Subcontracting and posted workers in the EU
According to trade unions, subcontracting tasks to posted workers may erode social standards and lead to the exploitation of workers, especially in the construction sector.

While the integration of the European markets is generally viewed as an economic success story, the view is more nuanced for workers who have experienced new kinds of competition and pressure on their social standards.

One of the issues workers are faced with is the use of subcontractors, for example in building projects, making it harder to enforce social standards. Trade unions would therefore like to limit the use of subcontractors and reform the EU’s Posted Workers Directive.

In two articles, EURACTIV is taking a closer look at this issue, following an event organised by the European Federation of Building and Woodworkers (EFBWW).
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As the EU celebrates 30 years of its single market and freedom of movement, for construction workers, there are many problems associated with it, according to union boss Johan Lindholm.

While the possibility to live and work in a different country is generally viewed positively by the European population, it has also led to new forms of workers’ exploitation, workers’ rights advocates said at an online campaign event by the European Federation of Building and Woodworkers (EFBWW) on Tuesday (30 May).

“We are celebrating 30 years of the single market this year, but from construction workers’ point of view, there is not so much to celebrate,” Lindholm, head of the EFBWW said at the event.

“What they have seen over the last three decades is actually less social protection, more precarious jobs, increasingly unsafe and unhealthy work conditions, but also a very fierce competition between workers based on nationality and employment status,” Lindholm added.

The union takes particular aim at the EU’s rules for ‘posted workers’, which regulate how companies can send their workers from one member state to another. The EU’s posted workers’ directive was reviewed and updated in 2018, introducing the principle of equal pay for the same work at the same place.

While this reform was introduced to reduce social dumping through the use of posted workers, trade unions are not yet satisfied.

In combination with the fairly...
common practice of using subcontractors in the construction industry, the use of posted workers opens the door for violations of workers’ rights as well as exploitation, according to EFBWW.

“Social dumping is not new in the construction industry, but recently we see a new trend,” Lindholm said. An increasing number of workers would only be “hired to be posted”, he added.

Increasing number of third-country nationals

Subcontractors are not only used to outsource certain tasks to specialists but increasingly also for the core of the construction activity. Often, this even leads to a “chain” of multiple subcontractors, making it difficult for workers to claim their rights, as responsibilities become blurred.

This would increasingly also affect workers from third countries, such as India, Nepal, Sri Lanka or Bangladesh, who are hired in one EU country in which they never work but are immediately sent to another country, the trade union says.

There is an increasing number of so-called posting agencies, whose “main business model is to bring workers to the EU, in gateway countries, who are then posted to another country”, Tom Deleu, the trade union’s Secretary General told EURACTIV.

“Posting of workers was never meant as a business model to send workers around Europe, it was meant for companies to go abroad for a specific time and deliver a specific task,” he added.

Limit the number of subcontracts

To tackle the problem, the union calls for a ban on agencies for posted workers. Posting workers “should be about construction workers companies sending workers”, Deleu said.

The trade union also calls for a limit on the number of layers of subcontractors that can be given to perform a specific task.

For that, the trade union receives support from the centre-left S&D group within the European Parliament.

“We must limit subcontracting and shorten the long subcontracting chains,” Agnes Jongerious, a Dutch EU lawmaker of S&D said at the event.

Some countries have already taken such steps, such as Belgium, Spain or Italy, Deleu said, while others are still discussing. The construction workers union would like to see this rule applied EU-wide.

“In an internal market, it should not only be about competition and making business easier but also about fair competition and equal treatment of workers,” Deleu said.

“There is a strong role of the Commission when it comes to protecting the single market, including free movement of services,” he said. Therefore, “the Commission should also play a role to ensure that this is not abused by companies,” he added.

For centre-left lawmaker Jongerious, this is particularly important when it comes to construction financed by the state. “Public spending must be conditional on social requirements, such as collective agreements or working conditions,” Jongerious said.

