



European Construction Industry Federation

Brussels, 29/01/2026

Building Solutions together: our mission, your future

First-phase consultation of the Social Partners on a Quality Jobs Act

The **European Construction Industry Federation (FIEC)** takes good note of the publication of a Communication on a Quality Jobs Roadmap on 4th December 2025, accompanied by the 1st stage consultation document on a Quality Jobs Act. FIEC welcomes this opportunity to share its view on a future Quality Jobs Act.

The European social model and legislative framework both cover many aspects related to job quality. From the European Pillar of Social Rights to the EU strategic framework on health and safety at work 2021-2027 and the Union of Skills, the European Commission has built a strong framework for quality jobs.

Against this background, and taking into consideration additional sector-related legislations, the construction sector is highly regulated, and benefits, at the European and national levels, of a strong social dialogue. In June 2025, FIEC published its position paper on a Quality Jobs Roadmap¹, calling for **more implementation, enforcement and monitoring** of current legislations rather than new legislations. **This position remains accurate but will be further developed below on the points highlighted in the 1st stage consultation document.**

About the proposal for an “Act”

The European Commission announced that the Quality Jobs Act will be a legislative instrument but didn't explain which kind of legislative instrument it will be.

The diversity of national labour market models and the unique circumstances of different sectors must be respected. More and better jobs are not created by more regulation and increased administrative burdens for companies. While we fully support the principle that quality should prevail over quantity, excessive regulation may discourage companies to hire new workers. EU action should aim to clarify and provide the necessary simplification to facilitate compliance with existing European legislation, not to overregulate or impose one-size-fits-all solutions.

Not only FIEC doesn't support a legislative approach, but would also like to point out that the topics addressed in the Quality Jobs Roadmap and in the Quality Jobs Act consultation document are very diverse and touch different areas of labour law. If all these issues are addressed in one single legislative proposal, there is a high risk of complexity, uncertainty and misunderstanding of the rules. Furthermore, having one single Act tackling different issues will not be align with the simplification and competitiveness goals.

¹ FIEC Position paper, [Quality Jobs Roadmap](#), 30/06/2025

In this context it is of utmost importance to make sure that the Commission's competitiveness check is strengthened and applied to assess the consequences on competitiveness of the whole Act together with other initiatives in holistic way.

In drafting the Quality Jobs Act, the European Commission should also always keep in mind the overall objective of simplification. Indeed, as duly recalled in the consultation document *"the Quality Jobs Act will actively contribute to the Commission simplification agenda where appropriate."*

Coherence with other initiatives

The European Commission intends to publish several key initiatives or revisions in the coming months, including the revision of the public procurement directives, the Fair Labour Mobility Package or the Construction Services Act. It will be of foremost importance to ensure that the different proposals are coherent and support one another.

For example, while the European Commission intends to remove barriers to the provision of construction services through the Construction Services Act, it also considers limiting subcontracting in the Quality Jobs Act, which will create new barriers.

1. Algorithmic management and Artificial Intelligence at work

The development and use of digital tools and Artificial Intelligence (AI) will be key for the future of the construction industry. As mentioned in the Draghi report, AI participates in improving the productivity and competitiveness of the industry.

In the construction industry, AI can be used to improve work organisation and planning, improve health and safety at work, increase productivity.... To deliver on the different challenges that our industry is facing (green transition, housing crisis, renovation wave...), companies will need to have easily access to innovation and digital tools, including AI. However, even if there is a growing interest, the digital transition and the deployment of AI in the construction industry remain slow and uneven in a fragmented sector, mostly composed of SMEs.

In this regard, and taking into account the existing European legislation dealing with the use of AI at work (AI Act, GDPR, Information and Consultation Directive, ...), FIEC doesn't see the need to regulate further on AI and algorithmic management. Guidelines or recommendations on how to foster AI while protecting the users could be useful and welcome. In addition, financial support would help to further disseminate these tools in our industry.

2. Occupational safety and health

The European legislative framework on occupational safety and health is one of the best in the world and has been developed in close cooperation with social partners. With the Framework Directive and the sectoral Directives, there is a strong corpus at EU level to protect workers from exposure to occupational risks. Of course, more can and must be done, especially regarding the implementation of the existing legislation.

