



EFBWW

**WE BUILD
EUROPE**



**A new European
Internal Market for
the construction
industry**

European Federation
of Building
and Woodworkers



1.

Introduction

1.1

This paper outlines the current state of play on the European internal market and sets out construction workers' vision for the future of the European Internal Market for the construction industry. The European Federation of Building and Woodworkers (EFBWW) has decided to come forward with this as we have serious concerns regarding the development of a fair Internal Market within the European Union and we believe that we, as trade unions, can help create new and practical solutions together with other social partners and policymakers.

1.2

Our overall vision for the European Internal Market centres on the development of a fair competitive model based on innovation, productivity, skills and qualifications. Many academics have demonstrated that severe wage competition hinders sustainable growth and creates a downward social and economic spiral. For this reason, the EFBWW believes that the principle of "equal pay for equal work at the same workplace" should be at the heart of a sustainable European Internal Market.

1.3

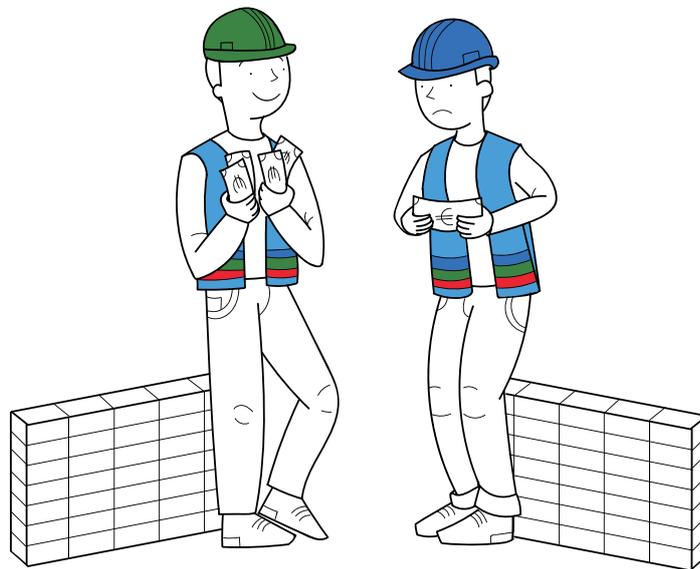
Our demands are also a response to the increasing turmoil within the EU. As the EFBWW is strongly committed to developing a European social market economy with an emphasis on upward convergence of living standards, social protection, health and safety and working conditions, we are intent on developing and promoting social progress for all workers.

1.4

The best way to achieve this is to include a Social Pillar in the European Treaty. Adding a Social Protocol to the Treaty establishes better and stronger legal control to guarantee that labour and social rights are given real substance. For the EFBWW, it is crucial that labour and social rights are at least on the same level of the EU legal hierarchy as the rules governing the internal market. To secure democracy and legitimacy, the Social Protocol should be developed in close cooperation with the workers' movement.

1.5

Our vision requires a paradigm shift in policymaking. This paper will focus on measures and solutions that can be adopted within the current (legal) framework to help mitigate some of the European Internal Market's worst failings and pave the way for a move in the right direction.



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1.6

The EFBWW believes that not enough is being done at EU level to create fairness in the workplace, promote sustainability and combat fraudulent and abusive companies. EU policymakers often hide behind the pretext that they do not have the competence to intervene, or trivialise cross-border fraud and abuse, or claim that the problem relates to enforcement at national level. However, the EFBWW's demand for better regulation at EU level does not mean that the EU should interfere with existing national regulations or practices that are functioning correctly. Under no circumstances should the EU take any action that could damage effective existing national systems within the labour market.

1.7

The EFBWW is recognised as a European social partner for the construction industry and wants to be involved in creating better European solutions. Yet in our experience, a liberal vision of the European internal market has resulted in EU policymakers often viewing the European and national social partners and their role as an ‘administrative burden’ or as ‘red tape’. The rigid European Internal Market that exists at present strongly undermines the vital role of the European and national social partners in the construction industry and their willingness to develop a fair and sustainable construction industry. This leads to bad, unilaterally imposed policies.

1.8

The EFBWW calls on EU policymakers to establish a strong and genuine partnership with the European social partners in the construction industry. Trade unions have valuable knowledge and experience to feed into new solutions for the development of a long-term sustainable internal market for the construction industry, but this is not being taken into account at present. If we want to create a genuinely sustainable construction industry with tangible results in the field, EU policymakers must work closely with those who have the necessary experience and knowledge in the field.

