

External expertise for the project "DESOCO 3" - Continuation of Decentralised Thematic Social Dialogue for the Construction Industry

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1. Introduction

This document constitutes the Final Report for the Project "DESOCO 3" - Continuation of Decentralised Thematic Social Dialogue for the Construction Industry, commissioned by the European Construction Industry Federation (FIEC) and the European Federation of Building and Woodworkers (EFBWW). The project builds on previous EU-funded projects, DESOCO 1 and 2, focused on addressing key labour market challenges. The objective of the DESOCO 3 project is to promote social dialogue in the construction industry and thereby improve working conditions, enhance the overall resilience of the industry and combat labour market fragmentation. This Report contributes to this objective by mapping the national and EU legal frameworks governing subcontracting and the use of temporary work agencies (TWAs), to highlight similarities, best practices and challenges. The in-depth national analysis covers 10 European Economic Area (EEA) countries, namely Belgium, France, Germany, Italy, Spain, Poland, Portugal, Romania, Slovenia and Norway.

The Report includes two main chapters: the first one presents a review of the EU legislation regulating subcontracting chains and the use of TWAs in the construction sector, and the second provides an overview of national measures on the same topics in the 10 selected countries. Introducing these two core chapters, the present chapter shortly presents the methodological approach followed by the Study Team.

In terms of the methodology used for this Project, the first step consisted of preparing a questionnaire that was dispatched to national legal experts from the 10 countries mentioned above. The Study Team, FIEC and EFBWW agreed on the content of said questionnaire during the kick-off meeting. After revision and quality checking of the questionnaires, the answers were shared with FIEC and EFBWW in order to collect further potential input from their affiliates. Once this step was completed, Spark's Study Team analysed and compared the replies of the national legal experts, as complemented by the affiliates, to identify core similarities and differences in the national legislation. The outcome of this comparative analysis is presented in Chapter 3. Additionally, the Study Team conducted an analysis of relevant EU legislation and policies which is presented in Chapter 2.

2. Review of EU legal framework

This section provides an overview of the existing EU legal and policy framework relevant to subcontracting. Subcontracting is not regulated through a single, stand-alone EU legislative act; rather, it is addressed through various primary and secondary legal instruments. These instruments have specific personal, material, or sectoral scopes and apply to subcontracting in specific contexts. As a result, the EU framework reflects a diverse set of arrangements, and there are currently no general EU rules specifically aimed at the protection of workers in the context of subcontracting across all sectors.

2.1. EU treaty and policy context

The EU internal market is built on the foundational principles of free movement of workers (Art. 45 TFEU and Article 28 of the EEA), establishment (Art. 49 TFEU and Article 31 of the EEA) and services (Art. 56 TFEU and Article 36 of the EEA). These provisions form the constitutional backbone of the EU's economic integration and are directly enforceable against national measures that unjustifiably restrict cross-border activity. At the same time, the Union's legal order expressly links those freedoms with social rights and aims. Specifically, the Charter of Fundamental Rights guarantees fair and just working conditions (Article 31), including health and safety and limits on working time¹, and the European Pillar of Social Rights (EPSR)² commits the EU and Member States to quality jobs, strong social protection and fair labour markets, with a 2021 Action Plan that operationalises these goals and sets 2030 targets (on employment, skills, poverty reduction). The recently launched Quality Jobs Roadmap, a non-legislative initiative from the European Commission, aims at improving job quality by ensuring protection of workers' rights while strengthening Europe's competitiveness. The initiative will focus also on exploring potential new rules in relation to subcontracting.³ In the context of subcontracting and the use of TWAs, these freedoms act as a legal boundary for Member States considering regulatory interventions. EU secondary law and the Court of Justice make clear that restrictions can be justified by overriding reasons of public interest, notably worker protection, OSH, social security integrity and the prevention of abuse, provided the measures are non-discriminatory, suitable and proportionate.⁴ EU secondary legislation reflects this balance. The Temporary Agency Work Directive 2008/104/EC⁵ both secures equal treatment for agency workers and permits justified restrictions on the use of TWAs where needed to protect workers, ensure proper labour-market functioning and prevent abuse (Article 4). Likewise, the Posting Enforcement Directive 2014/67/EU⁶ was designed 'to guarantee a level playing field for businesses and respect for the rights of workers', provides tools to identify genuine postings and combat circumvention, and allows subcontracting liability to protect posted workers in chains. These instruments are further presented below.

The interpretation of fundamental freedoms has been repeatedly subject to judicial decisions at the European level. For example, the criminal proceedings against Arblade and Leloup in 1999 clarified that employers who send their employees to work abroad on a temporary basis must comply with the health

¹ Charter of Fundamental Rights of the European Union, TITLE IV – SOLIDARITY, Article 31 - Fair and just working conditions, OJ C 326, 26.10.2012, p. 401–401, available at: https://eur-lex.europa.eu/eli/treaty/char_2012/art_31/oj (last accessed on 5 February 2026).

² The European Parliament, the Council and the Commission, 'European Pillar of Social Rights', available at: https://commission.europa.eu/system/files/2017-11/social-summit-european-pillar-social-rights-booklet_en.pdf

³ European Commission, 'Commission sets out roadmap for future-proof quality jobs in a competitive EU', December 2025, available at: https://employment-social-affairs.ec.europa.eu/news/commission-sets-out-roadmap-future-proof-quality-jobs-competitive-eu-2025-12-04_en.

⁴ Judgment of 18 December 2007, *Laval un Partneri Ltd v Svenska Byggnadsarbetareförbundet, Svenska Byggnadsarbetareförbundets avdelning 1, Byggettan and Svenska Elektrikerförbundet*, C-341/05, ECLI:EU:C:2007:809, available at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:62005CJ0341> (last accessed on 17 November 2025).

⁵ Directive 2008/104/EC of the European Parliament and of the Council of 19 November 2008 on temporary agency work, OJ L 327, 5.12.2008, pp. 9–14, art. 3, available at <https://eur-lex.europa.eu/eli/dir/2008/104/oj/eng> (last accessed on 17 November 2025).

⁶ Directive (EU) 2018/957 of the European Parliament and of the Council of 28 June 2018 amending Directive 96/71/EC concerning the posting of workers in the framework of the provision of services, OJ L 173, 9.7.2018, pp. 16–24, available at <https://eur-lex.europa.eu/eli/dir/2018/957/oj/eng> (last accessed on 17 November 2025).

and safety and employment legislation of the host Member State.⁷ The case concerned the interpretation of Art. 56 and 57 TFEU (former Articles 59 and 60 of the EEC Treaty) on the freedom to provide services. According to the Court's judgement, these provisions do not preclude Member States to impose administrative obligations on undertakings temporarily carrying out on their territory, but these must be necessary for monitoring compliance with national legislations and justified by the need to safeguard the social protection of workers.

2.2. Public Procurement Directives

The EU adopted an updated package of three directives covering public procurement in 2014. Directives 2014/23/EU⁸, 2014/24/EU⁹ and 2014/25/EU¹⁰ (applicable to EEA countries) set out the legal framework for the award of public contracts across Member States, ensuring fair competition, transparency and equal treatment. Articles 71 of Directive 2014/24/EU and 88 of Directive 2014/25/EU allow Member States to impose specific obligations on contractors and subcontractors in public contracts with regards to procurement documents, payments and providing information on subcontractors.

Over the years, several cases before the CJEU challenged the proportionality of national measures imposing obligations on and restricting subcontractors in public procurement. A prominent example is the Wrocław case in 2016, which addressed the legality of Polish measures imposing obligations on subcontractors in the award of a public contract.¹¹ The City of Wrocław initiated a restricted procedure for the award of a public contract in 2007 and in its tender specification, required economic operators to perform at least 25% of the works covered by the contract with their own resources. The Court investigated the compatibility of this restriction with the previous Public Procurement Directive 2004/18/EC (later repealed by Directive 2014/24/EU) and found the Polish national rules to be contradictory to EU law. Another prominent case is the Vitali judgement from 2019 concerning Article 71 of Directive 2014/24/EU, which was the CJEU's first ruling under the new procurement directives of 2014 regarding limitations on subcontracting.¹² In 2016, Italy adopted a new legislation which limited subcontracting to 30% of the total amount of the contract for works, services, or supplies.¹³ This was challenged before the CJEU which ruled that the Italian legislation went 'beyond what is necessary' to achieve its main objective, namely, to combat criminal organisations. Therefore, the Court ruled that Member States are precluded from restricting the share of a contract to be subcontracted to third parties without sufficient justification. In the same year, the same judgement was made in the case of the award of a public contract for cleaning services in Italy.¹⁴ However, CJEU case law, including the

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⁸ Directive 2014/23/EU of the European Parliament and of the Council of 26 February 2014 on the award of concession contracts Text with EEA relevance, OJ L 94, 28.3.2014, pp. 1–64, available at <https://eur-lex.europa.eu/eli/dir/2014/23/oj/eng> (last accessed on 17 November 2025).

⁹ 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, OJ L 94, 28.3.2014, pp. 65–242, available at <https://eur-lex.europa.eu/eli/dir/2014/24/oj/eng> (last accessed on 17 November 2025).

¹⁰ Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC Text with EEA relevance, OJ L 94, 28.3.2014, pp. 243–374, available at <https://eur-lex.europa.eu/eli/dir/2014/25/oj> (last accessed on 17 November 2025).

¹¹ Judgment of 14 July 2016, *Wrocław - Miasto na prawach powiatu v Minister Infrastruktury i Rozwoju*, C-406/14, available at <https://curia.europa.eu/juris/document/document.jsf?text=&docid=181688&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=2892373> (last accessed on 17 November 2025).

¹² Judgment of 26 September 2019, *Vitali SpA v Autostrade per l'Italia SpA*, C-63/18, available at <https://curia.europa.eu/juris/document/document.jsf?text=&docid=218281&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=2891747> (last accessed on 17 November 2025).

¹³ Decreto legislativo 18 aprile 2016, n. 50, Codice dei contratti pubblici (Legislative Decree of 18 April 2016, n. 50, Public Contracts Code), available at https://www.codiceappalti.it/Home/Legge/?legge=Italian_Procurement_Code (last accessed on 17 November 2025), Article 105(2).

¹⁴ Judgment of 27 November 2019, *Tedeschi Srl and Consorzio Stabile Istant Service v C.M. Service Srl and Università degli Studi di Roma La Sapienza*, C-402/18, available at <https://curia.europa.eu/juris/document/document.jsf?text=&docid=221084&pageIndex=0&doclang=SV&mode=lst&dir=&occ=first&part=1&cid=2914241> (last accessed on 17 November 2025).

Vitali judgment, confirms that objectives such as combating work-related crime, protecting workers, ensuring occupational safety and health, and preventing fraud may justify a restriction. Such a restriction is acceptable only if it is, as noted above, proportionate, sufficiently specific, and not overly broad or abstract.

2.3. Temporary Agency Work Directive

Article 3 of Directive 2008/104/EC on Temporary Work Agency defines temporary work agencies as ‘any natural or legal person who, in compliance with national law, concludes contracts of employment or employment relationships with temporary agency workers in order to assign them to user undertakings to work there temporarily under their supervision and direction’.¹⁵ The relationships between the temporary work agency, the temporary agency worker and the contracting business (user/borrower of workers’ services) are established via two contracts: one between the agency and the worker, and a second between the agency and the business. Therefore, the worker is a formal employee of the temporary work agency and there is no contract between the contracting business and the worker.

The growth of labour market intermediaries in the form of temporary work agencies has added complexity to subcontracting chains. These agencies play a crucial role by supplying workers for various stages of construction projects, ranging from unskilled labour to highly specialised professionals such as architects and engineers. By doing so, they facilitate labour mobility within the EU, making it easier for companies to hire temporary workers from other Member States. However, temporary work agencies may be subject to fraudulent use since they are not directly linked to the core activities of construction businesses. As a result, they may exploit complex employment relationships to avoid complying with obligations related, for instance, to legal wage payments, vocational education and training, and OSH requirements.¹⁶

The EU regulates certain aspects of the Temporary Agency Work through Directive 2008/104/EC (applicable to EEA countries). Its purpose is to ensure effective protection of temporary agency workers and to contribute to the development of the TWA sector in a way that respects the internal market freedoms and the diversity of national industrial relations. Article 5 establishes one of the core principles of the Directive, namely the principle of equal treatment according to which the basic working and employment conditions of the agency worker while on assignment must be at least those which would apply if the worker had been recruited directly by the user undertaking for the same job. Specifically, the principle of equal treatment applies to the duration of working time, overtime, breaks, rest periods, night work, holidays and public holidays, pay and other non-discriminatory and basic protections. However, the Directive allows derogations under defined conditions: Member States, after consultation with the social partners, may permit collective agreements (or where national law allows an agreement between social partners) that establish arrangements deviating from the equal-treatment principle, but only under strict safeguards ensuring transparency, adequate protection and prevention of misuse.¹⁷

A noteworthy case, interpreting the use of TWAs in relation to the posting rules, is the Team Power Europe judgment (C-784/19). In this judgement, the CJEU clarified that a temporary work agency can rely on the posting rules of Article 12(1) of Regulation 883/2004 only if it ‘normally carries out its activities’ in the Member State of establishment, which requires performing substantial activities other than purely internal management tasks. The Court held that merely recruiting or selecting workers in

¹⁵ Directive 2008/104/EC of the European Parliament and of the Council of 19 November 2008 on temporary agency work, OJ L 327, 5.12.2008, pp. 9–14, art. 3, available at <https://eur-lex.europa.eu/eli/dir/2008/104/oj/eng> (last accessed on 17 November 2025).

¹⁶ European Labour Authority, ‘Construction sector: Issues in information provision, enforcement of labour mobility law, social security coordination regulations, and cooperation between Member States’ (2023), available at https://www.ela.europa.eu/sites/default/files/2023-09/ELA_construction-sector-report-2023.pdf (last accessed on 17 November 2025).

¹⁷ Directive 2008/104/EC of the European Parliament and of the Council of 19 November 2008 on temporary agency work, OJ L 327, 5.12.2008, pp. 9–14, art. 5, available at <https://eur-lex.europa.eu/eli/dir/2008/104/oj/eng> (last accessed on 17 November 2025).

the home Member State is insufficient: the agency must carry out a significant part of its actual assignment activities for user undertakings located in that Member State; otherwise, it cannot issue valid A1 certificates for posting.¹⁸

If a Member State imposes a ban on the use of TWAs in certain occupations (for example, core construction tasks) or limits the number of tiers of subcontracting through agency supply, that ban or restriction needs to be justified under Article 4 of the Directive.¹⁹ The justification must rest on a genuine general interest objective, and the measure must be proportionate. The Directive explicitly ties such restrictions to e.g. worker protection, health and safety, labour-market functioning or abuse prevention. This legal standard means that sectoral bans of TWAs, such as the one in Germany for the construction sector, are not per se unlawful, but their compatibility depends on how they are designed and motivated.

