

Limiting the subcontracting chain: Preventing social dumping and unfair competition in Europe's construction sector

Summary

The European Builders Confederation (EBC) proposes four initial recommendations to address challenges in subcontracting within the construction sector. With 94% micro companies and a total of 99.9% SMEs¹, these small businesses are the pivotal players in the sector. First, EBC suggests that the European Commission (EC) carefully explores legislation to limit the levels of subcontracting in public contracts. Second, we call for the enforcement of existing EU laws to protect subcontractors. Third, EBC advocates revising Regulation EC 883/2004 on the coordination of social security systems to combat fraud and social dumping, and fourth, we recommend strengthening the European Labour Authority (ELA) to better monitor compliance in subcontracting chains and promote best practices.

General Remarks

The use of subcontracting has long been taken up as a useful economic scheme, widely used in the construction sector. Many SMEs and crafts actively participate in subcontracting chains. Subcontracting can have benefits when regulated and applied adequately, such as a high level of specialisation within and among construction SMEs, a diversity of specialised trades, encouraged collaboration among specialists in different fields, or the inclusion of local construction craftsmen in bigger projects.

However, these chains can be rendered very long in construction and infrastructure projects, with a cascade system sometimes used to abuse social and contractual norms. This phenomenon has been observed to result in significant adverse consequences in terms of economic viability, playing field, liability or reputation for our SMEs. As well as for construction workers, who can face significant challenges regarding working conditions, remunerations, safety or mobility.

Indeed, from the perspective of small construction companies acting as subcontractors for larger firms, a troubling trend to cut labour costs has been observed for decades where large companies delegate fully or partially labour-intensive tasks as specialized work. This practice often leads to the involvement of fraudulent firms using loopholes in cross-border subcontracting schemes to misuse wage competition and provoke social dumping. These companies create complex subcontracting chains to obscure employment relationships, avoid tax and social security contributions, dodge joint and several liability, and evade scrutiny from labour inspectors. Many of these businesses are merely intermediaries or letterbox companies that lack genuine, productive business operations, and even frequently disappear.

Cascade subcontracting also leads to a lack of quality and claims, both detrimental to the end customer, the objectives of the environmental and energy transition and the effectiveness of public policies, particularly in terms of energy-efficient renovation of buildings.

¹ European Commission, [Annual Report on European SMEs 2023/2024](#), 2024

Subcontracting affects the entire value chain, with prices plummeting from one layer to the next, penalising very small construction companies at the end of the chain which consequently may no longer have the financial margins needed to comply with specifications, develop their businesses in the long term or invest in their own digital and green transition, notably to ensure the quality of materials or manage waste. Abusive subcontracting can also jeopardise the safety of employees on building sites, with subcontracted companies being put under pressure in such a way that, sometimes, they no longer have the means to invest in the material needed to ensure employee safety.

According to the European Labour Authority (ELA)², during cross-border inspections the main challenges identified related to the lack of transparency of long contracting chains, the existence of letterbox companies or undeclared and under-declared work, as well as an increasing use of third-country nationals.

Despite all this, there is no specific European legislation on subcontracting or subcontracting in the construction sector, but a raft of scattered provisions. At the European level, a constellation of legislation affects subcontracting, notably the Directives on the posting of workers 2018/957/EU and on public procurement 2014/24/EU (PPD), as well as Regulation 883/2004 on the coordination of social security systems. At national level, some Member States have introduced relevant frameworks, with e.g., Spain standing out with a specific law on subcontracting in construction dating from 2006³, or Belgium with a limitation for subcontracting in public contracts since 2017 with no results in making long chains more predictable, while the absence of legislation or a mix of differing, binding and non-binding regulation applies in other Member States. With compliance monitoring by public authorities and inspections remaining high challenges at national level.

Such abusive subcontracting practices thus hinder the internal market, creating extremely unfair competition for local construction SMEs and crafts, reduce the quality of projects, threaten the workforce, and damage the overall image of the sector. In this context, EBC and its construction SMEs put forward the below policy recommendations:

Policy Recommendations

1. Investigate the potential necessity and added value of a dedicated EU legislative vehicle which limits the number of subcontracting levels in construction, focusing on public procurement.

Abuses linked to the opacity and length of value chains in the construction sector have been identified, notably by the ELA. It is thus worth diving into exploratory scenarios to potentially limit these chains. Defining a limit for the number of subcontracting levels in public contracts could not only facilitate labour inspections and compliance with the rules for *bonafide* companies, but also reduce administrative procedures and costs for both Member states and construction companies. As diverse national frameworks exist, these should first be carefully mapped, assessed, and their effectiveness analysed before any legislative action, with a solid consultation of all relevant construction stakeholders, especially smaller companies. All the above should however consider the need to maintain a diversity of specialisations in the sector.