2.

Current situation in the construction sector

2.1

Construction is a vast industry comprising workers and companies from across the EU. It is also a highly diverse industry: the sector consisted of more than 3.4 million companies in 2016¹ and employed more than 14 million workers in 2013². Companies and their workers cover many different specialisations, and there is considerable variation in companies' sizes and business models. Moreover, the construction industry is vital for the European economy. Large sums continue to be invested in the sector, which had a turnover of 1,645 billion euros in 2016³. Most construction workers (97%) are employed in small and medium-sized companies with fewer than 20 employees. The construction industry is further characterised by a very low level of product export, rendering it difficult to compare construction to other large industries.

2.2

Labour costs are a very significant competition factor for construction companies as they account for approximately 50% of construction industry turnover. In order to avoid cutthroat competition between construction companies and prevent cross-border wage dumping, the overall labour cost differences between the lowest and highest wages should be within an acceptable range. This requires a strong upward convergence of the lowest wages and levels of social security protection in Europe.

2.3

The construction industry also has a strong economic multiplier effect on many other sectors (such as wood, concrete, steel, glass, and furniture). Overall, a 1 million euro investment in the construction industry generates an increase of approximately 2 million euros in the output in other industries and a 0.5 million euro rise in household earnings, as well as creating hundreds of additional jobs⁴⁵.

¹ <http://appsso.eurostat.ec.europa.eu/nui/submitViewTableAction.do>

² Commission staff working document - impact assessment services e-card p. 9

³ <http://appsso.eurostat.ec.europa.eu/nui/submitViewTableAction.do>



“Not enough is being done at EU level to create fairness in the workplace, promote sustainability and combat fraudulent and abusive companies.”

2.4

The construction industry will change substantially over the next decade. Europe’s ambitious greenhouse gas reduction targets will have a major impact on the construction industry. New technologies and digitalisation will demand new skills and new professional qualifications. If the construction industry is to face up to these challenges, it must be sustainable. However, today’s construction sector has many unsustainable aspects. At present, the European Internal Market is mainly driven by the lowest price rather than by the quality of products and services or by sustainable forms of production. The current EU Internal Market is a boon to companies who can – often legally – exploit EU and national legal loopholes, administrative shortcomings and the current form of EU freedom of services to create unfair competition and a race to the bottom in which workers are played off against each other. Such a race has no winners, only losers, and is a serious obstacle to the development of a sustainable construction industry.

2.5

Construction is traditionally a sector with strong local roots, as the final product (the building/structure) remains in its place of production (the building site). As such, communication in the local language, respect for applicable local rules and acceptance of local structures are crucial. EU institutions often fall into the trap of comparing the construction industry to other sectors based on a theoretical construct that contradicts reality and thus underestimates construction’s local character.

⁴ Euroconstruct, 79th Conference

⁵ “For the construction sector, employment multipliers again range in the midfield and are quite uniform across countries. They range from 2 persons in the Czech Republic, Poland, Bulgaria, Slovenia and Great Britain to 1.2 persons in Luxembourg. Over time, employment multipliers have remained rather stable”, Robert Stehrer (WIIW) and Terry Ward (APPLICA), Study on monitoring sectoral employment, European Commission, 2012, p 184.

2.6

The construction industry is highly mobile by nature, with both workers and companies of different sizes crossing borders in search of new opportunities. 43% of all postings within the EU take place in the construction sector⁶. The real figures are thought to be even higher as many posted construction workers are not officially declared. The industry's highly mobile nature, the importance of the labour cost factor and an unbalanced EU internal market are leading to a disruptive and unsustainable construction sector. This will have a negative effect on workers' wages and social protection, on sustainable growth for law-abiding companies and on consumer protection.

2.7

It is beyond doubt that construction is a very complicated sector, characterised by many different, often unique, regulations (based on such factors as geography, like standards on flood and earthquake resilience, or on climate, environmental and urban planning requirements), specific hazardous health and safety challenges (e.g. asbestos, machinery, work at heights), complex production processes (supplies, subcontracting, and so on), a strong dependence on external factors (such as weather and funding) and major consumer protection schemes (including long guarantees and energy-saving standards). The sector's complexity has resulted in Member States, regions and even municipalities having their own building regulations, labour laws, tax laws, urban planning regulations, social security rules and collective agreement systems. The social partners in the construction industry have a crucial role in helping both companies and workers to cope with these - often very difficult - challenges, either as sectoral representatives or as regulators.

