Ente di support tecnico amministrativo regionale)**, Tuscany region = Regional administrative technical support body for procurement (*head of the industrial relations division*)
06/22	**Cleaning company 'BLUE'** (pseudonym), with contracts in the Tuscany region *(head of industrial relations*)
07/22	**Cleaning cooperative company 'GREEN'** (pseudonym), with contracts in the Tuscany region (*president*)
10/22	**Uiltrasporti – Toscana** trade union, regional level, participant to Estar technical committee
12/22	**Filcams CGIL – Firenze** trade union, local level, responsible for security services
06/23	**Estar (Ente di support tecnico amministrativo regionale)**, Tuscany region = Regional administrative technical support body for procurement (*2 interviewees, Head of the Goods and Services Acquisition Department + head of the industrial relations division*)
05/22	**Non-participant observation to a meeting of the Estar technical committee**

Documents

Regione Toscana (2015), Deliberazione n. 433/2015 Protocollo di intesa tra la Regione Toscana, ESTAR e CGIL, CISL e UIL Regionali, per l'introduzione di clausole sociali negli appalti del Servizio Sanitario Toscano (*Protocol between the Tuscany Region, ESTAR and CGIL, CISL and UIL, for the introduction of labour clauses in contracts of the Tuscan Health Service*), http://www301.regione.toscana.it/bancadati/atti/Contenuto.xml?id=5098448&nomeFile=Delibera_n.433_del_07-04-2015

Regione Toscana (2019), Legge regionale n. 18/2019 Disposizioni per la qualità del lavoro e per la valorizzazione della buona impresa negli appalti di lavori, forniture e servizi. Disposizioni organizzative in materia di procedure di affidamento di lavori (*Provisions for the quality of work and for the enhancement of good business in works, supplies and service contracts. Organizational provisions on procedures for awarding works*)

Estar (2020), L'esperienza di Estar. Sviluppo, Responsabilità, Crescita, https://www.estar.toscana.it/wp-content/uploads/2022/03/LEsperienza-di-ESTAR.pdf

Estar (2021), Procedura n. 103/2021 Tavolo tecnico per l'affidamento di servizi.

CASE STUDY IT-2: Provincial law on public contracts and "procurement committee" (Autonomous Province of Trento, Italy)

Brief description and key objectives

This case is based on the statutory regulation of public procurement set up by the Autonomous Province of Trento. On November 1, 2019, the Province passed the law n. 11/2019 entitled "Amendments to the provincial law transposing the European directives on public contracts 2016, for the strengthening of labor protection in public contracts". The law modified the previous statutory regulation of public procurement at provincial level entailed in the provincial law n. 2, 9 March 2016 (transposition of the 2014 European Directive on public procurement, 2014/24/UE). The law has a general approach, since it does not only cover cleaning and security, but all goods and services procured by the Autonomous Province of Trento.

The key objective of the 2019 amendment of the previous regulation was to avert the risk that the award of public tenders translated into a deterioration of employment conditions for workers employed in contracted out services. The key issues were, in particular, occupational continuity and continuity in employment conditions (wage levels and number of working hours), also connected with the issue of the collective agreement applied by contracting companies. Already in its 2016 version, art. 32 of the Provincial law n. 2/2016 foresaw a labour clause of occupational continuity for the personnel involved in the provision of public services. However, while this provision was able to safeguard the "number of heads" involved in public contracts, it was not able to protect workers from a deterioration in their employment conditions, such as a reduction in the number of hours worked, in wages, in seniority, etc.

Hence, the law n. 11/2019 reformed the provision by introducing a so called "strong" labour clause, which had the goal not only of safeguarding employment, but also of maintaining the economic and normative treatment already enjoyed by the incumbent workforce in case of change of contractor. Such a "strong" labour clause coexist with the previous "weak" labour clause, but the former is set as mandatory for tenders of so called labour-intensive services, i.e. those for which labour costs represent more than 50% of all operating costs. According to an interviewed trade unionist,

> *"the condition of re-employment, this is already identified in the tender, so the competitors already know at least the number of personnel involved and the cost of each individual person; they don't have the name of course, but they know that there are ten people, of whom, I don't know, three at an hourly rate of 30 euros per hour, because maybe there will be a change in seniority to a higher level and so on" (Interview FISASCAT CISL, 6/2023).*

According to the General Director of the purchasing agency of the Province of Trento, APAC,

> *"this provision was a particularly painful rule on the economic operators side, but which in the end they shared, as it was certainly in the interest of fair competition, thus avoiding forms of inequality on the side of the treatment of the workforce" (Interview APAC, 2/2023).*

In order to make sure that this new provision is effective, law n. 11/2019 explicitly foresees that the construction of the tender specifications must define an auction basis (*base d'asta*), i.e. the maximum amount of economic resources dedicated by the purchasing authority for the specific service (which then is subject to rebates according to the rules specified in part B of this report), consistent with the safeguard of the employment levels envisaged in the expiring contract and of the economic conditions enjoyed by the staff already employed. Hence, when formulating tender specifications, purchasing authorities have to take into consideration the list of workers already employed and their economic treatment. As argued by an interviewed trade unionist,

> *"the contracting authority must quantify the cost precisely on the basis of personnel costs, everything I take today must be recognized tomorrow, so as not to start with a truncated auction basis, because otherwise we are not going anywhere" (Interview FISASCAT CISL, 6/2023).*

Moreover, in order to make sure that competition among economic operators for being awarded the contract does not play out only on costs, with the risk of downward pressures on employment conditions, the law sets that "the weight to be attributed to the economic component of the offer cannot in any case exceed 30 percent or, in the case of labor-intensive contracts, 15 percent" (art. 17).

Furthermore, the law includes the detailed indication of reference collective agreements for the activities performed under public contracts. According to art. 32, in fact, "the reference collective agreement is identified by the Provincial Government, after hearing the comparatively most representative trade union organizations at national level and the provincial representatives of entrepreneurs, among the national collective agreements and the respective territorial second-level collective agreements (…), whose scope of application is closely connected with the activity object of the contract)".

Lastly, the law sets up procedures for the involvement of trade unions in the procurement process. Art. 32.4 septies, in fact, states that "as part of the planning activity for public procurement, the contracting authorities carry out a joint examination with the comparatively most representative trade union organizations at national level and the provincial representatives of the entrepreneurs in order to identify the effects on the size and quality of employment deriving from the choices related to labour-intensive contracted services".

The law also foresees a monitoring mechanism. According to art. 33, in fact, "the implementing regulation of this law introduces measures aimed at verifying the correctness of the remuneration in the execution of public contracts. The regulation governs, in particular, the methods of carrying out the verification, even randomly, and can identify which conditions allow the payment to be made even in the event of irregularities". The procedures according trough which these controls are carried out foresee self-declarations on the side of the companies at each requested invoice accompanied by random controls on the payslips. For the final payment, instead, this type of control is carried out on all companies. For

pursuing this monitoring activities, a control office currently staffed with 4 people was set up. However, this body does not have inspection duties beyond paper-based controls. Still, according to the General Director of the purchasing agency of the Province of Trento, this procedure is a national unicum, with no comparable experience in other national purchasing authorities (Interview APAC, 2/2'23)

Situation before the experimentation

The local context was characterized by several cases of severe deterioration of working conditions connected to the award of public tenders and the change of contractor, in which new companies worsened the employment conditions of workers previously already employed in the service. The causes of these cases was predominantly attributed to the lack of a "strong" labour clause and, consequently, produced the pressure for an amendment of the existing regulatory setting, as we will see below. Interestingly, the two most often mentioned by our interviewees, and the ones which received the most significant resonance in the public debate, were two cases involving security and cleaning services.

The first one is the case of the tender for the cleaning of the 60 buildings of the Trento municipality published in 2019, pending the assignment of the new procurement contract for cleaning activities of the whole Province. In line with the criteria defined in the latter, which had the goal of reducing public spending for cleaning, the value of the contract, in the previous year corresponding to €1 million, was reduced to €500,000 by reducing the total number of working hours devoted to the service. This cut in resources corresponded to a cut in the number of working hours for the 70 workers involved, all hired through part-time contracts between 8 and 20 hours per week, and therefore a significant cut in their wages. After a series of conflict activities (demonstrations and strikes) the tender (*appalto ponte*) was revoked and the municipality drafted a new contract. The same happened with the maxi contract of all cleaning activities of public institutions of the Province, which involved around 1,500 workers. The tender amounted to the considerable value of 95.35 million euros and ended with the assignment of the works to companies – most of which from outside the Province, and therefore criticized also by some local companies and employer organizations, among which also the organizations of cooperative enterprises – which offered discounts from 30 to 40% of the auction basis indicated in the tender documents[3]. According

[3] As indicated in part B of this reports, purchasing authorities have to indicate the labour cost for the supply of work and services determined according to the national tables of standard labour costs provided by the Ministry of Labour and Social Policies. However, the consolidated orientation of the administrative jurisprudence, these reference is not absolute and bids cannot be automatically excluded if indicating lower labour costs. In fact, such tables only indicate the "average hourly cost" of the work elaborated on a statistical basis; therefore, they are not a mandatory limit for economic operators because it is quite possible that the "own" cost of the individual economic operator is different from the average cost. Thus, the tables constitute a mere adequacy evaluation parameter and it is up to the contracting authority to assess whether deviations from the cost items summarized therein are significant, unjustified, and able to compromise the overall reliability of the offer and lead to a judgment of anomaly of the same. The exclusion from the tender procedure of the economic operator which has formulated an offer containing a lower

to some employers, although the criteria set in the tender for the cost/value evaluations were 30% price – 70% quality (i.e. the technical offer), the way in which the call was formulated produced an overwhelming relevance of the price factor for awarding the contract. For example, the local company Pulinet Servizi resulted first in 17 lots out of 19 in terms of evaluation of the technical offer, with 70 points awarded out of 70, but lost the tender due to the evaluation of the economic offer and the maxi discounts offered by other competitors.

> *«It is like this, and it is significant: the quality factor has not been rewarded. In the end, as there is a limit of three lots, the company will be able to obtain one, a smaller one. The error is in how the tender was conceived. We pointed it out immediately, they introduced a few changes... But the substance remained: a mega tender that rewards the price and not the quality" (Interview FILCAMS CGIL Trento, 2/2022).*

The tender was then revoked in August 2020 and this decision was justified with the changed service conditions required by the public administration due to the Covid-19 pandemic.

The second is the case of the security guards of the University of Trento. Up until 2019, the 54 workers were employed by a local company according to the collective agreement of the retail industry. In 2019, the University published a new tender, which was won by two new companies with an economic offer that granted the public administration savings of up to 10% of the total cost of the service. The two new companies applied the labour clause existing at the time and re-hired all the workers employed in the contract. However, they decided to change the collective agreement they applied to the workers, applying them the multi-service collective agreement. Hence, the job grading foreseen in the workers' employment contract moved from the fourth-level of the collective agreement of the retail sector to the second level of the multi-service collective agreement. This brought the workers' gross salary from 9.40 to 6.84 euros per hour. Moreover, the establishment of a new employment contract with the two new contractors produced the reset of the workers' seniority and the cancellation of the associated wage premia, with a further loss of salary. As argued by an interviewed trade unionist,

> *"those workers that were employed there, in the same workplace, since 20 years, (…) two new companies win the contract, they arrive, hire all workers, but put them on the lowest grading of the multi-service agreement with a loss of 300, for some 400 euros per month in terms of salary" (Interview FILCAMS CGIL Trento, 12/2022).*

According to the trade unions, this behaviour was due to a restrictive interpretation of the existing labour clause by the purchasing agency APAC, which indicated to the companies that the occupational continuity to be respected was the one of employment and not of employment conditions.

cost for labor than the one estimated by the purchasing authority is allowed only if the tender documents have expressly defined the cost of labor as not susceptible to reductions.

