



25 July 2025

BusinessEurope statement on subcontracting

On 13 March 2025, the European Parliament's plenary adopted a motion for resolution on restructuring which included, with the support of a weak majority of MEPs, a call on the Commission, "in close collaboration with the social partners, 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".

Ahead of the publication of a draft report by MEP Rapporteur Danielsson (S&D, SE), we pass the following key messages:

- Subcontracting activities are for companies a strategic lever for optimising resources, keeping in mind that:
 - ✓ Companies don't always have all the technical expertise or rare know-how, tools or infrastructures in-house.
 - ✓ To remain competitive, companies need to focus on what they do best: their core business.
 - ✓ Companies need to adapt to a constantly changing economic environment which calls on absorption of peaks in activity without burdening the internal structure, and on reduction of risk in uncertain times).
- The internal market rules but also article 16 of the EU fundamental rights charter recognise companies' freedom to conduct a business. Companies' freedom to conduct a business implies that they are free to choose their business partners. This includes the freedom to decide what is the right number of subcontractors and the activities they should be engaged in.
- Subcontracting has a positive impact on the productivity and competitiveness of companies and the European economy.
- In line with the Commission's competitiveness compass, the EU institutions should refrain from advancing measures, which undermine Europe's competitiveness or contradict with the EU's commitment to simplify EU legislation to ensure a favourable business environment.
- Many subcontractors are SMEs or craftsmen for whom subcontracts are vital. Restricting their use can put a brake on the entrepreneurial ecosystem and local employment in Member states.



- The [EP resolution of 13 March 2025 on restructuring](#), insofar as it relates to subcontracting, would, if transposed into legislation, constitute a serious attack on freedom to do business and, in particular, on the freedom to organise productive activities. A framework directive as called for in point 18 of this resolution would be highly counterproductive. BusinessEurope reiterates its firm opposition to such an EU legislative initiative.
- We are issuing this statement at an early stage to mobilise members of the European Parliament across policy committees to ensure that the impacts of such an initiative on competitiveness are taken into account by the EP from the outset.
- The EP should also bear in mind that:
 - ✓ Working conditions in Europe are generally good as demonstrated by the large majorities of European workers reporting satisfaction with their working conditions in the regular working conditions survey activities carried out by Eurofound¹.
 - ✓ Subcontracting and a diversity of contractual arrangements benefit the labour market and the EU single market as they respond to economic and labour market needs and contribute to more efficient allocation of labour, which is crucial in times of labour and skills shortages. An EU debate on subcontracting should therefore not lead to limiting subcontracting but focus on compliance and enforcement.
 - ✓ As regards the role of labour intermediaries, there is a specific legal framework with the EU Directive on temporary agency work. This regulates the triangular work relationship, requires Member States to review restrictions on agency work and provides for equal treatment and equal pay for agency workers. Furthermore, besides the triangular work relationship, agencies are involved in offering services based on subcontracting, and the role of subcontracting should be valued. As for any other company or intermediary providing subcontracted services, compliance and enforcement of existing rules are essential.
 - ✓ The Court of Justice of the European Union's (CJEU) case law, moreover, has already clarified that when the conditions for the supply of labour characteristic of the activity of temporary work agencies are met, the rules relating to such agencies must apply, even if the supplier of the labour is not formally constituted as a temporary work agency

¹ [Sixth European Working Conditions Survey – Overview report | European Foundation for the Improvement of Living and Working Conditions](#) – see page 105



(Judgment of the CJEU, Seventh Chamber, of 24 October 2024, Case C-441/23).

