

# 2010

ANNUAL REPORT

EN

European  
Construction  
Industry  
Federation



**F I E C**



29  
countries

34  
federations

including reports of



## FIEC

### Created in 1905

Legal personality under French law

**29 countries** (25 EU, Switzerland, Norway, Croatia and Turkey)

**34 national member federations** representing firms:

- of all sizes (from one person SMEs through to the large firms)
- of all building and civil engineering specialities
- practising all kinds of working methods (whether operating as general contractors or as sub-contractors)

### Associate member:

EFFC European Federation of Foundation Contractors



Social Partner in the European Sectoral Social Dialogue of the Construction Industry together with FETBB-EFBWW-EFBH (European Federation of Building and Woodworkers)  
<http://ec.europa.eu/social/main.jsp?catId=480&langId=en&intPageId=23>



The European founding member of CICA (Confederation of International Contractors' Associations)  
[www.cica.net](http://www.cica.net)



Associate member of CEN (European Committee for Standardisation)  
[www.cen.eu](http://www.cen.eu)



Member of ECCREDI (European Council for Construction Research, Development and Innovation)  
[www.eccredi.org](http://www.eccredi.org)



Associate Member of the "Enterprise Europe Network" of the European Commission  
[www.enterprise-europe-network.ec.europa.eu](http://www.enterprise-europe-network.ec.europa.eu)



Cooperation with EIC (European International Contractors) for activities beyond Europe's borders  
[www.eicontractors.de](http://www.eicontractors.de)



Participant in the ECF (European Construction Forum)  
[www.ecf.be](http://www.ecf.be)



Member of ESF (European Services Forum)  
[www.esf.be](http://www.esf.be)



Partner of "BUILD UP" ("The European Portal for Energy Efficiency in Buildings")  
[www.buildup.eu](http://www.buildup.eu)



Partner in ChemXchange project – Creation of web-based database for SME users of chemicals in the construction sector  
[www.chemxchange.com](http://www.chemxchange.com)

## The Sector

Total construction in 2009 (EU 27):

**1.173**  
billion €

**9,9%**  
of GDP  
in 2009 (EU 27):

**51,4%**  
of Gross Fixed  
Capital Formation

**3**  
million  
enterprises  
(EU 27),  
of which:

**95%**  
are SMEs with fewer  
than 20 and

**93%**  
with fewer than 10  
operatives

**14,9**  
million  
operatives

**7,1%**  
of Europe's total  
employment

**biggest  
industrial  
employer in  
Europe**  
(29,1% of industrial  
employment)

**44,6 million workers**

in the EU depend, directly or indirectly, on the construction sector\*

**Multiplier effect:**

**1 person** working in the construction industry  
 =  
**2 further persons** working in other sector\*

\*source: Communication from the Commission "The Competitiveness of the Construction Industry", COM(97) 539 of 4/11/1997, chapter 2

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It gives me great pleasure to present the latest edition of the FIEC Annual Report, at what is the end of my term as FIEC President. The report sets out FIEC's activities from the 2009 General Assembly in Madrid to the 2010 General Assembly in Limassol.

As ever FIEC has focused its activities on defending the interests of the small, medium-sized and large construction firms affiliated with our member federations.

In accordance with tradition, our colleagues from European International Contractors (EIC) and the Confederation of International Contractors' Associations (CICA) also report on their activities.

### **The economic environment**

As practically all sectors of industry, construction has been negatively impacted by the economic crisis. However, the impact of the economic stimulus packages has softened the blow to some degree, although "most of the recovery and stimulus programmes adopted in Europe are unsatisfactory in respect of both their content and their scale, as well as their objectives. They often provide only short term solutions, whilst what is needed is investment that can ensure long term sustainable development" (FIEC-EFBWW statement of 9/2/2010).

Against this backdrop, it must be repeated that investment, both in energy efficiency and infrastructure, responds to the needs of society, regardless of the economic downturn. It should also be stressed that, despite the effects of the financial and economic crisis, the construction industry is not asking for subsidies, but for the steady and consistent flow of investment that is needed for securing, social and economic development and the well-being of Europe's citizens for today and future generations. Construction is part of the solution!

Please refer to our latest statistical report, No. 53, for more details of the construction activity in Europe.

From all the issues in which FIEC is involved, I would like to highlight two in particular:

### **The need for a "social identity card" on worksites**

Considering the multitude of different actors sometimes at work simultaneously on the same site, it is becoming increasingly difficult for the main contractor to regularly and comprehensively identify and screen all persons present. As a contractor myself, I am therefore convinced that we need a "social identity card", allowing the verification of identity, status, employer (if any), as well as compliance with legal, fiscal and social requirements. Such cards should be issued by specifically mandated national authorities or institutions which collaborate with their colleagues from other EU/ EEA countries in a way that guarantees the possibility to check the card at any given moment. Such cards would increase transparency on construction sites and reduce the risks of illegal behaviour.