The consultation document highlights several emerging challenges such as risks arising from telework, psychosocial risks and the need *"to improve worker protection in light of the digital transition, while avoiding unnecessary burden on companies and simplifying the legislation"*.

On telework, while it remains marginal in the construction sector, FIEC believes that the issue will be better dealt with at national and sectoral level.

2.1. Psychosocial risks

FIEC recognises that mental health is an important societal issue, affecting many citizens, from a very young age, in all Member States. It is conditioned by several factors and dimensions which go beyond the work-related ones.

Employers have for already several years taken into account psychosocial risks in the risk management analysis and many initiatives have been put in place at company level and by social partners. Concrete examples of what have been established are available in FIEC's position paper on "*How to approach Mental Health in the construction industry*" in Annex 1.

FIEC doesn't see the need for a specific European legislation on mental health at work, as it is already covered by the existing legislative framework. Tools, guidelines or recommendations adapted to the particularities of the construction sector would be better suited to respond to the challenges posed by mental health. Raising awareness within companies, especially SMEs, and providing support through guidance and funding is necessary to reinforce the prevention of psychosocial risks at work.

2.2. Workplace and Display Screen Equipment Directives

The consultation document refers to the possible revision of the Workplace and Display Screen Equipment Directives. FIEC recognises that the content of the Directives is outdated and that a targeted revision to simplify them and make them more future-proof could improve them. However, the revision should be based on a thorough impact assessment and should not impose new burden on the employers.

3. Subcontracting

The consultation document lists many possible actions to limit subcontracting whether it is to strictly limit the number of tiers, to introduce stricter liability rules and/or enhance transparency in national systems via prequalification, certification or national registers.

In its position paper (see Annex 2), FIEC stresses that the freedom to provide services (article 56 TFEU) is essential for the competitiveness, efficiency and innovation of the European construction industry. Moreover, article 16 of the Charter of Fundamental Rights of the EU and the internal market rules recognise companies' freedom to conduct a business, which implies that they are free to choose their business partners as well as the form of the partnership (i.e. through subcontracting).

Depending on the projects and tasks to be performed, different companies need to intervene on the same worksite, and an effective and flexible co-operation is required. This is also due to the high fragmentation of the construction industry, which is composed of a vast majority of SMEs.

Hence, in construction, cooperation between different companies on a worksite is common and may take many different forms, including joint ventures and cooperating with subcontractors, suppliers as well as other service providers. Subcontracting as such can be used for different purposes and take different forms.

FIEC is strongly opposed to restrictions at the EU level aimed at limiting subcontracting to a certain number of tiers.

This is without prejudice to the fact that limitations to subcontracting already exist in some Member States, or the application of extended liability rules. Most of the time, these national rules have been proposed by and/or negotiated in close cooperation with the national (sectoral) social partners, taking into account their specific national context. Member States which already have limitations on subcontracting in place can, to a greater or lesser degree, allow temporary work, e.g. to have access to a specialised workforce. This means that what has been decided and implemented at national level cannot be seen as a solution for the 27 EU Member States in sense of a "one size fits all" approach. In its consultation document, the European Commission rightly stress that "*the initiative will take account*

of the diversity of national systems, allowing sufficient space for social partners' implementation and will limit to a minimum burden on companies".

Whereas there are incidents and abuses that can occur in the construction sector, FIEC believes that the solutions are rather improving transparency, in particular with sectoral social ID cards, better implementing and enforcing the existing rules, increasing the technical and human capacity of labour inspectorates, improving data sharing, etc.

4. Enforcement and the role of social partners

As rightly indicated in the consultation document, enforcement and effective implementation of EU legislation are central to ensuring a fair and competitive labour market. Through European funded projects or its implication in the European Labour Authority, FIEC has supported this objective of effective implementation.

However, more needs to be done. Through smarter inspections, better access to information and data sharing, enforcement and implementation of existing rules could be improved.

As an example, in some Member States, the involvement of national social partners in developing social ID cards has been key to increase transparency on worksite and fight against undeclared work. The fact that the European Commission supported FIEC and EFBWW in their joint SIDE-CIC project sent a strong signal in favour of these cards. Their existence and the autonomy of national social partners should not be put at risk by any future initiative.

