

**FIEC position paper on the EP « Lethinen report »
as adopted in the EMPL Committee**

FIEC is the European Construction Industry Federation, representing via its 32 national Member Federations in 27 countries (26 EU & EFTA, Croatia and Turkey) construction enterprises of all sizes, i.e. small and medium-sized enterprises as well as "global players", carrying out all forms of building and civil engineering activities

On 19th February 2009 the European Parliament adopted the "Fava Report" on the proposed Directive on "Sanctions against employers of illegally staying third-country nationals". This report suggests, amongst others, to introduce a conditional joint and several liability of the main contractor towards its direct subcontractor, if certain checks are not carried out.

On 17th February 2009 the EMPL Committee approved the "Lethinen Report" on "The social responsibility of subcontracting undertakings in productions chains". This report has still to be approved in the plenary session.

Although these two reports address very different issues, they both introduce provisions for a legislative framework for sub-contracting, based on the concept of "joint and several liability".

FIEC asks the Members of the European Parliament to vote against the adoption of the "Lethinen Report" for the following reasons :

1. When mentioning the recent Eurofound study on "joint and several liability", it is incorrect to claim that the schemes adopted in 8 Member States have proven to be efficient. On the contrary, **the study precisely highlighted the fact that the effectiveness of such schemes can be called into question.** Furthermore the fact that **19 other Member States decided not to introduce such a scheme** cannot be simply ignored.
2. The Eurofound study clearly shows also that the schemes put in place by some Member States vary significantly one from another and some of them also place the client's liability at stake. **The opportunity, feasibility and possible legal basis of a supra-national joint and several liability system**, that would moreover be compatible with the very different liability systems currently existing in some Member States, **still needs to be examined and validated.** According to the subsidiarity principle **the decision to introduce a liability scheme, as well as its scope, should be left to the decision of each Member State.**
3. The adoption of the "Lethinen Report" would create **additional legal uncertainty and incoherence** as the scope of the liability proposed does not match the one contained in the "Fava Report".
4. Joint and several liability is not the appropriate instrument to ensure compliance with fiscal and social legislation. **Compliance and enforcement of the existing legislation is the responsibility of the public authorities and it should not simply be put on the shoulders of enterprises.** This is particularly true in the context of the current economic crisis.

FIEC therefore encourages the exchange of knowledge and experiences on the issue of "joint and several liability", in particular in effectively achieving the objectives pursued, before deciding whether any legislation should be introduced on this matter at the European level.