

Social responsibility of subcontracting undertakings in production chains

European Parliament resolution of 26 March 2009 on the social responsibility of subcontracting undertakings in production chains (2008/2249(INI))

The European Parliament,

- having regard to Article 31(1) of the Charter of Fundamental Rights of the European Union,
- having regard to Articles 39, 49, 50 and 137 of the EC Treaty,
- having regard to Council Directive 94/45/EC of 22 September 1994 on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees¹,
- having regard to Directive 2002/14/EC of the European Parliament and of the Council of 11 March 2002 establishing a general framework for informing and consulting employees in the European Community²,
- having regard to the proposal for a directive of the European Parliament and of the Council providing for sanctions against employers of illegally staying third-country nationals (COM(2007)0249),
- having regard to its resolution of 26 October 2006 on the application of Directive 96/71/EC on the posting of workers³ and its resolution of 11 July 2007 on the posting of workers in the framework of the provision of services⁴,
- having regard to the OECD's Guidelines for multinational enterprises,
- having regard to the ILO's tripartite declaration of principles concerning multinational enterprises and social policy,
- having regard to its resolution of 15 November 2005 on the social dimension of globalisation⁵,
- having regard to its resolution of 13 March 2007 on corporate social responsibility: a new partnership⁶,

¹ OJ L 254, 30.9.1994, p. 64.

² OJ L 80, 23.3.2002, p. 29.

³ OJ C 313 E, 20.12.2006, p. 452.

⁴ OJ C 175 E, 10.7.2008, p. 411.

⁵ OJ C 280 E, 18.11.2006, p. 65.

⁶ OJ C 301 E, 13.12.2007, p. 45.

- having regard to its resolution of 23 May 2007 on promoting decent work for all¹,
 - having regard to its resolution of 9 October 2008 on stepping up the fight against undeclared work²,
 - having regard to its resolution of 11 July 2007 on modernising labour law to meet the challenges of the 21st century³,
 - having regard to the judgment of the Court of Justice of the European Communities of 12 October 2004 in Case C-60/03 *Wolff & Müller*⁴,
 - having regard to the study conducted by the European Foundation for the Improvement of Living and Working Conditions entitled "Liability in subcontracting processes in the European construction sector",
 - having regard to Rule 45 of its Rules of Procedure,
 - having regard to the report of the Committee on Employment and Social Affairs (A6-0065/2009),
- A. whereas subcontracting can be regarded as an integral part of economic activity,
- B. whereas the unprecedented rate of economic activity over the last quarter of a century has played a major role in raising employment levels across most economies of the European Union and whereas that development has benefited large and small undertakings and has also encouraged entrepreneurship,
- C. whereas globalisation and its corollary of increased competition are bringing about changes in the ways in which undertakings organise themselves, including as regards the outsourcing of non-strategic activities, the creation of networks and increased recourse to subcontracting,
- D. whereas, as a result, the complexity of the links between parent companies and their subsidiaries and between main contractors and their subcontractors makes it more difficult clearly to perceive the diverse structures, operations and policies as well as the responsibilities or liability of the various actors in the production chain,
- E. whereas those changes have had far-reaching consequences for labour relations and sometimes make it difficult clearly to determine the branch of law applying to the relationships between the various elements of a production chain, and whereas, as a consequence, the pricing and allocation of labour is no longer governed by the industry's regulatory framework,
- F. whereas the production process in several industries nowadays takes the form of a fragmented chain of production that has lengthened and broadened, a chain constituting a logistical chain (both horizontal and vertical), as well as a value-chain of an economic and productive nature with single specialities or tasks often 'externalised' to small businesses or

¹ OJ C 102 E, 24.4.2008, p. 321.

² Texts adopted, P6_TA(2008)0466.

³ OJ C 175 E, 10.7.2008, p. 401.