Social dialogue, at EU and national levels, is well functioning in the construction sector. Social partners should be involved for matters that impact the sector and their autonomy should be guaranteed. Well established and efficient national systems and mechanisms should be respected.

Finally, paritarian institutions can play a big role in implementing the legislation, especially through training or awareness-raising campaign. It could be therefore interesting to support their development where they don't exist yet.



Annex 1: Position paper on mental health

How to approach Mental Health in the Construction industry

FIEC recognises that mental health² is an important societal issue that affects many citizens, from a very young age, in all Member States. Mental health is “*conditioned by personal and external factors*”³ such as the state of the world, the economic crisis, family-related issues and changes in society. The notion of mental health shouldn’t be confused with the one of psychosocial risk. As defined by Eurofound, psychosocial risks are “*aspects of the design and management of work, and its social and organisational contexts, that have the potential to cause psychological or physical harm*”.

The challenges posed by psychosocial risks have been recognised and addressed by the construction employers for already many years. Ensuring safe workplaces is important for the attractiveness of the sector, particularly in a context of labour shortages.

In June 2023, the European Commission published a Communication on mental health which includes a specific section on “Tackling psychosocial risks at work”. Mental health is also one of the priorities in Ursula Von der Leyen’s Guidelines for 2024-2029 and in the mission letter of the European Commission Executive Vice-President, Roxana Mînzatu.

In this context, FIEC would like to share the following messages and recommendations:

- **Mental health is a societal issue**, influenced by **several factors and dimensions**, that go **beyond the work-related ones**.
- **FIEC doesn’t see the need for a specific European legislation** on mental health at work, as it is already covered by the existing legislative framework. Tools, guidelines or recommendations adapted to the particularities of the construction sector would be better suited to respond to the challenges posed by mental health.
- Many initiatives have been put in place at company level and by social partners. **A bottom-up approach**, taking into account existing initiatives and **involving the sectoral social partners** at all stage, must be adopted.
- **Support to employers**, and in particular SMEs, through specific guidance and funding is necessary to reinforce the prevention of psychosocial risks at work.

² Mental health is defined by the World Health Organization as “a state of well-being in which every individuals realizes his or her own potential, can cope with the normal stresses of life, can work productively and fruitfully, and is able to make a contribution to her or his community”

³ [Communication on a comprehensive approach to mental health](#), COM(2023) 298, European Commission, 7.06.2023

Psychosocial risks factors in the construction industry

Without drawing up an exhaustive list, FIEC recognises the existence of several psychosocial risk factors in the construction industry.

First, the construction industry, as all productive sectors, is vulnerable to economic crises and demand fluctuations. This can lead to uncertainty for workers and employers and affect their well-being as well as their job satisfaction and income security. In addition, the sector is characterised by a complex work organisation with multiple stakeholders and high mobility. According to the EU-OSHA, poor cooperation and communication in construction companies is also a prevalent psychosocial risks factors for the workforce⁴. Workers and employers in the construction industry also have to cope with client pressure, work overload and tight deadlines which can lead sometimes to long working hour. These risks have been identified and addressed by employers for already many years.

In 2020, the Irish Construction Industry Federation published a [report](#) on “Mental health in the Construction sector”. The Federation, recognising the importance of mental well-being in the construction sector, did a research with employers to explore their experience of managing staff and the key issues they face with regards to mental health. The report is accompanied by a set of recommendations for companies, industry and government.

The report identifies the following work-related reasons for mental health issues: work related stress (44%), unrealistic work targets (29%), long working hours (22%), a macho work culture where employees are uncomfortable seeking help (16%), a bullying culture (15%) and poor communication between management and staff (9%).

Challenges in addressing mental health at the workplace

As highlighted in FIEC and EFBWW joint project on mental health, “*the fact that mental health is defined by a multitude of factors linked to the personal, professional and societal environment makes the challenge of addressing its risks at workplace level especially difficult*”⁵. Mental health is a multifactorial and multidimensional issue.