For this reason, EBC calls for the European Commission and EU Member States to:

- Map all national legislation applicable to subcontracting in construction across Member States to identify good practices in terms of market acceptance, ease of use by SMEs and compliance monitoring;
- Conduct an evidence-based study on the benefit (e.g. fair competition; workers' protection; ideal length) and impacts (e.g. liability and sanction issues; compliance monitoring; labour inspection capacity) of potentially

² European Labour Authority, [Construction sector: Issues in information provision, enforcement of labour mobility law, social security coordination regulations, and cooperation between Member States 2023 | ELA Strategic Analysis](#), 2023

³ Spanish government, [Law 32/2006, of 18 October, regulating subcontracting in the construction sector](#), 2016.

introducing a limitation to the number of subcontracting levels in construction in public contracting, built around a baseline scenario based on a limit of 2 subcontracting levels;

- Already include in this study the exploration of derogations to this 2-levels limit based on clearly identified and justified practical or technical requirements necessary for construction and renovation works at local level;
- Consult inclusively with all relevant stakeholders, especially representatives of construction SMEs and crafts, before considering the development of any new subsequent legislative vehicle.

2. Empower subcontractors and small construction companies through the efficient application of existing EU legislation.

A group of EU legislative acts already applies to subcontracting practices in construction, affecting directly or indirectly SMEs and craftsmen. Directly, the current Posting of Workers Directive aims at preventing mobility and working conditions abuses conducted by *malafide* companies, while the current Public Procurement Directive aims at preventing payment abuses by main/large contractors to their subcontractors. Indirectly, the directives 2024/1760 on corporate sustainability due diligence and 2014/95/EU on disclosure of non-financial and diversity information by certain large undertakings also affect construction SMEs due to the top-down impact of their provisions.

For these reasons, EBC calls for the European Commission and EU Member States to:

Regarding the posting of workers directive 2018/957/EU (PWD)

- Refrain from reopening the PWD as suggested by the European Commission's report on the application and implementation of the directive;
- Monitor the continuous compliance of construction companies with the provisions of the PWD, reinforcing the national supervision and labour inspection schemes;
- Ensure that the liability mechanism included in the Enforcement Directive⁴ is weighted and proportional to the reality of small construction companies;
- Boost the adapted and frequent public delivery of exhaustive information on posting rules to employers and workers in construction in collaboration with the ELA.

Regarding the public procurement directive 2014/24/EU (PPD)

- Ascertain that subcontractors can directly be paid by public authorities in all kinds of public procurement processes, especially in the construction sector, as foreseen in the current PPD;
- Maintain, reinforce or introduce provisions aimed at strengthening the division into smaller lots of public contracts in order to limit complex subcontracting more effectively;
- Provide for the possibility for contracting and awarding authorities to reserve the right to participate in procurement and concession procedures, or to reserve the execution thereof to micro and small enterprises;
- Promote a close dialogue between municipalities and their local construction social partners to ensure compliance with safety regulations, adherence to collective labour agreements standards and fair payment practices in public contracts, exploring the Dutch *Verantwoord Bouwen Toets* as a good practice;

⁴ European Union, [Directive 2014/67/EU of the European Parliament and of the Council of 15 May 2014 on the enforcement of Directive 96/71/EC concerning the posting of workers in the framework of the provision of services](#), 2014

- Evaluate the need to revise the PPD after thorough and inclusive consultation with all relevant stakeholders in the construction sector. If the Commission proceeds with the revision announced in its political guidelines⁵, with regard to subcontracting:
 - Safeguard the existing clause (PPD Art. 71.3)⁶ allowing for subcontractors to be paid directly by public authorities and encourage its uptake by Member States;
 - Introduce clauses providing for the awarding of contracts and subcontracts of low amounts (e.g. below EUR 150,000) with priority to micro enterprises based locally, as part of realistic social and sustainability criteria;
 - Set strict minimum criteria of performance ability for companies being awarded a contract for construction works, to ensure that the main contractor is actually able to carry out directly part of the work;
 - Ban purely financial subcontracting, where the main contractor delegates its duties to the full 100% to a subcontractor;
 - List SME-friendly safeguard mechanisms, to ensure that the quality of work and the conditions of subcontractors are not compromised by a chain of subcontracting which progressively reduces economic profit and jeopardies the proper execution of the works. For example:
 - Define a maximum value of the initially agreed value that can be assigned to a subcontractor;
 - Define a list of tasks that cannot be assigned to a subcontractor;
 - Encourage subcontracting pre-contracts;
 - Require a list of subcontractors to the main contractor.
- Align any revised public procurement framework with the potential new framework and/or potential new EU legislative text on subcontracting in construction;

3. Reinforce the framework of mobility in construction by supporting the Posting of Workers Directive with the revision of Regulation EC 883/2004 on the coordination of social security systems.