Public contracts for the construction of new public buildings or infrastructure should include such provisions, for example when they are financed with EU money, she added.
The issue of workers’ rights in projects financed with public money will be a central issue in the next EU election campaign, centre-left EU lawmaker Agnes Jongerius said, as workers from the construction sector protest an increase in social dumping.

On Wednesday (7 June), 250 construction workers protested in front of the European Parliament, calling for stricter conditions on subcontracting in the construction sector, which opens the door for many forms of exploitation in the view of trade unions.

In the view of Jongerius, coordinator of the centre-left S&D group for employment and social affairs, this issue will be among the key points discussed in the upcoming EU election campaign, particularly when it comes to public contracts, such as for the construction of schools, social housing or roads.

"We spend quite a lot of money, also from the European level," Jongerius told EURACTIV. However, most of those procurements do not yet have social conditions attached, she said, as EU rules do not oblige member states to do so.

“So I think this is the time to, also at the European level, push for social conditionalities,” she said. This would not only benefit workers in the construction sector, but as construction receives many contracts from public authorities, it would be among the main targets.

“It’s now time to put your money where the law is,” she said, hinting at the EU’s minimum wage directive. This law obliges member states to lay out a strategy for increasing the level of collective bargaining in the overall
economy. According to Jongerius, one potential solution to achieve this would be to make collective agreements mandatory for all state-funded projects.

Some countries would already go in that direction, Jongerius said, citing Germany and Portugal as examples.

“So I think we are building momentum,” she said, “and we need also the momentum of the next election campaign to push further”.

Exploitation in the construction sector growing

In recent years, “the number of cases of exploitation in construction sites is growing,” Jongerius said, which was also due to the increase in subcontracting.

“On construction sites from 20 years ago, people were from the same company, they were on the paylist of smaller or even the big multinational construction companies,” she said. “But nowadays, it’s more and more common practice that people are working for the big companies but are not on their paylist.”

“If you talk to people inside their coffee room, there are people from different nationalities, different companies, some people being so-called self-employed,” she said.

While subcontracting would not be criminal per se, “if you are using subcontracting chains, there is a possibility of reducing costs by simply escaping legal responsibilities,” she said.

“That also leads to a situation where it’s often quite difficult to pinpoint who is the one to pay the proper wages and who is the one to pay the social contributions,” she said, adding that this would open the door for “criminal behaviour”.

Limiting layers of subcontracting “legally difficult”

One key demand of construction workers’ unions is to limit the number of subcontracting layers that can be used.

Patrick Vanderberghe, president of the Belgian trade union ACV-SCS told EURACTIV that “when you have too much subcontracting, 4th, 5th, 6th level, more and more criminality is being introduced”.

“The big problem is that the chain is really long, and the employers and the national authorities are not keen to limit it. That’s why we have to limit subcontracting to two levels,” he added.

While voicing her general support for this idea, Jongerius said, “legally, it’s quite difficult to make this possible.”

However, “legally, we can arrange legislation, which says, even if you’re using a subcontracting chain, it should be clear that you should also pay people the proper salaries, the social contribution, so equal pay also when posting in the subcontracting chain”, she added.

Furthermore, a “construction site ID” should be introduced, allowing for better enforcement of existing laws by merging all information about workers and their legal employment situation on a given construction site.

Initially, this was even part of the agenda of the previous Commission, Jongerius said, but “they never made a proposal”.
In construction, long and complex subcontracting chains are a major factor of exploitation. If done in an appropriate way, subcontracting should not be a problem. Trouble starts when subcontracting is simply used to reduce costs and escape legal responsibilities. These subcontractors repeatedly vanish without paying workers or leave them in the cold when an accident occurs. It is time to put an end to this. The European Commission (EC) must act. It is time to limit subcontracting.

Tom Deleu is the General Secretary of the European Federation of Building and Woodworkers.

Fernando, a posted worker in a subcontracting chain, discovered that the company was not paying him the correct salary of the country where he worked and that his social contributions and overtime were not being paid correctly. Ali has been falsely declared as a self-employed, as a cleaner or as a part-time worker. The goals are always the same: to pay him a lower salary and to disguise the nature of the relationship between worker and employer.
Arman had to live with more than 20 people in one small bedroom without hot water or heating. Mohamed was promised a good salary and good working conditions. They told him that he could bring his family to Europe. All lies.