Additionally, FIEC recognises that employers can face obstacle in managing mental health in the workplace:

- There is still a **lack of understanding and knowledge about mental health**. There is no clear definition. To better understand the issue and therefore take the necessary measures, it is essential to improve data collection and better understand the impact of work on mental health.
- The construction sector, by its own nature, has a series of characteristics that makes it different from others and that can't change: each work takes place in a different location, there are a lot of surrounding factors, the work with machines,....
- The sector is fragmented with many **SMEs** that don't always have the necessary resources and tools (human and/or financial).
- There can be many different cultures on a construction site.
- Mental health is a very personal and sensitive issue. This is not always easy for an employer to assess the well-being of their employees. **Indeed, employees do not always want to share their mental health problems with their employer.**
- Distinguish between the work-related factors and possible external ones is not easy.

⁴ [Mental health in the construction sector: preventing and managing psychosocial risks in the workplace](#), EU-OSHA, 14.11.2024

⁵ [Mental health in the construction industry](#), Report from the joint EFBWW and FIEC project, 2019

- A shortage of mental healthcare in some Member States.

FIEC therefore proposes to:

- Adopt a sectoral approach to make sure that the particularities of each sectors are taking into account.
- Improve the collection of information and data on mental health at national and European level.
- Improve support to employers, and in particular SMEs, through specific guidance and funding.
- Launch national campaigns to raise awareness on mental health issues and to tackle stigma and stereotypes, so that people feel free to talk about their mental wellbeing.

Measures to tackle mental health in the construction industry: The need for a holistic approach

As mentioned above, one of the main challenge in addressing mental health is its multifactorial nature. It is therefore not easy to identify the factors responsible for a lack of mental health wellbeing in the workplace. In this respect, **any actions needs to deal with mental health in a holistic approach**. Supporting the improvement of mental health and the prevention of mental health problems requires **multidisciplinary and sustained cooperation** between different actors, at all levels. It is important to define the responsibilities of all actors involved and to take into account that **an employer cannot control everything**.

At European level

The Framework Directive 89/391/EEC⁶ sets out the employers' obligation to ensure the safety and health of workers at the workplace. Employers have the obligation to carry out a comprehensive risk assessment, for all types of risks including psychosocial risks.

The EU strategic framework on health and safety at work 2021-2027⁷ mentions psychosocial risks and initiatives taken by the European Commission to tackle hazards to psychosocial wellbeing. This is further developed in the Communication on a comprehensive approach to mental health presented in June 2023. In addition, the EU-OSHA is preparing an EU-wide campaign on psychosocial risks and mental health at work for 2026-2028. Here, **FIEC recalls that such campaign should focus on good practices, practical guides, support for employers and workers and should adopt a constructive approach**.

The importance of the European Sectoral Social Dialogue

In their joint Work Programme for 2024-2027, FIEC and EFBWW, the European sectoral social partners for the construction industry, commit to discuss on how to better address mental health at work and to promote best practices and prevention measures among employers and workers.

In 2019, FIEC and EFBWW concluded a EU-funded [project](#) on psychosocial risks in construction. This project facilitated the exchange of best practices and examples between Member States to evaluate working conditions, their evolution and to take measures to reduce psychosocial risks. A sector-specific guide has been published, focusing directly on the needs at workplace level. Guidance is provided for the risk assessment for construction work and to help companies to identify measures to reduce individual load factors.

⁶ [Council Directive](#) 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work

⁷ Communication on EU strategic framework on health and safety at work 2021-2027 Occupational safety and health in a changing world of work, [COM/2021/323 final](#), 28.06.2021

At national level

Mental health should be a public health priority with adequate funding and resources. Education, information and awareness-raising campaigns and the provision of better medical care should be a priority at the national level.

However, these public health policies should not be based on mistrust of the world of work. As stated by the World Health Organization, decent work supports good mental health giving people purposes and achievements, inclusion, positive relationships,⁸

At company level

Poor mental health can lead to poor physical health, absenteeism and burnout. This is therefore in the interests of society and employers to ensure that citizens, workers, have good mental health.

