

Executive Summary

This report contains the research carried out by the European Centre for Social Welfare Policy and Research in the frame of the project “Better Functioning of the European construction labour Market - FELM” (VS/2021/0011 - Support for social dialogue) coordinated by the European Federation of Building and Woodworkers (EFBWW) and the European Construction Industry Federation (FIEC). The study has three parts:

- (1) a critical analysis of the EU regulatory and policy framework on the access of non-EU companies and workers to the European market;
- (2) a quantitative analysis of the number and characteristics of third-country construction companies, construction workers, and posted construction workers in the European Union (EU); and
- (3) six case studies, three on third-country companies’ and three on third-country workers’ access and participation in the EU construction market. The research was conducted during October 2021-March 2023.

The access and participation of third-country companies in the European construction market is regulated at three intersecting governance levels: the international, the EU, and the national levels. The existing legal framework provides access to the European market only to those third country operators established in countries party to the World Trade Agreement on Government Procurement (GPA) or other free trade agreements the Union or individual Member States are party to. However, it does not preclude economic operators originating in other third countries which have registered subsidiaries in the EU, to meet the criteria of being ‘established in the EU’ or ‘established in third countries party to the international agreements’ and thus obtain access to the European market. The analysis finds that while the overall framework is set at the international and EU levels, Member States can set their own criteria of inclusion and exclusion through national regulations and/or screening procedures.

The legal framework governing the employment and access of TCN workers in the European construction sector is based on national and EU level regulations. The fundamental rules for the issuance of a permit to reside and work in the different EU countries in general and for specific categories, such as seasonal, highly skilled, intra-corporate transfers, and posted workers, are regulated at the EU level through various directives. However, Member States’ national sovereignty remains the primary basis in terms of access options and procedures. All Member States aiming to ameliorate labour shortages in various sectors, including construction, implement different measures that target the provision of access and facilitation of recruitment of TCN workers in their national markets. These measures include quota systems, special legislation, and bilateral agreements with individual third countries. The review of the posting and other related regulations indicates that for TCNs to be posted, they should already be residing and working in an EU Member State.

The quantitative analysis is based on the Eurostat inward foreign affiliates statistics (FATS), the Tenders Electronic Daily (TED) contract award notices, the European Labour Force Survey, and posting statistics drawn from prior notifications.

Main results on third country (or non-EU) companies’ quantitative analysis include:

- While the presence of third country owned enterprises as a share of all enterprises in the construction sector in the EU was very small (amounting to just 0.1% in 2018), their weight appeared to be somewhat larger.

- Non-EU owned enterprises accounted for 1.2% of the turnover generated by the construction sector in the EU and 1.4% of value added.
- Non-EU enterprises were responsible for 15.4% of turnover, 19.0% of value added and 17.6% of persons employed in construction.
- In 2019, Slovenia was the EU country with the highest number of non-EU owned construction companies, whereas Luxembourg was the country where non-EU companies had the highest share of the national construction sector (10.6%).
- The origin for a considerable share of the foreign owned enterprises in the construction sector are not known (66.6%) due to data limitations. The available data indicate that in 2018 foreign owners came from the four EFTA countries (10.9%), the United States (8.5%), Israel (5.3%), Turkey (5.2%), and China and Hong Kong (2.3%). At the EU Member State level, geographical proximity, common language, and cultural similarities seem to be factors that can explain the higher presence of companies from EFTA area, Turkey, and Israel.
- Based on data from contract award notices published between 2011 and 2020, there were 347 contracts awarded to companies located outside the EU for construction work in a total amount of 8.8 billion euro. Both the number of contracts and the awarded value amount increased over time.
- The countries with the largest number of awarded contracts to non-EU companies were Germany (78), France (59), Poland (42) and Bulgaria (41). Although Germany awarded the most contracts (almost twice as many as in the case of Poland), these were lower in their value than in several EU Member States. Contracts awarded by Poland had by far the highest total amount with around 5 billion euro, followed by Bulgaria (close to one and half billion).
- There were 25 contracts awarded to a company located in China or Hong- Kong for construction projects in a total value of 1.9 billion euro. The largest number of contracts were awarded by Poland (16), Germany (3) and Greece (2).