Such restriction on the use of TWAs has been subject to judicial review in Norway. In 2022, Norway introduced new rules that ban hiring workers for temporary assignments and construction works in Oslo, Viken and former Vestfold. This was challenged by the EFTA Surveillance Authority and several staffing agencies on the basis of violating the fundamental freedoms of the EEA Agreement Articles 28 (free movement of workers), 31 (freedom of establishment) and 36 (freedom to provide services). However, in 2024 the EFTA Court found that although the new rules limit the activities of TWAs and thereby restrict fundamental freedoms, this may be justified by overriding reasons of general interest and therefore do not conflict with the EEA Agreement.²⁰

2.4. Posting of Workers Directive and its Enforcement Directive

Rules on posted workers and cross-border mobility are particularly relevant in light of the situation of the construction industry, which, as mentioned above, has witnessed a rise in both subcontracting chains and temporary work agencies. In this regard, the most important EU instruments regulating the posting of workers are Directive 96/71/EC, as amended by Directive (EU) 2018/957,²¹ and the Enforcement Directive 2014/67/EU (both incorporated in the EEA Agreement).²² These Directives aim to ensure that workers temporarily posted to another Member State enjoy a core set of rights and working conditions, while safeguarding fair competition and preventing social dumping.

Temporary work agencies sending posted workers to receiving Member States often act as subcontractors within the subcontracting chain, allowing for greater flexibility but at the same time raising issues of respect for worker's rights.²³ Subcontracting liability has thus become a crucial matter in ensuring respect of EU law and workers' rights in the construction sector, especially in posting of workers situations. Article 12(2) of Directive 2014/67/EU has introduced a joint subcontracting liability, establishing that Member States shall ensure that posted workers in subcontracting chains can hold the contractor of which the employer is a direct subcontractor liable, in addition to or in place of the

¹⁸ Case C-784/19, 'TEAM POWER EUROPE' EOOD v Direktor na Teritorialna direksia na Natsionalna agentsia za prihodite – Varna'.

¹⁹ Ibid., Article 4, Judgment of the Court (Grand Chamber) of 3 June 2021, ECLI:EU:C:2021:427, available at: <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:62019CJ0784> (last accessed on 5 February 2026).

²⁰ Judgment of 20 November 2024, *Bygg & Industri Norge AS and others v the Norwegian State*, E-2/24, available at <https://eftacourt.int/cases/e-02-24/> (last accessed on 17 November 2025).

²¹ Directive (EU) 2018/957 of the European Parliament and of the Council of 28 June 2018 amending Directive 96/71/EC concerning the posting of workers in the framework of the provision of services, OJ L 173, 9.7.2018, pp. 16–24, available at <https://eur-lex.europa.eu/eli/dir/2018/957/oj/eng> (last accessed on 17 November 2025).

²² 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 and amending Regulation (EU) No 1024/2012 on administrative cooperation through the Internal Market Information System, OJ L 159, 28.5.2014, pp. 11–31, available at <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32014L0067> (last accessed on 17 November 2025).

²³ Alexander Heinen, Dr. Alex Müller, and Bernd Kessler, 'Liability in subcontracting chains: National rules and the need for a European framework' (2017) PE 596.798, available at [https://www.europarl.europa.eu/RegData/etudes/STUD/2017/596798/IPOL_STU\(2017\)596798_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2017/596798/IPOL_STU(2017)596798_EN.pdf) (last accessed on 17 November 2025).

employer, for the respect of the posted workers' rights.²⁴ This provision has been transposed into national legislation by the large majority of EU Member States.²⁵ Some Member States extended this liability beyond direct contractors to the entire chain of subcontractors and to other sectors beyond construction. While the majority of Member States have transposed the minimum requirements of Article 12(2), the practical enforcement of subcontracting liability remains uneven.

Both CJEU case law and European Commission reports²⁶ point to continued challenges in implementation, particularly due to the use of letterbox companies and complex cross-border arrangements designed to circumvent liability rules. These practices illustrate the persistent tension between ensuring flexibility in cross-border service provision and guaranteeing effective protection for posted workers, especially in labour-intensive sectors such as construction.

A court case illustrating the applicability of the Posting of Workers Directive (96/71/EC) is the joined cases of three Polish temporary work agencies against the Dutch Ministry of Social Affairs and Employment.²⁷ In 2006, the Dutch Labour Inspectorate fined the three agencies for hiring out temporary workers to Dutch companies without valid work permits during Poland's transitional period following its 2004 EU accession. The CJEU ruled that the freedom to provide services (Articles 56 and 57 TFEU) does not override national work permit requirements during Member States transitional period.

2.5. Regulations on the Coordination of Social Security Systems

The two main pieces of legislation regulating Social Security Coordination at EU level are Regulation 883/2004²⁸ on the coordination of social security systems, amended in 2019, and its Implementing Regulation 987/2009,²⁹ amended in 2020. The first Regulation lays down principles and common rules to protect social security rights of workers moving across the EU and the EFTA countries. The second Regulation prescribes rules on the practical implementation of Regulation 883/2004 and on the transfer of data between social security institutions.

In the context of the construction sector, especially considering the high incidence of cross-border services and the involvement of TWAs posting workers, these rules are key to ensure respect of social security rights and obligations from workers and employers. The Portable Document A1 (PD A1) is the main administrative instrument used to certify³⁰ that a posted worker remains subject to the social security legislation of the sending Member State. However, the use of PD A1 forms has been repeatedly

²⁴ 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 and amending Regulation (EU) No 1024/2012 on administrative cooperation through the Internal Market Information System, OJ L 159, 28.5.2014, pp. 11–31, available at <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32014L0067> (last accessed on 17 November 2025).

²⁵ European Labour Authority, 'Construction sector: Issues in information provision, enforcement of labour mobility law, social security coordination regulations, and cooperation between Member States' (2023), available at https://www.ela.europa.eu/sites/default/files/2023-09/ELA_construction-sector-report-2023.pdf (last accessed on 17 November 2025).

²⁶ REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL AND THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE on the application and implementation of 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 and amending Regulation (EU) 1024/2012 on administrative co-operation through the Internal Market Information System, available at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52019DC0426> (last accessed on 17 November 2025).

²⁷ Judgment of 10 February 2011, *Vicoplus SC PUH (C-307/09)*, *BAM Vermeer Contracting sp. zoo (C-308/09)* and *Olbek Industrial Services sp. zoo (C-309/09)* v *Minister van Sociale Zaken en Werkgelegenheid*, C-307/09, C-308/09 and C-309/09, available at <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:62009CJ0307> (last accessed on 17 November 2025).

²⁸ Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems, OJ L 166, 30.4.2004, p. 1–123, available at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32004R0883> (last accessed on 17 November 2025).

²⁹ Regulation (EC) No 987/2009 of the European Parliament and of the Council of 16 September 2009 laying down the procedure for implementing Regulation (EC) No 883/2004 on the coordination of social security systems, OJ L 284, 30.10.2009, p. 1–42, available at <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32009R0987> (last accessed on 17 November 2025).

³⁰ The Altun Case (C-359/16) confirms that the PDA1 (in the Judgment it corresponds to the previous version E101) can be used as enforcement tools against social security fraud. Judgment of the Court (Grand Chamber) of 6 February 2018, ECLI:EU:C:2018:63. Available at: <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:62016CJ0359>.

identified as a source of fraud and abuse, particularly in long subcontracting chains where effective control over employment relationships is more challenging.³¹

Letterbox companies and certain temporary work agencies have been found to exploit the coordination rules by formally registering workers in Member States with lower social contributions, while the work is actually carried out elsewhere. Such practices allow undertakings to reduce labour costs and circumvent obligations applicable in the host country, undermining fair competition and the protection of workers' social security rights. These risks are particularly acute in construction, where multiple tiers of subcontractors make it difficult to verify the genuine employer and to ensure compliance with social security obligations.³²

To address these challenges, the European Commission and the European Labour Authority (ELA) have strengthened cooperation amongst national institutions, promoting the use of Electronic Exchange of Social Security Information (EESSI) and joint inspections in cross-border cases. Nonetheless, persistent gaps in enforcement and information exchange continue to enable certain actors to misuse PD A1 declarations, especially in subcontracting chains involving TWAs.

2.6. Occupational safety and health

Occupational safety and health (OSH) legislation is particularly important in sectors such as construction where there is heightened risk due to the nature of the work and the prevalence of subcontracting and TWAs. The foundational legislation covering OSH at the EU level is the Framework Directive 89/391/EEC which was adopted in 1989.³³ By empowering the Council to adopt individual directives on minimum safety and health requirements at the workplace, Directive 89/391/EEC (applicable to EEA countries) formed the basis for over 20 subsequent legislations. Examples include directives on health and safety requirements for the workplace (89/654/EEC),³⁴ the use of work equipment (2009/104/EC)³⁵ and personal protective equipment (89/656/EEC)³⁶ and safety and/or health signs at work (92/58/EEC).³⁷ All these Directives are either incorporated to the EEA Agreement or expressly applicable since their enter into force. These directives lay down specific obligations for employers, while the Framework Directive defines employers as 'any natural or legal person who has an employment relationship with the worker and has responsibility for the undertaking and/or establishment'. This covers both subcontractors and TWAs in the construction sector as the formal employers of workers. Moreover, the Framework Directive laid the foundation for sector-specific legislations, including Directive

³¹ European Labour Authority, 'Construction sector: Issues in information provision, enforcement of labour mobility law, social security coordination regulations, and cooperation between Member States' (2023), available at https://www.ela.europa.eu/sites/default/files/2023-09/ELA_construction-sector-report-2023.pdf (last accessed on 17 November 2025).

³² European Commission, Ecorys, HIVA-KU Leuven, Spark Legal and Policy Consulting, and wmp consult, 'Study supporting the Monitoring of the Posting of Workers Directive 2018/957/EU and of the Enforcement Directive 2014/67/EU' (2024), available at <https://op.europa.eu/en/publication-detail/-/publication/d06f8af4-02bd-11ef-a251-01aa75ed71a1/language-en> (last accessed on 17 November 2025).

³³ Council Directive 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work, OJ L 183, 29.6.1989, pp. 1–8, available at <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A31989L0391> (last accessed on 17 November 2025).

³⁴ Council Directive 89/654/EEC of 30 November 1989 concerning the minimum safety and health requirements for the workplace (first individual directive within the meaning of Article 16 (1) of Directive 89/391/EEC), OJ L 393, 30.12.1989, pp. 1–12, available at <https://eur-lex.europa.eu/eli/dir/1989/654/oj/eng> (last accessed on 17 November 2025).

³⁵ Directive 2009/104/EC of the European Parliament and of the Council of 16 September 2009 concerning the minimum safety and health requirements for the use of work equipment by workers at work (second individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC), OJ L 260, 3.10.2009, pp. 5–19, available at <https://eur-lex.europa.eu/eli/dir/2009/104/oj/eng> (last accessed on 17 November 2025).

³⁶ Council Directive 89/656/EEC of 30 November 1989 on the minimum health and safety requirements for the use by workers of personal protective equipment at the workplace (third individual directive within the meaning of Article 16 (1) of Directive 89/391/EEC), OJ L 393, 30.12.1989, pp. 18–28, available at <https://eur-lex.europa.eu/eli/dir/1989/656/oj/eng> (last accessed on 17 November 2025).

³⁷ Council Directive 92/58/EEC of 24 June 1992 on the minimum requirements for the provision of safety and/or health signs at work (ninth individual Directive within the meaning of Article 16 (1) of Directive 89/391/EEC), OJ L 245, 26.8.1992, pp. 23–42, available at <https://eur-lex.europa.eu/eli/dir/1992/58/oj/eng> (last accessed on 17 November 2025).

92/57/EEC on temporary or mobile construction sites.³⁸ Article 2(a) defines construction sites as any construction site at which building or civil engineering works are carried out.³⁹ This directive establishes a chain of responsibility amongst all parties involved in construction projects, i.e. the client, project supervisor, contractors, workers and self-employed people. It requires clients or project supervisors to appoint one or more OSH coordinator(s) at construction sites where more than one contractor is present and to draw up an OSH plan before works begin. However, appointing coordinators does not relieve the client or project supervisor of their OSH-related responsibilities. Additionally, employers are obliged to follow certain minimum OSH requirements tailored to the construction sector and elaborated in Annex IV of the Directive. Finally, in Article 10, the Directive specifies the obligations of self-employed people, which includes taking into account directions from the coordinator(s).

Since temporary workers are especially vulnerable with regards to occupational safety and health, in 1991, the EU adopted Directive 91/383/EEC to supplement OSH measures for workers with a fixed-duration or temporary employment relationship.⁴⁰ The objective of this legislation is to ensure that temporary workers receive the same level of protection as other workers of a user undertaking, especially with regards to access to personal protective equipment. The Directive also stipulates that temporary workers must receive sufficient training and allows Member States to prohibit the hiring of temporary workers for certain works which would be particularly dangerous to their health and safety.

³⁸ Council Directive 92/57/EEC of 24 June 1992 on the implementation of minimum safety and health requirements at temporary or mobile construction sites (eighth individual Directive within the meaning of Article 16 (1) of Directive 89/391/EEC), OJ L 245, 26.8.1992, pp. 6–22, available at <https://eur-lex.europa.eu/eli/dir/1992/57/oj/eng> (last accessed on 17 November 2025).

³⁹ *Ibid.*

⁴⁰ Council Directive 91/383/EEC of 25 June 1991 supplementing the measures to encourage improvements in the safety and health at work of workers with a fixed- duration employment relationship or a temporary employment relationship, OJ L 206, 29.7.1991, pp. 19–21, available at <https://eur-lex.europa.eu/eli/dir/1991/383/oj/eng> (last accessed on 17 November 2025).

3. Review of national legal frameworks

This chapter presents the results of the national legal analysis carried out on the basis of the in-depth research of national legal experts. The analysis includes 10 countries in total, namely Belgium, France, Germany, Italy, Spain, Poland, Portugal, Romania, Slovenia and Norway. The chapter is divided in two sections: the first presents the national legal frameworks governing subcontracting and TWAs in detail for each country separately, while the second summarises and illustrates the main features of national frameworks in comparative tables. The references to the specific national legislations, or their provisions thereof, can be found at the end of each country table directly.