## The need for a "level playing field"

The recent award of two lots of a motorway tender in Poland to a state-owned Chinese consortium shows very clearly that we have created a Single Market without much of a defence against the admission of such state-owned and state-aided enterprises. The EU legal framework should guarantee that competitive public procurement takes place on a level playing field and according to the same rules. Moreover, such a level playing field should also be ensured at international level, in the public procurement markets of Europe's trading partners.

## Other issues which you will find in this year's Annual Report are:

- Construction activity: is the financial and economic crisis over?
- Public procurement, PPPs and concessions: a buoyant activity since the 2<sup>nd</sup> half of 2009
- International accounting rules
- The "Lead Market Sustainable Construction"
- Late payment: towards strengthened European legislation?
- Revision of EU transport policy: towards a sustainable future for transport
- Revision of the TEN-T policy and guidelines: at the heart of EU's future sustainable transport policy
- Vocational training and education: a key investment in times of crisis
- Improving Health & Safety (H&S): for the benefit of enterprises and their workers
- "Posting" Directive: a key legislation for the construction industry
- Self-employment and bogus self-employment
- The environmental pillar of sustainable construction
- The role of construction in raising energy efficiency and climate change mitigation
- The completion of the internal market in construction products
- The promotion of research and development
- Issues linked to construction plant and equipment
- "Mediterranean" issues

Meeting with Annemie Neyts Uyttebroeck (ELDR "European Liberal Democrat and Reform Party" President) – Brussels – 12/5/2009



Photo: Yuan Clavie, Brussels

Annemie Neyts Uyttebroeck, Ulrich Paetzold, Dirk Cordeel

## My thanks

Let me take this opportunity to extend my thanks to everybody who, during my mandate, has participated actively or by virtue of their advice in our work: my Steering Committee colleagues, the Presidents and members of our commissions, sub-commissions and working groups, the contractors and staff of our member federations and also the staff of the FIEC secretariat in Brussels.

I also thank all our interlocutors in the European institutions and the associations/ federations with whom we have closely cooperated on the numerous themes linked to construction. I would like to address a special thank to our social partner EFBWW, with whom we have – again – successfully organised conferences and studies, as well as agreed on a number of important joint position papers.

In conclusion, I invite you all to spend some time reading about the activities presented and to send us any suggestions; these are always welcome.

Dirk Cordeel,  
President of FIEC

Meeting with Wilfried Martens (EPP "European People's Party" President) – Brussels – 14/5/2009



Photo: Yann Clavier, Brussels

Wilfried Martens, Dirk Cordeel

FIEC Council – Meeting with MEP Guy Verhofstadt (ALDE "Alliance of Liberals and Democrats for Europe" President) - Strasbourg – 26/11/2009



Photo: Yann Clavier, Brussels

MEP Guy Verhofstadt

Reception with Members of the European Parliament – Strasbourg – 25/11/2009



Photo: Studio F40, Strasbourg

Dirk Cordeel





Dirk Cordeel, BE

President



Bernard Huvelin, FR

Vice-President  
ECO  
(FR)



Luisa Todini, IT

Vice-President  
ECO – Infrastructure  
(IT)



Peter Andrews, GB

Vice-President  
SOC  
(GB)



Zdenek Klos, CZ

Vice-President  
TEC  
(CZ-PL)



Michel Buro, CH

Vice-President  
Treasurer  
(AT-CH-HR-HU-SI-SK)



Elco Brinkman, NL

Vice-President  
Communication  
(BE-IE-LU-NL)



Georgios Romosios, GR

Vice-President  
ECF  
(BG-CY-GR-MT-RO-TR)



Frank Dupré, DE

Vice-President  
The SME Envoy  
(DE)



Ricardo Gomes, PT

Vice-President  
MEDA  
(ES-PT)



Per Nielsen, SE

Vice-President  
Ethics  
(DK-EE-FI-LT-LV-NO-SE)



Michel Démarre, FR

Vice-President  
EIC

GENERAL ASSEMBLY

COUNCIL

STEERING COMMITTEE

**Economic and Legal Commission (ECO)**

Co-President:  
Bernard Huvelin, FR  
Co-President:  
Luisa Todini, IT  
Rapporteur:  
Christine Le Forestier, FIEC