Main results on TCN workers' quantitative analysis include:

- Construction is a critical job destination for TCNs in the EU labour markets, where their share remains 8.5%.
- According to the calculations from the EU-LFS data, Slovenia (23.3%), Latvia (23.1%), Greece (18.9%), Estonia (16.9%) and Cyprus (16.6%) had the highest share of TCNs working in construction in 2020. In most EU countries, the trends over time seem relatively stable, except for the increasing trends of the share of TCN workers in Slovenia and the Czech Republic and a minor decline in Greece.
- Nationals of non-EU countries in the European region are the largest group of workers, constituting considerable shares of the construction workforce in Slovenia (19.5%), Greece (16.4%), Latvia (16.6%), Estonia (16.1%), Austria (7.4%) and Italy (6.2%). Countries with relatively higher shares of workers coming from Middle East & Africa region are Cyprus (10.0%), France (4.0%), Spain (3.1 %), and Italy (2.4%).
- The largest group of TCN workers are within the 35-44 age bracket (35.7%).
- Most TCN workers in the construction sector perform jobs under the category of the ISCO-700 "crafts and related trade workers" (69.4%) and ISCO-900 group "elementary occupations" (14.8%).
- On average, TCNs are more frequently employed in part-time work contracts than EU/EFTA workers. In the EU, 82.4% of TCNs in the construction sector are employees (%), 17.07 % are self-employed, and 0.52 % are classified as family workers. The share of self-employment is the highest for TCNs in the Czech Republic, the Netherlands, Belgium, and Italy.

- The quantitative data on the posting of TCNs is limited to 15 Member States. Among those EU countries for which data are available, Belgium, France, and Austria received the highest number of posted TCN construction workers. Belgium is the only receiving country in which posted third-country nationals account for a significant share (4.34%) of total employment in construction, followed by Luxembourg (1.8%), Austria (1.4%), and France (0.89%).
- The main sending countries of posted workers are Poland (in absolute terms) and Slovenia (in relative terms).

The three case studies of third-country companies focused on the participation of third-country companies in public procurement in Bulgaria, a Turkish construction company in Slovenia, and a Chinese construction company in Sweden. The three case studies show the variation in public procurement practices in the three national contexts. The main modes of accessing the European market for third-country companies are through: participating in the bid as the sole participant, joint-ventures with local companies, and including local subcontractors. Apart from cooperation with local companies, third-country operators are also investing in public image, as many of the bids involve large projects of public importance. The cases jointly demonstrate the procedures and challenges in the application of regulatory principles of equal treatment, transparency and fair competition in public procurements involving third-country construction companies. By doing so, the case studies also showcase current weaknesses in procurement rules and procedures as well as possible ways to overcome them. Compliance of third-country companies with European environmental, social, and labour standards and their monitoring by national contracting authorities and public institutions are also fundamental for their enforcement.

The three case studies of TCN workers focused on Bosnian workers in Austria, Ukrainian workers in Belgium and South-east Asian workers in Romania. Findings show that in all three countries, two have longer and one has a relatively shorter history of immigration, TCN workers in construction are becoming a significant pool of labour supply in response to the growing shortages in the receiving country labour markets. Yet, TCN workers are exposed to multiple additional risks, which derive from a combination of their precarious employment and immigration statuses, particularly when both employment arrangements and residence permits are temporary. Cases of unequal terms and conditions (such as underpayment/minimum pay and poor accommodation) and exploitation have been evidenced in all three case studies. The risks for TCN workers are higher if they are either posted or sent through irregular channels to work in construction sites from their EU country of residence to another EU country. Language barriers and enforcement challenges are demonstrated in all three cases. However, while in Austria and Belgium, public authorities and social partners are strongly involved in the monitoring and enforcement of labour standards, in Romania, as an emerging country of immigration, monitoring and enforcement mechanisms are either new or still to be developed.