



European Construction Industry Federation

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POSITION PAPER

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Fundamental freedom to provide services – the case of subcontracting in construction

EXECUTIVE SUMMARY

The construction industry is a fundamental component of Europe's economic growth and a major source of employment. It generates about 7.9% of EU GDP and provides more than 12 million jobs – that is, 6.4% of EU total employment. Among its 3.8 million enterprises, 95% are SMEs with less than 20 workers.

Subcontracting is a vital part of the construction industry. It allows companies to respond to project demand flexibility, access specialized expertise, cushion the shortage of skilled workforce and maintain competitiveness. Calls for EU-wide limits on subcontracting misunderstand how the industry operates and risk damaging efficiency, innovation, and SME participation. National rules already exist and are better suited to the specific realities of each Member State. Rather than imposing one-size-fits-all limits, the EU should focus on better enforcement of existing laws and support digital tools for transparency and compliance.

1. The political context

On 13th March 2025, the European Parliament adopted a resolution on “restructuring”¹ which included an appeal to the European Commission, promoted by the trade unions, “*to consider the establishment of a framework directive to address the challenges and complexities associated with employers’ obligations in subcontracting chains and labour intermediaries in Europe to ensure decent working conditions and the respect of worker’s rights*”.

¹ European Parliament resolution of 13 March 2025 on social and employment aspects of restructuring processes: the need to protect jobs and workers’ rights (2024/2829(RSP))

In parallel, Executive Vice-President Roxana Minzatu, Commissioner in charge of Social rights and skills, quality jobs and preparedness, announced that she will present early 2026 a “fair mobility package” which would encompass an initiative on subcontracting.

2. The role of subcontracting in construction

The freedom to provide services (article 56 TFEU) is essential for the competitiveness, efficiency and innovation of the European construction industry. Moreover, article 16 of the Charter of Fundamental Rights of the EU and the internal market rules recognise companies’ freedom to conduct a business, which implies that they are free to choose their business partners as well as the form of the partnership (i.e. through subcontracting).

In general contract law, subcontracting refers to a situation where one party to a contract (the main contractor) uses the assistance of a third-party (the subcontractor) for the performance of some or all its contractual obligations, while maintaining full contractual liability towards the employer/client. In EU secondary law, in particular the Employer Sanctions Directive (2009/52) defines in article 2 (f) a subcontractor as “any natural person or any legal entity, to whom the execution of all or part of the obligations of a prior contract is assigned.” The Public Procurement Directive (2014/24) also clarifies in article 71 (4) that subcontracting “shall be without prejudice to the question of the main contractor’s liability.”

Depending on the projects and tasks to be performed, different companies need to intervene on the same worksite, and an effective and flexible co-operation is required. This is also due to the high fragmentation of the construction industry, which is composed of a vast majority of SMEs².

Hence, in construction, cooperation between different companies on a worksite is common and may take many different forms, including joint ventures and cooperating with subcontractors, suppliers as well as other service providers. Subcontracting as such can be used for different purposes and take different forms.

In many cases, it may be necessary to subcontract because the main contractor is unable to carry out certain specific construction services (e.g. the task requires specific skills, qualifications and equipment).

In other cases, the main contractor, who is equipped and has the skills and competences to perform a certain task, may decide to subcontract such task to another contractor, either occasionally, due to the many possible disruptive factors during the building process (i.e. a temporary peak in activity, a technical incident, weather conditions, objections from locals, late deliveries, etc.) and the consequences for the predictability of the planning, or because he wishes to maintain his own in-house production capacity for other purposes. Seasonality must also be taken into account for projects dependent on the rhythm of public budgets.

Under certain circumstances, and in particular in cross-border situations, it may be too complicated to transport all personnel, equipment, products and machinery over long distances. Instead, it may be sensible to focus on the main contractor’s relevant management competence

² According to FIEC figures: There are more than 3 million construction enterprises in the EU and 95% have less than 20 workers. <https://fiec-statistical-report.eu/>



in order to have certain construction services carried out by a contractual partner, who may be a local subcontractor. A very important positive aspect can also be that – from the subcontractor’s perspective – this form of contract may provide the opportunity to participate in projects, which otherwise would not be accessible, including cross-border situations.