**Working Group Infrastructure**

Chairman: Luisa Todini, IT

**Temporary Working Groups**

**International accounting rules**  
Chairman: Carl-Gustaf Burén, SE

**PPPs and Concessions**  
Chairman:  
Vincent Piron, FR

**Internal Market – Lead Markets**  
Chairman: Thierry Ceccon, FR

**Reduced VAT**  
Chairman: Frank Dupré, DE

**EU Contract Law**  
Chairman: Wolfgang Bayer, DE

**Public Procurement**  
Chairman: Philippe Van der Mersch, BE

**Social Commission (SOC)**

President:  
Peter Andrews, GB  
Rapporteur:  
Domenico Campogrande, FIEC

**SOC-1:**

**Vocational Training**  
Chairman: Alfonso Perri, IT  
Executive Chairman: Jacques Lair, FR

**SOC-2:**

**Health and Safety**  
Chairman: José Gascon y Marin, ES

**SOC-3:**

**Economic and Social Aspects of Employment**  
Chairman: André Clappier, FR

**Technical Commission (TEC)**

President:  
Zdenek Klos, CZ  
Rapporteur:  
Frank Faraday, FIEC

**TEC-1:**

**Directives, Standards and Quality Assurance**  
Chairman: Rob Lenaers, BE

**TEC-2:**

**Research, Development and Innovation**  
Chairman: Bernard Raspaud, FR

**TEC-3:**

**Environment**  
Chairman: Jan Wardenaar, NL

**TEC-4:**

**Plant and Equipment**  
Chairman:  
José Ramón Yannone, ES

**EIC – European International Contractors e.V.**  
President: Michel Démarre, FR  
Director: Frank Kehlenbach, EIC

**FIEC/EIC joint working group “Ethics”**  
Chairman: Per Nielsen, SE

**FIEC/EIC joint working group “Third country state-owned firms”**  
Chairman: Dirk Cordeel, BE



Ulrich Paetzold  
Director General



Christine Le Forestier  
Rapporteur  
Economic and  
Legal Commission



Domenico Campogrande  
Rapporteur  
Social  
Commission



Frank Faraday  
Rapporteur  
Technical  
Commission



Joëlle Caucheteur  
Secretariat



Yasmina Koeune  
Secretariat



Sylvie Masula  
Secretariat



Muriel Lambelé  
Accountant



Maxime Wotquenne  
Documentalist -  
Webmaster

Photo: Yvan Clavier, Brussels

**The Secretariat has a double responsibility:** *internally towards its member federations, and externally towards the European Institutions and other organisations both at the European and world levels. With the objective of defending and promoting the interests of enterprises in the construction sector.*

**So far as this "internal" role is concerned,** in the first instance it ensures the coordination and the proper functioning of internal bodies of the federation (General Assembly, Council of Presidents, Steering Committee, Commissions, Sub-commissions and working groups etc.) and on the other, ensures communications with the member federations which includes consulting them on all actions undertaken towards the European Institutions, directly or indirectly of concern to the construction sector.

**As concerns its external role,** this involves on the one hand representing the sector in its debates with the European Institutions, from the first consultative phases, ensuring the follow-up and proposing initiatives, through to individual specific actions of the organisations such as seminars and conferences. At the same time, the Secretariat takes care of the coordination of contacts and other actions with other organisations such as EIC (European International Contractors) and CICA (Confederation of International Contractors Associations).



Conference – Westin Palace Hotel –  
Construction and the Global Economic Crisis: Finding  
solutions for renewed jobs and growth 19/6/2009



1. David Taguas Coejo, SEOPAN – ANCOP President, Economic Crisis and its Impact on Construction
2. Tom Parlon, CIF Director General, Irish National Report
3. Simeon Peshov, BCC President, Bulgarian National Report
4. Prof. Dr. Ing. E.h. Manfred Nussbaumer, HDB Vice-President, German National Report
5. Pierre Delsaux, EU Commission – Director DG MARKT/F, EU action, interim results and expectations
6. Dirk Cordeel, Esperanza Aguirre (President of the Community of Madrid), David Taguas Coejo
7. Round Table Discussion: Rafael Domenech (BBVA) – Frank Dupré (C. Dupré Bau GmbH) – Enrique Fuentes (Ferroviol) – Luis Armada (Madrid Regional Authority) – Werner Buelen (EFBWW)

Photos: ES/SEOPAN-ANCOP

**“Construction and the Global Economic Crisis: finding solutions for renewed jobs and growth”**

Mirroring recent financial and economic developments, the conference held during FIEC’s 2009 annual Congress in Madrid, explored the theme of the impact of the global financial and economic crisis on the construction sector and its fundamental role on the road to recovery.