3.1. National legal frameworks

3.1.1. Belgium

| Country: Belgium | |
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| Subcontracting | |
| Legal definition of subcontracting | <p>Belgian law does not contain a single consolidated statutory definition of ‘subcontracting’. The legal meaning of subcontracting is derived from: (1) general contract law (the Civil Code, notably rules on contracts for work and services), (2) sectoral collective agreements (notably those applicable in the construction sector under Joint Committee (JC) No. 124), and (3) specific regulatory and penal provisions addressing aspects of subcontracting, notably the law of 15 May 2024 amending social criminal law and various provisions of labour law¹ and the law of 4 August 1996 on the well-being of workers.² Similarly, the law revising the Decree-Law of 28 December 1944 on the social security of workers includes the following definition of a subcontractor:</p> <p><i>“Anyone who undertakes, either directly or indirectly, at any stage whatsoever, to carry out or to have carried out, for a price, the work or part of the work entrusted to the contractor or to make workers available for this purpose”³</i></p> |
| Rules and limitations on subcontracting | <p>Subcontracting in public procurement is regulated by the Public Procurement Law⁴ and its implementing Royal Degree which was last modified in June 2017.⁵ In construction, there is a limit to the number of subcontracting tiers in public procurement, which is maximum 2 or 3 tiers depending on the category of work and whether the project falls within a risk sector.⁶ Additionally, there is a ban on purely financial subcontracting for subcontractors operating in the construction, relocation services and meat processing industries, meaning that subcontractors may not act as intermediaries retaining only a coordinating role and subcontracting the entirety of the works to another party.⁷ Subcontracting with companies established outside the EEA or employing third-country nationals is subject to additional conditions under Belgian immigration and labour law. Subcontractors must obtain authorisation to employ non-EEA nationals and comply with Belgian labour standards.</p> |

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| Liability structures | Belgium applies several complementary liability regimes. These include joint and several liability and sector-specific liability schemes (e.g. wages) ⁸ , and certain chain liability features under specific circumstances (e.g. social security and tax liability). ⁹ The client must verify the payment of social security contributions by the main contractor and subcontractors and can be held liable for the social debts of both. |
| National enforcement | In Belgium, several national authorities are involved in the enforcement of subcontracting rules. The Federal Public Service Employment, Labour and Social Dialogue monitors working conditions, health and safety and wage compliance, the Social Inspectorate and National Office for Social Security verify registration, social contributions, and employment declarations, while the Labour Prosecutor's Office intervenes when criminal or social-penal rules are violated. The FPS Policy and Support, and the Public Procurement Authority oversee compliance with procurement rules. Monitoring is carried out through several integrated systems: construction companies are obliged to register the presence of their employees on construction sites and communicate the social security data through the online platform Checkin@work and relevant individuals accessing the construction site must also register their presence on-site, on a daily basis, via a check-in device. The ConstruBadge can be used as an identification tool for this, along with other authorised identification means, such as the Belgian electronic ID card or the QR code of the LIMOSA declaration, which records all foreign postings. Failure to comply with subcontracting rules may result in administrative and criminal fines under the Social Criminal Code. |
| Temporary work agencies and other intermediaries | |
| Rules and limitations on TWAs | The operation of TWAs is regulated by the Temporary Work Act, ¹⁰ which stipulates that TWAs must obtain prior authorisation from the relevant authorities to operate legally. In the construction sector, TWAs are only permitted for temporary assignments to (1) replace workers who are temporarily unable to perform their duties, (2) address temporary increases in the volume of work, or (3) fulfil exceptional tasks requiring specialised technical assistance. ¹¹ TWAs established in other Member States can post workers to Belgium, but must comply with Belgian labour and social security rules, including the LIMOSA declaration, minimum wages, and safety training obligations. TWAs can also employ third-country nationals but must comply with the Single Permit system ¹² and ensure that workers possess valid residence and work permits before assignment. |
| Liability structures | When TWAs are involved in subcontracted work, liability is joint and several among the agency, the user undertaking and the main contractor. Each party can be held fully responsible for failing to fulfil obligations towards temporary workers, such as unpaid wages or social security contributions. Under the Temporary |

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| | Work Act, the user undertaking assumes the same responsibilities towards temporary workers as towards its own employees, including occupational safety and health training. |
| National enforcement | Enforcement is ensured by the Federal Public Service Employment, Labour and Social Dialogue, the Social Inspectorate and National Office for Social Security, and regional employment authorities which verify compliance and authorisation. |

Relevant national legislation:

¹ Loi du 15 mai 2024 modifiant le droit pénal social et diverses dispositions en droit du travail (Law of 15 May 2024 amending social criminal law and various provisions of labour law), available at https://www.ejustice.just.fgov.be/cgi/article.pl?language=fr&sum_date=2024-06-21&lg_txt=f&caller=sum&s_edition=2&2024202958=9&numac_search=2024202958&view_numac= (last accessed on 3 February 2026).

² Loi du 4 août 1996 concernant le bien-être des travailleurs lors de l'exécution de leur travail (Law of 4 August 1996 concerning the well-being of workers during the performance of their work), available at https://www.ejustice.just.fgov.be/cgi_loi/article.pl?language=fr&lg_txt=f&type=&sort=&numac_search=&cn_search=1996080400&caller=SUM&&view_numac=1996080400f (last accessed on 3 February 2026).

³ Loi révisant l'arrêté-loi du 28 décembre 1944 concernant la sécurité sociale des travailleurs (Law revising the Decree-Law of 28 December 1944 on the social security of workers), 27 June 1969, available at <https://www.ejustice.just.fgov.be/eli/loi/1969/06/27/1969062710/justel> (last accessed on 17 November 2025), Article 30bis(4).

⁴ Loi du 17 juin 2016 relative aux marchés publics (the Public Procurement Law), available at https://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=fr&la=F&cn=2016061719&table_name=loi (last accessed on 3 February 2026).

⁵ Arrêté royal du 13 janvier 2013 établissant les règles générales d'exécution des marchés publics (Royal Decree of 14 January 2013 establishing the general rules for the execution of public procurement contracts), available at https://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=fr&la=F&cn=2013011409&table_name=loi (last accessed on 3 February 2026).

⁶ Ibid., Article 12/3.

⁷ Arrêté royal établissant les règles générales d'exécution des marchés public (Royal Decree establishing the general rules for the execution of public contracts), 14 January 2013, available at: <https://www.ejustice.just.fgov.be/eli/arrete/2013/01/14/2013021005/justel> (last accessed on 3 February 2026).

⁸ Loi du 12 avril 1965 concernant la protection de la rémunération des travailleurs (Law of 12 April 1965 on the protection of workers' wages), available at https://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=fr&la=F&cn=1965041204&table_name=loi (last accessed on 3 February 2026).

⁹ Loi révisant l'arrêté-loi du 28 décembre 1944 concernant la sécurité sociale des travailleurs (Law revising the Decree-Law of 28 December 1944 on the social security of workers), 27 June 1969, available at <https://www.ejustice.just.fgov.be/eli/loi/1969/06/27/1969062710/justel> (last accessed on 17 November 2025), Article 30bis.

¹⁰ Loi du 24 juillet 1987 sur le travail temporaire, le travail intérimaire et la mise de travailleurs à la disposition d'utilisateurs (Law of 24 July 1987 on temporary work, agency work and the provision of workers to users), available at <https://www.ejustice.just.fgov.be/eli/loi/1987/07/24/1987012597/justel> (last accessed on 3 February 2026).

¹¹ Convention collective de travail du 12 juin 2014 conclue au sein de la Commission paritaire de la construction concernant la mise à disposition de personnel (Collective labour agreement (CLA) of 12 June 2014 concluded within the Joint Committee for the Construction Industry concerning the provision of personnel), available at <https://socialeye.kluwer.be/secure/DocumentView.aspx?id=lf155949&scrollid=lf155949&NavSearchId=8480032> (last accessed on 3 February 2026).

¹² Loi du 9 mai 2018 relative à l'occupation de ressortissants étrangers se trouvant dans une situation particulière de séjour (Law of 9 May 2018 on the Employment of foreign workers in a special residence situation implementi), available at <https://www.ejustice.just.fgov.be/eli/loi/2018/05/09/2018202642/justel> (last accessed on 3 February 2026).

3.1.2. Germany

| Country: Germany | |
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| Subcontracting | |
| Legal definition of subcontracting | There is no specific definition of subcontracting under civil law in Germany, but contracts of subcontracting are subsumed under certain general contract types of the German Civil Code. ¹ |
| Rules and limitations on subcontracting | In public procurement, the law restricts subcontracting for certain critical tasks in service contracts and critical installations or assembly works in supply contract. ² Additionally, all German federal states (except Saxony and Bavaria) have collective bargaining compliance laws in public procurement law, although their structures differ (some stipulate that a certain minimum wage specific to public procurement must be adhered to, some require compliance with certain collective agreements). Companies from third countries that wish to send workers to Germany as contractors must obtain prior approval from the Federal Employment Agency, which only grants approval for nationals coming from a limited list of countries. |
| Liability structures | Liability is joint and several with regards to the remuneration and social contributions of workers. ³ This is not limited to the obligations of the contractors' direct contractual partner, but also extends to all liabilities of subsequent companies, sub-subcontractors and TWAs (chain liability). |
| National enforcement | The Federal Employment Agency (BA) is responsible for the approval of contracts of workers and companies from third countries, and monitoring compliance with temporary employment regulations. Additionally, the Supplementary Pension Fund for the Construction Industry and the customs authorities also perform monitoring tasks. Regular checks and inspections are also carried out by the German Pension Insurance Fund, the statutory accident insurance fund and the occupational safety authorities of the federal states. Corporate due diligence duties under German law ⁴ are monitored by Federal Office for Economic Affairs and Export Control. Regarding monitoring tools, companies in the construction sector based abroad who wish to employ workers in Germany must provide a written notification to customs authorities before the start of any work or service. Additionally, companies operating in the German construction sector must register with the social security fund SOKA-BAU and report wages and working hours on a monthly basis. The SOKA-BAU also issues compliance certificates for construction companies which confirm that the company is participating properly in the social security fund procedures and pays the contributions due to vacation and wage compensation funds on time. This makes it easier for contractors to find reliable subcontractors and help to limit their liability in accordance |

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| | <p>with Section 14 of the AEntG. Prequalification (PQ) in Germany is possible through accredited prequalification bodies, such as the Zertifizierung BAU. These bodies issue prequalifications, i.e. contract-independent reviews of a construction company's suitability for public tenders, covering proof of expertise, reliability and capacity. The prequalification is confirmed by entering the company in the official PQ-VOB directory and issuing a PQ certificate. Sanctions for unlawful subcontracting mainly include fines and exclusion from the award of public contracts, but can also entail considerable civil, social, tax, and criminal law risks.</p> |
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Temporary work agencies and other intermediaries

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| <p>Rules and limitations on TWAs</p> | <p>In Germany, the use of TWAs (including foreign TWAs) in the construction sector is prohibited by law.⁵ However, this rule has two exceptions: when both construction and non-construction companies are covered by generally binding collective agreements, or when the lending construction company has been covered by the same general wage agreements for at least three years. If construction companies wish to provide workers to each other, they must obtain a licence for temporary agency work and grant minimum working conditions and equal treatment.</p> |
| <p>Liability structures</p> | <p>TWAs are primarily liable for the wages and social security contributions of their workers, while regarding occupational safety and health, the TWA and the hiring company are jointly liable.</p> |
| <p>National enforcement</p> | <p>The customs authorities, mainly the Financial Control Unit for Illegal Employment, are primarily responsible for monitoring compliance with rules on TWAs. Additionally, the German Pension Insurance Office and the German Social Accident Insurance Institution for the Construction Industry are also responsible for monitoring tasks, while the Statutory Health Insurance Fund is responsible for collecting contributions. The Federal Employment Agency is responsible for monitoring compliance with temporary employment regulations and occupational health and safety alongside the OSH authorities in the federal states.</p> |

Relevant national legislation:

¹ Bürgerliches Gesetzbuch (German Civil Code) (BGB), available at https://www.gesetze-im-internet.de/englisch_bgb/index.html (last accessed on 2 November 2025).

² Verordnung über die Vergabe öffentlicher Aufträge - VgV (Regulation on the award of public contracts), 12 April 2016, available at https://www.gesetze-im-internet.de/vgv_2016/BJNR062410016.html (last accessed on 12 December 2025).

³ Gesetz über zwingende Arbeitsbedingungen für grenzüberschreitend entsandte und für regelmäßig im Inland beschäftigte Arbeitnehmer und Arbeitnehmerinnen (Act on Mandatory Working Conditions for Workers Posted Across Borders and for Workers Regularly Employed in Germany) (AEntG), available at https://www.gesetze-im-internet.de/englisch_aentg/index.html (last accessed on 2 November 2025).

⁴ Gesetz über die unternehmerischen Sorgfaltspflichten zur Vermeidung von Menschenrechtsverletzungen in Lieferketten (Act on corporate due diligence to prevent human rights violations in supply chains) (Lieferkettengesetz –LkSG), available at <https://www.gesetze-im-internet.de/lksg/> (last accessed on 2 November 2025).

⁵ Arbeitnehmerüberlassungsgesetz (Act on Temporary Agency Work), 21 February 2017, available at https://www.gesetze-im-internet.de/englisch_a_g/index.html (last accessed on 17 November 2025), Section 1b.

3.1.3. Spain

| Country: Spain | |
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| Subcontracting | |
| Legal definition of subcontracting | In Spain, the law on subcontracting in the construction sector (Law 32/2006) contains the following definition of subcontracting: <i>“The organisational practice by which the contractor or a subcontractor entrusts part of what has been assigned to it to another subcontractor or to a self-employed worker”¹</i> |
| Rules and limitations on subcontracting | Spanish law provides a sector-specific statutory framework for subcontracting in construction with Law 32/2006, which applies uniformly to both private and public works. The number of subcontracting tiers is limited to three, meaning that the third-tier subcontractor may not subcontract further. ² Additionally, self-employed workers and subcontractors whose productive organisation on site is mainly the provision of labour and tools are not permitted to subcontract. ³ An exceptional fourth tier may only be authorised by site management where duly justified by fortuitous events, the specialisation of the work, technical complications, or force majeure. There are additional capacity and solvency requirements for subcontracting, as well as the obligation to register in the Register of Accredited Companies (REA) and keep an up-to-date Subcontracting Book, an on-site documentary tool. ⁴ The administrative and contractual aspects of subcontracting in public works are regulated by the Public Sector Contracts Law. ⁵ |
| Liability structures | Contractors bear joint and several liability for the wage, social security and occupational safety obligations of its subcontractors, including those established abroad. ⁶ This liability extends to all tiers of the subcontracting chain (chain liability) and applies equally to EU and non-EU undertakings operating on Spanish construction sites. The main contractor must verify its subcontractors’ REA registration, compliance with occupational safety duties, and the affiliation of its workforce to the Spanish social security system. Law 9/2017 complements this framework in public procurement by assigning to the main contractor full responsibility for its subcontractors’ compliance with contractual, labour and safety obligations. |

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| National enforcement | <p>Several national and regional authorities are responsible for the enforcement of subcontracting rules:</p> <ul style="list-style-type: none"> • The Labour and Social Security Inspectorate oversees compliance with Law 32/2006, including REA registration, limits to subcontracting tiers, and occupational safety obligations; • The Regional Labour Authorities manage the REA and maintain updated registers of accredited construction companies; • The Independent Office for Regulation and Supervision of Public Procurement supervises the overall functioning of public procurement and issues recommendations for compliance and transparency; • The Central Administrative Tribunal for Public Procurement Appeals resolves administrative appeals related to subcontracting clauses. <p>Monitoring mechanisms include the REA registration, the Subcontracting Book, and the Professional Construction Card (TPC) which is a portable worker identification and training record that complements statutory monitoring tools.⁷ For public contracts, Law 9/2017 adds additional administrative monitoring instruments. Sanctions include penalties, administrative sanctions, termination of the public contract or exclusion from future tenders, and in some cases may also engage the civil liability of the main contractor.</p> |
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Temporary work agencies and other intermediaries