⁴ Case C-60/03 *Wolff & Müller* [2004] ECR I-9553.

self-employed workers, and whereas the effect in company accounts is a substitution of direct labour costs by subcontracting, services or supplier costs based on invoices and 'commercial contracts for services',

- G. whereas subcontractors are often played off against each other and whereas, therefore, the employees of both the issuer of the invitation to tender and of the subcontractors come under pressure as regards their working conditions,
 - H. whereas Parliament has previously highlighted problems associated with the falsely self-employed and whereas that problem is also in evidence in the case of subcontractors,
 - I. whereas subcontracting and outsourcing to legally independent firms does not lead to independence, and companies at a lower level in the value chain, with the exception of specialised subcontractors with high-tech or other sophisticated activity, are often not in a position to act on an equal footing with main contractors,
 - J. whereas, although subcontracting has many positive aspects and has allowed for increased production capacity, it is also generating some economic and social imbalances among workers and might foster a race to the bottom in working conditions, which is a matter of concern,
 - K. whereas subcontracting may also be carried out by pure intermediaries, manpower firms or temporary work agencies, for example, which sometimes operate as so-called letterbox companies, and whereas in many cases only a single contract is awarded or workers are hired only for that specific purpose; whereas such practices highlight the rapidly changing nature of the construction industry and other sectors in which employment relationships are often precarious,
 - L. whereas, in a cross-border context, the problems linked to this precarious situation are compounded when, for example, workers are posted to a third Member State,
 - M. whereas employment relations in the construction sector have been redefined and, at the same time, have reduced the direct social responsibility of the 'principal contractor', as labour has been externalised by the use of subcontractors and employment agencies, making the supply of cheap, often unskilled labour an integral part of lower level subcontracting,
 - N. whereas some sectors, in particular the construction sector, have been particularly vulnerable to abuses in their often complicated subcontracting chains,
 - O. whereas the basic principle of equal pay for equal work in the same place must apply to all employees, regardless of their status and the nature of their contracts, and that principle must be enforced,
1. Calls on public authorities and all stakeholders to do their utmost to increase the level of awareness among workers of their rights under the various instruments (such as labour law, collective agreements, codes of conduct) that regulate their employment relationship and working conditions in the undertakings for which they work and the contractual relationships in subcontracting chains;
 2. Calls on the Commission to raise awareness of good practices, existing guidelines and standards and social responsibility practices among undertakings, be they main contractors

or subcontractors;

3. Reiterates its invitation to the Commission to put forward a proposal on applying the decent work agenda to workers in subcontracting undertakings and, in particular, on compliance with core labour standards, social rights, employee training and equal treatment;
4. Stresses the importance of subcontracting undertakings in production chains using new technologies in order to improve the quality of both production and jobs;
5. Calls on national public authorities to adopt or further develop legal provisions which exclude undertakings from public procurement, where they are found to have infringed labour law, collective agreements or codes of conduct;
6. Welcomes the adoption of a transnational legal framework, agreed between individual multinational enterprises and global union federations, designed to protect labour standards in multinational enterprises and their subcontractors and affiliates across different countries and which defines the status of the dependent worker and provides social protection irrespective of specific employment conditions;
7. Takes note of the judgement in the case of *Wolff & Müller*, in which the Court of Justice held that the German national liability scheme did not infringe Community law but was, instead, intended to ensure the protection of workers posted abroad;
8. Takes note of the outcome of the public consultation on the Commission's Green Paper "Modernising labour law to meet the challenges of the 21st century" (COM(2006)0708); encourages in this regard the Commission's intention to take the necessary steps to clarify the rights and obligations of the parties involved in subcontracting chains to avoid depriving workers of their ability to make effective use of their rights;
9. Welcomes the fact that eight Member States (Austria, Belgium, Finland, France, Germany, Italy, the Netherlands and Spain) have responded to the problems connected with the duties of subcontractors as employers by establishing national liability schemes; encourages other Member States to consider introducing similar schemes; highlights the fact, however, that implementing the rules in cross-border subcontracting processes is particularly difficult when Member States have different systems in place;
10. Stresses that the European Foundation for the Improvement of Living and Working Conditions' study states that a narrow scope of liability, such as a limitation to only one element of the chain, is one of the reasons why arrangements are ineffective;
11. Emphasises the particular challenges faced by small businesses; calls on policymakers to develop appropriate tools to raise awareness among small businesses;
12. Reminds all stakeholders that, in its resolution of 26 October 2006 on the posting of workers, Parliament called on the Commission to regulate the joint and several liability of the general or principal undertakings, in order to deal with abuses in the subcontracting and outsourcing of cross-border workers, and to set up a transparent and competitive internal market for all companies;
13. Reiterates its message by calling on the Commission to establish a clear-cut Community legal instrument introducing joint and several liability at Community level, while respecting