2.8

The policy of streamlining regulation should be implemented cautiously. EU policymakers are often unaware of the rationale behind a specific policy measure or of the consequences of scrapping a specific rule or procedure. In the EFBWW's view, streamlining is all too often used as a pretext for reducing the role and involvement of trade unions and the added value of collective agreements.

2.9

Sadly, the construction sector has one of the highest incidences of fatal occupational accidents. In 2017, more than one fifth of all fatal accidents at work in the EU-28 took place within the construction sector⁷. In addition to this, 19% of all undeclared work in the EU-28 is undertaken in the construction sector. Unfortunately, poor compliance with the rules applying in the construction sector and circumvention of collective bargaining agreements and labour and social law in the workplace have tarnished the construction industry's image.



“Under no circumstances should the EU take any action that could damage effective existing national systems within the labour market.”

2.10

It is also important to note that companies using artificial legal structures to avoid detection tend to lack respect for workplace health and safety and environmental protection, as well as not paying the correct amount of tax. This is not just a problem for European construction workers, but for all European workers.

3.

Improving the European Internal Market for the construction industry

3.1

An adequate legislative framework for the construction industry

3.1.1

It is clear that the construction industry needs an adequate legislative framework, proper application of the relevant rules, efficient and effective prevention, adequate controls and proper enforcement of labour laws. Many of these measures should be applied at national level - primarily in the host country, since the EFBWW supports the host country principle. The host country should be responsible for setting and enforcing workplace rules.

The EU Internal Market should neither hinder necessary preventive control and sanctioning measures at national level, which are designed to combat social fraud and abuse and to ensure health and safety and environmental protection, nor undermine workers' rights and industrial action.

3.1.2

Adequate EU legislation implies proper involvement of the European social partners for the construction industry in the legislative process. This includes genuine cooperation in an early stage of policymaking. This will enable lawmakers to take account of the reality of the construction industry and propose solutions that will have a practical and positive effect by creating tangible results.

3.1.3

The Court of Justice of the European Union has set very restrictive criteria (the 'proportionality and justification test') for Member States and often considers national controls to be breaching the EU principles of free movement or freedom of establishment. The EFBWW maintains that the EU should recognise national measures to combat fraud and abuse as measures of public order or public policy. This will enable Member States to protect their most fundamental values, which are at the very core of their system.

3.1.4

The EU must adopt a zero-tolerance stance on fraud and/or abuse. This requires a prudent, vigilant, ambitious and responsible approach from all the policymakers involved. The current EU political legislative process all too often results in compromises that are unsatisfactory to the relevant stakeholders and solve very little in practical terms.

3.1.5

The EFBWW believes that there is too much emphasis on the assumption of "mutual trust between Member States". Today, there is clear evidence that Member States are vying with each other to give their own companies significant competitive advantages when they operate in another Member State. Host Member States should therefore be entitled to reclassify or reject any artificial structure that was set up in a home Member State with a view to creating a fraudulent or abusive situation in a host Member State. It should be up to the host Member State to define what it considers fraud or abuse, particularly as regards the (re)classification of portable A1 forms.





“the current EU freedom of services facilitates unfair competition and a race to the bottom in which workers are played off against each other. Such a race has no winners, only losers”

3.2

Responsible public procurement

3.2.1

With the revision of the Public Procurement Directive (2014/24/EU), the EU established an improved framework for socially responsible public procurement, including a requirement for Member States to ensure compliance with labour law and collective agreements. Unfortunately, many Member States still have a narrow focus on the lowest price when choosing contractors for large public construction projects. With this in mind, the EFBWW first and foremost calls for the Commission to ensure that the current Directive is properly implemented and applied in all Member States.

3.3

Cross-border exchange and use of electronic data

3.3.1

The EFBWW observes that there is currently no structured, integrated information system to support operational exchanges on labour and internal market matters between national authorities, institutions, social inspectorates, prosecutors and the competent national social partner enforcement bodies

at EU level. Most national authorities continue to work with systems that were not designed to exchange information with their colleagues abroad or with the relevant European agencies, such as Eurojust or the future European Labour Authority. The current information exchange system is still largely based on manual data entry and does not connect to other databases.