Origins of the experimentation

As indicated above, **the trigger of the experimentation were the described scandals connecting public procurement with a significant deterioration of employment conditions for workers employed in public services**. As argued by an interviewed trade unionist: «It took years and above all deaths on the field[4], with disastrous contract changes and awards, in which all the weaknesses of the previous regulation emerged, in order to get to a modification of the legal framework» (Interview FILCAMS CGIL, 12/2022). This idea was confirmed also by the General Director of APAC, the purchasing agency of the Province of Trento: "The origin of the new law, it arose as a result of a series of negative events, linked to a large contract (…) that APAC had put in place for the assignment of all cleaning services, for all the provincial buildings and for the residential care facilities for the elderly. And it was then that the problem arose, that during the change of contractor, there was staff who were expelled or that was asked to give up to certain entitlements (…) This is the origin of the situation and the *casus belli* from which this thing arose" (Interview APAC, 2/2023).

The cases were strongly politicized by the mobilizations set up by the trade unions, which were able to bring these issues at the core of the public debate. As argued by an interviewed trade unionist,

> *"with these workers, these women, we started doing a series of sit-ins under the City Council. We received, there was a strong solidarity from the public opinion and also from the press for the first time, they defined it, the "contract of shame", the press had never actually gone so far, this is a very un-conflictual city" (Interview FILCAMS CGIL, 12/2022).*

These cases unfolded in a political moment, incoming election at the municipal and provincial level, which revealed to be a favourable political constellation for change. As argued by an interviewed trade unionist "the municipal elections were about to arrive and over the years we have learned to exploit this too, right? The fertile ground of elections and what they can bring" (Interview FILCAMS CGIL, 12/2022). The issue was, in fact, mobilized by the opposition, at that time composed by centre-right parties, which scandalized the anti-workers behaviour of the centre-left municipal administration. In the subsequent Provincial election, this issue was brought to the fore by the opposition and, in particular, by the Northern League, which won the government. The reform of the provincial law on public procurement was, in fact, a decision of the newly elected Provincial government headed by the Northern League. As argued by the General Director of APAC

> *"it was a particularly tense situation, which then created the occasion, when the new Council was elected, with the opposition that passed to government, it took up the battles that it had made its own as the opposition to the previous Government, and therefore once they took office they carried*

[4] By "deaths on the field" the interviewee means very negative consequences for workers, such as redundancies and deterioration of working conditions.

> *on and therefore gave a very decisive imprimatur from this point of view" (Interview APAC, 2/2023).*

A significant role was also played by the already existing procurement committee (*Tavolo Appalti*), which was established in 2010. The procurement committee is part of a set of bodies of tripartite concertation which characterise the management of socio-economic issues in the Province of Trento. The Province is, in fact, well known for a long tradition of territorial social dialogue and very good relationships between the local government and the social partners. Similarly to the one in Tuscany, the procurement committee of the Province of Trento is convened by the purchasing agency (in this case APAC) and foresees the participation of the regional government and the trade unions. However, differently from the Tuscan counterpart, this procurement committee is also participated by the major employer organisation. A further difference is that it mostly deals with more general, regulatory issues and less with specific tenders. However, it played a crucial role in the renewal of the regulation of public procurement. The president of the Province of Trento reiterated the importance of the path and method for the formulation of the new provincial law on procurement:

> *"We have chosen to discuss and share the key elements of the new legislation within the Procurement committee, because we believe in the constructive contribution of the parties to the creation of a new procurement context" (L'Adige 2019).*

However, during the process of approval, the new regulation was exposed to criticisms particularly by business representatives. They particularly criticized the formulation of the new labour clause, lamenting its incompatibility with the Constitutional principle of "Freedom of enterprise". According to the coordinating committee of employer organisations "the legislative measure proposed by the Provincial Council presents possible critical issues because it does not ensure the entrepreneurial freedom of the incoming contractor (...) by imposing the hiring of all the workers of the outgoing company, with the maintenance of the salary level and (even) of the previous number of working hours, it appears absolutely abnormal and not in line with current jurisprudence (…) and of dubious compatibility with constitutional and European principles" (il Dolomiti 2019).

In order to respond to these concerns and in line with a conspicuous jurisprudence that has excluded the possibility of labour clauses to impose to new contractors an absolute and automatic re-hiring obligation of the incumbent workforce, the provincial law identifies a way to balance the protection of labour conditions and the right of companies to set up their own organisation. In particular, art. 32.4 identifies three conditions under which new companies can derogate the re-hiring obligation: 1) if the services covered by the new contract differ, in qualitative or quantitative aspects, from those of the previous one and this involves the employment of a lower number of workers; 2) in case of technological innovations; 3) in case of availability of the tenderer's employees who could be assigned to perform the contract without being distracted from other activities of the economic operator. In these cases, the new company is requested to carry out a joint examination of the situation that involves the outgoing contractor, the territorial trade unions and the employee representation structure.

These derogations are considered very problematic by trade unions and an institutional loophole potentially undermining the whole protective architecture (Interview FISASCAT CISL, 6/2023). As argued by a trade unionist,

> *"what I do not like in the regulation is the piece where it says that in any case the company demonstrates that it uses very advanced technological equipment, it may reduce part of the staff" (Interview FILCAMS CGIL, 12/2022). A concrete example was mentioned by another trade unionist: "in a group of rest homes (…) there were a certain number of workers, the company that took over the contract, since it proposed in the technical offer to use devices, in terms of mops, we are not actually talking about particularly innovative machineries, the company argued it would have saved a twenty to thirty percent in the worker's working hours on the entire contract. And there we organized sit-ins, we discussed with the purchasing authority, but we were unable to stop them. So there is actually the case that this provision is used like this" (Interview FISASCAT CISL, 6/23).*

Outcomes and (expected) impact on work

The experimentation is considered being a very important improvement of the *status quo ante*. The novel labour clause introduced in 2019 and the practice of trade union involvement in public procurement that it foresees constitute significant "market-embedding" instruments that allow for a more effective protection of the conditions of employment of workers in contracted-out public services. According to an interviewed trade unionist, this is particularly evident when considering similar cases that fall outside the reach of application of the provincial law:

> *"there is an abyss between everything that is subject to provincial legislation (…) and everything that is not; in the tenders of the Ministry of Defence we cry, that is where we had launched the famous slogan "pay to work", because workers spent more than they earned, because they were workers who had 3-4 hours a week, and they had to go around among the barracks in mountain villages with a considerable outlay of money for fuel and of time. This was due to a tender made at ministerial level which reduced the frequency of cleaning with a view to save on cleaning costs and therefore we even got to have half an hour of cleaning a day" (Interview FILCAMS CGIL, 12/2022).*

Several positive cases were mentioned by our interviewees. For example, during the recent renewal of the contract for security services in the building of the municipality of Trento, the call for tender was redrafted after the pre-emptive meeting between the purchasing authority and the trade unions because the description of the service and its organization as set up by the municipal officials did not allow to ensure the same wage level to employed personnel: "

> *the Municipality would have guaranteed the same hours to the employed workers, but they wanted to stop service at night and put workers in during the day. In the preventive meeting we pointed out to the Municipality that yes, it is true, they would have respected the labour clause, the total number of hours of service, but in reality the person would have lost 80 euros, because the night supplement is missing. As a consequence, the Municipality took a step back and published*

the tender under the same conditions. So the lady who worked the night shift continues to work the night shift and receives her additional salary. In this sense, this involvement procedure is a great success for us" (Interview FISASCAT CISL, 6/2023).

Other positive examples have, instead, to do with the subsequent phase, when the tender is awarded:

"the winning company, they wanted to cut the hours of work, we went to the RUP (the public official who is administratively responsible for the tender) who received us immediately, (…) and the RUP forced them to take a step back, saying no, the hourly cost based on the auction was this, the hours to be worked are these, you have to maintain the workforce and the contractual hours for each individual person. So let's say that if we call them demonstrating the anomaly they receive us, it's not that they say who cares I've already done the announcement; no, no" (Interview FISASCAT CISL, 6/2023).

However, this experimentation is not without its limits. **The foreseen protective provisions sometimes clash against the rules on competition, freedom of enterprise and freedom of association as foreseen in EU and constitutional law. Moreover, some of the most significant measures, such as the binding indication of the reference collective agreement, an absolute re-hiring obligation and the overall elimination of competition on labour costs are ruled out by those very same provisions.** As argued by an interviewee,

"until the cost of personnel - which is eighty, eighty-five percent of the economic value - is eliminated from competition, until we get there, it is almost obvious that we will have problems. (…) And therefore, it is true the social clause is important, but the fundamental element, the fundamental objective to be achieved, would be to eliminate the cost of personnel from the competition" (Interview FISASCAT CISL, 6/2023).

Moreover, as indicated also in the Tuscan case, **there is a common understanding among the interviewed trade unionists that the experimentation provides a basis, which needs to be enacted and made effective tender by tender though a constant "use" by actors, through monitoring and the mobilization of power resources. The risk felt by the interviewees is that of this provisions remaining "paper tigers" and not having concrete effects**. As argued by an interviewed trade unionist,

"over the years, we took for granted that the companies applied the law, they entered the contract and rehired the workers on equal terms. At one point we had some doubts and a few years ago we started a methodical intervention, even where we did not have members and there was no employee representation at workplace, therefore with a significant commitment in terms of resources, and we realized that instead there were some problems (…) And so we intervened and enforced the provisions of the provincial law and, in short, in several cases we managed to guarantee the transfer on equal terms (…) Hence, the provincial law provides an important window that we try to exploit, but which is not always unilaterally activated by the contracting authority"

(Interview FISASCAT CISL, 6/2023). The centrality of union action in granting the enforcement of statutory provisions is highlighted (and reclaimed) also in the following quote: "the public authority has the task of inserting and specifying the standards as clearly as possible in the tender, and then it is up to us to verify and monitor (…) the enforcement is left to us, but I think it is also right that it is left to us, in the sense that we are actually the guarantee body for the workers" (Interview FISASCAT CISL, 6/2023).

This question is connected with the issue of resources to be dedicated to the negotiation/enforcement work. particularly on the side of trade unions: "it is very difficult to stay, especially in the field of cleaning, on all the contract changes. Also because it is a job that must be done painstakingly, because you have to contact the workers, hear from them, understand for their part how that contract works, then hear from the outgoing company and hear from the incoming company" (Interview FISASCAT CISL, 6/2023).