In parallel, we can distinguish between horizontal and vertical subcontracting. In the first case, there can be several subcontractors under the responsibility of the main contractor, at level -1. In the second case, each subcontractor may have reasons to subcontract and hereby create a level below the previous one in the chain (-1, -2, etc.). In both cases, the market structure, the technical nature of the work and its complexity are the main justifications for using subcontractors, particularly for large-scale and/or long-term projects.

3. Why limiting subcontracting at the EU level is NOT the right option

FIEC is strongly opposed to restrictions at the EU level aimed at limiting subcontracting.

This is without prejudice to the fact that limitations to subcontracting already exist in some Member States³. Most of the time, these limitations have been proposed by and/or negotiated in close cooperation with the national (sectoral) social partners.

- a. Any restriction of this kind will have to be compliant with the EU Treaty. However, it is currently debated whether such limitations on subcontracting are in breach of EU law. Limitations on subcontracting can be considered a breach of EU law if they are not proportional or are too general and abstract.⁴
- b. Such restrictions would limit the subcontractor’s freedom to provide services⁵, especially where complex or large parts of the project are subcontracted or where it may not be clear at the time of the subcontract, when exactly the respective tasks will need to be performed (i.e. planning-related issue).
- c. One of the key pillars of the European Union is the internal market. Limitations on subcontracting will limit the internal market in reducing the freedom of providing services.
- d. Such restriction would not take into account the need for flexibility due for example to market/economic fluctuations and labour and skills shortage that are hindering construction activities. Construction companies need flexibility in case of rapid or unexpected increase of activity, requiring additional workforce. This is where subcontracting can play a buffer role.

³ In Belgium, Italy, Norway and Spain.

⁴ The European Court of Justice (ECJ) has repeatedly drawn lines in the context of a required “self-execution”, for example on 14 April 1994 in case C-389/92 (*Ballast Nedam I*), on 18 December 1997 in case C-5/97 (*Ballast Nedam II*), on 2 December 1999 in case C-176/97 (*Holst Italia*), on 18. March 2004 in case C-314/01 (*Arge Telekom*), on 10 October 2013 in case C-94/12 (*Mannocchi*), on 14. July 2016 in case C-406/14 (*Wroclaw*) and on 26 September 2019 in case C-63/18 (*Vitali*).

⁵ In Germany for example, the commercial importance of subcontracting is, for example, highlighted by the German Federal Statistical Office, according to which between 20 and 45 percent of construction costs have been related to subcontracting in 2022, as average in different parts of the [German construction market](#)



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This is especially the case in Germany for instance, where the use of additional workforce via temporary work agencies has been banned in the construction industry. On the contrary, those countries which have restricted subcontracting chains have kept the possibility to rely – at least to some extent – on temporary work. Restrictions at both levels would no longer allow any flexibility.

- e. A European legislative instrument limiting the subcontracting chain would oblige Member States that already have a limitation at their national level (for the construction industry) – i.e. Belgium, Spain, Italy, Norway – to adapt their national legislation, even if it is functional and adapted to their specific reality. Indeed, in general, these existing national mechanisms have been developed in cooperation with the relevant social partners.
- f. Moreover, the market structure and business structure are different from one country to the other. This is why there cannot be a one-size-fits-all rule at the EU level. The matter is better dealt with at national level, involving national social partners, and finding solutions tailored to the national market structure and sectoral specificities.
- g. The EU currently suffers from a lack of competitiveness, as addressed in the Draghi report. The EU priority should be to promote competitiveness, namely by promoting simplification and avoiding overregulation. For instance, while the limitation of the subcontracting chain in public procurement in Belgium aims to combat social dumping, it significantly increases the administrative burden for main contractors. They are now required to take on greater responsibilities in terms of verification, coordination, legal compliance, and reporting — all of which demand additional human and financial resources.
- h. In addition, according to our own internal research, we have neither statistics nor other valid information from Member States, which could show the added value of more restrictive European legislation on subcontracting to achieve the goals of reducing illegal practices, frauds and abuses.

Subcontracting and public procurement

- i. Limiting subcontracting would make public procurement even more unattractive⁶, particularly in view of the labour and skills shortages in the EU construction industry. Indeed, companies might refrain from bidding to public contracts, knowing that they might not have the flexibility to organise themselves as they wish.
- j. Such restrictions would decrease competitiveness, impair efficiency and innovation of the European construction industry and would result in a restricted access to public contracts. Indeed, it would primarily affect the possibility of SMEs to participate in larger contracts. It

⁶ For the record, single bidding in the construction sector has increased from 6.9 % in 2011 to 13.9 % in 2021 – more than doubling the amount of single bidding. And the number of bidders has decreased from 7.1 bidders to 4.8 bidders per tender. Source: <https://www.eca.europa.eu/en/publications/SR-2023-28>



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would also potentially disqualify specialised companies who rarely take contracts as main contractors as they do not have the full range of professional qualifications required.