In this regards, much has been done by employers in the construction sector to prevent, promote and manage the mental health and to improve workers' health and safety. OSH legislation requires employers to perform impact assessment of all risks in the workplace, including psychosocial risks, and to adopt adequate prevention strategies. Where they exist, health and safety coordinators or managers have an important role to play in providing advices and ensuring that psychosocial risks are addressed. The involvement of the sectoral social partners is also key to deliver effective and efficient measures and support to workers and companies.

In the Netherlands, several companies are working together and organise every year a week around mental health and well-being at work. This "[Hee, ben jijoké?](#)" is about social safety, diversity and inclusivity in the construction, infrastructure and installation sector.

Also in the Netherlands, [Vollandis](#), a non-profit organisation set up by the social partners in the construction industry, has developed several tools to reduce stress and workload (e.g. guide on "Getting started with workload in the construction sector").

A large Austrian company is having discussion on working time to allow workers to spend more days at home between two periods of work. They have also improved the working clothes and personal protective equipment (PPE). Finally, they have put in place children camps when the schools are closed to reduce stress around child care.

The [report](#) of the Irish Construction Industry Federation states that 98% of companies in the construction industry recognise the importance of employee wellbeing and that the mental health of employees has important safety implications

*This report presents also **a set of recommendations for companies and the industry.***

*For **companies**, it is recommended to prioritise the project management and supervision of each job to establish and maintain realistic deadlines, clear communication and healthy work hours and work period. They recommend also to improve communication and teamwork, to introduce an open and confidential process whereby employees can report a mental health issue, to inform and promote good mental health, ...*

*For the **industry**, it is recommended to develop best practice policies guidelines and procedures for managing mental health that can be adapted for small and large companies alike, to promote a range of accredited mental health training courses, ...*

⁸ <https://www.who.int/news-room/fact-sheets/detail/mental-health-at-work>

The **project Women Can Build**, led by Fundación Laboral de la Construcción (Spain) and involving seven other organisation from the construction industry, aimed at **promoting gender equality** in the construction sector and **improve the social conditions** of the sector. One of the phase of the project was to elaborate an Action Plan for construction companies to address the horizontal and vertical segregation of gender in the construction industry.

The role of paritarian institutions – Paritarian institutions play a big role in the construction sector when it comes to health and safety at work. These institutions are established and managed by employers and trade unions on a joint basis within the framework of collective agreements.

In Belgium, **Constructiv** has several resources and publications targeting mental health and well-being:

- A dossier on psychosocial risks to help SMEs to detect and deal with psychosocial risks inside their organisation.
- A brochure for employers with a step-by-step plan on how to address the issue of stress systematically in the company.
- A brochure for workers to help them to recognise the symptoms of stress and to set what employers are required to do.
- A dossier on prevention in relation to alcohol and drugs in the construction industry.

Finally, Constructiv visits construction sites and can produce advices on mental health.

In Spain, **Fundación Laboral de la Construcción** through its service *Línea Prevención*, offers several information and resources about prevention of psychosocial risks.

Conclusion

FIEC doesn't see the need for a specific European legislation on mental health at work. Such legislation would be difficult to implement in practice and would not be tailored to every national practices and sector specificities. Mental health and psychosocial risks are already covered by the existing legislative framework. Therefore tools, guidelines or recommendations would be better suited to respond to the challenges posed by mental health. Before taking any initiatives at EU level, a thorough assessment of existing legislation and instruments should be completed. **The construction industry having its own particularities, a sectoral approach to mental health at work, build on what already exists and on the dissemination of these tools, is crucial.** One solution can not fit to the specificities of all sectors. This requires a bottom-up approach, taking into account existing initiatives and involving the sectoral social partners. The role of the social partners in the process of introducing and implementing any measures is fundamental. Their involvement at national and European level is desirable so that they can actively participate in the decision-making process.

Fundamental freedom to provide services – the case of subcontracting in construction

EXECUTIVE SUMMARY

The construction industry is a fundamental component of Europe's economic growth and a major source of employment. It generates about 7.9% of EU GDP and provides more than 12 million jobs – that is, 6.4% of EU total employment. Among its 3.8 million enterprises, 95% are SMEs with less than 20 workers.