Resources and references

List of interviews

Date (MM/YY)	**Organisation** + details/explanation (+ *interviewees' role [where necessary/useful])*
12/22	**Filcams CGIL – Trento** trade union, local level
01/22	**Filcams CGIL – Trento** trade union, local level, responsible for security services
02/23	**Confindustria Trento**, employer organization *(3 interviewees, Head of the "Employment and Welfare" division + responsible for "Contracting service" + legal advisor)*
06/23	**APAC (Agenzia Provinciale per gli Appalti e i Contratti)**, Province of Trento = Provincial administrative technical support body for procurement (*general director*)
06/23	**FISASCAT CISL– Trento** trade union, local level (*2 interviewees, responsible for cleaning and security services)*

CASE STUDY IT-3: Regional Memorandum of Understanding on legality and public procurement (region Emilia-Romagna, Italy)

Brief description and key objectives

The main objective of the experimentation is to ensure decent working conditions in all the services acquired through public procurement by the Emilia-Romagna region. This goal is pursued by compulsorily including social considerations in tendering and by establishing a permanent pre-emptive dialogue between the regional public administration as contracting authority and the trade unions on labour regulation and standards to include in public tenders. Overall, the experimentation aims to tackle two main protection gaps: the lack of occupational continuity and continuity in employment conditions, and the lack of instruments to identify the collective agreement to be applied by companies performing contracted-out services.

The experimentation is based on the Memorandum of Understanding on the matters of legality and public procurement signed by the Emilia-Romagna region and CGIL, CISL, UIL Emilia-Romagna, on 21st December 2021.

The Memorandum of Understanding established a set of mandatory rules and mechanisms to apply to ensure decent working conditions in public tenders as well as a stricter enforcement of the labour-related provisions included in the Public Contracts Code (for details see Part B oh the report). These includes: i) the preliminary consultations for the contracting authorities with the trade unions before drafting the tender; ii) the compulsory inclusion of social clauses in all the call for tenders; iii) the consultation with the providers and the trade unions in the event of any change of contract to protect employment stability; iv) in case of subcontracting, the recognition of the same rights, protections, and working conditions applied to the workers employed in the main contracting companies.

Importantly, the experimentation has a general approach towards public procurement, since it does not target specifically cleaning and security services, but rather all kinds of services centrally acquired by the Emilia-Romagna region. Nevertheless, it played a crucial role in protecting working conditions in cleaning services contracted out by the region during a change of contract, given the financial relevance of the tender.

Situation before the experimentation

Before the negotiation and the signature of this Memorandum of Understanding, and of the 2017 Memorandum of Understanding in the healthcare sector, there were no relevant instruments or procedures in place to prevent detrimental consequences for

working conditions and employment stability triggered by public procurement practices. Before the launch of the experimentation, in fact, workers employed in outsourced services used to suffer from a deterioration of working conditions applied by the private sector National Collective Agreements (NCAs hereinafter) not only compared to those ensured by public sector NCAs but also among the multitude of private sector NCAs signed and legitimately applicable. This was due to the lack of a regulatory framework in the private sector setting the *erga omnes* application of a unique NCA (while it is the case in the Italian public sector), combined with juridical uncertainty in the 2016 Code of Public Contrasts around the definition of the NCA to apply in case of outsourcing (as according to the article no. 30, c.4). This uncertainty has been recently juridically solved in the new revised version of the Public Contract Code issued in 2023 (for details see part B of this Report), but at the time of the experimentation the definition of the NCA to apply in case of outsourcing still represented an ambiguous and tricky issue for the trade unions. Furthermore, the voluntary adoption of the social clause for employment stability and continuation in working conditions, as defined in the 2016 Code of Public Contrasts (art. 50) (the one in force at the time of the experimentation) triggered instability and high turnover among the workforce employed in services outsourced by the region.

Against this legislative backdrop, however, the Emilia-Romagna context – the region where the memorandum of Understanding was signed − presented some conditions that might have facilitated the emergence of this experimental practice, a sort of 'fault lines' of disruption.

First, the territory displays historically a high political sensitivity towards social and employment considerations at the regional level. Since the 1970s, all the elected regional governments in office have always had a left or centre-left orientation, a political dimension that contributes to explaining the sensitivity towards a socially responsible agenda in labour market policies and public procurement practices.

Second, as witnessed by the Aemilia trial that prosecuted the infiltration of the organized crime clan 'Ndrangeta in the region, the regional labour market experienced massive negative repercussions due to the criminal infiltration, impacting also on the public procurement system. This contributed to creating a significant legacy in the action of both the political actors as well as the social partners, which gained awareness of the need to equip the regional institutional and regulatory infrastructure with rules and mechanisms to monitor, especially during the ex-ante phases, legality, and fairness in the public procurement system. This approach turned to be especially relevant in the aftermath of the pandemic crisis when the regional government had to spend the funds allocated by the National Plan for Recovery and Resilience (PNRR) whose investments could be potentially subject to misuse and criminal infiltration.

Third, the pandemic emergency shed light on the crucial role played by the cleaning services, especially in healthcare structures, drawing further political and public attention.

Origins of the experimentation

The experimentation started with an agreement signed in 2017 between the Emilia-Romagna regional government and the regional Health Policy department, the three

trade union confederations CGIL, CISL, and UIL at the regional level and the business organisations representing the municipal and the provincial governments, respectively ANCI and UPI. The agreement, the so-called "*Memorandum of understanding on the procedures for public procurement in the regional healthcare system*" was introduced with the aim to contrast organized crime infiltration and to promote legality in public procurement in the healthcare sector. Hence, the main initial target of the Memorandum of Understanding was to address the problem of the massive infiltration of organized crime clans (in particular of the 'Ndrangheta) in the regional productive system, including the healthcare system.

The initial settlement of the organized crime clan in the Emilia-Romagna region started in the early 1980s, after which it gradually progressed from being a peripheral organisation focused on drug trafficking and extortion activities to a central presence in the 'grey' economy of the region. To contrast this criminal settlement, the region hosted the largest legal action against the 'Ndrangheta in Northern Italy, the so-called 'Aemilia trial' which started in 2015. The trial involved 203 defendants prosecuted on a series of charges, including mafia association; membership of a mafia organisation; illegal recruitment; extortion, usury, damage; money laundering and tax fraud; possession of weapons. The interviewees underlined that the arena of procurement, not only in the public sector, represented an attractive source of financial resources and a strategic opportunity for the 'Ndrangheta to penetrate the local productive system and the labour market, with detrimental consequences also for working conditions and employment in the region.

The 2017 agreement, thus, responded to the need of the regional government to equip the regional public procurement system − and specifically the regional healthcare procurement system − with *ad hoc* procedures and tools to prevent and contrast organised crime infiltration, following up the provisions established by the Regional Law no. 18/2016 titled "Consolidated Act for the promotion of legality and the enhancement of responsible citizenship and economy". Nevertheless, specific measures promoting legality were combined with new rules to safeguard working conditions in public procurement practices implemented by the local health authorities belonging to the region Emilia-Romagna.

With regard to the legality matter, the agreement provided that the contracting authorities have to strengthen the qualitative and reputational requirements demanded to the bidders in the calls for tenders, enhancing the legality rating and encouraging the award of the tenders to those economic operators registered in the "white lists", under the provisions of the 2016 Public Contracts Code (Legislative Decree no. 50/2016).

As far as the protection of employment and working conditions is concerned, the 2017 agreement established a set of mandatory rules for both contracting authorities and external providers to apply, including:

- **the adoption by the contracting authorities of the *most economically advantageous offer*** as a selection criterion for awarding contracts instead of the one with the lowest price;

- **the inclusion by the contracting authorities in public contracts concerning personal services, the *reference standards and expected results from the providers***, deemed indispensable criteria to ensure an adequate quality of the service;
- **the *compulsory application* by the contracting authority *of the social clause in public tender to ensure continuity in employment levels*** between different providers in case of a change of economic operator providing the services (in compliance with 2016 Public Contracts Code; and with the regional law no. 18/2016);
- **the *direct provision of the service outsourced by the economic operator who wins the contract, avoiding the recourse to subcontracting***. When subcontracting is envisaged, it must comply with the limits and criteria established by art. 105[5] of 2016 Public Contracts Code;
- **the *mandatory application by both direct providers and subcontractors of the national and territorial collective agreements for the sector of reference***, based on the prevalent types of services performed in the tender (according to the art. 30 of the 2016 Public Contracts Code), signed by the most representative employers' associations and trade unions at national level;
- **to provide the contracting authority with a *system of sanctions to apply in case of non-compliance*** with the obligations contained in the tender as well as those established in the 2017 agreement;
- **to promote the *signature of ad hoc agreements*** aimed at ensuring the correct application of the national collective agreements and employment continuity in case of a change of contractor.

Overall, the 2017 Memorandum of Understanding set the first regulatory infrastructure to safeguard employment and working condition in the regional public tenders. Nevertheless, its application was limited to the healthcare sector.

Description of the experimentation: main characteristics and functioning

Thus, a new agreement called "*Memorandum of Understanding on legality and public procurement*" was signed on 23rd December 2021 by the Emilia-Romagna regional government and by the three main union confederations CGIL, CISL, and UIL. The new 2021 agreement, which extends and integrates the one already signed in 2017, provides for an articulated series of measures and procedures aiming at promoting the quality of work, the prevention, and the fight against organised crime in public procurement practices carried out by the regional government as contracting

[5] The 2016 Public Contracts Code provided for *restrictions to the possibility of subcontracting*, as a measure to prevent the risk of a lowering in working conditions applied by the subcontractors. Article no. 105 (c.1) stated that, under penalty of nullity of the contract, the complete execution of the services or work covered by the contract cannot be entrusted to third parties, as well as the prevalent execution of the work relating to labour-intensive contracts, namely the share of subcontracted work cannot exceed 50%.

authority as well as by Intercent-ER. Intercent-ER is the Agency for the development of telematic procurement markets of the Emilia-Romagna region, established in 2004 for optimizing, rationalizing, and simplifying the expenditure for goods and services of the public administrations located in the regional territory, through the management of a telematic negotiation system (e-procurement), the centralization of purchases, the standardization of demand and the development of innovative tender strategies.

The 2021 agreement acknowledges the relevant role played by the 2017 healthcare agreement to establish shared procedures and rules for the management of public procurement and in the fields of legality and anti-corruption. Nevertheless, old and new emergent challenges underpinned the signature of a new wider Memorandum of Understanding, which accordingly aims to extend the field of application and strengthen the contents of the 2017 agreement. On the one hand, in fact, throughout the territory and in many regional production sectors, significant problems still need to be tackled (e.g., attempts to infiltrate by organised crime, irregular business activities and spurious cooperatives, illegal hiring, tax, and social security evasion, contractual irregularities, etc.) which continue to weaken economic growth and the quality of work in the Emilia-Romagna economy and labour market. On the other hand, the economic and organisational consequences of the Covid-19 pandemic emergency have further exacerbated the criticalities already present in the territory.