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| Rules and limitations on TWAs | <p>The operation of TWAs is governed by a specific regime and requires prior authorisation from the labour authority, registration in the official register, and the establishment of a financial guarantee to cover wage, indemnity, and social security liabilities.⁸ Temporary workers cannot be hired through TWAs to replace workers on strike, perform dangerous tasks, if the user undertaking has terminated the same or similar positions through dismissal declared unfair in the preceding 12 months, or to supply workers to another TWA.⁹ In sectors with significant risks to safety and health (such as construction), there are strengthened preventive obligations such as: TWAs are subject to external audits, must maintain their own occupational risk prevention service, and ensure that workers possess the required aptitude, training and qualifications.¹⁰ TWAs established in other EU/EEA countries are allowed to post workers to Spain provided that: (1) they are validly constituted and authorised to supply temporary agency work under the law of its state of establishment; (2) the assignment contract with the Spanish user undertaking is in writing and conforms to the core requirements of the Spanish TWA statute; and (3) the TWA and the user undertaking comply with the Spanish posted workers regime on minimum employment conditions.¹¹ TWAs are also allowed to employ third-country nationals provided that workers hold prior residence- and work authorisation, which must be obtained by the TWA as the legal employer, alongside ensuring their social security registration.¹²</p> |
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| Liability structures | TWAs bear primary responsibility for all core employment obligations, such as wages, social security contributions, benefits and severance. The user undertaking must guarantee equal treatment and employment conditions, and are subsidiarily liable for wages, contributions and termination pay during the assignment, and joint and several liability where the assignment infringes the statutory limits, such as engaging workers through an unauthorised TWA or in prohibited situations. ¹³ Regarding OSH, the TWA must ensure that workers received adequate training, undergone the necessary medical surveillance, and been provided with appropriate personal protective equipment, while the user undertaking is responsible for the work environment, carrying out risks assessment, implementing preventive measures on site and coordinating OSH activities with other (sub)contractors. |
| National enforcement | The Labour and Social Security Inspectorate is primarily responsible for monitoring compliance, requesting documentation, and initiating infringement proceedings. National and regional labour authorities impose fines and may suspend or revoke the TWA's authorisation in cases of violations. Regarding social security, the General Treasury of the Social Security administers the collection of unpaid contributions, while the Labour and Social Security Inspectorate determines the benefit surcharge in cases of employer fault. |

Relevant national legislation:

¹ Ley 32/2006, de 18 de octubre, reguladora de la subcontratación en el Sector de la Construcción (Law 32/2006 of 18 October, regulating subcontracting in the construction sector), available at <https://www.boe.es/eli/es/l/2006/10/18/32/con> (last accessed on 17 November 2025), Article 3.

² Ibid, Article 5(a)-(d).

³ Ibid, Article 5(e)-(f).

⁴ Ibid, Articles 4, 6- 8.

⁵ Ley 9/2017, de 8 de noviembre, de Contratos del Sector Público, por la que se transponen al ordenamiento jurídico español las Directivas del Parlamento Europeo y del Consejo 2014/23/UE y 2014/24/UE, de 26 de febrero de 2014 (Law 9/2017, of November 8, on Public Sector Contracts, which transposes into Spanish law Directives 2014/23/EU and 2014/24/EU of the European Parliament and of the Council of February 26, 2014), available at <https://www.boe.es/buscar/act.php?id=BOE-A-2017-12902> (last accessed on 17 November 2025).

⁶ Real Decreto Legislativo 2/2015, de 23 de octubre, por el que se aprueba el texto refundido de la Ley del Estatuto de los Trabajadores (Royal Legislative Decree 2/2015 of 23 October approving the consolidated text of the Workers' Statute), 24 October 2015, available at <https://www.boe.es/buscar/act.php?id=BOE-A-2015-11430> (last accessed on 5 February 2026), Article 42, and Ley

32/2006, de 18 de octubre, reguladora de la subcontratación en el Sector de la Construcción (Law 32/2006 of 18 October, regulating subcontracting in the construction sector), available at <https://www.boe.es/eli/es/l/2006/10/18/32/con> (last accessed on 17 November 2025), Article 7.

⁷ VII Convenio colectivo general del sector de la construcción, 2022–2026 (VII Construction General Collective Agreement 2022–2026), available at <https://www.boe.es/buscar/doc.php?id=BOE-A-2023-19903> (last accessed on 10 October 2025).

⁸ Ley 14/1994, de 1 de junio, por la que se regulan las empresas de trabajo temporal (Law 14/1994 of 1 June regulating Temporary Work Agencies), available at <https://www.boe.es/buscar/act.php?id=BOE-A-1994-12554> (last accessed on 5 February 2026), complemented by Real Decreto Legislativo 2/2015, de 23 de octubre, por el que se aprueba el texto refundido de la Ley del Estatuto de los Trabajadores (Royal Legislative Decree 2/2015 of 23 October approving the consolidated text of the Workers' Statute), 24 October 2015, available at <https://www.boe.es/buscar/act.php?id=BOE-A-2015-11430> (last accessed on 5 February 2026).

⁹ Ley 14/1994, de 1 de junio, por la que se regulan las empresas de trabajo temporal (Law 14/1994 of 1 June regulating Temporary Work Agencies), available at <https://www.boe.es/buscar/act.php?id=BOE-A-1994-12554> (last accessed on 5 February 2026), Article 8.

¹⁰ Real Decreto 216/1999, de 5 de febrero, sobre disposiciones mínimas de seguridad y salud en el trabajo en el ámbito de las empresas de trabajo temporal (Royal Decree 216/1999 of 5 February on minimum health and safety provisions for temporary-agency workers), available at <https://www.boe.es/buscar/act.php?id=BOE-A-1999-4525> (last accessed on 5 February 2026), Articles 3-6; Real Decreto 1627/1997, de 24 de octubre, por el que se establecen disposiciones mínimas de seguridad y salud en las obras de construcción (Royal Decree 1627/1997 of 24 October on minimum safety and health provisions at temporary or mobile construction sites), available at <https://www.boe.es/buscar/act.php?id=BOE-A-1997-22614> (last accessed on 5 February 2026), Articles 2-4; and Real Decreto 171/2004, de 30 de enero, por el que se desarrolla el artículo 24 de la Ley 31/1995 (Royal Decree 171/2004 of 30 January on coordination of business activities), available at <https://www.boe.es/buscar/act.php?id=BOE-A-2004-1848> (last accessed on 5 February 2026), Articles 3-4.

¹¹ Ley 14/1994, de 1 de junio, por la que se regulan las empresas de trabajo temporal (Law 14/1994 of 1 June regulating Temporary Work Agencies), available at <https://www.boe.es/buscar/act.php?id=BOE-A-1994-12554> (last accessed on 5 February 2026), Article 22, and Ley 45/1999, de 29 de noviembre sobre el desplazamiento de trabajadores en el marco de una prestación de servicios transnacional (Law 45/1999, of November 29, on the posting of workers within the framework of a transnational provision of services), available at <https://www.boe.es/buscar/act.php?id=BOE-A-1999-22895>, (last accessed on 5 February 2026), Articles 1-3.

¹² Ley Orgánica 4/2000, de 11 de enero, sobre derechos y libertades de los extranjeros en España y su integración social (Organic Law 4/2000, of January 11, on the rights and freedoms of foreigners in Spain and their social integration), available at <https://www.boe.es/buscar/act.php?id=BOE-A-2000-544> (last accessed on 5 February 2026).

¹³ Ley 14/1994, de 1 de junio, por la que se regulan las empresas de trabajo temporal (Law 14/1994 of 1 June regulating Temporary Work Agencies), available at <https://www.boe.es/buscar/act.php?id=BOE-A-1994-12554> (last accessed on 5 February 2026), Articles 11, 12 and 16.

3.1.4. France

| Country: France | |
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| Subcontracting | |
| Legal definition of subcontracting | In France, the law of 1975 on subcontracting (as amended) in private and public contracts contains the following definition of subcontracting: <i>“The operation by which a contractor entrusts, by way of a subcontract and under their responsibility, to another person called a subcontractor the execution of all or part of the works contract or part of the public contract concluded with the project owner.”</i> ¹ |
| Rules and limitations on subcontracting | In France, the law of 1975 on subcontracting ² regulates the operation of subcontractors both for private and public contracts, complemented by the Public Procurement Code (PPC) ³ for public contracts. In general, there are no limitations concerning the number of subcontracting tiers or the type of tasks that can be subcontracted in France, but each subcontractor must be accepted by the contracting authority and their payment terms approved. The only exception is the domain of nuclear plants where certain activities cannot be subcontracted, and a limit of maximum two subcontracting tiers apply. ⁴ Additionally, the definition of subcontracting in the PPC excludes the possibility of subcontracting the entire public contract, however, it does not specify a minimum percentage of works that the main contractor must retain. ⁵ The PPC also stipulates that the contracting authority may require the main contractor to perform certain critical tasks directly. ⁶ Regarding subcontracting companies that are located outside of France, no specific limitations apply, but workers must obtain work permits and companies who contracts a subcontractor wishing to post employees to France must verify whether the subcontractor submitted the SIPSI declaration to the labour inspectorate prior to posting. ⁷ |
| Liability structures | Liability is joint and several among the main contractor and subcontractor in France when the latter violates the rules on undeclared work. ⁸ Additionally, the liability extends to the client if they fail to act upon the subcontractors of its contractors operating illegally and therefore become jointly responsible for the payment of remuneration, taxes and social contributions. ⁹ All contracting entities in the chain must verify the social and tax compliance of their direct contractors and in case they employ foreign workers, whether the workers obtained the appropriate authorisation to work in France. ¹⁰ |

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| National enforcement | The responsible bodies for the enforcement of working conditions and labour laws are labour inspectors, police officers, tax and customs officers, social security inspectors, maritime affairs administrators, road and air transportation inspectors, and fraud prevention officers. ¹¹ Monitoring mechanisms include the BTP card (Carte d'identification professionnelle des salariés du bâtiment et des travaux publics) which is mandatory for all employees on construction sites since 2017. ¹² Additionally, the SIPSI declaration is used to track foreign employers posting workers to France through an online system operated by the Ministry of Labour. Sanctions for non-compliance with subcontracting rules and undeclared work consist of both civil liability and criminal liability. |
| Temporary work agencies and other intermediaries | |
| Rules and limitations on TWAs | The operation of TWAs is regulated by the Labour Code in France, and they must fulfil certain conditions, such as submitting a declaration to the labour inspectorate, having a financial guarantee for the wages and social contributions of workers. ¹³ Temporary workers may only be hired for specific and temporary tasks, and only in specific cases, such as the replacement of workers, temporary increase in company activity, or seasonal jobs. ¹⁴ The assignment contract, regardless of its purpose, may neither aim nor have the effect of permanently filling a position related to the normal and ongoing activity of the user undertaking. The Labour Code prohibits hiring temporary workers within six months after a dismissal for economic reasons, to replace workers whose employment contract has been suspended due to collective labour disputes, and for particularly hazardous work listed by regulation. ¹⁵ Foreign TWAs are allowed to post workers in France as long as they respect national rules, such as submitting the SIPSI declaration. In the construction sector, employers must also affiliate workers to national bodies for annual paid leave and leaves in case work is impossible due to weather conditions (CIBTP). Hiring third-country nationals as temporary workers is allowed, but they must obtain work and residence permits before starting to work and the TWA is responsible for verifying their identity and right to work. |
| Liability structures | TWAs as employers are primarily responsible for the wages and social security contributions of their workers, as well as most of the OSH obligations, ¹⁶ while the user undertaking is responsible for the working conditions, including health and safety and prevention measures at the workplace. ¹⁷ Personal protective equipment is provided by the user undertaking. ¹⁸ Additionally, temporary workers within the user undertaking have access to collective transport services and shared facilities, particularly catering facilities, under the same conditions as the user undertaking's employees. ¹⁹ In case of illegal employment, the TWA and the user undertaking are jointly and severally liable. |

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| National enforcement | Similarly to subcontracting, labour inspectors, police officers, tax and customs officers, social security inspectors, maritime affairs administrators, road and air transportation inspectors, and fraud prevention officers are responsible for controlling undeclared work. Foreign TWAs must notify the Labour Inspectorate of posting workers to France through the SIPSI declaration. Sanctions for failing to comply with the provisions on temporary work mainly include fines, and in case of repeated offences, imprisonment. ²⁰ |
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Relevant national legislation:

¹ Loi n° 75-1334 du 31 décembre 1975 relative à la sous-traitance (Law n° 75-1334 of 31 December 1975 relating to subcontracting), available at <https://www.legifrance.gouv.fr/loda/id/JORFTEXT000000889241/2021-06-27> (last accessed on 17 November 2025), Article 1.

² Ibid.

³ Code de la commande publique (Public Procurement Code), 1 April 2019, https://www.legifrance.gouv.fr/codes/texte_lc/LEGITEXT000037701019/ (last accessed on 6 February 2026).

⁴ Code de l'environnement (Environmental Code), 21 September 2000, available at https://www.legifrance.gouv.fr/codes/texte_lc/LEGITEXT000006074220/ (last accessed on 6 February 2026), Article R593-10.

⁵ Code de la commande publique (Public Procurement Code), 1 April 2019, available at https://www.legifrance.gouv.fr/codes/texte_lc/LEGITEXT000037701019/ (last accessed on 6 February 2026), Article L2193-2.

⁶ Ibid., Article L2193-3.

⁷ Code du travail (Labour Code), 2 January 1973, available at https://www.legifrance.gouv.fr/codes/texte_lc/LEGITEXT000006072050/ (last accessed on 6 February 2026), Article L1262-4-1.

⁸ Ibid., Articles L8222-1 to L8222-7.

⁹ Ibid., Article L8222-5.

¹⁰ Ibid., Articles L8222-1 and L8254-1.

¹¹ Ibid., Article L8271-1-2.

¹² Ibid., Articles L8291-1 and L8291-2.

¹³ Ibid., Articles L1251-45 to L1251-58.

¹⁴ Ibid., Article L1251-6.

¹⁵ Ibid., Articles L1251-9 and L1251-10.

¹⁶ Ibid., Article L1251-22.

¹⁷ Ibid., Article L1251-23.

¹⁸ Ibid., Article L1251-21.

¹⁹ Ibid., Article L1251-24.

²⁰ Ibid., Articles L1255-1 to L1255-18.