3.3.2

The EFBWW proposes the establishment of an easy-to-use, fast, reliable, automated, encrypted and interoperable IT infrastructure for use by national authorities, institutions, social inspectorates, prosecutors and the competent national social partner enforcement bodies. Such a system would enable the relevant organisations to access databases remotely and exchange case information in real time from their offices. All national authorities participating in a joint investigation team would also be able to plan their operations and exchange information and evidence in a secure online environment.

3.3.3

Digital data, and especially the exchange, mining and processing of meta- and individual data, are becoming increasingly important. Large volumes of data are already available within the construction industry, though unfortunately not always in a digital format. The EFBWW believes that there is a huge window of opportunity to develop publicly-run European tools and procedures aimed at detecting patterns, preventing forms of fraud and abuse and better tackling individual cases.

3.3.4

For all this to be possible, the EU must push all Member States to digitalise their data and interconnect their national databases. The European legal framework for data exchange should be better supported and enforced. All national administrations must cooperate in line with their legal obligations. Connecting social, tax, urban, company and worker data may help labour inspectorates and make it a lot easier to prevent and detect fraud and abuse.

3.3.5

For effective controls to be established, national authorities and social partners need reliable real-time data. The EU has taken steps to achieve this in the Services Directive. However, the current Internal Market Information System (IMI) is an outdated, limited tool and is not designed for intelligent data-min-





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ing systems. The EU should develop better, smarter European tools for the exchange and matching of data between national authorities’ and the national social partners’ databases.

3.3.6

Access to data is important as company transparency needs to be greater. It is too easy for fraudulent companies to hide behind creative company structures, making it hard to deduce which Member State they come from, who owns them, whether they have or are covered by a collective agreement, and whether they pay social contributions or taxes. Labour inspectorates and social partners need this information to check whether companies are obeying the rules within the internal market.

3.3.7

Besides having available data on companies, it is also necessary to have information about workers arriving from another Member State. It is often difficult to gather basic information about who they are, where they come from, what company they work for or what they do on the construction site. This information is necessary for determining which country should cover workers’ social security, whether workers are being paid correctly, and whether workers are qualified to perform the task they are doing. Accurate information about workers’ educational background is also needed in order to guarantee that requirements regarding quality and the regulation of professions are met.

3.4

Towards a sustainable and green construction industry

3.4.1

Building a sustainable construction industry based on innovation and high productivity requires the EU to invest in upgrading its workforce's professional skills and qualifications, especially in connection with the green agenda and the construction industry's contribution to a green transition. To secure the future of the construction industry, there needs to be a stronger focus on lifelong professional training and a smooth transition from education to professional life, and the apprenticeship system must be fostered and upgraded.

3.4.2

The protection and promotion of national systems of vocational and professional training and of the regulation of professions should be an important objective of European internal market policy. This is a precondition for ensuring high-quality construction services and a sufficient number of qualified workers in the construction industry. The more skilled and better educated the workforce is, the better are the prospects for economic growth for a country or a group of countries.

3.4.3

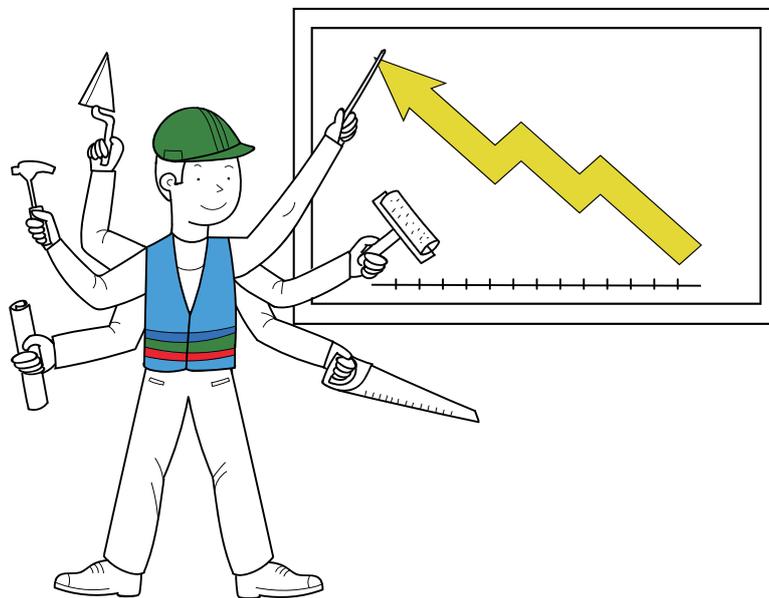
The EFBWW strongly promotes the concept of apprenticeship in the construction industry. Apprentices can learn the job from experienced and skilled workers. However, this system only works properly if apprentices are guaranteed to receive proper training and have the prospect of a full-time employment contract with proper remuneration. The EU should step up its efforts to ensure that apprenticeship becomes a high-quality experience enabling young workers to find a decent job in the construction industry.