A union official from CGIL Emilia-Romagna who participated in the negotiation retraced the origins of the Memorandum of Understanding:

> *it has been more than ten years since in this Region we started in-depth work on the issue of procurement. Already before the assignment of the funds connected to the National Recovery and Resilience Plan, we knew that the quantitative percentage of money allocated to procurement was significantly increasing: already before this Fund, 16% of GDP in Italy is spent on public procurement. And this is already a good reason [to start work on this issue]. Then, you add the fact that for decades the mafia, corruption, and illegality have been trying to infiltrate the procurement system every day. In public procurement, the rights of workers are often compressed and exploitation lurks behind this. Thus, the first moment of great reflection of our organization together with CISL and UIL was exactly ten years ago, with the tragic event of the 2012 earthquake in the heart of Emilia, when the reconstruction phase had to begin. In that context, with the category of construction workers in particular, we started work on the Memorandum of Understanding so that quality of work and legality began to march together (Interview CGIL, 5/2022).*

The main provisions set by the 2021 agreement are the following.

First, it extends the application of all the provisions and rules set in the 2017 Memorandum of Understanding to all the calls for tenders carried out by the Region and by Intercent-ER in any economic sector (thus comprising the cleaning and the private security industries) (articles no. 1 and 2). **The clauses and rules to be extended include (i) the most economically advantageous offer as a selection criterion for awarding contracts, instead of the criterion of the lowest price; (ii) the compulsory adoption of the social clause in the call for tenders; (iii) the**

direct provision of the service outsourced by the economic operator who is awarded, setting limits to the recourse to subcontracting; (iv) the mandatory application by both direct providers and subcontractors of the national and territorial collective agreements for the sector of reference; (v) the application of a system of sanctions to apply in case of non-compliance.

Second, the 2021 agreement established the procedures for a compulsory and continuous information, consultation, and negotiation table between the contracting authorities, the trade unions, and the economic operators. More in detail, it provides for the compulsory pre-emptive negotiation between the contracting authority and the signatory trade unions before designing the call for tenders (article no. 4): such ex-ante negotiations are envisaged to ensure the joint definition of social considerations to be included in the call for tenders, and especially the trade union involvement. Also, in case of a change of provider on the occasion of a change of contracts in labour-intensive activities, the agreement provides for a compulsory pre-emptive phase of trilateral negotiation between the contracting authority, the trade unions, and the economic operators, both the expiring and the incoming ones (articles no. 6 and 7). This dialogue aims to ensure the correct application of the social clause for employment continuity and of the NCA of reference by the new provider, to prevent the adoption of lower terms and conditions of employment compared to those applied by the previous provider. As reported by the CGIL regional union official that signed the Memorandum of Understanding:

> *the thing that I believe deserves an in-depth study, a reflection, and that I believe is new is an effective in-advance bargaining table, because we often found ourselves with defined, published tenders and perhaps not compliant in some cases with what were the dictates defined in the agreement. So, we have claimed and obtained, and I think it is important, that there is a prior discussion of the definition of the tender. When the contracting authority decides to outsource that activity, it notifies us and we meet them to discuss the social clauses, the contracts, and all the contractual articulations that represent the fundamental parts of a tender. […]*
>
> *Then there is another advantage, always concerning in-advance bargaining, which concerns contract changes, in particular in labour-intensive activities and cleaning is an example. It provides for the obligation to inform and for the joint examination of the contractual conditions applied by the new provider before the start of the activities. Therefore, it configures as a sort of preventive consultation in which we verify the compliance with the social clause, the correct application of the contract, the wages, and also the procedures for resorting to subcontracting which is the other novelty that is included (Interview CGIL, 5/2022)*

Third, the signatory parties of the 2021 agreement agreed upon the *joint definition of a declaratory judgment pointing out the specific private sector National Collective Agreements to refer to* in each specific economic sector, based on the types of prevalent services/activities and sector covered by the contract and signed by employer associations and the trade unions comparatively most representative in the sector at

the national level (article no. 9). On 6th December 2022, the Emilia-Romagna region together with the unions CGUL; CISL, and UIL signed the declaratory judgment which legally represents an annex of the 2021 Memorandum of Understanding. The main objective of this list of NCAs was to limit the dumping among economic operators and contain the market competition in public tenders purely based on labour costs by setting common standards to apply to get the contract awarded. The NCAs indicated in the declaratory represent the reference standard to apply to design the social clause in the call for tenders. In other words, as explained by the director of Intercent-ER, when a call for tenders has to be drafted, the contracting authority has to *compulsory apply the social clause as formulated in the NCAs of reference in the sector listed in the Annex*.

Actors involved and strategies/resources

The main actors involved in the definitional phases of the experimentation are the Emilia-Romagna regional government and Intercent-ER, the procurement agency of the Emilia-Romagna region, and the main trade union confederations CGIL, CISL, and UIL (and their sectoral federations). They not only negotiated and signed the 2021 Memorandum of Understanding and the annexed declaratory on NCAs, but they embody the principal actors involved then in the actual and effective application and enforcement of the contents of the agreement.

Employers' associations and economic providers were not proactive actors during the phase of definition and negotiation of the 2021 agreement, and they represent marginal actors of its application, primarily driven by the trade unions and the contracting authorities. Nevertheless, they have to take part in negotiation tables with the trade unions and the contracting authorities in case of a change of contract to ensure the adequate and effective enforcement of the social clause in terms of continuation in employment as well as in normative and economic contractual conditions.

Obstacles, constraints, conflicts, and learning processes

The actual enforcement of the experimentation presents some critical dimensions reported by the interviewees.

First, *its applicability is limited*, since the Memorandum of Understanding is legally binding only on the public authorities that signed it: in this case, it applies only to calls for tenders issued by the regional government and by its central procurement agency Intercent-ER. To extend its legal enforcement, as to become mandatory at the local/subregional level, the formal ratification of the agreement by each public authority is required.

Second, its *effectiveness largely depends on the use made of it by the local actors*. In the absence of continuous and systematic involvement of the contracting authority and the trade unions, the enforcement of the labour clauses and procedures set into the agreement might risk remaining mere 'paper tigers'. As reported by the CGIL regional union official interviewed:

> *we have obtained an instrument that we have to leverage because it is precisely an instrument, not a procedure that produces effects in an automatic and autonomous way. We have a tool that allows us to negotiate, to confront each other before the call for tender is launched, and from this point of view, I think it is absolutely important (Interview Filcams CGIL, 6/2022).*

Third, the *limited amount of funds public authority allocates in public procurement* represents an overarching constraint that limits the financial capability of private contractors to design tenders foreseeing 'social considerations' and 'decent working conditions', thus leading to lowest-price as the de facto award criteria.

Fourth, there is uncertainty around what can be legitimately indicated in the tender regarding the application of specific NCA and the related terms and conditions. While the signatory parties of the 2022 *declaratory judgment* pointed out a list of specific private sector National Collective Agreements to refer to depending on the specific economic sector of activity in the tender, their compulsory application seems not to be judicially legitimate. This simply represents an indication that cannot translate into the compulsory adoption of that specific list of NCA, as underlined by a Fisascat CISL trade union official interviewed: "*in the declaratory judgement in attachment to the agreement, for each activity, we indicate the national collective agreement of reference to be applied. Knowing that we speak of reference, this is not an obligation*". However, the new provisions contained in the 2023 Public Contracts Code should have solved this issue.

Outcome (to be investigated locally) and (expected) impact on work

The 2021 Memorandum of Understanding on legality and public procurement was successfully enforced to safeguard employment continuity in a tender for cleaning services in the Local Health Authority (LHA hereinafter) of Bologna-Ferrara. The LHA as the contracting authority in 2021 had to renew the contract for the external provision of cleaning services, where 80 people were employed. The call for tender was prepared by Intercent-ER, the procurement agency of the Emilia-Romagna region in charge of centrally carrying out the regional procurement practices. In the first draft of the call for tender, Intercent-ER included a weak and flexible version of the social clause for occupation stability, as indicated by the 2016 Public Contracts Code, providing that the incoming company, in case of need and based on its organization, can (thus it is not obliged to) reabsorb the personnel employed in the contracted service by the previous provider.

Accordingly, **the sectoral trade unions in the cleaning industry (Filcams Cgil, Fisascat Cisl, and Uiltrasporti) by leveraging on the in-advance bargaining right the Memorandum of Understanding acknowledged to the unions asked to be convened by the contracting authority to discuss the formulation of the call for tender.** Intercent-ER convened the trade unions and all the potentially interested economic operators to pre-emptively and jointly discuss and negotiate the final formulation of the call for tender**. Following up the meeting, the trade unions obtained a more stringent formulation of the social clause, as indicated in the**

Memorandum of Understanding, providing for the compulsory re-employment of all the personnel employed in the contracted service. As underlined by a union official involved in the in-advance bargaining table, the right to pre-emptively and jointly discuss the content of the call for tender represents an important instrument for the trade unions to monitor and safeguard employment stability and protected terms and conditions of employment in public tenders, especially in case of change of contract:

> *certainly, that meeting completely changed the nature of the social clause inserted in the call for tenders, which was a clause initially limited to the possibility of the incoming company in case of need and based on its organization to reabsorb the personnel. It has instead been transformed into a clause guaranteeing the continuity of employment of the workers employed (Interview Filcams CGIL, 6/2022).*

Resources and References

List of Interviews

Date (MM/YY)	**Organisation** + details/explanation (+ *interviewees' role [where necessary/useful])*
06/22	**Filcams CGIL – Emilia Romagna** trade union, regional level (*2 interviewees, regional responsible for cleaning + regional responsible for private security*)
05/22	**CGIL – Emilia Romagna** trade union, regional level, regional responsible for legality and public procurement
11/22	**FISASCAT CISL – Emilia Romagna** trade union, regional level, regional secretary
07/23	**Intercent-ER (Regional agency for public procurement)**, region Emilia Romagna, general regional director

Documents

- Memorandum of Understanding on public procurement in the regional healthcare system, signed by the Emilia-Romagna region, the regional Health Policy department and CGIL, CISL, UIL Emilia-Romagna (28th December 2017)
- Memorandum of understanding on legality and public procurement, signed by the Emilia-Romagna region and CGIL, CISL, UIL Emilia-Romagna (21st December 2021)
- Declaratory judgment attached to the 2021 Memorandum of Understanding on legality and public procurement (6th December 2022)
- Regional law no. 18/2016 "Consolidated act for the promotion of legality and the enhancement of responsible citizenship and economy".

CASE STUDY IT-4: Memorandum of Understanding of the Romagna Local Health Authority (LHA)

Brief description and key objectives

The main objective of the experimentation is to ensure decent working conditions in all the services acquired through public procurement by the Romagna Local Health Authority (LHA hereinafter). This goal is pursued by compulsorily including social considerations in tendering and by establishing a permanent pre-emptive dialogue between the LHA as contracting authority and the trade unions on labour regulation and standards to include in public tenders. Overall, the experimentation aims to tackle two main protection gaps: the lack of occupational continuity and continuity in employment conditions, and the lack of instruments to identify the collective agreement to be applied by companies performing contracted-out services.

The experimentation is based on the Memorandum of Understanding on public procurement signed by the Romagna LHA and CGIL, CISL, UIL of Forlì, Cesena, Ravenna, and Rimini and Romagna on 30th September 2019. The Romagna LHA is located within the Emilia-Romagna region (see Case study 3) and it territorially covers about a quarter of the region in terms of healthcare services' provision. More specifically, the LHA is located in the East part of the region and covers four provinces (i.e., Ravenna, Cesena, Forlì, and Rimini).

