

**REPORT****Article 22 of the Constitution of the ILO**

Report for the period 1 June 2011 to 31 May 2016, made by the **Government of Finland**

on the

**LABOUR CLAUSES (PUBLIC CONTRACTS) CONVENTION, 1949,  
No. 94**

(ratification registered on 22 December 1951)

**Direct Requests, 2011**

*Articles 1(1) and 2 of the Convention. Inclusion of labour clauses in public contracts. **The Committee therefore requests the Government to indicate the measures, taken or envisaged, to ensure the inclusion of labour clauses in all public contracts falling within the scope of the Convention.***

A comprehensive reform of Finnish public procurement legislation is currently in its preparatory stage. The Government has submitted its procurement legislation proposal to Parliament on 22 June 2016. This legislative proposal aims to expand the compliance obligation for terms of employment so that it includes *every* agreement type that is covered by ILO Convention no. 94:

“A public works contract awarded by a central government authority to a private employer shall be accompanied by a clause according to which the work relating to the public works contract shall comply with the minimum terms of employment which must be observed in similar work pursuant to Finnish law and collective agreements.”

*Article 2 (4). Keeping tenderers informed. **Noting that, pursuant to this provision, informing tenderers of the labour clauses seems to be left to the discretion of the contracting authority, the Committee requests the Government to provide additional information on how it is ensured in law and in practice that the persons tendering for contracts actually have advanced knowledge of the terms of the labour clauses, as required under Article 2(4) of the Convention.***

The open and free database that is maintained by the Ministry of Justice ([www.finlex.fi](http://www.finlex.fi)) contains the texts for the generally applicable collective agreements. In addition, the site also publishes agreements between the central labour market organisations, and compliance with these agreements as part of the collective agreements is stated in every collective agreement. The same website also contains every provision that is applicable in Finland and that affect the contents of the terms of employment. For example, in notices on public procurements, contracting authorities are provided with extensive possibilities for referring to the collective agreements and legislation in question in different parts of the notification forms.

*Article 4. Posting of notices.* The Committee notes that neither the Public Procurement Act nor the Contractor’s Liability Act seem to provide for the posting of notices in conspicuous places at the workplace with a view to informing the workers engaged in the execution of public contracts of their conditions of work, as required under this Article of the Convention. In this regard, the Committee notes the comments made by SAK according to which no regulation exists that would

provide employees with the right to be informed whether a labour clause has been included in a public contract and, consequently, employees do not have the opportunity to access information on the detailed content of a possible labour clause if the state employer or private business does not wish to provide this information. ***The Committee requests the Government to indicate the measures, taken or envisaged, to ensure that the workers engaged in the execution of public contracts are informed of the working conditions applicable to them through the posting of notices at the workplace, as prescribed by Article 4(a)(iii) of the Convention.***

According to chapter 13, section 10 of the Employment Contracts Act (55/2001), the employer shall keep the generally applicable collective agreement freely available to employees at the place of work. If the document in question is something other than a generally applicable collective agreement, on the basis of section 12 of the Collective Agreements Act (436/1946), the availability requirement also applies to every employer who is bound by a collective agreement, and they must post up a copy the collective agreement in the workplace.

In addition, the Working Hours Act (605/1996) and the Annual Holidays Act (162/2005) require that the employer keep a working hours and annual holiday register. This requirement also applies to any company that uses temporary agency work.

***Article 5. Penalties.*** The Committee notes the Government's indication that under section 9 of the Contractor's Liability Act, a contractor failing to comply with his duties as an employer is liable to a fine, also called "negligence fee", ranging from €1,600 to €16,000. ***The Committee requests the Government to provide further information on all measures and sanctions applicable in case of infringement of the relevant legislation, and to indicate in particular whether the withholding of contracts and/or the withholding of payments under the contract may be imposed, as provided for under this Article of the Convention.***

