

STATEMENT

29 October 2008

EP hearing: follow-up actions to the EUROFOUND study on “liability in subcontracting in the European construction sector” – 5 November

Sub-contracting can be defined as a commercial relationship with contractual obligations but without subordination between the client and the service provider. Companies have recourse to subcontracting, for instance, when they look for specialised competences or where they are confronted with capacity problems to produce goods and/or services.

The underlying idea behind subcontracting is to provide companies with the flexibility they need to optimise the production cycle by focusing on what they do best and externalising part of the production to other economic actors. Subcontracting is therefore critical in Europe’s endeavours to increase competitiveness and achieve growth and jobs along the lines of the Lisbon strategy.

In this context, subsidiary liability is not an appropriate solution to ensure that labour laws are respected in a production chain. All sub-contractors must ensure that they follow relevant labour law when dealing with their employees. Companies cannot and should not assume responsibilities of public authorities in this regard. In addition, the main contractor is not in a position to monitor compliance in practice.

The Dublin Foundation’s study has examined existing national rules with regard to joint and several liability in 8 Member States in the construction sector. The European Parliament is going to work on this basis on a report on “social responsibility of subcontracting undertakings in production chains”.

BUSINESSEUROPE acknowledges that the study provides useful information on national rules on this issue. That being said, it is important to bear in mind that the research only looked at the situation in one sector – construction – and this for only 8 countries. Given this limited scope, BUSINESSEUROPE believes that this does not allow to draw conclusions regarding the need for EU action at EU level. More information on the situation in the 19 countries without legislation and in other sectors should be gathered as a prerequisite to any form of action in this area.

It is argued that the enforcement of existing national liability rules pose a particular problem in a cross-border context and that this would be an obstacle to mobility in the EU. In this regard, BUSINESSEUROPE would like to recall that foreign service providers are subject to the rules that are in force in their country of establishment. Outside the scope of the posting of workers directive, they do not have to comply with the labour laws of the host country, which would constitute a real obstacle to the mobility of services in the Single Market. Better enforcement of existing legislation at national level is a precondition before taking action at EU level.

Ahead of the vote of the EP LIBE committee on 4 November on the draft report regarding the draft directive on “sanctions against employers of illegally staying third-country nationals”, BUSINESSEUROPE would like to reaffirm its opposition to any form of subsidiary liability.