

BUREAUCRATIC OXYMORON: THE COMPLIANCE OF THE REA IN SPAIN

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ABSTRACT:

Unlike other sectors, the Spanish Construction Sector has unique characteristics that make it particularly vulnerable to occupational accidents [1]. In order to solve this worrying situation, with unaffordable incidence rates for a modern and advanced economy, the Government of Spain and social agents (trade unions and construction firms) were in agreement with the enactment of Law 32/2006 [2] and its inclusion in the regulations on Occupational Risk-Prevention, to facilitate the management of subcontracting in construction works, with the aim of establishing an effective reference framework that would reduce incidence rates that devastated the Construction Sector.

This is the reason why a limit on the capacity to contract was established, prohibiting, except for justified reasons, exceeding the third level in the subcontracting chain. As an additional measure, the so-called Registry of Accredited Firms (REA, for its acronym in Spanish) was designed and launched, through the enactment of Royal Decree 1109/2009 [3], which develops the regulations of the aforementioned Law 32/2006.

Although it is clear that the principal aim of this new regulation was the containment of the worrying incidence rates on construction sites in Spain, the opportunity was taken to improve working conditions and the employment of workers engaged with subcontracting firms, as well as to provide legal security to cooperative business relations between firms, when these concur simultaneously or successively at the same workplace. Both registration on the REA and the Duty of Preventive Coordination of Business Activities are inherent obligations for firms that employ workers, as long as they act as contractors or subcontractors of construction works.

As seen on the official website of the Registry of Accredited Firms (REA, for its acronym in Spanish) [4], a software tool developed by the Ministry of Employment and Social Security, *Public Administrations have to be entered on the registry if they participate as contractors or subcontractors in the process of subcontracting in the Construction Sector.*

The aim of this research is to study the level of compliance of Public Administrations with this obligation to register on the REA, specifically among City Councils and Provincial Councils, in order to check whether there is a privileged dealing compared to other firms belonging to the private sector or not. To do so, a total of 97 Public Administrations were analyzed, distributed between 52 City Councils and 45 Provincial Councils, and after proceeding the verification of their registration on the REA on 02/13/2017, noting that only 11.54% of the total of the 52 City Councils were registered, compared to 88.46% of non-registered. Similar results were obtained in the case of Provincial Councils, because, on 02/13/2017, a high number of Provincial Councils in Spain failed to comply with the REA, with values that reached 88.44% of non-registered compared to 15.56% of the Provincial Councils were registered.

The records analyzed show us that from the total of the 97 Public Administrations under analysis (City Councils and Provincial Councils), only 13.40% of them complied with this registration requirement, which implies a very high level of non-compliance: 86.60%.

It can be concluded that there is evidence of comparative double-standards in the formal requirement for REA accreditation, while those firms that are Public in nature do not comply with this requirement, firms that are Private in nature have to compliance with the REA before the beginning of construction activities.

This situation demonstrates the limited effectiveness of the REA with regard to the compliance of Public Administrations when acting as contractors or subcontractors, mandatory since August 26th, 2008, for which intervention work by the Labor Inspectorate and Social Security is recommended in order to demand general compliance with the Subcontracting Law and the its Regulations, regardless of the Public or Private legal nature of the firm. On the other hand, we believe that Public Administrations should set an example and be a bulwark against legislative non-compliance and be a role model of good practice in their actions.

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