All these cases are real and unfortunately too frequent. Next time you pass by a construction site, take a closer look: it is highly probable that you will find stories like the ones from Fernando, Ali, Arman and Mohamed.

The list of workers abused is endless, the list of abuses is endless. There is one common denominator: subcontracting chains, as they are a major exploitation risk factor.

If done in a correct manner, subcontracting should not be a problem. A construction project implementation often requires different kinds of highly specialised abilities, skills, and knowledge not always available in-house. Specialised companies are subcontracted to perform specialised works.

However, this is only one side of the medal. The other side shows an increasing number of large companies which use the term ‘specialised work’ for normal, labour-intensive construction work. These companies use subcontracting chains to disguise employment relationships, use bogus self-employment, outsource key construction tasks to curb labour costs and open the doors for fraudulent companies who use cross-border subcontracting to make a profit with severe wage competition, exploitation, and social dumping.

At the end of the chain are the workers and their families, who end up being the weakest link. Subcontractors often vanish without paying the workers their wages due after months of working. These companies are often temporary work agencies, and letterbox companies, which do not pursue a real and productive business. Abusive subcontracting is an obstacle to sustainable growth and destroys the social market economy and fair competition.

Because of existing loopholes in European and national law, such practices are not necessarily always illegal, but they are certainly abusive and immoral.

Now it is time for a change! As we celebrate 30 years of the Internal Market, it is time to put social progress at the centre and make the European Internal Market socially sustainable. It is time for better rules on subcontracting. The European Commission launched a study to review the revised 2018 posting of workers directive, which aims to provide a comprehensive analysis of various aspects related to the temporary cross-border movement of workers in the European Union (EU), including subcontracting. The study is now ready, and we are waiting for its presentation and for the EC to announce the next steps.

One thing is already indisputable: the need to limit subcontracting and the long chains in subcontracting.

In many European countries, such as Belgium, Spain, Norway and Croatia, limitations have already been imposed on the number of tiers in subcontracting chains in the construction industry, others, such as Sweden, are discussing introducing similar measures.

However, it is not only about limiting the number of levels, there must also be limits to the permitted percentage of employed workers, the number of tasks, and the percentage of the turnover generated down the subcontracting chain.

In parallel, there are other solutions which must be adopted. Temporary work agencies, for instance, must be prohibited to post workers in the construction industry, as is the case in Germany.

In the context of discussions on staggering labour shortages and how to increase the attractiveness of the construction industry, direct jobs must be the norm. And when this is not possible, the European and national legislation must guarantee equal treatment in all public and private procurement, so that the subcontractor applies to his workers the same working conditions and social security rights that the main contractor applies, including the same collective bargaining agreements. It is simple: Same work, same rights, same salary, same social protection.

EU legislation must ensure unconditional and comprehensive systems of joint and several-chain liability in construction in all Member States, including in cross-border subcontracting chains. Additionally, we need a European framework for social ID cards in construction to promote transparency and assist in better enforcement.

We need effective labour inspections and complaint mechanisms. A new EU directive shall set minimum standards for labour inspections and complaint mechanisms based on ILO Convention No. 81. It shall also empower the European Labour Authority to take up its full responsibility in the area of cross-border enforcement. It should allow victims as well as third parties, including trade
unions, to file complaints addressing practical barriers that make complaint mechanisms ineffective or inaccessible, in particular for mobile and migrant workers.

We believe in and fight for a sustainable internal market for construction based on fair competition, innovation, productivity, good skills and qualifications, good working conditions, strong collective bargaining, and health and safety for all workers. Profit cannot be achieved at all costs and at the expense of workers’ lives.

The state of play of subcontracting in the European construction sector will be discussed on 30 May in a joint conference with S&D – How to better regulate subcontracting – with EC representatives, MEPs, and specialists. Register here.
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