3.5

Promoting genuine entrepreneurship

3.5.1

Over the last decade, the EU and many Member States have stimulated and facilitated the development of self-employment and false self-employment under the pretext of promoting entrepreneurship. The EFBWW has nothing against genuine self-employment; however, falsely self-employed workers are essentially regular workers who have inappropriately been stripped of their social rights and protection. Falsely self-employed workers have less social protection and are not covered by collective bargaining agreements.



“The more skilled and better educated the workforce is, the better are the prospects for economic growth for a country or a group of countries.”

These workers may be companies on paper, but in actual work situations, they are treated like normal, employed workers. In many cases, workers are forced to become self-employed to avoid losing their jobs. The EFBWW urges the European Commission and the Member States to put an end to false self-employment.

3.5.2

Companies and workers can pursue work in other European countries in different ways. In recent years, there has been a strong focus on temporary posted workers, but this is merely the tip of the cross-border mobility iceberg. In reality, more and more construction companies are creating local subsidiaries in the supposed aim of employing workers under the legal conditions applying in the place of work. Unfortunately, such companies or subsidiaries are often created for the sole purpose to circumventing national workplace rules and legislation. The EFBWW calls on the EU to step up its efforts to combat these ‘letterbox companies’.

3.6

Towards genuine posting

3.6.1

Each year, we observe an increase in cross-border social fraud and abuse. Posting of workers should be based on the principle of “equal pay for equal work at the same workplace”. If this were the case - if this principle were ap-

plied – then the increased number of posted workers and companies using free movement within the EU would no longer be an issue. By revising the Posting of Workers Directive (Directive 2018/957), European lawmakers took a step forward with regard to better protection of posted workers and more equal treatment on the European labour market. Now the EU must take all measures necessary to ensure that its principles are also applied within the workplace.

3.6.2

If they are to prevent, control and properly sanction fraud and abuse in cross-border posting, Member States must be allowed to set up efficient and effective prevention, control and sanctioning mechanisms at national level. The EFBWW urges the European Commission not to abuse its power to promote free movement of service providers in order to curtail Member States' powers to tackle cross-border social fraud and abuse.

3.6.3

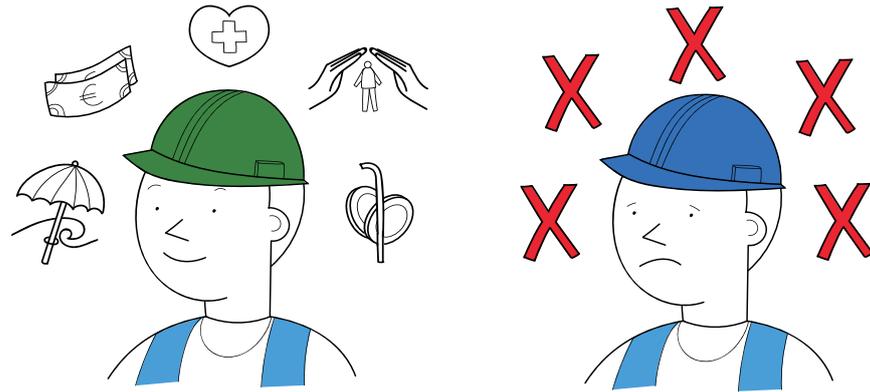
Of course, only a portion of construction companies are fraudulent, but the sector is plagued by too many rotten apples who take advantage of the inconsistencies in the EU's current web of rules and the lack of effective and efficient control mechanisms. Unfortunately, the existence of legal loopholes at both European and national level and the serious lack of sanctions and controls create incentives for companies to pursue shady business practices. It is unacceptable that a company can break the rules in one country, return to its home Member State and escape paying fines by hiding behind national rules and legal systems. Substantial improvements must be made to existing cross-border principles on the recovery of fines, penalties and back-payments of unpaid salaries.