3.1.5. Italy

| Country: Italy | |
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| Subcontracting | |
| Legal definition of subcontracting | <p>In Italy, public procurement law contains the following definition of subcontracting:</p> <p><i>“A contract by which the contractor entrusts to third parties the execution of part of the services or works covered by the original procurement contract, with the organisation of means and risks borne by the subcontractor”¹</i></p> |
| Rules and limitations on subcontracting | <p>Rules differ significantly between public procurement and private contracts. In public procurement, subcontracting is governed primarily by Article 119 of the Public Procurement Code (Legislative Decree 36/2003). Full subcontracting is prohibited: any agreement entrusting third parties with the complete performance of the contract, or with the predominant execution of works relating to the predominant category or labour-intensive contracts, is null and void. The contracting authority identifies the activities that must be performed directly by the main contractor and may prohibit subcontracting for specific tasks with the due justification. There are no fixed quantitative limits on subcontracting following the 2023 reform, but the main contractor must perform the predominant part of the works relating to the predominant category and labour-intensive contracts. Contractors must hold the required qualifications for the predominant category and cannot remedy a lack of qualification through subcontracting. In private construction contracts, there are no statutory limits on subcontracting tiers or types of tasks, except those contractually agreed. Nonetheless, compliance with health and safety rules and verification of technical and professional suitability remain mandatory. Both public and private contracts are subject to Legislative Decree 81/2008² on occupational health and safety. Contractors and subcontractors must possess technical and professional suitability, cooperate in risk prevention, and comply with coordination obligations on construction sites. A points-based licence issued by the National Labour Inspectorate is required for companies operating on temporary or mobile construction sites, with limited exceptions. The construction credit license for companies and self-employed workers on construction sites is mandatory since 1 October 2024 and is issued digitally via the National Labour Inspectorate’s portal. When the authorities issue a license, each company obtains 30 credits, and companies must have at least 15 credits available to operate on construction sites. To obtain a license, companies must meet a number of requirements, some of which are to be proven by self-certification, such as the possession of a valid DURC (single document of regulatory contribution), DVR (risk assessment document) and training. The maximum score is 100 which can be earned based on the history and security of the company.</p> |

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| <p>Liability structures</p> | <p>In both public and private contracts, the main contractor remains responsible toward the client for proper performance, even when parts of the work are subcontracted. In other words, the main contractor and the subcontractor are jointly and severally liable to the contracting authority for the works or the services covered by the subcontract. Subcontracting does not relieve the contractor of contractual liability. In public procurement, the main contractor and subcontractor are jointly and severally liable toward the contracting authority for the performance covered by the subcontract.³ In both public and private contracts, the client, the contractor and all subcontractors are jointly and severally liable, for up to two years after termination of the contract, for wages, social security contributions and insurance premiums due to workers employed along the contracting chain.⁴ In public contracts, pursuant to Article 29 of Legislative Decree No. 276 of 10 September 2003, the main contractor is jointly and severally liable with the subcontractor for remuneration and social security contributions, except where the subcontractor is entitled to direct payment not caused by the contractor's fault. This regime supplements the direct action available to workers under Article 1676 of the Civil Code. Additionally, the client, contractor and subcontractors are jointly and severally liable for damages suffered by workers and not covered by INAIL insurance, except where damages result from risks specific to the subcontractor's activity.⁵</p> |
| <p>National enforcement</p> | <p>The National Anti-Corruption Authority oversees compliance with public procurement rules, issues guidance and interpretative acts, manages the Virtual File of the Economic Operator, and may impose administrative sanctions or initiate exclusion procedures in cases of serious or repeated breaches. The National Labour Inspectorate is responsible for supervising compliance with labour law and OSH regulations throughout the subcontracting chain. It conducts inspections on construction sites, may impose administrative fines, and can order the suspension of worksites in cases of serious violations. The National Social Security Institute (INPS), National Institute for Insurance against Accidents at Work (INAIL) and the Construction Funds (so called Casse Edili) verify compliance with social security and insurance obligations and jointly issue the DURC online (Documento Unico di Regolarità Contributiva), which is a mandatory certification attesting that contractors and subcontractors are up to date with social security, welfare and compulsory insurance contributions. In public procurement, contracting authorities may apply suspension of payments, penalties for delays in the performance of contractual obligations by the contractor and termination of the contract in accordance with Article 123 of the Public Procurement Code. In public contracts, in the event of non-compliance with contributions as shown in the DURC relating to employees of the contractor or subcontractor, the contracting authority shall withhold from the payment certificate the amount corresponding to the non-compliance for subsequent payment to the social security and insurance institutions, including, in the case of construction work, the Construction Funds. In the event of persistent delay in the payment of wages due to the personnel referred to in the first sentence, the contracting authority shall also pay the arrears directly to the workers during the course of the work, deducting the relevant amount from the sums due to the contractor or from the sums due to the defaulting subcontractor in case direct payment is provided for.</p> |

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| | <p>In the construction sector, enforcement is further strengthened by the role of the Casse Edili, bilateral bodies established by the trade unions and employers' organisations that are comparatively more representative at national level. In addition to contributing to the issuance of the DURC online, the Casse Edili are responsible for issuing the certificate of labour-force congruity (attestazione di congruità), which verifies whether the amount of construction labour declared and employed is proportionate to the type and value of the construction works performed based on predefined adequacy indices. Monitoring is conducted under Ministerial Decree 143/2021, Article 3, paragraph 4, through the "EdilConnect" system, a digital platform managed by the Joint National Committee for Building Workers' Welfare Funds (CNCE), a paritarian institution established by trade unions and employers' organizations that are comparatively more representative in Italy.</p> |
| <p>Temporary work agencies and other intermediaries</p> | |
| <p>Rules and limitations on TWAs</p> | <p>TWAs are regulated primarily by Legislative Decree 276/2003⁶ and Legislative Decree 81/2015.⁷ Only authorised agencies may lawfully supply labour; other intermediaries are prohibited. TWAs must meet strict licensing, organisational and integrity requirements. Both fixed-term and open-ended agency work are permitted, subject to quantitative limits (30% for fixed-term agency workers and 20% for open-ended agency workers at user undertakings), unless collective agreements provide otherwise. Temporary agency work is prohibited in specific situations, including replacing striking workers, following recent collective redundancies, during work suspensions under wage guarantee schemes, or where risk assessments have not been carried out.⁸ TWAs established in the EU can post workers to Italy provided that they are legally established and authorised in their home Member State and they must notify the posting via the online platform 'Posting of Workers' prior to the assignment. Additionally, they must designate a contact person in Italy and comply with the Italian labour laws and collective agreements. Hiring third-country nationals is permitted but they must hold valid residence- and work permits and in the construction sector, they must be registered with the local Cassa Edile and covered by all relevant social security and OSH obligations.</p> |
| <p>Liability structures</p> | <p>The TWA is responsible for wages and social security contributions, while the user undertaking is jointly liable for these obligations, including contributions to INPS, INAIL and the Casse Edili.⁹ Regarding OSH, the TWA is responsible for general training and information, while the user undertaking bears responsibility for prevention and protection measures at the workplace. Liability for work accidents is allocated according to the party responsible for the breach that caused the accident. For workers (blue collars), the application of the national collective labour agreement for the construction industry signed by the trade unions and employers' organizations that are comparatively more representative at the national level remains unchanged, with the relevant registration with the</p> |

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| | competent local construction workers' fund and the fulfilment of training obligations at construction schools/single bodies, i.e., the joint bodies set up by the aforementioned social partners for this purpose. |
| National enforcement | The National Labour Inspectorate is the primary authority responsible for supervising TWAs' compliance with labour law and OSH obligations. The INPS and INAIL monitor social security and insurance compliance, while the Casse Edili verify contribution regularity and labour-force congruity in the construction sector. In public works, contracting authorities may suspend payments or apply sanctions for non-compliance involving TWAs. |

Relevant national legislation:

¹ Decreto Legislativo 31 marzo 2023, n. 36, Codice dei contratti pubblici in attuazione dell'articolo 1 della legge 21 giugno 2022, n. 78, recante delega al Governo in materia di contratti pubblici (Legislative Decree 31 March 2023, no. 36, Public Contracts Code implementing Article 1 of Law No. 78 of 21 June 2022, granting the Government delegated powers on public contracts), available at <https://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:decreto.legislativo:2023;036> (last accessed on 12 February 2026), Article 119(2).

² Decreto Legislativo 9 aprile 2008, n. 81, testo unico in materia di tutela della salute e della sicurezza nei luoghi di lavoro (Legislative Decree No. 81 of 9 April 2008, Consolidated Act on Health and Safety at Work), available at <https://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:decreto.legislativo:2008;81~art306> (last accessed on 12 February 2026).

³ Decreto Legislativo 31 marzo 2023, n. 36, Codice dei contratti pubblici in attuazione dell'articolo 1 della legge 21 giugno 2022, n. 78, recante delega al Governo in materia di contratti pubblici (Legislative Decree 31 March 2023, no. 36, Public Contracts Code implementing Article 1 of Law No. 78 of 21 June 2022, granting the Government delegated powers on public contracts), available at <https://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:decreto.legislativo:2023;036> (last accessed on 12 February 2026), Article 119(6).

⁴ Decreto Legislativo 10 settembre 2003, n. 276 di attuazione delle deleghe in materia di occupazione e mercato del lavoro, di cui alla legge 14 febbraio 2003, n. 30 (Legislative Decree No. 276 of 10 September 2003 implementing the delegations on employment and the labor market, pursuant to Law No. 30 of 14 February 2003), available at <https://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:decreto.legislativo:2003-09-10;276> (last accessed on 12 February 2026), Article 29.

⁵ Decreto Legislativo 9 aprile 2008, n. 81, testo unico in materia di tutela della salute e della sicurezza nei luoghi di lavoro (Legislative Decree No. 81 of 9 April 2008, Consolidated Act on Health and Safety at Work), available at <https://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:decreto.legislativo:2008;81~art306> (last accessed on 12 February 2026), Article 26(4).

⁶ Decreto Legislativo 10 settembre 2003, n. 276 di attuazione delle deleghe in materia di occupazione e mercato del lavoro, di cui alla legge 14 febbraio 2003, n. 30 (Legislative Decree No. 276 of 10 September 2003 implementing the delegations on employment and the labor market, pursuant to Law No. 30 of 14 February 2003), available at <https://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:decreto.legislativo:2003-09-10;276> (last accessed on 12 February 2026).

⁷ Decreto Legislativo 15 giugno 2015, n. 81, Disciplina organica dei contratti di lavoro e revisione della normativa in tema di mansioni (Legislative Decree No. 81 of 15 June 2015, Comprehensive Regulation of Employment Contracts and Revision of the Legislation on Job Duties), available at <https://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:decreto.legislativo:2015-06-15;81> (last accessed on 12 February 2026).

⁸ Ibid., Article 32.

⁹ Ibid., Article 35.

3.1.6. Poland

| Country: Poland | |
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| Subcontracting | |
| Legal definition of subcontracting | In Poland, public procurement law contains the following definition of a subcontract: <i>“A subcontract shall be understood as a written contract for consideration, concluded between the contractor and the subcontractor, and in the case of a construction works contract other than a contract in the fields of defence and security, also between the subcontractor and a sub-subcontractor or between sub-subcontractors, under which the subcontractor or sub-subcontractor, respectively, undertakes to perform part of the contract.”</i> ¹ |
| Rules and limitations on subcontracting | In Poland, subcontracting in public works is regulated by the Public Procurement Law, ² while private contracts are governed by the Civil Code. ³ Private companies are free to determine the rules of their procurement, but they have to comply with general legal provisions of the Civil Code, including on due diligence, liability for non-performance and contractual penalties. In public contracts, the contracting authority must specify the type of activities that require the contractor or subcontractor to employ workers, the method of verifying the employment of these workers, and the contracting authority's power to verify the contractor's compliance with the employment requirements and the sanctions for failure to meet these requirements. ⁴ If already known, contractors must provide the names, contact details and representatives of subcontractors involved in public works to the contracting authority. Regarding subcontracting companies based outside the EEA, equal treatment applies to those operating in countries that are party of international agreements (e.g. WTO GPA), but other third-country companies may be subject to less favourable conditions. |
| Liability structures | The contractor is liable for the acts and omissions of persons assisting in fulfilling their obligation, as for their own acts and omissions. ⁵ Additionally, the client is jointly and severally liable with the main contractor for the payment of remuneration due to the subcontractor for the construction works performed by them. ⁶ In a 2014 ruling, the Polish Supreme Court stressed that contracting authorities must consent to the conclusion of a contract between contractor and subcontractor to establish their joint and several liability for remuneration payments. ⁷ |

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| National enforcement | The public contracting authority directly supervises and approves the contractor's subcontractors and verifies contracts with subcontractors, while the Fiscal Audit Office and the National Fiscal Administration (KAS) audit tax settlements and invoices between contractors and subcontractors. The National Labor Inspectorate is responsible for overseeing compliance with labour law regulations by contractors and subcontractors on construction sites, and the construction supervision authorities verify compliance of works performed by the contractor and subcontractors with building permits and technical regulations. The National Appeal Chamber is responsible for reviewing appeals in public procurement procedures. In Poland, there is no single, central, public register of subcontracting in public procurement, tracking is performed within the internal systems of the contracting parties. Sanctions mainly entail administrative fines. |
| Temporary work agencies and other intermediaries | |
| Rules and limitations on TWAs | TWAs can participate in public contracts as subcontractors, but restrictions may apply to specific contracts. For instance, in security, education and healthcare, specific provisions or tender specifications may require direct employment, which limits TWA participation. Additionally, temporary workers may not be employed for particularly hazardous work, to replace workers on strike, or if the user undertaking has terminated the same or similar positions for reasons not attributable to the employees in the preceding three months. ⁸ Particularly hazardous work includes construction, demolition, renovation and assembly work carried out without stopping the operation of workplace of parts thereof, and working at height. ⁹ There are no restrictions on foreign TWAs posting workers in Poland. Similarly, TWAs are allowed to employ third-country nationals as long as workers have valid residence and work permits or appropriate visas. However, a 2025 act introduced a new two-year grace period which stipulates that TWAs can only employ foreigners after 2 years from the date of entry in the register of employment agencies. ¹⁰ |
| Liability structures | TWAs are responsible for all employer obligations that are not assigned to the user undertaking and have not been contractually transferred, such as duties regarding OSH obligations to the extent not transferred to the user undertaking. User undertakings and TWAs posting workers in the territory of Poland are jointly and severally liable for the entitlements of temporary workers resulting from the performance of works, such as remuneration and allowances. ¹¹ |
| National enforcement | The Central Register of Employment Agencies is responsible for examining the correctness of contracts with individuals assigned to work by TWAs and safeguarding compliance with labour market regulations. They may issue recommendations, guidelines and interpretations to voivodeship marshals and the Province Marshal issues a certificate of entry into the register for TWAs. The Labour Inspectorate of Poland is responsible for the supervision and inspection of compliance with labour law provisions, in particular OSH regulations and principles, and provisions concerning employment relationships. |

Relevant national legislation:

¹ Ustawa z dnia 11 września 2019 r. - Prawo zamówień publicznych (Act of 11 September 2019 - Public Procurement Law), available at <https://isap.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WDU20190002019> (last accessed on 5 February 2026), Article 7(27).

² Ibid.

³ Obwieszczenie Marszałka Sejmu Rzeczypospolitej Polskiej z dnia 25 lipca 2025 r. w sprawie ogłoszenia jednolitego tekstu ustawy - Kodeks cywilny (Announcement of the Marshal of the Sejm of the Republic of Poland of 25 July 2025 on the announcement of the consolidated text of the act - Civil Code), 24 July 2025, available at <https://isap.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WDU20250001071> (last accessed on 17 November 2025).