This experimentation embodies a locally-based variant of the 2017 "*Memorandum of Understanding on the procedures for public procurement in the regional healthcare system*" signed between the Emilia-Romagna regional government and the regional Health Policy department, the three trade union confederations CGIL, CISL, and UIL at the regional level and the business organisations representing the municipal and the provincial governments ANCI and UPI (for details see the Case Study 3). The 2017 regional Memorandum was, in fact, fully transposed at the local level in a local Memorandum called "*Memorandum of Understanding on public procurement*" that the Romagna LHA and the three main union confederations CGIL, CISL, and UIL of Forlì, Ravenna, Rimini, and Romagna signed in 2019.

The new agreement, operationally, fully transposed the 2017 regional Memorandum of Understanding to extend its application also for the LHA at the local level, hence it made it fully binding for the procurement practices carried out by the LHA. The 2019 local agreement acknowledges the relevant role played by the 2017 healthcare regional agreement to establish shared procedures and rules for the socially responsible management of public procurement

By recalling the 2017 regional Memorandum, the 2019 local Memorandum of understanding established a set of mandatory rules and mechanisms to apply to ensure decent working conditions in public tenders, including i) preliminary consultations for

the contracting authorities with the trade unions before drafting the tender; ii) compulsory inclusion of social clauses in all the call for tenders; iii) consultation with the providers and the trade unions in the event of any change of contract to protect employment stability; iv) in case of subcontracting, the recognition of the same rights, protections, and working conditions applied to the workers employed in the main contracting companies.

Importantly, the experimentation has a general approach towards public procurement, since it does not target specifically cleaning and security services, but rather all kinds of services centrally acquired by the Emilia-Romagna region. Nevertheless, it played a crucial role in protecting working conditions in the security services contracted out by the region, as the direct experience presented in the report will show.

Situation before the experimentation

Before the negotiation and the signature of the 2019 Memorandum of Understanding, there were no relevant instruments or procedures in place to prevent detrimental consequences for working conditions and employment stability triggered by public procurement practices. Before the launch of the experimentation, workers employed in outsourced services used to suffer from a deterioration of working conditions applied by the private sector National Collective Agreements (NCAs hereinafter) not only compared to those ensured by public sector NCAs but also among the multitude of private sector NCAs signed and legitimately applicable. This was due to the lack of a regulatory framework in the private sector setting the *erga omnes* application of a unique NCA (while it is the case in the Italian public sector), combined with juridical uncertainty in the 2016 Code of Public Contrasts around the definition of the NCA to apply in case of outsourcing (as according to the article no. 30, c.4). This uncertainty has been recently juridically solved in the new revised version of the Public Contract Code issued in 2023 (for details see part B of this Report), but at the time of the experimentation the definition of the NCA to apply in case of outsourcing still represented an ambiguous and tricky issue for the trade unions. Furthermore, the voluntary adoption of the social clause for employment stability and continuation, as defined in the 2016 Code of Public Contrasts (art. 50) (the one in force at the time of the experimentation) trigger instability and high turnover among the workforce employed in outsourced services by public administrations. A confederal union official from CGIL operating in the area well explained these critical dimensions connected to public procurement in the LHA:

> *We have decided, but this is part of a political elaboration of our organization, to intervene based on some events that have taken place in the area and which, from our point of view, have been particularly critical for the quality of the work. Some calls for tenders were made and resulted in a change of contractor which applied a National Collective Agreement which was worse than the one applied by the previous contractor. Accordingly, we suffered a double damage: on the one hand, not all the staff who were previously employed in those activities were reabsorbed by the new company awarded the contract, and even the staff who was rehired has undergone the*

> *application of a pejorative National Collective Agreement compared to the previous one (Filcams CGIL, 3/2023).*

Against this legislative backdrop, however, the Romagna LHA where the experimentation took place presented some conditions that might have facilitated the emergence of this experimental practice, a sort of 'fault lines' of disruption.

First, the Romagna LHA is located in the Emilia-Romagna region where the so-called "*Memorandum of Understanding on the procedures for public procurement in the regional healthcare system*" was signed in 2017 between the Emilia-Romagna regional government and the regional Health Policy department, the three trade union confederations CGIL, CISL, and UIL at the regional level and the business organisations representing the municipal and the provincial governments ANCI and UPI (for details see the Case Study 3). This exemplary antecedent has represented a successful experience the LHA Romagna had the chance to draw inspiration from.

Second, the territory displays historically a high political sensitivity towards social and employment considerations at the local level, mirroring the sensitivity displayed also at the regional level. This sensitivity reflects on the consideration given to the social concerns in the regulation and governance of the local labour market. This approach is well described by the superintendent of the Romagna LHA:

> *Certainly, Romagna is a territory sensitive to not only the quantitative but also the qualitative dimension of public spending. It is inherent in Romagna culture, but also the local politics, the willingness of qualifying − so to speak − the production system not only from the point of view of competition, of legality, which are unavoidable presuppositions, but also from the point of view of how to give priority to employment and work, precisely recognizing its social value. So, I believe that this sensitivity, which sees procurement not only as an economic driving force but as a social driving force, has brought convergence between the trade union needs and presumably also those of the LHA management, who then deliberated and approved this agreement (Interview LHA Romagna, 5/2023).*

Third, the LHA Romagna resulted from the merger of four previously separated Local Health Authorities (i.e., Ravenna, Cesena, Forlì, and Rimini) in 2014. The newly created LHA territorially covers a vast territorial dimension equal to about a quarter of the region, including the healthcare structures and hospitals of three different provinces. Following up on the merger, the LHA acknowledged the need to equip its structure with a general and centralized regulatory framework concerning the procurement system, to overcome the previous fragmented situation, as explained by a union official from CGIL who participated in the preparation of the 2019 local agreement:

> *We thought that the agreement would also allow us to govern some critical aspects, which also concern the fact that this LHA of significant size comes from four previous experiences. To give you an example: we faced a discussion on the change of contract, relating to building maintenance and electrical systems and we reached the point where a single tender was made that covered the whole territory, therefore all the structures of the merged LHA. Before we had three or four different tenders, then three or four different economic operators, with different contractual applications, and with profoundly different organizational conditions: therefore, the fact that there*

was a single tender with a unique winner would have led to changes for someone. So, that was a complex phase, which also required litigation; I would say that this was perhaps one of the main elements triggering the protocol because in more than one circumstance we have brought the company to sit down at the Prefecture's table in an attempt to cool off the conflict. Therefore, the need to somehow manage a conflict, faced with such complex phases, has become evident also to the contracting authority… (Filcams CGIL, 3/2023).

Fourth, the pandemic emergency shed light on the centrality of cleaning services as well as non-armed security services to control the access during the pandemic, especially in healthcare structures, drawing further political and public attention to these issues.

Origins of the experimentation

The experimentation originated from the so-called "*Memorandum of Understanding on the procedures for public procurement in the regional healthcare system*" (for further detail see Case Study 3), an agreement signed in 2017 between the Emilia-Romagna regional government and the regional Health Policy department, the three trade union confederations CGIL, CISL, and UIL at the regional level and the business organisations representing the municipal and the provincial governments ANCI and UPI. It aimed to contrast organized crime infiltration and to promote legality in public procurement specifically in the healthcare sector. Hence, the main initial target of the Memorandum of Understanding was to address the problem of the massive infiltration of organized crime clans (in particular of the 'Ndrangheta) in the regional productive system, in particular in the healthcare system. Furthermore, the 2017 Memorandum of Understanding responded to the need of the regional government – in charge of the governance and regulation of the whole regional healthcare system − to equip the regional healthcare procurement system with *ad hoc* procedures and tools to prevent and contrast the organized crime infiltration and to include social considerations to safeguard local employment in public procurement.

As far as the protection of employment and working conditions is concerned, the 2017 agreement established a set of mandatory rules for both contracting authorities and external providers to apply, including:

- **the adoption by the contracting authorities of the *most economically advantageous offer* as a selection criterion for awarding contracts** instead of the one with the lowest price;
- **the inclusion by the contracting authorities in public contracts concerning personal services, the *reference standards and expected results from the providers***, deemed indispensable criteria to ensure an adequate quality of the service;
- **the *compulsory application* by the contracting authority *of the social clause in a public tender to ensure continuity in employment levels*** between different providers in case of a change of economic operator providing the services (in compliance with 2016 Public Contracts Code, the Legislative Decree no. 50/2016; and with the regional law no. no. 18/2016);

- **the *direct provision of the service outsourced by the economic operator who is awarded, avoiding the recourse to subcontracting***. When subcontracting is envisaged, it must comply with the limits and criteria established by art. 105 of 2016 Public Contracts Code;
- **the *mandatory application by both direct providers and subcontractors of the national and territorial collective agreements for the sector of reference***, based on the prevalent types of services performed in the tender (according to the art. 30 of the 2016 Public Contracts Code), signed by the most representative employers' associations and trade unions at national level;
- **to provide the contracting authority with a *system of sanctions to apply in case of non-compliance*** with the obligations contained in the tender as well as those established in the 2017 agreement;
- **to promote the *signature of ad hoc agreements*** aimed at ensuring the correct application of the national collective agreements and employment continuity in case of a change of contractor.

Overall, the 2017 Memorandum of Understanding set the first regulatory infrastructure to safeguard employment and working condition in the regional public tenders in the healthcare local authorities.

Description of the experimentation: main characteristics and functioning

Following up the introduction of the 2017 regional *Memorandum of Understanding on the procedures for public procurement in the regional healthcare system*, the regional confederal trade unions CGIL, CISL, and UIL, those who signed the regional Memorandum of Understanding, put pressure on the Romagna LHA for it to transpose the agreement also at the local level.

The 2017 regional agreement suffered from two main limitations.

First, it only bound as contracting authorities the regional government and Intercent-ER, the regional agency for public procurement practices to be carried out at the regional level.

Second, in the perspective of the confederal trade unions, despite it represented a key instrument to safeguard employment stability and working conditions in outsourced public services, it constitutes more a declaration of principle to follow for the contracting authorities than an operative tool to implement. This weakness is elucidated by a trade union official from CGIL who participated in the definition of the 2019 local Memorandum of Understanding:

> *We have decided to try to go further with this specific agreement with the LHA, compared to what was established by the regional protocol. The regional protocol referred to very specific principles, which are the ones we have tried to implement also in our territory, but we have tried to go a little deeper and define specific and clear operational tools. Indeed, it often happened that the LHA, especially the administrative part of the healthcare authority, did not refer to a general and generic protocol as the regional one. On the contrary, if it is instead promoted by the trade union organizations of the area, with which there are in any case structured and continuous discussions, at that point it becomes an element of greater concreteness (Interview Filcams CGIL, 3/2023)*

Accordingly, **by acknowledging the relevance and the potentialities of the 2017 regional Memorandum of Understanding, as well as intending to overcome the above-mentioned limitations, under the pressure of the confederal trade unions CGIL, CISL, and UIL, the Romagna LHA accepted to sign its own local Memorandum of Understanding on 30th September 2019**, as reported by the superintendent of the Romagna LHA, and confirmed by a confederal union official who participated in the preparation of the agreement:

> *the local memorandum of understanding of the Romagna LHA has been proposed, advanced, and requested by the trade union organizations CGL, CISL, and UIL, which are the same signatory parties of the regional protocol (Interview LHA Romagna, 5/2023).*
>
> *we have presented a platform; we have prepared it in agreement with the four provincial structures of CGIL of Romagna. Thus, the initiative started with us, after which we shared it with colleagues from CISL and UIL and presented it to the LHA, and with which, following several meetings, we came to sign a Memorandum of understanding which is still operating. So, in short, we believe that the contents of this agreement represented progress compared to the regional agreement in force at that time (Interview Filcams CGIL, 3/2023).*

The new agreement called "*Memorandum of Understanding on public procurement*" was signed by the Romagna LHA and by the three main union confederations CGIL, CISL, and UIL of Forlì, Ravenna, Rimini, and Romagna. Operationally, it fully transposed the 2017 regional Memorandum of Understanding to extend its application also for the LHA at the local level, hence it made it fully binding for the procurement practices carried out by the LHA. The 2019 local agreement acknowledges the relevant role played by the 2017 healthcare regional agreement to establish shared procedures and rules for the socially responsible management of public procurement.