3.7

Creation of single points of contact for workers

3.7.1

The Services Directive already includes a requirement for Member States to create single points of contact for companies wanting to establish themselves in their territory. We believe that the concept of single points of contact could be adapted to cater to workers' needs. These one-stop-shops for workers should provide the information that workers need before moving to another country, including administrative information and information about legal rights and obligations, wages and trade unions⁸. It is important to note that these single points of contact should not be in competition with trade unions, but rather work closely with them, such as by contacting workers and pointing them in the right direction when they need help. In Member States where this is appropriate and does not conflict with national social partner practices, single points of contact should also be able to provide legal advice and legal aid to workers experi-



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encing issues in their workplaces. The services should be available in workers’ native languages. The EFBWW also supports approaches that entail giving trade unions sufficient means to run the single points of contact themselves.

3.8

A European social security number for workers, used to determine whether a person is receiving social security protection

3.8.1

The EFBWW strongly supports the introduction of a European social security number. This would allow labour authorities and unions to identify workers on construction sites and gain information about where they are working, along with details of their wages, working conditions and social security protection. It is a recurring issue that companies do not pay social security contributions or only pay contributions based on a low wage level. Workers often do not have employment contracts and do not know their basic rights. If it were possible to identify workers and access information about their education, their employment conditions, the length of time they have been abroad, and so on, it would be easier to intervene if the workers were found to be victims of fraud.

3.8.2

A European social security register should also be set up to detect false posting. A register would make it possible to see, in real time, whether workers had a prior employment relationship with the company through which they were posted or whether they were only hired for the purpose of posting them to another country.

3.9

A European social security card for all workers

3.9.1

The EFBWW proposes that all workers must be in possession of a European Social Security Card issued by the social security authorities of their country of origin. The national authorities must periodically issue European Social Security Cards to those for whom social security and insurance contributions are being made.

All workers must wear their European Social Security Cards visibly when working on a building site.

3.9.2

The European Social Security Card should contain at least the following information:

- | | |
|--|--|
| (1) Picture of the card holder; | (5) Contact information of the issuing national authorities; |
| (2) Full name of the card holder; | (6) Employment status; |
| (3) Date and place of birth; | (7) The card's validity period. |
| (4) Unique European social security number ; | |

3.9.3

To prevent falsification, the European Social Security Card should be protected by forgery-proof features.

3.9.4

Through the European Social Security Card, workers would know whether their employer has declared them to the national social security authority. The requirement to wear the European Social Security Card visibly on a construction site would have a self-regulating effect and substantially facilitate the work of national labour inspectorates and trade unions.



3.10

Introduction of a mandatory prior notification of posting

3.10.1

Another measure that would help prevent social fraud and/or abuse is the mandatory prior notification of posting for all workers, regardless of their employment status, and all self-employed people. This would give authorities an overview of who is at which construction site, the job they are there to perform, and the company that hired them/for which they are working. Consequently, it would be easier for national authorities and trade unions to prove whether companies are behaving fraudulently. Such systems already exist in several Member States, e.g. the Limosa system in Belgium. The strengths of the different systems should be studied with a view to making recommendations for the further improvement and interconnection of the existing systems, resulting in a common European system⁹.

3.10.2

The above solution and the introduction of a European social security number would give national authorities and trade unions valuable information, helping to identify fraudulent companies while also lowering administrative burdens for both companies and workers and making control more efficient and effective.

⁹ Description of the Limosa system in English: https://www.international.socialsecurity.be/working_in_belgium/en/limosa.html

3.11

An unconditional system of chain liability for clients and main contractors

3.11.1

An unconditional system of joint and several chain liability would make clients, main contractors and all contractors in the chain jointly responsible for actions taken by their subcontractors and insourced companies. Long subcontracting chains are often seen in the construction sector since companies rarely have the capacity to perform all the tasks needed to complete a project. Rules regarding the main contractor's responsibilities differ from country to country. The EFBWW proposes that clients, main contractors and all contractors in the chain should always be liable for the actions taken by subcontractors, which would encourage them to carefully select the companies further down the chain. This would be especially helpful in situations where workers are unable to enforce claims against a fraudulent employer that has disappeared, and would thus discourage main contractors from using companies that either have a history of labour cases or are difficult to identify. plying in the place of work. Unfortunately, such companies or subsidiaries are often created for the sole purpose to circumventing national workplace rules and legislation. The EFBWW calls on the EU to step up its efforts to combat these 'letterbox companies'.