Rules without proper enforcement are vulnerable. In that sense, and in coherence with its approach during the last attempt of a revision, EBC considers that not revising Regulation EC 883/2004 was a missing opportunity to establish a strong framework against fraud, social dumping and abuses related to posting, mobility and undeclared work. Indeed, this Regulation should provide a complementary support to the appropriate implementation of the PWD by clarifying the rules on the collection of social security contributions. This would give national authorities the appropriate means to check the social security status of posted employees to remedy abusive practices along construction subcontracting chains.

For this reason, EBC calls for the European Commission and EU Members States to :

- Explore an addendum to the Posting of Workers Directive, to ban subcontracting carried out by intermediaries and/or interim agencies;
- Resume actively the revision process of Regulation EC 883/2004, including a wide consultation of all EU-level and national stakeholders in construction;
- Act on the demands of SMEs and craftsmen in the construction sector for a better coordination of social security systems, among others⁷:

⁵ Ursula von der Leyen, Candidate for the European Commission President, [Europe's choice – Political Guidelines for the next European Commission 2024-2029](#), 2024

⁶ European Union, [Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC Text with EEA relevance](#), 2014

⁷ EBC, [Better coordination of Social Security Systems to fight social dumping in the construction sector](#), 2017

- The maintenance of compulsory prior notification for all postings in the construction sector, both of short and longer duration;
- An SME-friendly digitalisation of social security, including the creation of a digital EU-wide database of A1 forms, exploring the Belgian *LIMOSA* scheme as a good practice;
- The promotion of more stringent enforcement mechanisms and penalties for companies exploiting A1 provisions to circumvent collective labour agreements and local labour laws;
- Stronger provisions on social ID cards as a tool for increased transparency, accountability, and protection of workers in the construction sector. The mandatory Dutch *Bouwplaats ID* or French *Carte BTP* could be taken as good practices.

4. Revise the ELA's mandate to provide it with the necessary tools to further monitor compliance with the PWD rules, serve as an inclusive information hub and act as a catalyst for cross-border inspections.

EBC welcomed the creation of the ELA over the past decade. It seems impossible indeed to seek to develop a solid and fair internal market without rigorous monitoring of the application of European rules on labour mobility and the coordination of social security, especially in the construction sector. At the end of ELA's first mandate, it seems useful and judicious to strengthen the tools at its disposal to maintain a sectoral focus, monitor enforcement even more closely, improve SME inclusiveness, reach the right national stakeholders, and boost cross-border inspection activities, while respecting the principle of subsidiarity. Noticing a gap in representation and involvement in the current structure of the ELA, a more inclusive dialogue ensuring SME representatives would ensure that the challenges faced by smaller construction companies are effectively addressed and that their interests are represented at EU level.

For this reason, EBC calls for the European Commission and EU Member States to:

- Confirm and reinforce ELA's triggering and coordination roles regarding cross-border inspections, including of subcontracting chains in construction;
- Equip ELA with a dedicated unit for the construction sector, building on the experience and findings of its campaign for the sector;
- Expand the level of consultation of economic operators by ELA to ensure that all the right players are inclusively informed and contribute to the efforts against abuses in subcontracting chains in construction;
- Task ELA to create an EU-wide digital repository of good and bad practices on subcontracting across the EU.

About EBC

Established in 1990, the European Builders Confederation (EBC) is the European professional organisation representing national employer associations of construction micro, small and medium-sized enterprises (SMEs) and crafts. EBC is part of the employers' delegation in the European sectoral social dialogue for construction. EBC is a member of SMEunited, the European association of SMEs, and founding partner of Small Business Standards (SBS), the European association representing SMEs in standardisation.

With around 3 million enterprises and a total direct workforce of 15 million, the construction sector is of vital importance to the European economy and society, contributing around 10% to the GDP of the European Union. 99.9% of the European construction sector is composed of micro, small and medium-sized enterprises, active mostly at the local, regional, and national level.