The main provisions set by the 2019 local agreement, in adopting the regulatory infrastructure set in the 2017 regional agreement, are the following.

First, it *enforces the application of all the provisions and rules set in the 2017 Memorandum of Understanding to all the calls for tenders* carried out by the Romagna LHA (thus comprising the cleaning and the private security industries). The clauses and rules to be extended include (i) the most economically advantageous offer as a selection criterion for awarding contracts, instead of the criterion of the lowest price; (ii) the compulsory adoption of the social clause in the call for tenders; (iii) the direct provision of the service outsourced by the economic operator who is awarded, setting limits to the recourse to subcontracting; (iv) the mandatory application by both direct providers and subcontractors of the national and territorial collective agreements for the sector of reference; (v) the application of a system of sanctions to apply in case of non-compliance.

Second, and related to the first, the 2019 local agreement further stress the major relevance that *qualitative and reputational criteria have to play to award the tender*, compared to merely economic considerations.

Third, the 2019 local agreement established the *procedures for a compulsory and continuous information, consultation, and negotiation table between the contracting authorities, the trade unions, and the economic operators*. The provision of compulsory and continuous information, consultation, and negotiation with the trade unions foresees two main phases of mandatory involvement, as pointed out by the superintendent of the Romagna LHA:

> *the discussion with the trade unions takes place during the planning phase of the call for tenders, but also takes place during the planning phase before the issuing of the call for tenders and more generally, so to speak, discuss the choice of whether to internalize or outsource a service that was previously or internalized or outsourced (Interview LHA Romagna, 5/2023).*

Phase (1). Every two years, it provides for the communication to the trade unions of the biennial scheduling of calls for tenders of the LHA, specifying: (a) the timetable of the call for tenders scheduled for the following two years; (b) the territorial area interested by the call for tenders scheduled among the four previously separated LHAs; (c) the list of the economic operators that were in charge of the outsourced service when the contract is renewed. This kind of pre-emptive information allows the trade unions to timely plan and participate in the phases of the call for tender definition and preparation. The importance of this phase of union information is emphasized by the superintendent of the Romagna LHA:

> *we have set up some solid preventive information mechanisms with the confederal trade union organizations, which have signed both the regional protocol and ours. Hence, every time we plan goods and services procurement or update the programming of goods and services procurement, we have undertaken to communicate the planning with all the information needed to the trade unions, to ensure that they know what the expected times are for the publication of the call for tenders. Given that we are a very large province, it is crucial to let them know which territorial areas are involved and whether one or more of them are interested, or all of them and we also tell them which are the economic operators who were previously awarded that supply or that service or that work, if it is a supply of a pre-existing contract (Interview LHA Romagna, 5/2023).*

Phase (2). It provides for the compulsory pre-emptive negotiation between the contracting authority and the signatory trade unions before designing the call for tenders: such ex-ante negotiations are envisaged to ensure the joint definition of social considerations to be included in the call for tenders, and especially the trade union involvement. In this phase of involvement, the contracting authority is committed to mandatory communicating to the trade unions a list of information regarding the contract that is expiring, in particular: (i) the number of workers employed in the outsourced service; (ii) the number of hours worked in the outsourced service; (iii) the national collective agreement applied by the economic operator; (iv) the qualifications applied to the outsourced workers; (v) the wage levels applied; (vi) the seniority accrued by the outsourced workers; (vii) the specific venue of work (among the four previously separated LHAs). As clarified by the superintendent of the Romagna LHA, the pre-emptive communication of all this information "*allows the incoming contractor to formulate an informed offer and to take account of the social clause".* On the union side, it enables the trade union organizations to convene and take part in the so-called "in-advance bargaining', as explained by a union official from CGIL:

> *The pre-emptive information constitutes one of the main points of our agreement because it allows us to carry out the so-called 'in-advance bargaining'. When we come to know of complex situations, in which there is perhaps the risk of the application of a different national collective agreement, or of non-full compliance with the social clause, well, in those conditions we ask for a preventive meeting and we reason together, we try to also request the inclusion of specific elements of protection in the call for tenders (Interview Filcams CGIL, 3/2023).*

Fourth, the signatory parties of the 2019 local agreement agreed upon the *mandatory indication in the call for tenders of the specific National Collective Agreement* the winning contractors as well as the subcontractors have to apply based on the types of services and prevalent works object of the contract, namely the national and the territorial NCA signed by employer associations and the trade unions comparatively most representative in the sector at the national level. The main goal of this provision was to limit dumping among economic operators and contain the market competition in public tenders purely based on labour costs by setting common standards to apply to get the contract awarded. The NCAs indicated in the call for tenders have to be applied, in fact, by both the main contractor as well as by all the potential subcontracting companies.

Actors involved and strategies/resources

The main actors involved in the definitional phases of the experimentation are the Local Health Authority (LHA) Romagna, and the main trade union confederations CGIL, CISL, and UIL. They not only negotiated and signed the 2019 local Memorandum of Understanding, but they embody the principal actors involved in the actual and effective application and enforcement of the contents of the agreement.

Employers' associations and economic providers were not proactive actors during the phase of definition and negotiation of the 2019 agreement, and they represent marginal actors of its application, primarily driven by the trade unions and the contracting authorities. Nevertheless, they have to take part in negotiation tables with the trade unions and the contracting authorities in case of a change of contract to ensure the adequate and effective enforcement of the social clause in terms of continuation in employment as well as in normative and economic contractual conditions.

Obstacles, constraints, conflicts, and learning processes

The actual enforcement of the experimentation presents some critical dimensions reported by the interviewees.

First, *its applicability is limited*, since the Memorandum of Understanding is legally binding only on the public authority that signed it: in this case, it thus applies only to calls for tenders issued by the Local Health Authority (LHA). To extend its legal enforcement, as to become binding for other LHAs located in the region, the formal ratification of the agreement by each public authority is required.

Second, its *effectiveness largely depends on the use made of it by the local actors*. In the absence of continuous and systematic involvement of the contracting authority and the trade unions, the enforcement of the labour clauses and procedures set into the agreement might risk remaining mere 'paper tigers'. As underlined by a regional union official from Fisascat CISL, the collaboration of contracting authority is especially relevant for the effective enforcement of this kind of agreement:

> *It is clear that signing an agreement, as I always say, does not mean solving concrete and real problems in the workplace. The agreement is a tool that can be used and obviously, this also depends on the sensitivity of the local administrators, rather than of the companies. […] Therefore, the application of a protocol is not automatic. It is certainly a tool that we need, having a protocol strengthens us for the claims we make concerning the correct application of NCAs (Fisascat CISL, 4/2023).*

Furthermore, juridically it binds the economic operators taking part in tenders only indirectly, as the employers' associations and the providers are not signatory parties of the Memorandum of Understanding. Formally, it constitutes an agreement between the trade unions and the public administration as the contracting authority, whose repercussions relapse indirectly on the service providers.

> *The agreement is important, but in and of itself it is not applicable. It expresses principles, it also states them, and therefore sets constraints, but it is clear that it has a value that very often must have applications to other subjects. Therefore, whoever applies the procurement protocol is not the subject who signed the procurement protocol very often. So, from a legal point of view, it is not the same thing as a contract signed between two subjects, which binds the two subjects, and a protocol made by third parties, which binds the subjects, but in legal terms clearly, it's a little weaker here (Fisascat CISL, 4/2023).*

Third, the *limited amount of funds a public authority allocates in public procurement* represents an overarching constraint that limits the financial capability of private contractors to design tenders foreseeing 'social considerations' and 'decent working conditions', thus leading to lowest-price as the de facto award criteria.

Fourth, there is uncertainty around *what can be legitimately indicated in the tender regarding the application of specific NCA* and the related terms and conditions. While the signatory parties of the 2019 agreement provided for the guarantee of specific private sector National Collective Agreements to apply depending on the specific economic sector of activity in the tender, their compulsory application seems not to be judicially legitimate. This simply represents an indication that cannot translate into the compulsory adoption of that specific list of NCA. However, the new provisions contained in the 2023 Public Contracts Code should have solved this issue.

Outcome (to be investigated locally) and (expected) impact on work

The 2019 Memorandum of Understanding on public procurement was successfully enforced to safeguard working conditions, and especially wage levels, in a tender for non-armed security services (stewards) in the Local Health Authority (LHA) Romagna. The LHA as contracting authority in 2020, in the middle of the pandemic emergency, had to renew the contract for the external provision of security services for all the healthcare structures belonging to the LHA, previously separated. Before the 2020 call for tenders, the security services in the four previous LHAs were provided by four different providers following up four separate calls for tenders. For the first time, then, the procurement process was centralized also for the security services.

The call for tender was prepared by the Romagna LHA and mandatorily included the social clause for occupational stability, as established by the 2019 agreement. The new economic operator that won the contract re-employed all the stewards previously employed in the security services in the four LHAs, as required by the social clause set in the 2019 Memorandum of Understanding. Nevertheless, it applied the sectoral National Collective Agreement for doorkeepers and concierges, a NCA that provided for lower wage levels compared to the private security NCA, considered the main collective agreement in the sector signed by the most representative trade unions and employers' association in the security sector. As reported by a union official from CGIL involved in the action "*we shifted from a contract that wasn't much of a deal for the workers, but that paid more than seven euros per hour, gross, to a contract that pays less than five euros per hour, always gross*".

The stewards reported to the trade unions in the sector (Filcams Cgil, Fisascat Cisl, and Uiltrasporti) the reduction in salary levels they were experiencing. **The sectoral trade unions in the security industry (Filcams Cgil, Fisascat Cisl, and Uiltrasporti) by leveraging on the bargaining right set in 2019 the Memorandum of Understanding convened the LHA to discuss this critical issue of the contract**. At its time, the LHA convened at the bargaining table and also the economic operator by leveraging on the protocol and jointly reached a trilateral agreement to solve the issue of wage reduction. **The LHA agreed to increase the hours of security service acquired through outsourcing as a way to inject an adequate amount of financial resources at the disposal of the economic operator to increase the salary levels of the stewards employed in the contract**. The economic operator accepted to exclusively invest the extra money allocated by the contracting authority to top-up stewards' salaries up to the wage levels established by the private security NCA.