3.11.2

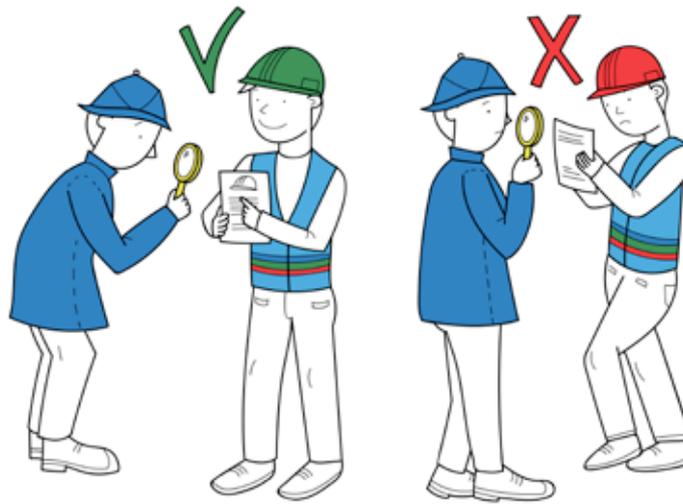
An unconditional system of joint and several chain liability is an important additional self-regulating driver for clients and main contractors to control companies in the chain of subcontractors. If clients, main contractors and all contractors in the chain control their subcontractors, this will automatically reduce the number of subcontractors and therefore create greater transparency in the supply chain. Long subcontracting chains are not an economic or operational necessity, but a chosen business model.

3.12

Centralised national business registers and European certification of construction companies

3.12.1

As mentioned above, there are more than 3.4 million construction companies in the EU. It can therefore be difficult for contracting entities to gain an overview of potential contractors. At the same time, it is hard for national au-



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thorities to determine companies’ origin, the location of their base in the host country, their owner, and so on if companies do not provide this information voluntarily. Today, gathering this kind of information is an onerous task as authorities need to request information from the sending Member State; where even that is not known, tracking down companies is difficult.

3.12.2

As described earlier, there are many issues around the lack of information about where workers and companies are active; it can even be difficult to find out which companies are active on specific building sites. It is especially difficult to gather information about subcontractors, as long supply chains complicate the picture and some companies are only present on sites for short periods because they undertake small, specialised projects. As a result, main contractors or contracting entities do not always have an overview of the companies and workers that are present on their sites and the projects that are under way there.

3.12.3

One solution would be to introduce a European Directive requiring all Member States to set up centralised national business registers that could be accessed by national authorities and trade unions. These registers should con-

tain information about the following as a minimum:

- The company's founders;
- The company's legal representatives;
- The company's address,
- The company's initial capital;
- The company's business activities;
- The company's VAT number;
- The required certifications and certificates,
- The number and the identity of the workers.

3.12.4

The registers should be digital and contain information about the dates on which companies begin their project, the people they are using for the assignment and the dates they expect to finish, thus allowing national authorities and trade unions to provide targeted information about companies' and workers' rights and obligations.

3.12.5

Having this information would make it easier for labour inspectorates, tax authorities and trade unions to monitor companies, determine whether they have fulfilled their social and tax obligations and check whether there are labour cases against them. It should also be noted that this system would reduce potential discrimination against companies since it would apply to all European companies.

3.12.6

Centralised national business registers could be linked to a system of European certification for construction companies. Such certification should be based on a common European standard inspired by existing certifications. The EFBWW believes that the European social partners for the construction industry should be entrusted with setting up this European certification scheme for construction companies. In order to gain certification, companies may, for example, be required to have fulfilled their social obligations, not have pending labour cases against them, have paid the correct amount of tax, and so on. This would make it easier for contracting entities to decide which companies they want to hire and help main contractors to hire trustworthy subcontractors. Governments could also use certification as a criterion for awarding large public procurement construction contracts, thus ensuring that these large construction projects are carried out under fair conditions.

3.13

A legislative proposal on unfair trading practices

3.13.1

In view of the increasing problem of cross-border social fraud and abuse in the construction industry, the EFBWW urges the European Commission to present

a legislative proposal on unfair trading practices (UTPs)¹⁰ in construction industry supply chains. This proposal should cover all activities on a building site, regardless of the site's size or turnover. The European legislative proposal should set a fair and transparent benchmark for the entire construction process. It should also include a complaint mechanism and proper prevention, control and enforcement tools (including corrective measures and penalties).