**1. General overview and national examples**

The first part of the conference was given over to the presentation of a general overview of the current situation, as well as some specific national examples.

This general overview was presented by the President of SEOPAN (The Spanish Association of National Construction Enterprises) and ANCOP (National Group of Civil Engineers) **David Taguas Coejo**, who spoke on the causes and effects of the crisis, as well as its specific impacts on the construction sector and possible solutions for the European and in particular the Spanish economy. Mr. Taguas Coejo concluded his presentation by stressing that:

- a) While central banks have taken massive action to increase liquidity and measures taken by governments have been put in place to support the banking sector, uncertainty is still rife and significant credit restrictions remain in many economies.
- b) The main question at this point is the duration of the economic crisis. This will mainly be determined by the effectiveness of public policies.
- c) In this respect, there is a high degree of consensus that infrastructure policies boost the economy, not only in the long- but also in the short-term, given low levels of aggregate demand.
- d) Given the financial pressure on government budgets – and although public financing must continue to play its vital leverage role – the private financing of these infrastructure policies should be encouraged and facilitated. It is therefore necessary to introduce changes in current regulations, minimizing the risk associated with these projects and reducing uncertainty.

This was then followed by the presentation of three case studies, from Germany, Ireland and Bulgaria.

As regards the German economic recovery plan, HDB (German Construction Industry Federation) Vice-President, **Prof. Dr. Manfred Nussbaumer**, reported that although the announced figures might not have the total impact expected and the implementation of the programmes come with some delay, one conclusion is clear: without the two consecutive recovery plans, the slowdown in construction production and investment in 2009 and 2010 would be much stronger.

Reporting on public investment in Ireland, CIF (Construction Industry Federation) Director General, **Tom Parlon**, pointed out the weakness of the Irish economic stimulus plan. He explained that a significant infrastructure shortage remains in Ireland despite there being a long list of "shovel ready" projects in the areas of education, health, transport, environment and energy. In terms of economic recovery, marrying the resources within construction with the provision of badly needed infrastructure would, according to him, appear to be the obvious solution, generating jobs, government revenue and increased activity elsewhere in the economy in one stroke. In order to support this solution, he added that measures have been proposed to the government to harness private investment by using private pension funds to pay for capital investment plans (public building and civil engineering projects).

Outlining the Bulgarian situation, BCC (Bulgarian Construction Chamber) President, **Simeon Peshov**, explained that the crisis had hit the country about six months later than the Western European countries and that one specific worrying point was the suspension of EU funds for certain projects and programmes, with a negative impact on the construction companies concerned. He therefore recalled that one of the anti-crisis measures put forward by the BCC to the government was that national institutions, industry associations and employers organizations adopt plans to enable the rapid absorption of EU funds – from a project's conception to its implementation – once they had resumed.

## 2. The EU perspective: the road to recovery

The second part of the conference opened on the European perspective on the economic crisis and the recovery with the presentation by **Pierre Delsaux**, Director in the European Commission (Internal Market and Services DG) in charge of Free Movement of Capital, Company Law and Corporate Governance, who reported on the reactions of both the EU and Member States in response to the financial and economic crisis. He recognized the importance of large infrastructure policies in the current context, even if these policies lead to greater pressure on national budgets in the short-term, and concluded with the optimistic forecast that the EU should start to grow again in 2010. He stressed however that this would only occur if Member States adopt a global vision for the recovery and both public and private stakeholders cooperate.

Welcome Dinner – Estadio Santiago Bernabéu 18/6/2009



Opening Ceremony – Colegio de Médicos 19/6/2009



A fruitful roundtable discussion followed these presentations, involving various actors in the sector: banks, local authorities, trade unions, contractors (both SMEs and large companies). Each of them gave their impressions on how best to accelerate recovery in the construction sector.

During the discussion, **Frank Dupré (DE/ZDB)**, FIEC Vice-President and SME Envoy, noted that the EU and national recovery plans would not be sufficient to compensate the poor business conditions for SMEs. He stressed that governments should therefore incentivize energy efficiency rehabilitation in the housing sector – in particular through reduced rates of VAT – as it is the sector that generates the most business for SMEs.

As regards the trade unions point of view, **Werner Buelen**, EFBWW (European Federation of Building and Woodworkers) political secretary, recalled that the unions defend not only workers, but also the entire sector. Especially considering the current situation, he called on employers to work together with trade unions in order to secure more support from governments and public authorities.