This dispute demonstrates the effective capacity of the Memorandum of Understanding to safeguard working conditions and wages in public procurement when enforced by the local actors, as reported by a union official from Fisascat Cisl:

It is clear that this dispute here would not have been resolved if we had not had that agreement with the Romagna LHA: it gave a hand in the solution of the dispute in very concrete terms, and therefore this agreement, in my opinion, is a good example of application and functioning and assumption of responsibility concerning the procurement practices (Interview Fisascat CISL, 4/2023).

Resources and references

List of Interviews

Date **(MM/YY)**	**Organisation** + details/explanation (+ *interviewees' role [where necessary/useful])*
06/22	**Filcams CGIL – Emilia Romagna** trade union, regional level (*2 interviewees, regional responsible for cleaning + regional responsible for private security*)
05/22	**CGIL – Emilia Romagna** trade union, regional level, regional responsible for legality and public procurement
04/23	**Fisascat CISL – Emilia Romagna** trade union, regional level, regional secretary
03/2023	**Filcams CGIL – Ravenna** trade union, local level
05/2023	**LHA Romagna** public authority, local level, head of the procurement department
03/2023	**LHA Romagna** public authority, local level, head of industrial relations department

Documents

- Memorandum of Understanding on public procurement in the regional healthcare system, signed by the Emilia-Romagna region, the regional Health Policy department and CGIL, CISL, UIL Emilia-Romagna (28th December 2017)
- Memorandum of understanding on public procurement, signed by the Romagna LHA and CGIL, CISL, UIL of Forlì, Cesena, Ravenna and Rimini and Romagna (30th September 2019)

Conclusions

This report has focused on BDW initiatives developed in Italy in response to the protection gaps experienced by workers employed in contracted out public services, with a particular focus on the cleaning and security industries. Through the analysis of 35 in-depth interviews with relevant testimonies, we have shown how public procurement has increasingly been thematized in Italy as a potentially detrimental pressure on employment conditions. **Several critical protection gaps in the cleaning and security industries are, in fact, crucially connected with public procurement and how it unfolds: the succession of tenders jeopardizes occupational continuity and continuity of employment conditions, with the risk of downward spirals in terms of number of hours worked, seniority, overtime, pace of work; cost cutting pressures on part of public clients and the hefty competition experienced by companies in the two industries in order to win public tenders increase the likelihood of them applying "pirate" collective agreements and/or not respecting employment standards set by law or by collective agreements**.

These issues have been partially taken up by the new Italian normative framework defined by the Code of public contracts in 2016, as an implementation of EU directive 2014/24/EU, and even more strongly in its 2023 reform. Hence, important elements in the direction of BDW have been incorporated in the legal infrastructure regulating public procurement.

However, the new national legal framework on public procurement was anticipated by and implemented through local level initiatives, often spurred by trade unions, in the form of territorial Protocols for the management of public contracts and the definition of labour clauses. In fact, the main distinctive characteristic of BDW initiatives in Italy is that they are developed as and develop a new arena of industrial relations, in particular due to the action of trade unions.

In this report we have explored what are the characteristics of these initiatives, how they came about (i.e. their politics), the constrains they are exposed to, as well as the potentials and limits in terms of efficacy. **The four case studies we explored share a set of similarities in this regard. First, they all combine substantive and procedural elements of regulation in order to make sure that public procurement is able to BDW**. In fact, all four experimentations focus on the definition of substantive standards (most notably clauses of occupational continuity and on the selection of applicable collective agreements), but very significantly also procedural ones. The key indications coming from these cases, in fact, is that **in order to make sure that the BDW infrastructure is effective, it needs to take on board crucial workers and their representatives**. Hence, in all the four cases examined, mechanisms for the preventive involvement of trade unions in public procurement are set up that ensure both an ex-ante control (i.e. a control on the content of procurement documents to ensure that they do not include aspects/provisions that might negatively impinge upon working conditions) and ex-post control (i.e. a control on the implementation/enforcement of provisions during the supply of the

service to ensure compliance and resolve potential issues that might arise). Hence, we can argue that **these cases portray a model of BDW which is strongly reliant on industrial relations actors, in the setting up, design and implementation/enforcement of the experimentation.**

The analysis of the four cases has allowed to identify the enabling conditions for these initiatives. They are, in fact, all connected with highly visible cases of deterioration of working conditions connected to public procurement, which allowed trade unions to mobilize outrage and spurred a request of intervention, and favourable political conditions (being it in the form of territorial traditions of social concertation) or of electoral competition. In all cases, these favourable conditions were mobilized by trade unions to ask for sub-national regulation in the form of local laws or agreements (protocols). These requests are part of a specific strategy on behalf od trade unions which arises from the acknowledgement of the difficulty in acting ex-post (i.e. when procurement has taken place) in defence of working conditions in contracted-out services and the importance of acting ex-ante (i.e. before defining the tendering process). Many relevant issues (e.g. resources, type of service required and organistion of the service) are set in the procurement contracts or during the procurement process and therefore the room of manouvre of private companies in defining employment conditions is strongly constrained. Hence, it is important to act ex-ante, ensuring that the conditions set in tenders/procurement contracts (budget, type of labour clause) allow to grant workers adequate conditions.

The four cases also allow to elaborate on the effectiveness and the limits of these instruments of regulation.

On the one hand, they have been effective in addressing some of the protection gaps experienced by workers in the cleaning and security industry. In particular, **clauses on occupational continuity have been key in reducing employment insecurity for contracted-out workers. Furthermore, procedural provisions (the institutionalization of the pre-emptive involvement of trade unions in procurement) allows unions to exert control on tendering conditions before they become employment conditions issues**. They also also give a platform to foster further negotiations and the monitoring of the execution of the services. Hence, such instruments make a difference compared to the status-quo ante.

On the other hand, "market-making" rules and practices around procurement act as a strong barrier to their effectiveness. Compliance with EU and national legal regulation limits the possibility to introduce stronger protections, such as a more stringent indication of reference collective agreement (which, until the new Code on Public contracts of 2023 was considered not compatible with the principle of freedom of choice of the collective agreement) and more stringent labour clauses. Moreover, these instruments cannot compensate poor standards setting, such as low collectively agreed wages. Hence, through our empirical analysis we have shown that socially responsible public procurement ("market-embedding") only partially compensates for the

detrimental effects of public procurement ("market-making") as the fundamental logics of marketization remains intact. The two logics are, in fact, in a structural tension and the latter tends to predominate.

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List of Interviews

Date (MM/YY)	Organisation + details/explanation (+ *interviewees' role [where necessary/useful]*)
02/2022	**ITACA - Institute for innovation and transparency in public procurement**, technical body, national level *(2 interviewees)*
02/2022	**ANAC - National anti-corruption authority,** technical body, national level
04/2022	**ASSIV**, employers' association in the private security industry, national level, (*president)*
03/2022	**Legacoop**, employers' association in the cleaning industry, national level *(head of the industrial relations department)*
03/2022	**Labour law scholar**, University of Milan *(expert)*
02/22 and 05/22	**Filcams CGIL** trade union, national level (and former regional level)
05/22	**Filcams CGIL – Toscana** trade union, regional level, participant to Estar technical committee
06/22	**Estar (Ente di support tecnico amministrativo regionale)**, Tuscany region = Regional administrative technical support body for procurement (*head of the industrial relations division*)
06/22	**Cleaning company 'BLUE'** (pseudonym), with contracts in the Tuscany region *(head of industrial relations*)
07/22	**Cleaning cooperative company 'GREEN'** (pseudonym), with contracts in the Tuscany region (*president*)
10/22	**Uiltrasporti – Toscana** trade union, regional level, participant to Estar technical committee
12/22	**Filcams CGIL – Firenze** trade union, local level, responsible for security services
06/23	**Estar (Ente di support tecnico amministrativo regionale)**, Tuscany region = Regional administrative technical support body for procurement (*2 interviewees, Head of the Goods and Services Acquisition Department + head of the industrial relations division*)
05/22	**Non-participant observation to a meeting of the Estar technical committee**
12/22	**Filcams CGIL – Trento** trade union, local level
01/22	**Filcams CGIL** – Trento trade union, local level, responsible for security services
02/23	**Confindustria Trento**, employer organization *(3 interviewees, Head of the "Employment and Welfare" division + responsible for "Contracting service" + legal advisor)*
06/23	**APAC (Agenzia Provinciale per gli Appalti e i Contratti)**, Province of Trento = Provincial administrative technical support body for procurement *(general director)*
06/23	**FISASCAT CISL– Trento** trade union, local level *(2 interviewees, responsible for cleaning and security services)*
06/22	**Filcams CGIL – Emilia Romagna** trade union, regional level *(2 interviewees, regional responsible for cleaning + regional responsible for private security)*

05/22	**CGIL – Emilia Romagna** trade union, regional level, regional responsible for legality and public procurement
11/22	**FISASCAT CISL – Emilia Romagna** trade union, regional level, regional secretary
07/23	**Intercent-ER (Regional agency for public procurement**), region Emilia **Romagna**, (*general regional director*)
06/22	**Filcams CGIL – Emilia Romagna** trade union, regional level (*2 interviewees, regional responsible for cleaning + regional responsible for private security*)
03/2023	**Filcams CGIL – Ravenna** trade union, local level
05/2023	**LHA Romagna** public authority, local level (*head of the procurement department*)
03/2023	**LHA Romagna** public authority, local level (*head of industrial relations department*)

Annexes

Part 1

Table 1a. Gender distribution of workforce employed in the two industries (percentages) (years 2014-20)

	Men	Women
General cleaning of buildings (8121)	23.61	76.39
Other building and industrial cleaning activities (8122)	58.50	41.50
Other cleaning activities (8129)	44.08	55.92
Private security activities (8010)	87.68	12.32

Source: European Union Labour Force Survey (EU-LFS)

Table 2a. Percentage of employed in each industry by migration status (years 2014-20)

	Native	Migrant
General cleaning of buildings (8121)	70.31	29.69
Other building and industrial cleaning activities (8122)	72.28	27.72
Other cleaning activities (8129)	88.95	11.05
Private security activities (8010)	94.22	5.78

Source: European Union Labour Force Survey (EU-LFS)

Table 3a. Percentage of subordinated\self-employed workers in each sector (years 2014-20)

	Subordinated workers	Self-employed
General cleaning of buildings (8121)	90.25	9.75
Other building and industrial cleaning activities (8122)	91.50	8.50
Other cleaning activities (8129)	92.37	7.63
Private security activities (8010)	97.69	2.31
All employed individuals	**75.72**	**24.28**

Source: European Union Labour Force Survey (EU-LFS)

Table 4a. Percentage of employed in each sector by open-ended\fixed-term contracts (years 2014-20)

.	Open-ended contract	Fixed-term contract
General cleaning of buildings (8121)	86.52	13.48
Other building and industrial cleaning activities (8122)	87.06	12.94
Other cleaning activities (8129)	76.94	23.06
Private security activities (8010)	83.60	16.40
All employed individuals	**85.13**	**14.87**

Source: European Union Labour Force Survey (EU-LFS)