3.14

Guarantee of the average or prevailing wage in countries without a collectively-agreed or legal minimum wage

3.14.1

Workers posted to a country without a collectively-agreed or legal minimum wage should be guaranteed to receive at least the average or prevailing wage in the country to which they are posted. This is necessary to ensure that posted workers cannot be used to drag down local incomes. If posted workers receive the average or prevailing wage instead of just a minimum income, they will be part of the workforce on equal terms with national workers, thus reducing the risk of social dumping and contributing positively to the economy and the local labour market.

3.15

Restoring and strengthening bilateral industrial relations in the construction industry at national level

3.15.1

For the construction industry to be sustainable, there must be an effective autonomous bilateral system of social dialogue in the construction industry at national level. Since national sectoral social partners are well qualified to identify their national challenges and know best what needs to be done in terms of tangible results, they should be able to take up their responsibilities as autonomous sectoral social partners.

3.15.2

Over the years, several national governments have completely dismantled sectoral bilateral industrial relations (e.g. Hungary and Romania) or have neglected the role of the social partners. This centralistic governmental approach hinders the development of a sustainable construction industry.

¹⁰ Directive 2005/29/EC of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market could be used a point of departure for this discussion.

3.15.3

The EU Treaty clearly stipulates that the EU “shall facilitate dialogue between the social partners, respecting their autonomy” (Art. 152 TFEU). So far, the EFBWW has observed that no EU actions whatsoever have been taken against those Member States that have dismantled or cast aside the autonomous sectoral system of bilateral industrial relations.

3.15.4

The EFBWW does not want a European superior model of industrial relations, which would set the standard for all Member States. However, the EU should safeguard the national social partners’ role and their autonomy to take up their responsibility as social partners and take action against those national governments that are dismantling national industrial relations.

3.16

Efficient and effective management and monitoring of companies and workers from non-EU Member States

3.16.1

In recent years, there has been a significant increase in the number of companies and workers from non-EU Member States (also known as ‘third countries’) working in the European construction sector. We are not referring to refugees or asylum seekers, but to non-EU companies and workers working directly in the European construction sector from a third country. A fundamental problem with this development is the complete lack of transparency involved, which makes it practically impossible to manage this economic mobility and monitor these companies and workers. Access to the European labour market is gained in a number of ways. Some countries are ‘transit countries’ for third-country workers, while some countries conclude bilateral agreements with third countries to allow large quotas of non-EU workers in the construction sector. Some non-EU workers are employed in the EU following an intra-company (or intra-group) transfer, while others are employed in the EU because their company has won a (public) call for tender.

3.16.2

The EFBWW highlights that this development entails the serious danger of the emergence of new, hidden forms of social exploitation (and even cases of trafficking in human beings), as well as an unfair risk of displacement of EU construction firms and workers. The European internal market must be especially vigilant. Greater transparency and appropriate preventive, monitoring and sanctioning measures are required to combat all forms of social fraud and exploitation of third-country workers.



4.0

In conclusion

4.1

As observed in this document, substantial improvements can be made to many areas of the European Internal Market for the construction industry. The EFBWW's proposals set out to create a fair and balanced European Internal Market. For this to be achieved, the EU must take into account the real challenges facing the construction industry and adopt a zero-tolerance approach to social fraud and abuse.

4.2

These proposals are intended as a starting point and not an exhaustive list, as there are numerous other solutions that could be implemented. The common factor for all the above proposals is that they can be achieved without major changes to the current EU legal framework.

4.3

Our solutions are interlinked to a high degree; implementing one would improve the conditions for implementing the rest. The following tools could be interlinked easily: the implementation of national business registers, a European social security number, mandatory prior notification for posting, and an unconditional system of chain liability for clients and main contractors.

4.4

On the whole, the EFBWW wishes to see a more balanced approach to the European Internal Market: one that places more emphasis on ensuring a high level of worker social protection and good working conditions based on the principle of "equal pay for equal work at the same workplace". The most important and urgent requirement in this regard is the introduction of better control mechanisms, enabling better monitoring aimed at preventing cross-border social fraud and abuse. Achieving a sustainable construction industry is merely a matter of making the right political choices and working closely with the European and national trade unions in the construction industry, whilst respecting the autonomy of the national social partners for the construction industry.

The European Federation of Building and Woodworkers is a sectoral European trade union federation representing approximately 1.6 million workers in the construction, wood and furniture industries in 34 countries. 77 national trade unions are affiliated to the EFBWW. The EFBWW advocates and defends the rights of the workers at EU level. The EFBWW is affiliated to the European Trade Union Confederation (ETUC) and works closely with the international federation BWI and the other European trade union federations.

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