the different legal systems in place in the Member States and the principles of subsidiarity and proportionality;

14. Calls on the Commission to launch an impact assessment on the added value and feasibility of a Community instrument on chain liability as a way of increasing transparency in subcontracting processes and of securing better enforcement of Community and national law; emphasises that such a study should be cross-sectoral;
15. Is convinced that a Community instrument on chain liability would benefit not only employees, but also Member State authorities, employers and, in particular, SMEs in their fight against the grey economy, as clear, transparent Community rules would drive dubious operators out of the market, thus improving the functioning of the internal market;
16. Notes that all measures that inform employees about their rights and support them in the exercise thereof make a vital contribution to fostering corporate social responsibility; calls on the Member States to ensure, as a matter of principle, that employees are informed of their rights; regards the social partners as having a particular responsibility in that connection;
17. Calls on the Commission to intensify its efforts to promote more and better cooperation and coordination between national administrative bodies, inspectorates, government enforcement agencies, social security authorities and tax authorities; calls, furthermore, on Member States to introduce more stringent inspection procedures and to favour closer links between national labour inspectorates, thus allowing for increased cooperation and coordination among them; calls on the Commission to develop quality standards for labour inspectorates and to carry out a feasibility study of possible arrangements for establishing a Community network of labour inspectorates;
18. Stresses the need to promote incentives for companies to make every reasonable effort in good faith to eliminate labour law infringements by subcontractors, such as systems of certification and codes of conduct, including reporting to the authorities and terminating a contract with a subcontractor which engages in illegal practice in order to avoid the possibility of being held jointly and severally liable for that infringement;
19. Invites both sides of the industry to take the lead in the promotion of cooperative subcontracting for specific one-off tasks on the one hand, and for the restriction of the multiplication of subcontracting on the other, and welcomes the development of framework agreements that define social responsibility and liability in the chain as a complement to the necessary regulation;
20. Warns against conflicts and overlapping between, and duplication of, provisions found in codes of conduct and in labour law, codes of conduct, standards and guidelines adopted by public authorities and collective agreements in force; for this reason, emphasises the need for undertakings to adhere, as a matter of priority, to codes of conduct, standards and guidelines drafted at the level of supranational organisations (OECD, ILO), or at national or sectoral levels;
21. Reminds all stakeholders, and in particular employers, of their obligations with regard to information, consultation and participation of workers, notably those provided for in Community and national legal instruments;

22. Proposes that the possibility of reconciling family life with work be safeguarded in law at national level for workers in subcontracting undertakings in production chains and that the directives on maternity and parental leave be effectively implemented;
23. Calls on the Commission to ensure effective compliance with Directive 96/71/EC, including, if necessary, launching infringement procedures; furthermore, calls on both the Commission and the Member States to adopt measures aimed at improving access to information by posted workers, reinforcing coordination and administrative cooperation among Member States, including clarifying the role of Member States liaison offices, and solving cross-border enforcement problems that hamper the effective implementation of Directive 96/71/EC;
24. Stresses that more effective measures can be taken to counter the potential negative social consequences of subcontracting by improving enhanced social dialogue between employers' organisations and trade unions;
25. Instructs its President to forward this resolution to the Council and the Commission, and to the governments and the parliaments of the Member States.