⁴ Ustawa z dnia 11 września 2019 r. - Prawo zamówień publicznych (Act of 11 September 2019 - Public Procurement Law), available at <https://isap.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WDU20190002019> (last accessed on 5 February 2026), Article 95.

⁵ Obwieszczenie Marszałka Sejmu Rzeczypospolitej Polskiej z dnia 25 lipca 2025 r. w sprawie ogłoszenia jednolitego tekstu ustawy - Kodeks cywilny (Announcement of the Marshal of the Sejm of the Republic of Poland of 25 July 2025 on the announcement of the consolidated text of the act - Civil Code), 24 July 2025, available at <https://isap.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WDU20250001071> (last accessed on 17 November 2025), Article 474.

⁶ Ibid, Article 647¹.

⁷ Supreme Court of Poland, ruling V CSK 124/13 of 24 January 2014, available at <https://www.sn.pl/sites/orzecznictwo/orzeczenia3/v%20csk%20124-13-1.pdf> (last accessed on 17 November 2025).

⁸ Ustawa z dnia 9 lipca 2003 r. o zatrudnianiu pracowników tymczasowych (Act of 9 July 2003 on the employment of temporary workers), available at <https://isap.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=wdu20031661608> (last accessed on 6 February 2026), Article 8.

⁹ Rozporządzenie Ministra Pracy i Polityki Socjalnej z dnia 26 września 1997 r. w sprawie ogólnych przepisów bezpieczeństwa i higieny pracy (Regulation of the Minister of Labour and Social Policy of 26 September 1997 on general occupational health and safety regulations), available at <https://isap.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=wdu19971290844> (last accessed on 6 February 2026).

¹⁰ Ustawa z dnia 20 marca 2025 r. o rynku pracy i służbach zatrudnienia (Act of 20 March 2025 on the labor market and employment services), available at <https://isap.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WDU20250000620> (last accessed on 6 February 2026), Article 305(3).

¹¹ Ustawa z dnia 10 czerwca 2016 r. o delegowaniu pracowników w ramach świadczenia usług (Act of 10 June 2016 on the posting of workers in the framework of the provision of services), available at <https://isap.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WDU20160000868> (last accessed on 6 February 2026), Article 7.

3.1.7. Portugal

| Country: Portugal | |
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| Subcontracting | |
| Legal definition of subcontracting | <p>In Portugal, the sector-specific law on subcontracting in the construction sector (Law 41/2015) contains the following definition of subcontracting:</p> <p><i>“The contractual transfer of work execution from one construction company to another for projects originally awarded by the project owner.”¹</i></p> <p>Additionally, subcontracting is defined in the Portuguese Civil Code as:</p> <p><i>“Subcontracting is the contract by which a third party undertakes to perform, or a part thereof, the work to which the contractor is bound.”²</i></p> |
| Rules and limitations on subcontracting | <p>Law 41/2015 regulates subcontracting in construction for both private and public works and stipulates minimum mandatory content for subcontracts, including specific clauses on detailing the parties involved, the scope of work, qualifications, pricing, deadlines and payment terms. Additionally, subcontractors must be qualified and hold necessary licences from the Institute of Public Markets, Real Estate and Construction. Subcontractors cannot perform work beyond their licensed categories, and contracts may require certain obligations (e.g. critical tasks) to be directly performed by the contractor. Furthermore, construction activities within Portuguese territory may only be performed by EEA nationals or nationals of any state that are party to the World Trade Organisation (WTO), applicable to both natural persons and legal entities.³ Foreign companies can establish or temporarily provide construction services in Portugal if they are legally established in the EEA or in signatory countries of the WTO’s Government Procurement Agreement.⁴ Companies may employ third-country nationals, provided that workers hold valid residence and work permits, and when workers of foreign companies are temporarily posted to Portugal, employers must comply with Portuguese rules on working conditions, wages, and OSH. Employers must also notify the Portuguese Authority for Working Conditions. For public contracts, the Public Procurement Code defines additional rules.⁵</p> |
| Liability structures | <p>Both Law 41/2015 and the Public Procurement Code impose substantial liabilities on main contractors concerning the actions and overall conduct of their subcontractors. Main contractors are jointly and severally liable for the entire performance of the contract, including all subcontracted work. Should the subcontractors fail to comply with contractual obligations, labour laws, OSH regulations, or other statutory requirements that may apply, the main contractor</p> |

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| | is fully liable before the project owner and the relevant public authority. The same principle is applied to private works, whereby the contractor is also liable before the project owner. |
| National enforcement | Regarding authorities, the Portuguese Authority for Working Conditions is responsible for monitoring working conditions and enforcing labour laws, while the Institute of Public Markets, Real Estate and Construction monitors compliance with legal requirements, assesses whether companies have and maintain the standards required to perform construction activities, and imposes appropriate sanctions. Regarding monitoring tools, Portugal maintains an official online public procurement portal (Portal BASE) where information concerning the award and execution of public contracts is publicly disclosed. In addition, the Social Security Identification Number system mandates that all employers, including subcontractors, must register their employees before the Portuguese social security authorities to allow tracking employment relationships and ensure compliance with social security contribution obligations. Non-compliance may entail administrative sanctions, contractual penalties, termination of contract, exclusion from future public procurement procedures and/or civil liability. |
| Temporary work agencies and other intermediaries | |
| Rules and limitations on TWAs | In Portugal, the standard regime is an open-ended employment contract, thus temporary hiring (whether through a fixed-term or temporary employment contract) is considered exceptional. Temporary contracts are regulated by the Portuguese Labour Code that lays down the specific conditions under which temporary contracts can be used, including for the replacement of workers, seasonal activity whose annual production cycle presents irregularities, exceptional increase in company activity, the execution of an occasional task or specific service, and carrying out temporary projects. ⁶ The use of temporary workers for jobs that are particularly dangerous to their safety or health is not permitted, unless that is their professional qualification. ⁷ TWAs must obtain a licence from the Institute for Employment and Vocational Training, who maintains a public register of licensed TWAs. In the construction sector, there is a mandatory public registration system for companies that provide external services that include the transfer and allocation of workers to third parties, as well as a weekly register of workers at temporary or mobile construction sites. ⁸ Foreign TWAs can post workers in Portugal but must ensure the working conditions provided for by law and collective labour agreements. TWAs can also hire third-country nationals provided that workers possess valid residence and work permits. |
| Liability structures | Regarding remuneration, the TWA is responsible for providing a deposit that guarantees the payment of workers' remuneration and compensation, social security contributions, ⁹ while the user undertaking is jointly and severally liable for the TWA's failure to comply with legal obligations with regards to the social |

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| | security of their workers, and the payment of respective fines. ¹⁰ Regarding OSH, user undertakings are responsible for risk assessments, safety measures and working conditions, trainings, and medical supervision. ¹¹ TWAs are responsible for professional trainings for temporary workers. ¹² |
| National enforcement | The national public employment service, the Institute of Employment and Vocational Training, is responsible for promoting the creation and quality of employment in Portugal and issuing licences for TWAs, while the Portuguese Authority for Working Conditions is responsible for monitoring labour conditions. |

Relevant national legislation:

¹ Lei n.º 41/2015, de 3 de junho (Law 41/2015 of 3 July with later amendments, legal regime applicable to the exercise of construction activity), available at <https://diariodarepublica.pt/dr/detalhe/lei/41-2015-67377968> (last accessed on 17 November 2025), Article 3.

² Decreto-Lei n.º 47344 de 25 de novembro - Código Civil (Decree-Law No. 47344 of November 25th - Civil Code), available at <https://diariodarepublica.pt/dr/legislacao-consolidada/decreto-lei/1966-34509075> (last accessed on 5 February 2026), Article 1213.

³ Lei n.º 41/2015, de 3 de junho (Law 41/2015 of 3 July with later amendments, legal regime applicable to the exercise of construction activity), available at <https://diariodarepublica.pt/dr/detalhe/lei/41-2015-67377968> (last accessed on 17 November 2025), Article 4.

⁴ Ibid, Articles 21-22.

⁵ Decreto-Lei n.º 18/2008 de 29 de janeiro - Código dos Contratos Públicos (Decree-Law 18/2008 of 29 January - Public Procurement Code), available at <https://diariodarepublica.pt/dr/legislacao-consolidada/decreto-lei/2008-34455475> (last accessed on 1 October 2025).

⁶ Lei n.º 7/2009 de 12 de fevereiro - Aprova a revisão do Código do Trabalho (Law n.º 7/2009 of 12 February - Approving the revision of the Labour Code), available at <https://diariodarepublica.pt/dr/legislacao-consolidada/lei/2009-34546475> (last accessed on 5 February 2026).

⁷ Ibid, Article 175.

⁸ Lei n.º 13/2023, de 3 de abril (Law n.º 13/2023, of 3 April), available at <https://diariodarepublica.pt/dr/detalhe/lei/13-2023-211340863> (last accessed on 5 February 2026).

⁹ Lei n.º 7/2009 de 12 de fevereiro - Aprova a revisão do Código do Trabalho (Law n.º 7/2009 of 12 February - Approving the revision of the Labour Code), available at <https://diariodarepublica.pt/dr/legislacao-consolidada/lei/2009-34546475> (last accessed on 5 February 2026).

¹⁰ Decreto-Lei n.º 260/2009 de 25 de setembro (Decree-Law No. 260/2009 of 25 September), available at <https://diariodarepublica.pt/dr/legislacao-consolidada/decreto-lei/2009-63511624> (last accessed on 5 February 2026).

¹¹ Lei n.º 7/2009 de 12 de fevereiro - Aprova a revisão do Código do Trabalho (Law n.º 7/2009 of 12 February - Approving the revision of the Labour Code), available at <https://diariodarepublica.pt/dr/legislacao-consolidada/lei/2009-34546475> (last accessed on 5 February 2026), Article 186.

¹² Lei n.º 7/2009 de 12 de fevereiro - Aprova a revisão do Código do Trabalho (Law n.º 7/2009 of 12 February - Approving the revision of the Labour Code), available at <https://diariodarepublica.pt/dr/legislacao-consolidada/lei/2009-34546475> (last accessed on 5 February 2026), Article 187.

3.1.8. Romania

| Country: Romania | |
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| Subcontracting | |
| Legal definition of subcontracting | <p>In Romania, public procurement law contains the following definition of a subcontractor:</p> <p><i>“A subcontractor is any economic operator who is not a party to a public procurement contract and who performs certain parts or elements of the works/services, being responsible to the contractor for the organization and performance of all the stages necessary for this purpose.”¹</i></p> <p>Additionally, the Romanian Civil Code defines subcontracting as:</p> <p><i>“By means of a subcontract, the contractor may entrust one or more subcontractors with the execution of parts or elements of the work or services, unless the subcontract was concluded for his own benefit.”²</i></p> |
| Rules and limitations on subcontracting | <p>In Romania, Law 98/2016 governs subcontracting in public procurement and stipulates that the main contractor must retain a significant part of the work and is not allowed to subcontract the entire contract.³ Additionally, subcontractors must be declared at the time of bidding or during the execution of the contract and the contracting authority may require that subcontractors do not subcontract further to ensure traceability and quality control. Thus, multiple levels in the subcontracting chain are not prohibited by law but may be limited by the contract or by quality, warranty or authorisation requirements. In private contracts, no general limit applies, but the main contractor remains responsible for the work to the client regardless of the number of levels of subcontractors. No restrictions apply to subcontracting companies based outside the EEA.</p> |
| Liability structures | <p>The subcontractor as the employer of its workers is liable for the payment of wages and abiding the rules in the Labour Code, but the main contractor can be held jointly and severally liable for the wages of workers. Subcontractors are responsible for registering their workers and paying their required social insurance, health insurance and unemployment contributions. Regarding OSH, subcontractors as employers are responsible for all necessary measures to ensure the health and safety of their workers, including risk assessments, preventive measures, training, protective equipment and medical checks.⁴ On the worksite,</p> |

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| | subcontractors must produce their own OSH plan, provide proof of training and ensure that their workers have undergone medical examinations and training. The main contractor is responsible for overall site safety and has a coordination role when multiple subcontractors operate on one worksite. |
| National enforcement | The bodies responsible for the enforcement of national rules are the Construction Inspectorate, the General Inspectorate for Emergency Situations, the Labor Inspectorate, the National Agency for Public Procurement, and the National Tax Administration Agency. Regarding monitoring systems, Romania has a set of interconnected tools mandated by labour legislation (REVISAL, D112), taxation (e-Invoice, D394), public procurement (SICAP), and on-site documentations such as technical books. These allow indirect monitoring and control of subcontracting, but complete and real-time traceability is not yet implemented at a centralised level. Violation of the legislation on subcontracting, failure to declare subcontractors or non-compliance with reporting and registration obligations may entail administrative and, in some cases, criminal sanctions. |
| Temporary work agencies and other intermediaries | |
| Rules and limitations on TWAs | TWAs in Romania are regulated by the Labour Code ⁵ when it comes to the rights and obligations of workers, TWAs and user undertakings, Government Decree no. 1256/2011 ⁶ regarding the authorisation of TWAs, and Law no. 156/2000 ⁷ regarding posting workers abroad. TWAs must register with the Ministry of Labour in Romania, and temporary employment agents can only be legal entities, not natural persons. TWAs from other EU countries can post workers to Romania but must comply with specific national rules and administrative requirements. Similarly, TWAs may hire third-country nationals as long as they obtain a work and residence permit, the TWA is licenced by the National Employment Agency and registered for REVISAL reporting, and the workers are declared to the National Tax Administration Agency and the Labour Inspectorate. |
| Liability structures | Liability is shared between the TWA and the user undertaking depending on the type of obligation. For remuneration and social security contributions, such as registering as an employer in REVISAL and filing D112 declarations, the TWA is responsible. For OSH, the user enterprise is responsible for training, risk assessment and preventive measures on the worksite. Regarding equal treatment of workers and workplace accidents, the TWA and the user undertaking are jointly liable. User undertakings are liable for illegal placements and unlicensed TWAs which constitutes a violation of the law. |
| National enforcement | The bodies responsible for the enforcement of rules regarding TWAs are the Labour Inspectorate, the National Employment Agency, the National Tax Administration Agency, Labour Courts, the State Inspectorate for Construction and the National House for Public Pensions. |

Relevant national legislation:

¹ Lege nr. 98 din 19 mai 2016 privind achizițiile publice (Law No. 98 of May 19, 2016 on public procurement), available at <https://legislatie.just.ro/public/detaliidocument/178667> (last accessed on 5 February 2026), Article 3(yy).

² Codul Civil din 17 iulie 2009, Legea nr. 287/2009 (Civil code of 17 July 2009, Law no. 287/2009), available at <https://legislatie.just.ro/public/detaliidocument/175630> (last accessed on 5 February 2026), Article 1852.

³ Lege nr. 98 din 19 mai 2016 privind achizițiile publice (Law No. 98 of May 19, 2016 on public procurement), available at <https://legislatie.just.ro/public/detaliidocument/178667> (last accessed on 5 February 2026).