Table 5a. Reason why you have chosen fixed-term contracts in the two industries (percentage vales; only on fixed-term employees) (years 2014-20)

	Training	Probation period	Seasonal work	Occasional work	Project work	Vacancy	Other, do not know
General cleaning of buildings (8121)	3.07	12.89	11.27	49.23	4.42	8.57	10.55
Other building and industrial cleaning activities (8122)	4.41	16.18	11.76	48.53	2.94	5.88	10.29
Other cleaning activities (8129)	2.29	5.05	35.32	36.70	8.26	3.67	8.72
Private security activities (8010)	5.37	19.10	11.64	42.69	3.28	8.06	9.85

Source: European Union Labour Force Survey (EU-LFS)

Part 2

Annex 1b. National table of standard labour costs in the cleaning industry (professional qualification: workman; year 2022)

MINISTERO DEL LAVORO E DELLE POLITICHE SOCIALI
Direzione Generale delle Relazioni Industriali e dei Rapporti di Lavoro - Div. IV

COSTO MEDIO ORARIO DEL PERSONALE DIPENDENTE DA IMPRESE ESERCENTI SERVIZI DI PULIZIA, DISINFESTAZIONE, SERVIZI INTEGRATI/MULTISERVIZI

NAZIONALE — **OPERAI** — **LUGLIO 2022**

	1	2 (Par 109)	2 (Par 115)	3	4	5	6
A-Elementi retributivi annui							
Retribuzione tabellare	7.917,96	8.630,52	9.105,72	9.343,08	10.134,84	11.084,88	13.776,96
Ind. contingenza	6.152,52	6.167,52	6.167,52	6.185,04	6.210,00	6.222,36	6.297,24
Anzianità forfettaria di settore	612,24	652,68	666,00	698,16	757,80	801,24	995,88
E.D.R. - ex prot.23/7/1993	123,96	123,96	123,96	123,96	123,96	123,96	123,96
TOTALE "A"	**14.806,68**	**15.574,68**	**16.063,20**	**16.350,24**	**17.226,60**	**18.232,44**	**21.194,04**
B-Oneri aggiuntivi							
Festivita retribuite (2 giorni)	114,12	120,04	123,80	126,01	132,77	140,52	163,35
Tredicesima mensilita'	1.233,89	1.297,89	1.338,60	1.362,52	1.435,55	1.519,37	1.766,17
Quattordicesima mensilita'	1.223,56	1.287,56	1.328,27	1.352,19	1.425,22	1.509,04	1.755,84
TOTALE "B"	**2.571,57**	**2.705,49**	**2.790,67**	**2.840,72**	**2.993,54**	**3.168,93**	**3.685,36**
C-Oneri previd. e assist.							
Inps (29,44%)	5.341,44	5.381,68	5.550,58	5.649,82	5.952,81	6.300,56	7.324,50
Inail - Class. 0432 Terziario (3,4683%)	629,28	634,02	653,92	665,61	701,30	742,27	862,90
TOTALE "C"	**5.970,72**	**6.015,70**	**6.204,50**	**6.315,43**	**6.654,11**	**7.042,83**	**8.187,40**
D-Altri Oneri							
Trattamento fine rapporto	1.287,28	1.354,09	1.396,58	1.421,55	1.497,79	1.585,29	1.842,92
Rivalutazione T.F.R. (4,359238%)	218,85	230,21	237,43	241,68	254,64	269,52	313,32
Fondo di Previdenza complementare (adesione al 35%)	40,22	41,27	42,18	42,50	44,25	45,12	50,37
Assistenza sanitaria integrativa	79,20	79,20	79,20	79,20	79,20	79,20	79,20
Bilateralità	6,00	6,00	6,00	6,00	6,00	6,00	6,00
TOTALE "D"	**1.631,55**	**1.710,77**	**1.761,39**	**1.790,93**	**1.881,88**	**1.985,13**	**2.291,81**
COSTO MEDIO ANNUO	**24.980,52**	**26.006,64**	**26.819,76**	**27.297,32**	**28.756,13**	**30.429,33**	**35.358,61**
RETRIB. MENSILE	**1.233,89**	**1.297,89**	**1.338,60**	**1.362,52**	**1.435,55**	**1.519,37**	**1.766,17**
RETRIB. ORARIA	**7,13**	**7,50**	**7,74**	**7,88**	**8,30**	**8,78**	**10,21**
COSTO MEDIO ORARIO	**15,80**	**16,45**	**16,96**	**17,27**	**18,19**	**19,25**	**22,36**
IRAP (3,9%)(*)	0,61	0,63	0,65	0,66	0,70	0,74	0,86
TOTALE COSTO MEDIO ORARIO (lavoratori a t.d.)(**)	**16,57**	**17,24**	**17,78**	**18,10**	**19,07**	**20,18**	**23,45**

Source: Ministry of Labour and Social Policies

Annex 2b. National table of standard labour costs in the security industry

(daytime shift; year 2016)

MINISTERO DEL LAVORO E DELLE POLITICHE SOCIALI

Direzione Generale della Tutela delle Condizioni di Lavoro e delle Relazioni Industriali - Div. IV

COSTO MEDIO ORARIO PER IL PERSONALE DIPENDENTE DA ISTITUTI ED IMPRESE DI VIGILANZA PRIVATA E SERVIZI FIDUCIARI

NAZIONALE	SERVIZIO TECNICO - OPERATIVO - DIURNO									MARZO 2016
A - Elementi retributivi annui	**VI**	**V**	**IV**	**IV ex IVS**	**III**	**III ex IIIS**	**II**	**I**	**I ex IS**	**Q**
Paga base tabellare conglobata	12.868,08	14.576,64	15.346,56	15.346,56	17.079,72	17.079,72	19.067,52	20.328,36	20.328,36	23.431,32
Scatti triennali	471,84	492,48	507,12	507,12	539,04	539,04	571,92	626,88	626,88	751,20
S.a.P. da riclassificazione	0,00	0,00	0,00	758,16	0,00	692,56	0,00	0,00	1.185,72	0,00
TOTALE "A"	**13.339,92**	**15.069,12**	**15.853,68**	**16.611,84**	**17.618,76**	**18.511,32**	**19.639,44**	**20.955,24**	**22.140,96**	**24.182,52**
B - Oneri aggiuntivi										
Tredicesima mensilita'	1.124,06	1.268,16	1.333,54	1.396,72	1.480,63	1.555,01	1.649,02	1.758,67	1.857,48	2.027,61
Quattordicesima mensilita'	1.111,66	1.255,76	1.321,14	1.384,32	1.468,23	1.542,61	1.636,62	1.746,27	1.845,08	2.015,21
Indennità realtive ai servizi prestati ex art. 108	148,85	148,85	148,85	148,85	148,85	148,85	148,85	148,85	148,85	148,85
Indennità di lavoro domenicale ex art. 108	173,95	173,95	173,95	173,95	173,95	173,95	173,95	173,95	173,95	173,95
TOTALE "B"	**2.558,52**	**2.846,72**	**2.977,48**	**3.103,84**	**3.271,66**	**3.420,42**	**3.608,44**	**3.827,74**	**4.025,36**	**4.365,62**
C - Oneri previdenziali ed assistenziali										
Inps - (29,88%)	4.750,45	5.353,25	5.626,75	5.891,05	6.242,06	6.553,20	6.946,47	7.405,15	7.818,50	8.530,18
Inail - (5,50%)	874,41	985,37	1.035,71	1.084,36	1.148,97	1.206,25	1.278,63	1.363,06	1.439,15	1.570,15
TOTALE "C"	**5.624,86**	**6.338,62**	**6.662,46**	**6.975,41**	**7.391,03**	**7.759,45**	**8.225,10**	**8.768,21**	**9.257,65**	**10.100,33**
Trattamento di Fine Rapporto	1.153,75	1.303,19	1.370,99	1.436,51	1.523,53	1.600,66	1.698,15	1.811,87	1.914,33	2.090,77
Rivalutazione T.F.R. - (1,500000%)	17,31	39,10	123,39	129,29	137,12	144,06	152,83	163,07	172,29	188,17
Una Tantum	150,00	150,00	150,00	150,00	150,00	150,00	150,00	150,00	150,00	150,00
Fondo di previdenza complementare (adesione al 40%)	31,80	35,83	37,66	39,43	41,78	43,86	46,50	49,57	52,33	57,10
FASIV/Quas	120,00	120,00	120,00	120,00	120,00	120,00	120,00	120,00	120,00	350,00
Contributo di solidarieta L.166/91 (10% del Fondi)	15,18	15,58	15,77	15,94	16,18	16,39	16,65	16,96	17,23	40,71
COASCO (ex art. 8)	37,53	42,52	44,76	44,76	49,82	49,82	55,61	59,29	59,29	68,34
Polizza Infortuni (ex art 128)	60,00	60,00	60,00	60,00	60,00	60,00	60,00	60,00	60,00	60,00
Rinnovo porto armi e licenza (ex art. 120)	185,40	185,40	185,40	185,40	185,40	185,40	185,40	185,40	185,40	185,40
Divisa (ex art. 119)	360,50	360,50	360,50	360,50	360,50	360,50	360,50	360,50	360,50	360,50
COSTO ANNUO PARZIALE	**23.654,77**	**26.566,58**	**27.962,09**	**29.232,92**	**30.525,78**	**32.421,88**	**34.318,62**	**36.527,85**	**38.515,34**	**42.199,46**
COSTO ORARIO PARZIALE	**14,99**	**16,84**	**17,72**	**18,53**	**19,60**	**20,55**	**21,75**	**23,15**	**24,41**	**26,74**
Costi derivanti da disposizioni di legge	873,00	873,00	873,00	873,00	873,00	873,00	873,00	873,00	873,00	873,00
Oneri Sicurezza	473,10	531,33	559,24	584,66	618,52	648,44	686,37	730,56	770,31	843,99
COSTO ANNUO	**25.000,87**	**27.970,91**	**29.394,33**	**30.690,58**	**32.417,30**	**33.943,32**	**35.877,99**	**38.131,41**	**40.158,65**	**43.916,45**
COSTO ORARIO	**15,84**	**17,73**	**18,63**	**19,45**	**20,54**	**21,51**	**22,74**	**24,16**	**25,45**	**27,83**

	Sistema 5+1	Sistema 6+1+1
Ore annue teoriche	**2128**	**1987**
Ore annue mediamente non lavorate così suddivise:		
Ferie (25/23 giorni)	175	167
Festivita' (11 giorni)	77	80
Permessi annui retribuiti (20 gg - ex artt. 76 e 84)	140	0
Assemblee, permessi sindacali,diritto allo studio	25	25
Malattia, infort., maternita'	126	130
Formazione, permessi T.U. 81/08 e succ. modif. (1 giorno)	7	7
Totale ore non lavorate	550	409
Ore annue mediamente lavorate	**1578**	**1578**

Note:

- **Il costo annuo minimo aziendale della sicurezza individuale (D.P.I./giubbotto, visite mediche, formazione l 81/2008, radio) è di 370 euro.**
- **Inquadramento nel settore terziario ai sensi della legge 662/96.**
- **Al totale dei costi si devono aggiungere gli eventuali integrativi territoriali.**

Source: Ministry of Labour and Social Policies