Subcontracting is a vital part of the construction industry. It allows companies to respond to project demand flexibility, access specialized expertise, cushion the shortage of skilled workforce and maintain competitiveness. Calls for EU-wide limits on subcontracting misunderstand how the industry operates and risk damaging efficiency, innovation, and SME participation. National rules already exist and are better suited to the specific realities of each Member State. Rather than imposing one-size-fits-all limits, the EU should focus on better enforcement of existing laws and support digital tools for transparency and compliance.

1. The political context

On 13th March 2025, the European Parliament adopted a resolution on “restructuring”⁹ which included an appeal to the European Commission, promoted by the trade unions, *“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”*.

In parallel, Executive Vice-President Roxana Minzatu, Commissioner in charge of Social rights and skills, quality jobs and preparedness, announced that she will present early 2026 a “fair mobility package” which would encompass an initiative on subcontracting.

2. The role of subcontracting in construction

The freedom to provide services (article 56 TFEU) is essential for the competitiveness, efficiency and innovation of the European construction industry. Moreover, article 16 of the Charter of Fundamental Rights of the EU and the internal market rules recognise companies’ freedom to conduct a business, which implies that they are free to choose their business partners as well as the form of the partnership (i.e. through subcontracting).

In general contract law, subcontracting refers to a situation where one party to a contract (the main contractor) uses the assistance of a third-party (the subcontractor) for the performance of some or all its contractual obligations, while maintaining full contractual liability towards the employer/client. In EU secondary law, in particular the Employer Sanctions Directive (2009/52) defines in article 2 (f) a subcontractor as “any natural person or any legal entity, to whom the

⁹ European Parliament resolution of 13 March 2025 on social and employment aspects of restructuring processes: the need to protect jobs and workers’ rights (2024/2829(RSP))

execution of all or part of the obligations of a prior contract is assigned.” The Public Procurement Directive (2014/24) also clarifies in article 71 (4) that subcontracting “shall be without prejudice to the question of the main contractor’s liability.”

Depending on the projects and tasks to be performed, different companies need to intervene on the same worksite, and an effective and flexible co-operation is required. This is also due to the high fragmentation of the construction industry, which is composed of a vast majority of SMEs¹⁰.

Hence, in construction, cooperation between different companies on a worksite is common and may take many different forms, including joint ventures and cooperating with subcontractors, suppliers as well as other service providers. Subcontracting as such can be used for different purposes and take different forms.

In many cases, it may be necessary to subcontract because the main contractor is unable to carry out certain specific construction services (e.g. the task requires specific skills, qualifications and equipment).

In other cases, the main contractor, who is equipped and has the skills and competences to perform a certain task, may decide to subcontract such task to another contractor, either occasionally, due to the many possible disruptive factors during the building process (i.e. a temporary peak in activity, a technical incident, weather conditions, objections from locals, late deliveries, etc.) and the consequences for the predictability of the planning, or because he wishes to maintain his own in-house production capacity for other purposes. Seasonality must also be taken into account for projects dependent on the rhythm of public budgets.

Under certain circumstances, and in particular in cross-border situations, it may be too complicated to transport all personnel, equipment, products and machinery over long distances. Instead, it may be sensible to focus on the main contractor’s relevant management competence in order to have certain construction services carried out by a contractual partner, who may be a local subcontractor. A very important positive aspect can also be that – from the subcontractor’s perspective – this form of contract may provide the opportunity to participate in projects, which otherwise would not be accessible, including cross-border situations.

In parallel, we can distinguish between horizontal and vertical subcontracting. In the first case, there can be several subcontractors under the responsibility of the main contractor, at level -1. In the second case, each subcontractor may have reasons to subcontract and hereby create a level below the previous one in the chain (-1, -2, etc.). In both cases, the market structure, the technical nature of the work and its complexity are the main justifications for using subcontractors, particularly for large-scale and/or long-term projects.

3. Why limiting subcontracting at the EU level is NOT the right option

FIEC is strongly opposed to restrictions at the EU level aimed at limiting subcontracting.

This is without prejudice to the fact that limitations to subcontracting already exist in some Member States¹¹. Most of the time, these limitations have been proposed by and/or negotiated in close cooperation with the national (sectoral) social partners.