- k. Limitations on subcontracting might even lead to higher prices, as it will inevitably restrict competition (i.e. exclude smaller companies from the market).

Subcontracting and SMEs

- l. Limiting subcontracting would have a negative impact of SME participation in large public and/or private contracts as they are the main beneficiaries of subcontracting. Especially in cross-border situations, there may only be a realistic opportunity for SMEs to participate as subcontractors in the project.
- m. For some construction companies, it is also their business model to work as subcontractors. Often, companies know each other well and are used to work together. This is a way for the subcontractor to benefit from an easier access to public procurement, while avoiding burdensome procedures related to the application for and the management of a public contract.
- n. Such restrictions would not be able to cover in a satisfactory and professional manner certain construction activities which are specialised by nature, and hence, are mostly performed in the framework of subcontracting.
- o. The construction sector is characterised by the presence of many small, specialised companies, which often operate as subcontractors. Swedish data⁷, gathered in a report commissioned by the social partners in the construction industry, demonstrate that, over the past years, the number of such companies has increased while accidents and work-related illnesses have decreased. This evidence directly challenges the assumption that subcontracting in itself leads to higher health and safety risks.

4. A smarter path forward

For FIEC, fighting against illegal practices, frauds and abuses in the construction industry is a top priority. While work-related crime is a complex issue, different types of means and instruments have been developed to fight against it. The final objective of these means and instruments is to ensure effective controls and enforcement.

In order to achieve these goals, a complex European legislation is already in place. In particular, there are already rules on subcontracting in the framework of public procurement (art. 71 of “classical” public procurement directive⁸) as well as for posting of workers (art. 12 of

⁷ Report by *The Construction Industry's Central Work Environment Council - A Social Partner Council by Byggnads, The Swedish Union for Service and Communications Employees - SEKO and the Swedish Construction Federation: [Arbetskador-inom-byggindustrin-2023-.pdf](#)*

⁸ Directive 2014/24/EU



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“enforcement” directive⁹). This later legislation introduces the possibility of implementing a system of joint and several liability throughout the subcontracting chain, each contractor being liable for its direct subcontractor. Some countries even have implemented more stringent liability rules.

Then, at national level, under the respective legal and social dialogue frameworks, many measures and instruments are being put in place: e.g. sectoral social ID cards, register of accredited companies in construction sector, “Subcontracting book” on site with specific information about who are the subcontractors at worksite, tools related to compliance with health and safety legislation, obligation to register employees for social security purposes before they start working, obligation to carry ID documents at all times, etc.).

In any case, what construction companies need is to have the appropriate tools to assess who they are doing business with and undergo a proper risk analysis. This entails, in particular in cross-border situations: access to verified data across borders (e.g. tax records, insurances, company structure...), reliable PDA¹, development of AI and big data analysis, integration of these systems into public procurement, etc.

This is why FIEC supports the ongoing initiatives being developed by the European Commission: the ESSPASS pilot project, the EU DI wallet and main objectives of the proposal for an “e-declaration” for the posting of workers¹⁰. While respecting the differences between Member States, these initiatives promote the enforcement of existing rules and effective controls. They act therefore preventively against infringements without disproportionately restricting competition in the internal market and freedom to provide services.

This is also why FIEC, together with its counterpart EFBWW, promoted the development of sectoral social ID cards and looked at their possible interconnection according to a bottom-up approach¹¹.

In addition, FIEC supports a better enforcement of the existing rules thanks to a strengthening of national labour inspection services. In this regard, FIEC is actively involved in the activities of the European Labour Authority (ELA) which is supporting Member States with capacity building, and is working on improving access to relevant information for both employers and workers.

⁹ Directive 2014/67/EU

¹⁰ See FIEC dedicated position paper : <https://www.fiec.eu/fiec-opinions/position-papers-pl/proposal-regulation-public-interface-connected-imi-declaration-posting-workers-com2024531>

¹¹ EU-funded project [SIDE-CIC](#)



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