⁴ Lege nr. 319 din 14 iulie 2006 a securității și sănătății în muncă (Law No. 319 of 14 July 2006, occupational health and safety), available at <https://legislatie.just.ro/Public/DetaliiDocumentAfis/73772> (last accessed on 5 February 2026).

⁵ Codul Muncii, Lege nr. 53 din 24 ianuarie 2003 (Labour Code, Law No. 53 of 24 January 2003), available at <https://legislatie.just.ro/Public/DetaliiDocumentAfis/41625> (last accessed on 5 February 2026).

⁶ Hotărâre nr. 1.256 din 21 decembrie 2011, privind condițiile de funcționare, precum și procedura de autorizare a agentului de muncă temporară (Decision No. 1.256 of 21 December 2011, regarding the operating conditions, as well as the authorization procedure for the temporary employment agent), available at <https://legislatie.just.ro/Public/DetaliiDocument/134255> (last accessed on 5 February 2026).

⁷ Lege nr. 156 din 26 iulie 2000, privind protecția cetățenilor români care lucrează în străinătate (Law No. 156 of 26 July 2000, regarding the protection of Romanian citizens working abroad), available at <https://legislatie.just.ro/Public/DetaliiDocument/23620> (last accessed on 5 February 2026).

3.1.9. Slovenia

| Country: Slovenia | |
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| Subcontracting | |
| Legal definition of subcontracting | In Slovenia, labour legislation, in particular the Employment Relations Act, contains the following definition of a subcontractor: <i>“An employer who is a subcontractor [...] shall be considered a legal entity to which a part or entirety of a service has been subcontracted under a contract, for the performance of which the main contractor has concluded a contract with the service client.”¹</i> |
| Rules and limitations on subcontracting | The only regulation that generally regulates the liability in subcontracting in the construction industry is the Employment Relations Act. ² Additionally, the Public Procurement Act regulates the operation of subcontractors in public procurement contracts, including in the construction sector. ³ This stipulates that all subcontractors must be listed in the tender, together with an explanation about which part of the work is intended to be subcontracted and the contact details and legal representatives of the proposed subcontractors. The legislation also regulates the possibility of replacing subcontractors, the rejection of a subcontractor by the client, the possibility of direct payment of a subcontractor by the client, as well as misdemeanour proceedings against the main contractor if it violates the rules regarding subcontractors. Specific requirements apply to subcontractors based outside the EEA, such as an extract of criminal record and a certificate issued by the competent authority of its state. |
| Liability structures | The only legal provision dealing with liability is Article 141(a) of the Employment Relationships Act which states that the main contractor is subsidiarily liable for the wages of subcontractors’ workers if the latter fails to provide their workers with a salary for the work performed. ⁴ |
| National enforcement | The Labour Inspectorate of the Republic of Slovenia is responsible for the supervision of the Employment Relations Act, while the National Review Commission for Reviewing Public Procurement Award Procedures supervises the implementation of the Public Procurement Act. Additionally, the Construction Inspectorate monitors permits. Sanctions mainly include monetary fines. Subcontracting itself is not subject to special administrative supervision. |
| Temporary work agencies and other intermediaries | |

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| Rules and limitations on TWAs | The legal framework governing the operation of TWAs and labour market intermediaries consists of the Employment Relations Act and the Labour Market Regulation Act. ⁵ The latter requires TWAs to submit an application for a permit and for entry in the register to the Ministry of Labour of the Republic of Slovenia. Foreign TWAs are allowed to post workers to Slovenia, but they must comply with all labour legislation and collective agreements applicable to the specific sector. Similarly, TWAs in Slovenia may hire third-country nationals, provided that they have (1) free access to the Slovenian labour market, (2) a single residence and work permit, and (3) an EU Blue Card. ⁶ |
| Liability structures | The primary responsibility for all workers' rights lies with the TWA as the employer, but the user undertaking is liable for the payment of wages and other remunerations for the period during which the worker worked for them. Regarding OSH, the user undertaking is responsible for ensuring safe working conditions, education and training, although it is common practice in Slovenia that the TWA and the user undertaking agree on the latter in more detail in a contract between them. |
| National enforcement | The Labour Inspectorate is responsible for enforcing rules regarding the operation of TWAs in Slovenia, while the Ministry of Labour is responsible for issuing permits for TWAs. |

Relevant national legislation:

¹ Zakon o delovnih razmerjih (Employment Relations Act), 5 March 2013, available at <https://pisrs.si/pregledPredpisa?id=ZAKO5944> (last accessed on 5 February 2026), Article 141(a)(2).

² Ibid.

³ Zakon o javnem naročanju (Public Procurement Act), 18 November 2015, available at <https://pisrs.si/pregledPredpisa?id=ZAKO7086> (last accessed on 5 February 2026).

⁴ Zakon o delovnih razmerjih (Employment Relations Act), 5 March 2013, available at <https://pisrs.si/pregledPredpisa?id=ZAKO5944> (last accessed on 5 February 2026), Article 141(a).

⁵ Zakon o urejanju trga dela (Labour Market Regulation Act), 28 September 2010, available at <https://pisrs.si/pregledPredpisa?id=ZAKO5840> (last accessed on 5 February 2026).

⁶ Ibid, Article 167.

3.1.10. Norway

| Country: Norway | |
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| Subcontracting | |
| Legal definition of subcontracting | There is no single statutory definition of subcontracting in Norwegian law. The difference between employees and independent contractors is based on the definition of an employee which can be found in Section 1-8 of the Working Environment Act. ¹ |
| Rules and limitations on subcontracting | <p>In general, the Working Environment Act regulates employment conditions for all employees in Norway, supplemented by the collective agreement for the construction sector (FOB).² For private works, contract law and standard construction contracts regulate subcontracting (NS 8405, 8406, 8407 for main contracts and NS 8415, 8416, 8417 for subcontracts). In public contracts, the Public Procurement Act,³ complemented by Regulations No. 974, limits subcontracting to two levels in construction work and cleaning services.⁴ This means that second-level subcontractors may not subcontract further, with exceptions in rare cases such as when more than two subcontractors are necessary to ensure sufficient competition. Some local authorities, such as Oslo and Skien, imposed further restrictions to supply chains, limiting them to a single tier. The EFTA Surveillance Authority (ESA) opened an own initiative case against Norway in 2019 in response to these limitations, arguing that the provisions of the Public Procurement Act conflict with Articles 31 and 36 of the EEA Agreement on the freedom of establishment and freedom to provide services.⁵ However, in 2024 the ESA decided to not pursue the case further due to 'limited resources and increased workload', and thereby closed the case.⁶</p> <p>Regarding the type of task, outsourcing of work and hiring temporary workers through TWAs is only permitted when the main contractor has insufficient in-house staffing and increasing the number of in-house employees is not possible.⁷ If a company has to lay off or terminate permanently employed employees to outsource work, outsourcing the work may violate Section 15-7 of the Working Environment Act.⁸ In the procurement of goods that include construction work, the contracting authority may require certain critical tasks to be performed by directly the main contractor.⁹ Subcontracting non-EEA companies in the construction sector is permitted, but the contracting authority must monitor the subcontractor to ensure that the latter guarantees the same general pay and working conditions to its employees as those agreed in the Norwegian collective pay agreements.¹⁰ Additionally, subcontractors based outside Norway must be reported in the Assignment and Employee Register (OAR) and workers must obtain residence permits. It is the responsibility of employers to check whether employees are entitled to work in Norway.</p> |

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| <p>Liability structures</p> | <p>In Norway, contractors and subcontractors who outsource work or hire employees are jointly and severally liable in the same way as the client for the payment of wages and overtime pay of the subcontractors' workers.¹¹ This extends the liability across the supply chain (chain liability). However, employees must submit their wage claims in writing within three months after the due date for the payment. Regarding OSH, employers, including subcontractors, are primarily responsible for the working environment and training of their workers. However, when multiple contractors' workers operate at the same site simultaneously, the main contractor is responsible for the coordination of subcontractors.¹² If no company can be considered the main contractor, a written agreement among contractors must be made as to who shall be responsible for coordination.</p> |
| <p>National enforcement</p> | <p>The Labour Inspection Authority oversees and ensures that companies comply with the requirements of the Working Environment Act, such as rules about wages and employment, while district courts are responsible for the damage claims of bidders. The Norwegian Tax Administration operates the Assignment and Employee Register where foreign contractors are reported. The EFTA Surveillance Authority oversees Norway's obligations under and alignment with the EEA Agreement. The Norwegian Complaints Board for Public Procurement receives complaints from suppliers and assesses whether procurement laws have been violated. Monitoring mechanisms include the Assignment and Employee Register, forms RF-1198 and RF-1199 which are used to report assignments, and mandatory HSE cards for all workers in the building and construction sectors. HSE cards are required for both Norwegian and foreign workers and must be worn visibly while working. The client is responsible for compiling an electronic list of all workers who perform work at the construction site and updating this on a daily basis.¹³</p> |
| <p>Temporary work agencies and other intermediaries</p> | |
| <p>Rules and limitations on TWAs</p> | <p>The use of TWAs is regulated by the Working Environment Act, which allows hiring temporary workers only in specific cases, such as for the temporary replacement of another worker, for internships, for participants in certain labour market schemes, and for athletes, trainers, referees and other leaders within organised sports.¹⁴ Since 2023, the use of temporary workers for 'work of temporary nature' is no longer permitted in Norway.¹⁵ Additionally, the temporary hiring of labour to carry out construction works on construction sites is prohibited in certain counties (Oslo, Akershus, Buskerud, Østfold, Vestfold).¹⁶ However, construction companies are allowed to hire staff in other employee groups for other types of work, such as engineers and administrative personnel. In 2023, some TWAs sued the Norwegian State in the Oslo District Court arguing that such prohibition violates Articles 28, 31 and 36 of the EEA Agreement on the free movement of workers, freedom of establishment and freedom to provide services. The case was referred to the EFTA Court for advisory opinion, who ruled that although national rules restrict the freedom of establishment under EEA law, such restrictions may be justified by overriding reasons of general interest.¹⁷</p> |

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| | Subsequently, the Oslo District Court ruled that the hiring rules are not in conflict with EEA law and no companies were awarded damages. Besides the restrictions on the use of TWAs, temporary workers in Norway must have a written contract in accordance with the Working Environment Act. ¹⁸ All TWAs must register with the Norwegian Labour Inspection Authority and enter into the public registry of approved staffing agencies to operate legally in Norway. ¹⁹ Foreign TWAs are allowed to post workers in Norway but must comply with national minimum wage requirements, holiday and holiday pay, working hours and overtime pay, etc. ²⁰ Similarly, TWAs may hire third-country nationals as long as workers have a valid residence permit and enjoy the same rights as Norwegian employees. |
| Liability structures | Similar to subcontracting, chain liability applies in Norway to the hiring of temporary workers. Contractors and TWAs are jointly and severally liable for the payment of wages and overtime pay of temporary workers in the same way as the client. ²¹ Regarding OSH, the same rules apply as for subcontracting, as laid down in the Working Environment Act. |
| National enforcement | The Norwegian Labour Inspection Authority is responsible for issuing certificates to TWAs and maintaining a public registry of licenced TWAs. Workers who perform work on building and construction sites, including through TWAs, must have an HSE card, which is supervised by the Labour Inspection Authority. |

Relevant national legislation:

¹ Lov om arbeidsmiljø, arbeidstid og stillingsvern mv. (arbeidsmiljøloven) (Act on the Working Environment, Working Hours and Job Protection, etc. (Working Environment Act)), 17 June 2005, available at <https://lovdata.no/dokument/NL/lov/2005-06-17-62> (last accessed on 6 February 2026).

² Fellesoverenskomsten for byggfag (The collective agreement for construction trades), 2024-2026, available at <https://www.fellesforbundet.no/lonn-og-tariff/tariffavtaler/fellesoverenskomsten-for-byggfag/> (last accessed on 17 November 2025).

³ Lov om offentlige anskaffelser (Public Procurement Act), 17 June 2016, available at <https://lovdata.no/dokument/NL/lov/2016-06-17-73> (last accessed on 5 February 2026).

⁴ Forskrift om offentlige anskaffelser (Public Procurement Regulations), 12 August 2016, No. 974, available at <https://lovdata.no/dokument/LTI/forskrift/2016-08-12-974> (last accessed on 17 November 2025), Section 19-3.

⁵ EFTA Surveillance Authority Decision of 7 February 2024, available at https://www.eftasurv.int/cms/sites/default/files/documents/gopro/Case%2084262%20College%20Decision%20010_24_COL%20-%20Closure%20Decision%20-%20Own-initiative%20case%20concerning%20restrictions%20on%20subcontr.pdf (last accessed on 17 November 2025).

⁶ Ibid.

⁷ Fellesoverenskomsten for byggfag (The collective agreement for construction trades), 2024-2026, available at <https://www.fellesforbundet.no/lonn-og-tariff/tariffavtaler/fellesoverenskomsten-for-byggfag/> (last accessed on 17 November 2025), Appendix 14.

⁸ Ibid.

⁹ Forskrift om offentlige anskaffelser (Public Procurement Regulations), 12 August 2016, No. 974, available at <https://lovdata.no/dokument/LTI/forskrift/2016-08-12-974> (last accessed on 17 November 2025), Section 19-2.

¹⁰ Forskrift om delvis allmenngjøring av tariffavtale for byggeplasser i Norge (Regulations on partial generalization of collective agreements for construction sites in Norway), 21 October 2024, available at <https://lovdata.no/dokument/SF/forskrift/2024-10-21-2544> (last accessed on 12 December 2025).

¹¹ Lov om allmenngjøring av tariffavtaler m.v. (allmenngjøringsloven) (Act on the Generalization of Collective Agreements, etc. (The General Application Act)), 4 June 1993, available at <https://lovdata.no/dokument/NL/lov/1993-06-04-58> (last accessed on 6 February 2026), Section 13.

¹² Lov om arbeidsmiljø, arbeidstid og stillingsvern mv. (arbeidsmiljøloven) (Act on the Working Environment, Working Hours and Job Protection, etc. (Working Environment Act)), 17 June 2005, available at <https://lovdata.no/dokument/NL/lov/2005-06-17-62> (last accessed on 6 February 2026), Sections 2-2 and 6-1.

¹³ Forskrift om sikkerhet, helse og arbeidsmiljø på bygge- eller anleggsplasser (byggherreforskriften) (Regulations on safety, health and the working environment at building or construction sites (The Construction Client Regulations)), available at <https://lovdata.no/dokument/SF/forskrift/2009-08-03-1028> (last accessed on 6 February 2026), Section 15.

¹⁴ Lov om arbeidsmiljø, arbeidstid og stillingsvern mv. (arbeidsmiljøloven) (Act on the Working Environment, Working Hours and Job Protection, etc. (Working Environment Act)), 17 June 2005, available at <https://lovdata.no/dokument/NL/lov/2005-06-17-62> (last accessed on 6 February 2026), Sections 14-9 and 14-12.

¹⁵ Arbeitnehmerüberlassungsgesetz (Act on Temporary Agency Work), 21 February 2017, available at https://www.gesetze-im-internet.de/englisch_ag/index.html (last accessed on 17 November 2025), Section 1b.