- a. Any restriction of this kind will have to be compliant with the EU Treaty. However, it is currently debated whether such limitations on subcontracting are in breach of EU law. Limitations on

¹⁰ According to FIEC figures: There are more than 3 million construction enterprises in the EU and 95% have less than 20 workers. <https://fiec-statistical-report.eu/>

¹¹ In Belgium, Italy, Norway and Spain.

subcontracting can be considered a breach of EU law if they are not proportional or are too general and abstract.¹²

- b. Such restrictions would limit the subcontractor's freedom to provide services¹³, especially where complex or large parts of the project are subcontracted or where it may not be clear at the time of the subcontract, when exactly the respective tasks will need to be performed (i.e. planning-related issue).
- c. One of the key pillars of the European Union is the internal market. Limitations on subcontracting will limit the internal market in reducing the freedom of providing services.
- d. Such restriction would not take into account the need for flexibility due for example to market/economic fluctuations and labour and skills shortage that are hindering construction activities. Construction companies need flexibility in case of rapid or unexpected increase of activity, requiring additional workforce. This is where subcontracting can play a buffer role. This is especially the case in Germany for instance, where the use of additional workforce via temporary work agencies has been banned in the construction industry. On the contrary, those countries which have restricted subcontracting chains have kept the possibility to rely – at least to some extent – on temporary work. Restrictions at both levels would no longer allow any flexibility.
- e. A European legislative instrument limiting the subcontracting chain would oblige Member States that already have a limitation at their national level (for the construction industry) – i.e. Belgium, Spain, Italy, Norway – to adapt their national legislation, even if it is functional and adapted to their specific reality. Indeed, in general, these existing national mechanisms have been developed in cooperation with the relevant social partners.
- f. Moreover, the market structure and business structure are different from one country to the other. This is why there cannot be a one-size-fits-all rule at the EU level. The matter is better dealt with at national level, involving national social partners, and finding solutions tailored to the national market structure and sectoral specificities.
- g. The EU currently suffers from a lack of competitiveness, as addressed in the Draghi report. The EU priority should be to promote competitiveness, namely by promoting simplification and avoiding overregulation. For instance, while the limitation of the subcontracting chain in public procurement in Belgium aims to combat social dumping, it significantly increases the administrative burden for main contractors. They are now required to take on greater responsibilities in terms of verification, coordination, legal compliance, and reporting — all of which demand additional human and financial resources.
- h. In addition, according to our own internal research, we have neither statistics nor other valid information from Member States, which could show the added value of more restrictive European legislation on subcontracting to achieve the goals of reducing illegal practices, frauds and abuses.

Subcontracting and public procurement

¹² The European Court of Justice (ECJ) has repeatedly drawn lines in the context of a required “self-execution”, for example on 14 April 1994 in case C-389/92 (*Ballast Nedam I*), on 18 December 1997 in case C-5/97 (*Ballast Nedam II*), on 2 December 1999 in case C-176/97 (*Holst Italia*), on 18. March 2004 in case C-314/01 (*Arge Telekom*), on 10 October 2013 in case C-94/12 (*Mannocchi*), on 14. July 2016 in case C-406/14 (*Wroclaw*) and on 26 September 2019 in case C-63/18 (*Vitali*).

¹³ In Germany for example, the commercial importance of subcontracting is, for example, highlighted by the German Federal Statistical Office, according to which between 20 and 45 percent of construction costs have been related to subcontracting in 2022, as average in different parts of the [German construction market](#)

- i. Limiting subcontracting would make public procurement even more unattractive¹⁴, particularly in view of the labour and skills shortages in the EU construction industry. Indeed, companies might refrain from bidding to public contracts, knowing that they might not have the flexibility to organise themselves as they wish.
- j. Such restrictions would decrease competitiveness, impair efficiency and innovation of the European construction industry and would result in a restricted access to public contracts. Indeed, it would primarily affect the possibility of SMEs to participate in larger contracts. It would also potentially disqualify specialised companies who rarely take contracts as main contractors as they do not have the full range of professional qualifications required.
- k. Limitations on subcontracting might even lead to higher prices, as it will inevitably restrict competition (i.e. exclude smaller companies from the market).