In accordance with ILO Convention no. 94, the requirement to include compliance entries in procurement agreements is included in the Act on Public Contracts (348/2007), which is being reviewed in the aforementioned manner. The Act on Public Contracts also lays down the legal remedies for all violations of the provisions that are included in the Act. If a provision of the Act on Public Contracts is violated and a complaint is made to the Market Court (the special court tasked with handling procurement cases), the Market Court has the authority to do the following:

- 1) cancel a contracting authority's decision in part or in full;
- 2) forbid the contracting authority from applying an incorrect section in a document relating to the contract or otherwise pursuing an incorrect procedure;
- 3) require the contracting authority to rectify an incorrect procedure;
- 4) order the contracting authority to pay compensation to a party who would have had a genuine chance of winning the contract if the procedure had been correct.

Changes made during the reporting period to the Act on the Contractor's Obligations and Liability When Work is Contracted Out are explained in more detail in parts II-V.

***Article 4(b)(ii) and Part V of the report form. System of inspection.*** ***The Committee requests the Government to provide additional information on the measures taken to ensure the effective implementation of the national legislation giving effect to the Convention. It would also be grateful if the Government would communicate, together with its next report, up to date information on the manner in which the Convention is applied in practice, including, for example, extracts from reports of the inspection services, statistics on the average number of***

***public contracts granted annually and the approximate number of workers engaged in their execution, as well as any other particulars which would enable the Committee to have a clear understanding of the manner in which the Convention is applied in practice.***

The labour protection service of the Regional State Administrative Agency for Southern Finland supervises compliance with the Act on the Contractor's Obligations and Liability when Work is Contracted Out (1233/2006) for the whole of Finland. The contractor liability inspectors work actively in cooperation with bodies such as the police force, tax administration and Finnish Centre for Pensions to develop the prevention of the grey economy e.g. by providing their inspection observations to other authorities.

The following is a list of all carried out contractor liability inspections that covered every sector:

2011	675 inspections
2012	885 inspections
2013	1,631 inspections
2014	1,680 inspections
2015	1,846 inspections

These inspection numbers do not specify the number of inspections that focused on public administration. In 2016, the contractor liability inspections began utilising the Occupational Safety and Health Administration's Vera information system, and, in the future, Vera can provide specific information on those inspections that focused on public administration.

## **I - LEGISLATION AND REGULATIONS**

Act on the amendment of the Act on the Contractor's Obligations and Liability When Work Is Contracted Out (496/2012), entry into force on 01/09/2012.

Act on the amendment of section 6 of the Act on the Contractor's Obligations and Liability When Work Is Contracted Out (874/2012), entry into force on 01/01/2013.

Act on the amendment of section 5 of the Act on the Contractor's Obligations and Liability When Work Is Contracted Out (794/2014), entry into force on 01/12/2014.

Act on the amendment of the Act on the Contractor's Obligations and Liability When Work Is Contracted Out (678/2015), entry into force on 01/09/2015.

*Translation on Act on the Contractor's Obligations and Liability When Work Is Contracted Out is available as amended by several Acts, including 678/2015 on the following link:*

<http://www.finlex.fi/fi/laki/kaannokset/2006/20061233>

## **II – V**

*Amendments on Act on the Contractor's Obligations and Liability When Work Is Contracted Out*

Reform 1 Sep 2012

The Act on the contractor's liability is applied when a contractor uses temporary agency workers or labour based on a subcontracting agreement. According to the act, the contractor is liable to check

its contractual partner's ability to take care of its legal obligations. The provisions also aim to ensure that subcontractors and enterprises leasing labour adhere to their obligations as employers. The established obligations therefore also aim to ensure that minimum terms of employment of subcontractors and temporary agency workers are observed.

The contractor's liability law is generally applied to all industries, however, certain specific regulations, which largely entered into force in September 2012, apply to construction.

The purpose of the contractor's liability to perform checks is to give the contractor as accurate information as possible on whether the contracting party is reliable and whether it acts in compliance with legislation. In line with the 2012 amendment, a contractor in the construction industry will, in most situations, be obliged to request that the subcontractor provide the accounts and certificates required by the contractor's liability act. These include information related to the entry of the enterprise into various registries, pension insurance, tax payment, and the collective agreement or other principal terms of employment applicable. After the amendments, it has also been necessary to check for accident insurance. In construction, these accounts must be also requested from companies with established operations, or when the contractual relationship between the contractor and the subcontractor can be regarded as established.