- ✓ The supply of labour through instruments other than temporary work agencies should be provided for and regulated in national legislation. The phenomena of contracting and subcontracting are lawful options for organising productive activities protected by business freedom. If there is a false contract or subcontract, intended to conceal unfair practices, we would be dealing with a fraudulent phenomenon that the national authorities must prosecute and punish, but which does not require additional regulation, and certainly not mixed with the legal regime governing lawful subcontracting activities.
- When problems occurred involving some workers in subcontracting chains, these do not relate to a lack of EU legislation, but to an insufficient enforcement of the applicable rules on the ground by Member States and their authorities. It may be more appropriate to strengthen the implementation of existing regulation in the EU and promote transparency with clear contractual obligations.
- Sectors with highly mobile workers are the ones where the focus is needed to improve trust between companies in the subcontracting chains and ensure better respect of the applicable rules for posted workers by Member States and their authorities, including the third country national posted workers.
- By contrast, we do not support EU-wide measures aiming to shorten subcontracting chains or define an appropriate number of subcontractors, for the three following main reasons:
 1. An EU legislative initiative on subcontracting would also heavily influence sub-contraction within Member States without having any cross-border dimension. It would therefore endanger freedom of contract in general. This must be avoided. Any attempt to limit subcontracting interferes disproportionately with the principle of contractual freedom and EU intervention in this area will undermine well-established national frameworks.
 2. As regards cross-border situations, the main issue that needs to be addressed is the insufficient enforcement of the applicable rules. By contrast, it is highly questionable whether the number of subcontractors is an issue that needs to be addressed.
 3. Such a limitation would inevitably narrow the pool of suppliers and prevent the usage of specialised services. Moreover, we believe that such measures can easily hurt competitiveness of the businesses



using subcontractors, and, depending on their design, could effectively undermine the competitive position of SMEs, hampering their activity and thus employment.

- We strongly advise against introducing new EU-level legislation on subcontracting and joint liability in subcontracting chains. We recommend that the European Commission and the European Parliament take into account the lessons learnt from the application by the Member States of the 2014 Enforcement Directive on posting of workers. Article 12 of this Directive includes specific provision on subcontracting liability. First, it is worth noting that nine Member States have limited application of this measure only to the construction sector. Second, the [available evidence](#) published by the Commission in September 2019 raises serious doubts as regards the effectiveness of this measure. Third, chain and joint liability is incompatible with some national models, as it entails legislating about wages and work conditions that are set by social partners. Fourth, the introduction of joint liability in subcontracting chains would significantly increase costs for contractors, as they would need to secure against potential claims from subcontractors, ultimately making economic activities more expensive. Holding a company liable for others' failure to comply creates an uncertain legal situation and undermines the fundamental principle of certainty of law.
- In this light, the labour related issues that have materialised in practice in some sectors in the context of subcontracting chains are best resolved through sector-specific measures developed by the social partners and – above all – by enforcement of applicable rules by Member States and their authorities”. This is the best way to ensure that such measures are well suited to the needs and realities of employers and workers across diverse sectors.
- In some sectors, digital tools need to be designed to achieve a more effective identification of the posted workers in the receiving country with regards to the labour law and social security law. When introducing such tools, it is important to ensure a good degree of inter-operability of the proposed solutions, such as envisaged in the eDeclaration.
- Digital tools facilitating the identification of workers should be made operational to verify compliance with the social security related requirements, as defined by Regulation 883, e.g. A1 form verification. Therefore, it is important to make sure that over the coming years the relevant features of these tools are gradually integrated with existing national approaches, supporting the development of the European Social Security Pass (ESSPASS).



- The European Labour Authority (ELA) has an important role to play in providing a common platform where Member States and social partners can exchange their respective practices, including in the context of the ELA Undeclared Work (UDW) Platform. Interoperability of IT systems is also important in the context of public procurement. In particular, for some sectors, the ability to have a recourse to global supply chains is a key aspect of their business model and contributes positively to Europe's competitiveness. Whereas the CS3D is in the middle of an omnibus process to stop the clock and forcefully simplify this directive, introducing new EU-wide legislative measures to limit the number of subcontractors in the social policy domain would be particularly unwelcome by European employers. Furthermore, it would be inconsistent and detrimental for the competitiveness of law-abiding companies without addressing the root causes of non-compliance by others. This often non-voluntary incompliance is best addressed by enforcement measures and, in particular, information and advice provision to companies. Complexity for law-abiding companies is further enhanced by the lack of common definitions and a common understanding within the subject of subcontracting.
- We reiterate our call on ELA to finalise the creation of the planned web tool that is to provide information on labour mobility. It would also constitute a single AI-driven entry point to all relevant mobility related information sources at EU and national level, via links to appropriate national websites, including the national posting websites. Moreover, complementing the web tool, it is high time for ELA to establish an on-demand helpdesk function, taking into account the information gathered from the ongoing feasibility study on "the establishment of a help desk for labour mobility at EU level". This helpdesk should provide on-demand, practical and individualised help and guidance to employers seeking to hire mobile workers and workers looking to find a job in another Member State.