Subcontracting and SMEs

- l. Limiting subcontracting would have a negative impact of SME participation in large public and/or private contracts as they are the main beneficiaries of subcontracting. Especially in cross-border situations, there may only be a realistic opportunity for SMEs to participate as subcontractors in the project.
- m. For some construction companies, it is also their business model to work as subcontractors. Often, companies know each other well and are used to work together. This is a way for the subcontractor to benefit from an easier access to public procurement, while avoiding burdensome procedures related to the application for and the management of a public contract.
- n. Such restrictions would not be able to cover in a satisfactory and professional manner certain construction activities which are specialised by nature, and hence, are mostly performed in the framework of subcontracting.
- o. The construction sector is characterised by the presence of many small, specialised companies, which often operate as subcontractors. Swedish data¹⁵, gathered in a report commissioned by the social partners in the construction industry, demonstrate that, over the past years, the number of such companies has increased while accidents and work-related illnesses have decreased. This evidence directly challenges the assumption that subcontracting in itself leads to higher health and safety risks.

4. A smarter path forward

For FIEC, fighting against illegal practices, frauds and abuses in the construction industry is a top priority. While work-related crime is a complex issue, different types of means and instruments have been developed to fight against it. The final objective of these means and instruments is to ensure effective controls and enforcement.

In order to achieve these goals, a complex European legislation is already in place. In particular, there are already rules on subcontracting in the framework of public procurement (art. 71 of

¹⁴ For the record, single bidding in the construction sector has increased from 6.9 % in 2011 to 13.9 % in 2021 – more than doubling the amount of single bidding. And the number of bidders has decreased from 7.1 bidders to 4.8 bidders per tender. Source: <https://www.eca.europa.eu/en/publications/SR-2023-28>

¹⁵ Report by *The Construction Industry's Central Work Environment Council - A Social Partner Council* by Byggnads, The Swedish Union for Service and Communications Employees - SEKO and the Swedish Construction Federation: [Arbetsuskador-inom-byggindustrin-2023-.pdf](#)

“classical” public procurement directive¹⁶) as well as for posting of workers (art. 12 of “enforcement” directive¹⁷). This later legislation introduces the possibility of implementing a system of joint and several liability throughout the subcontracting chain, each contractor being liable for its direct subcontractor. Some countries even have implemented more stringent liability rules.

Then, at national level, under the respective legal and social dialogue frameworks, many measures and instruments are being put in place: e.g. sectoral social ID cards, register of accredited companies in construction sector, “Subcontracting book” on site with specific information about who are the subcontractors at worksite, tools related to compliance with health and safety legislation, obligation to register employees for social security purposes before they start working, obligation to carry ID documents at all times, etc.).

In any case, what construction companies need is to have the appropriate tools to assess who they are doing business with and undergo a proper risk analysis. This entails, in particular in cross-border situations: access to verified data across borders (e.g. tax records, insurances, company structure...), reliable PDA¹, development of AI and big data analysis, integration of these systems into public procurement, etc.

This is why FIEC supports the ongoing initiatives being developed by the European Commission: the ESSPASS pilot project, the EU DI wallet and main objectives of the proposal for an “e-declaration” for the posting of workers¹⁸. While respecting the differences between Member States, these initiatives promote the enforcement of existing rules and effective controls. They act therefore preventively against infringements without disproportionately restricting competition in the internal market and freedom to provide services.

This is also why FIEC, together with its counterpart EFBWW, promoted the development of sectoral social ID cards and looked at their possible interconnection according to a bottom-up approach¹⁹.

In addition, FIEC supports a better enforcement of the existing rules thanks to a strengthening of national labour inspection services. In this regard, FIEC is actively involved in the activities of the European Labour Authority (ELA) which is supporting Member States with capacity building, and is working on improving access to relevant information for both employers and workers.

¹⁶ Directive 2014/24/EU

¹⁷ Directive 2014/67/EU

¹⁸ See FIEC dedicated position paper : <https://www.fiec.eu/fiec-opinions/position-papers-pl/proposal-regulation-public-interface-connected-imi-declaration-posting-workers-com2024531>

¹⁹ EU-funded project [SIDE-CIC](#)