¹⁶ Forskrift om endring i forskrift om innleie fra bemanningsforetak (Regulations on amendments to regulations on hiring from staffing agencies), 20 December 2022, available at <https://lovdata.no/dokument/LTI/forskrift/2022-12-20-2355> (last accessed on 6 February 2026), Section 4.

¹⁷ Judgment of 20 November 2024, *Bygg & Industri Norge AS and others v the Norwegian State*, E-2/24, available at <https://eftacourt.int/cases/e-02-24/> (last accessed on 17 November 2025).

¹⁸ Lov om arbeidsmiljø, arbeidstid og stillingsvern mv. (arbeidsmiljøloven) (Act on the Working Environment, Working Hours and Job Protection, etc. (Working Environment Act)), 17 June 2005, available at <https://lovdata.no/dokument/NL/lov/2005-06-17-62> (last accessed on 6 February 2026), Sections 14-5 and 14-6.

¹⁹ Forskrift om offentlig godkjenning av bemanningsforetak (Regulations on public approval of staffing agencies), 4 June 2008, available at <https://lovdata.no/dokument/SF/forskrift/2008-06-04-541> (last accessed on 6 February 2026).

²⁰ Forskrift om utsendte arbeidstakere (Regulations relating to posted employees), 16 December 2005, available at <https://lovdata.no/dokument/SF/forskrift/2005-12-16-1566> (last accessed on 6 February 2026).

²¹ Lov om allmenngjøring av tariffavtaler m.v. (allmenngjøringsloven) (Act on the Generalization of Collective Agreements, etc. (The General Application Act)), 4 June 1993, available at <https://lovdata.no/dokument/NL/lov/1993-06-04-58> (last accessed on 6 February 2026), Section 13.

3.2. Overview of national legal frameworks

The following section summarises the main features of national legal frameworks in the 10 selected countries as detailed in the section above and provides an overview in several tables. Table 1 presents the general characteristics of national subcontracting frameworks, such as whether the law contains a definition of subcontracting, as well as the national authorities responsible for the enforcement of rules, the applicable monitoring mechanisms and sanctions. Table 2 provides an overview of the most relevant rules and limitations on subcontracting in the selected countries and the applicable liability structures. Finally, Table 3 summarises the features of national legal frameworks concerning TWAs, including the general rules, rules on non-national TWAs and temporary workers, liability structures and national enforcement authorities.

Table 1: Overview of national subcontracting frameworks

| Country | Subcontracting defined by law | National enforcement authorities | Monitoring mechanisms | Sanctions |
|----------|-------------------------------|---|--|---------------------------------------|
| Belgium | No | Federal Public Service Employment, Labour and Social Dialogue; Social Inspectorate and National Office for Social Security; Labour Prosecutor's Office; FPS Policy and Support; Public Procurement Authority | Checkin@work, LIMOSA declaration, Social ID card (ConstruBadge) | Administrative and criminal sanctions |
| Germany | No | Federal Employment Agency; German Pension Insurance Fund; Supplementary Pension Fund for the Construction Industry; Statutory Accident Insurance Fund; Federal Office for Economic Affairs and Export Control; custom authorities | Written notification to customs authorities, Prequalification (PQ) for construction companies, registration with social security fund SOKA-BAU | Administrative and criminal sanctions |
| Spain | Yes | Labour and Social Security Inspectorate; Regional Labour Authorities; Independent Office for Regulation and Supervision of Public Procurement; Central Administrative Tribunal for Public Procurement Appeals | Register of Accredited Companies for Construction Sector (REA), Subcontracting Book, Social ID card (TPC) | Mainly administrative sanctions |
| France | Yes | Labour inspectors; police officers; tax and customs officers; social security inspectors; maritime affairs administrators; road and air transportation inspectors; fraud prevention officers | Social ID card (Carte d'identification professionnelle BTP), SIPSI declaration | Administrative and criminal sanctions |
| Italy | Yes | National Anti-Corruption Authority; Labour Inspectorate; National Social Security Institute; National Institute for Insurance against Accidents at Work, Casse Edili | Social ID card (TAG), DURC online, certificate of labour-force congruity (attestazione di congruità) | Mainly administrative sanctions |
| Poland | Yes | Supreme Audit Office; National Revenue Administration; Labour Inspectorate; construction supervision authorities; National Appeal Chamber | No central register | Mainly administrative sanctions |
| Portugal | Yes | Institute of Public Markets, Real Estate and Construction; Portuguese Authority for Working Conditions | Online portal for public procurement (Portal BASE) | Mainly administrative sanctions |

| Country | Subcontracting defined by law | National enforcement authorities | Monitoring mechanisms | Sanctions |
|----------|-------------------------------|--|--|---------------------------------------|
| Romania | Yes | State Construction Inspectorate; General Inspectorate for Emergency Situations; Labor Inspectorate; National Agency for Public Procurement; National Tax Administration Agency | No central register, but several interconnected tools (REVISAL, D112 declarations, e-Invoice, D394 form, SICAP, technical books) | Administrative and criminal sanctions |
| Slovenia | Yes | Labour Inspectorate of Slovenia; Natural Resources and Spatial Planning Inspectorate; National Review Commission for Reviewing Public Procurement Award Procedures | No central register, the Construction Inspection monitors permits | Mainly administrative sanctions |
| Norway | No | Norwegian Labour Inspection Authority; Norwegian Tax Administration; Norwegian Complain Board for Public Procurement | Assignment and Employee Register (for foreign contractors), Social ID card (HSE) | Mainly administrative sanctions |

Table 2: Overview of national subcontracting rules

| Country | Rules and limitations on subcontracting | Liability structures in subcontracting |
|----------------|---|---|
| Belgium | <p>In public contracts:</p> <ul style="list-style-type: none"> • Purely financial subcontracting for subcontractors is prohibited in the construction, relocation services and meat processing industries • Number of subcontracting tiers is limited to 2-3 depending on the category of work and whether the project falls within a risk sector | Both joint and several liability and chain liability (under specific circumstances, such as social security and taxes) |
| Germany | <p>In public contracts:</p> <ul style="list-style-type: none"> • Restriction of subcontracting for certain critical tasks • Only companies based in certain third countries can be subcontractors in Germany (and prior approval from the Federal Employment Agency). | Both joint and several liability and chain liability |
| Spain | <ul style="list-style-type: none"> • Number of subcontracting tiers is limited to 3 for both private and public construction contracts • Certain capacity and solvency requirements apply • Companies must register in the Register of Accredited Companies and keep an up-to-date Subcontracting Book | Both joint and several liability and chain liability |
| France | <ul style="list-style-type: none"> • Number of subcontracting tiers is limited to 2 in nuclear installations <p>In public contracts:</p> <ul style="list-style-type: none"> • Each subcontractor must be accepted by the contracting authority and their payment terms approved • Subcontracting the entire contract is prohibited • The contracting authority may require certain tasks to be performed by the main contractor | Both joint and several liability and chain liability (under specific circumstances, such as remuneration, taxes and social contributions) |
| Italy | <p>In public contracts:</p> <ul style="list-style-type: none"> • Subcontracting the entire contract is prohibited • The main contractor must perform a significant part of the contract directly • Contracting authorities may prohibit subcontracting or sub-subcontracting for specific tasks with the due justification. | Both joint and several liability and chain liability |

| Country | Rules and limitations on subcontracting | Liability structures in subcontracting |
|-----------------|---|--|
| Poland | <p>In public contracts:</p> <ul style="list-style-type: none"> • The contracting authority specifies the types of activities allowed for subcontractors, the method of verifying the employment of these individuals • Contractors must provide names, contacts details and representatives of the subcontractors involved | Joint and several liability |
| Portugal | <ul style="list-style-type: none"> • Subcontractors must be qualified and hold necessary licences • Subcontractors cannot perform work beyond their licensed categories • Contracts may require certain obligations (e.g. critical tasks) to be directly performed by the main contractor • Only companies based in certain third countries can be subcontractors in Portugal | Joint and several liability |
| Romania | <p>In public contracts:</p> <ul style="list-style-type: none"> • The main contractor must retain a significant part of the work and is not allowed to subcontract the entire contract • Multiple tiers of subcontracting chains may be limited by the contract or by quality, warranty or authorisation requirements | Joint and several liability |
| Slovenia | <p>In public contracts:</p> <ul style="list-style-type: none"> • All subcontractors must be listed in the tender, as well as the part of work intended to be subcontracted and the contact details and legal representatives of proposed subcontractors. • Rules apply to replacing subcontractors, the client rejecting a subcontractor, the direct payment of a subcontractor, and misdemeanour proceedings against the main contractor if it violates the rules regarding subcontractors • Subcontractors based outside the EEA must have certification and an extract of criminal record | Joint and several liability |
| Norway | <p>In public contracts:</p> <ul style="list-style-type: none"> • Subcontracting is limited to maximum two tiers in construction work and cleaning services, and in some municipalities to maximum one tier • The contracting authority can require certain critical tasks to be performed by the main contractor | Both joint and several liability and chain liability |

Table 3: Overview of national rules on temporary work agencies

| Country | General rules on TWAs | Rules on non-national TWAs | Rules on hiring and posting third-country nationals (TCNs) | Liability structures | National enforcement authorities |
|---------|--|---|---|---|---|
| Belgium | Temporary workers are only permitted to temporarily replace workers, address increases in the volume of work or fulfil exceptional tasks. TWAs require prior authorisation | Foreign TWAs are allowed but must submit LIMOSA declaration and comply with Belgian labour law | TCNs must comply with the Single Permit system and TWAs must ensure that TCNs possess valid residence and work permits | Joint and several liability among the TWA, user undertaking and the main contractor | Federal Public Service Employment, Labour and Social Dialogue; Social Inspectorate and National Office for Social Security; regional employment authorities |
| Germany | The use of TWAs in the construction sector is prohibited, with two exceptions when both construction and non-construction companies are covered by generally binding collective agreements, or when the lending construction company has been covered by the same general wage agreements for at least three years | Third-country TWAs are not allowed to provide workers to the German construction industry | TNCs cannot be temporary workers if the approval of the Federal Employment Agency is required for their residence permit | Joint and several liability for OSH. Prior liability of the TWAs for wages and social security contributions | Financial Control Unit for Illegal Employment; German Pension Insurance; Statutory Health Insurance Fund; German Social Accident Insurance Institution for the Construction Industry; Federal Employment Agency |
| Spain | TWAs require prior authorisation, registration in the official registry and financial guarantee. Temporary workers cannot be hired to replace workers on strike, perform dangerous tasks, or in case of recent dismissals declared unfair | Foreign TWAs are allowed under specific conditions and must comply with Spanish minimum employment conditions | TCNs must possess valid residence and work permits. TWAs are responsible for obtaining these and ensuring workers' social security registration | TWAs are liable for wages and social security contributions; user undertaking is responsible for work environment and is subsidiarily liable for remuneration | Labour and Social Security Inspectorate; General Treasury of the Social Security; regional and national labour authorities |

| Country | General rules on TWAs | Rules on non-national TWAs | Rules on hiring and posting third-country nationals (TCNs) | Liability structures | National enforcement authorities |
|---------|--|--|---|--|--|
| France | TWAs are prohibited in case of recent dismissals for economic reasons, hazardous tasks, and replacing workers whose employment is suspended due to collective labour disputes | Foreign TWAs are allowed but must submit SIPSI declaration and affiliate workers to the CIBTP | TCNs must obtain work and residence permit prior to assignment, which TWAs must verify | TWAs are liable for wages and social security; user undertaking is liable for working conditions and safety at the worksite. Joint and several liability in case of illegal employment | Labour inspectors; police officers; tax and customs officers; social security inspectors; maritime affairs administrators; road and air transportation inspectors; fraud prevention officers |
| Italy | TWAs must be authorised to operate, limitations apply to the number of temporary workers that can be employed by one contractor. TWAs are prohibited in certain cases (e.g. to replace workers on strike, following recent collective redundancies) | Foreign TWAs must be legally established and authorised in their home Member State to carry out TWA activities | TCNs must obtain work and residence permits and be registered with the Cassa Edile and covered by social security | Joint and several liability for wages, social security. For OSH, TWAs are responsible for training and information, the user undertaking is responsible for prevention and protection | National Labour Inspectorate |
| Poland | Sectoral restrictions on the use of TWAs in public contracts (e.g. security, education, healthcare). TWAs are prohibited in case of recent dismissals for reasons not attributable to the employees, for hazardous work, and replacing workers on strike | Must designate a person residing in Poland to represent the TWA before national authorities | TCNs must obtain work and residence permit prior to assignment | Joint and several liability among TWA, client and contractor in subcontracting | Central Register of Employment Agencies, Labour Inspectorate of Poland |

| Country | General rules on TWAs | Rules on non-national TWAs | Rules on hiring and posting third-country nationals (TCNs) | Liability structures | National enforcement authorities |
|-----------------|--|--|---|--|--|
| Portugal | Temporary workers are only permitted to temporarily replace workers, for occasional and specific tasks, and seasonal work, and prohibited for particularly dangerous jobs. TWAs must obtain licence and register in public registry. In the construction sector, TWAs must have a weekly register of workers | Foreign TWAs must respect working conditions provided for by Portuguese law and collective labour agreements | TCNs must obtain work and residence permit prior to assignment | TWAs are responsible for remuneration and social security contributions; user undertaking is jointly and severally liable for social security and payment of fines. For OSH, user is responsible for safety measures, working conditions, training and medical supervision | Institute for Employment and Vocational Training; Portuguese Authority for Working Conditions |
| Romania | TWAs must be licensed, temporary work agents must be a legal entity and not a natural person when registering with the Ministry of Labour | Foreign TWAs must apply for permit and entry in the records of the Ministry of Labour | TCNs must obtain work and residence permit prior to assignment | TWAs are responsible for wages and social security, contractor is responsible for OSH, equal treatment is a joint responsibility | Labour Inspectorate, the National Employment Agency, the National Tax Administration Agency, Labour Courts, the State Inspectorate for Construction and the National House for Public Pensions |
| Slovenia | TWAs require prior authorisation and registration in the official registry | Foreign TWAs must respect all labour legislation and collective agreements applicable to the specific sector | TWAs can hire TCNs provided they have free access to the Slovenia labour market, residence and work permit, and an EU Blue Card | Joint and several liability among TWA and user undertaking for remuneration. For OSH, user is responsible for working conditions and training | Labour Inspectorate; Ministry of Labour |
| Norway | Temporary workers are only permitted in specific cases (temporary replacement of workers, internships, etc). In some municipalities, hiring temporary labour is prohibited in the construction sector | Must obtain Norwegian TWA authorisation | TCNs must obtain work and residence permit prior to assignment | Joint and several liability among TWA, client and contractor in subcontracting | Norwegian Labour Inspection Authority |



 Spark Legal and Policy Consulting BV
Rue des Comédiens 22
1000 Brussels, Belgium

 +32 (0) 234 50 749
+44 (0) 78 723 79 184

 [spark-legal-policy](https://www.linkedin.com/company/spark-legal-policy)
 [@spark_LPC](https://twitter.com/spark_LPC)
 www.sparklegalpolicy.eu