Efficiency in enforcement of this act was improved through the adoption of a higher fine for negligence in construction activity in 2012. The minimum fine is 16,000 EUR and the maximum 50,000 EUR. This fine can be levied if the contractor has either made an agreement with a party that is barred from conducting business, or is aware that the contracting party has no intention of fulfilling its legal obligations. The Act on Public Procurement was also amended to ensure that, in future, all contracting units referred to in the act shall, within the terms of the construction contract, require that the building contractor comply with the minimum terms of employment. Defined by legislation and collective agreements, the minimum terms of employment address issues such as pay, working hours, and holiday.

#### *Reform 1 Sep 2015*

The purpose of the reform was to clarify the application of legislation and make it easier for contractors to observe their obligations. The provisions are also being standardised to apply to all industries. There are specifications to e.g. the contractor's checking obligations and negligence fines. The contractor's obligation to check is expanding to occupational healthcare. In addition, the pension security required for workers posted from abroad is defined in detail.

The contractor can also use the public tax debt register in looking for necessary tax payment information concerning the contracting party. In addition, if a foreign company as a business ID in Finland, besides procuring accounts from the company's domicile, the contractor shall ensure that the company in question is registered in tax-related registers in Finland. In addition, the contractor shall review the company's tax debt details.

As regards pension insurance information, provisions are added to the law concerning workers posted from abroad. The contracting party shall provide the contractor with an account on the determination of social security before commencing work. The contractor, in turn, shall ensure that the contracting party submits the required information. As regards construction, a provision would be laid down in the law, stipulating that the contractor is perpetually obliged to ensure that the workers posted by the contracting party have valid certificates on the determination of their social security. A fine for negligence can be imposed on the contractor for neglecting this responsibility.

Consequences of a failure to perform the checks were also amended.

Both the standard and higher fines for negligence will be increased and the higher fine will be applied to all contracts under the contractor's liability act.

If the checks required under the act are not performed, the contractor must pay a negligence fee, which is between 2,000 and 20,000 euros.

The raised negligence fee may be imposed if the contractor concludes a contract for work by a trader who has been barred from conducting business. It may also be imposed if, in spite of fulfilling its obligation to check, the contractor shows a clear disregard for the fact that the contracting partner has no intention of complying with its employer or other obligations. In that case the negligence fee is between 20,000 and 65,000 euros. The gravity of the negligence, among other factors, will be considered in determining the size of the sanctions. The decision on the payment is made by the Regional State Administrative Agency under whose jurisdiction the occupational health and safety authority supervising compliance with the act falls.

## VI

A copy of this report has been sent to the following labour market organisations:

1. The Confederation of Finnish Industries (EK)
2. The Central Organization of Finnish Trade Unions (SAK)
3. The Finnish Confederation of Salaried Employees (STTK)
4. The Confederation of Unions for Academic Professionals in Finland (Akava)
5. The Commission for Local Authority Employers (KT)
6. The State Employer's Office (VTML)
7. The Federation of Finnish Enterprises
8. The Commission for Church Employers

### **Statements from the labour market organisations**

*The Central Organization of Finnish Trade Unions (SAK),  
The Finnish Confederation of Salaried Employees (STTK) and  
The Confederation of Unions for Academic Professionals in Finland (Akava)*

We refer to the joint statement by SAK, Akava and STTK in 2006 which includes inter alia a following note:

“We would like to underline the lack of clarity in the interpretation of central authorities. In Finland Convention 94 as well as the Recommendation 84 are not seen to apply to contracts concluded by municipal authorities. However, in Finland governing system principles governing municipal administration and the duties of the municipalities as well as the provisions on the principles governing tax liability and the grounds for the municipal tax are laid down by the State (Parliament Act). State also provides funds for municipalities to fulfil their duties. “