Closing the round table session, FIEC Vice-President **Bernard Huvelin** summarized the discussion by stressing that in order to combat the current downturn and promote sustainable development, the

EU needed prompt investment in infrastructure and energy efficiency:

- 1) Investing in infrastructure remains a fundamental necessity and must not become the victim of the current financial and economic turmoil.
- 2) Acting immediately on improving the energy efficiency of buildings will not only lay the foundations of a more sustainable low carbon future, but will also generate employment and business opportunities.

In this regard, both Bernard Huvelin and FIEC President **Dirk Cordeel** welcomed efforts provided by Member States in their respective recovery plans but pleaded for more ambition in these two fields.

Concluding the event **Mrs Esperanza Aguirre**, President of the Region of Madrid, gave her support to the construction industry, particularly badly hit by the economic downturn in Spain, emphasizing that the industry is not to blame for the current crisis and recognizing the major role played by the sector in employment and the economy.

Indeed, in this respect, the message of all speakers was unanimous: construction is not part of the problem, but part of the solution!

**Gala Dinner – Castillo de Viñuelas 19/6/2009**



Honorary Presidency awarded to FIEC Past President Daniel Tardy



Honorary Vice Presidency awarded to last ECC President Paul Naudo

Photos: ES/SEOPAN-ANCOP



## THE CONSTRUCTION SECTOR'S 10-POINT MANIFESTO FOR THE EUROPEAN ELECTIONS 2009

30/4/2009

1. Speed up decision making and implementation of projects already in the pipeline.
2. Develop an ambitious but achievable vision for sustainable construction.
3. Invest in and maintain our infrastructure. Making up for the delay in investment and preparing future projects are essential for Europe's long-term development.
4. Facilitate the use of PPPs (public-private partnerships) where appropriate.
5. Invest in the renovation of Europe's building stock to boost energy efficiency, minimize climate change, reduce our dependency on imported energy while creating new skilled employment in construction.
6. Apply reduced rates of VAT and any other tax incentives on construction activity across the housing sector to spur energy efficient renovation, encourage growth and jobs as well as combat undeclared labour.
7. Avoid protectionism and focus resources on improving the single market which is the best way to encourage growth and job creation.
8. Promote more flexibility in the use of EU employment mechanisms to fight long-term unemployment and help workers back to the job market.
9. Streamline planning and procurement procedures and cut undue red tape to ensure projects are started as soon as possible, turning commitments into action.
10. Ensure timely payment by clients, in particular in the public sector, and encourage access to lending for viable companies, especially SMEs. Both are vital in the current downturn.

### Fair competition on a level playing field?

Decades of committed work in favour of creating the EU's Internal Market, without national barriers and in support of fair competition

on a level playing field to the benefit of citizens, enterprises and their workers has certainly achieved much tangible progress.

Recent developments however in a member state of the European Union, raise the question of whether this open internal market is not open to abuse by member state authorities wishing to favour third country state owned undertakings. The case puts into question the very principle of fair and open competition on the EU public procurement market as such undertakings enjoy advantages in terms of state backed capital and material support that no EU member state would be allowed to provide under EU state aid rules.

The case in question concerns the recent award of two lots of a motorway project by a Polish contracting authority to a Chinese state-owned consortium:

In preparation for the UEFA 2012 European Football Championships, Poland has ordered the construction of a 90 km stretch of the A2 motorway, between Stryków (Łódź) - Konotopa (Warsaw). Following a cancelled tender procedure as a PPP project, the second tender procedure took the form of a "Design & Build" contract comprising five lots. The award criterion was the lowest price and if not all details had been priced, the total price was deemed to cover all items of the published specifications. "Instructions to Contractors" state that it is intended to finance the project with funds at the disposal of the awarding authority. (Note: The project has received an EIB loan worth 500 million €; in addition to the general support for Poland through the European funds.

The preferred bidder was a consortium of mainly Chinese firms, led by COVEC, which, according to its website, is a 100% subsidiary of the Chinese state railway which, in turn is part of the PRC asset

administration. The consortium's firms have no experience with infrastructure projects in Europe.

As the consortium's offers were **abnormally low**: (in lot A 26,7 % of the client's estimate, the next lowest offer at 35,1 %, and in lot C 28,9 %, the next lowest at 38,4 %, the client asked for explanations.

COVEC, for the consortium, provided the following main reasons:

- COVEC (note: state owned) puts at their immediate disposal 300 mln PLN ≈ 100 mln USD, so that they can immediately buy/ reserve all material/ machines at an early stage and in large quantities and do not run any risk of price fluctuations. After signature of the contracts, COVEC will regularly transfer funds for the execution of the works, until completion, so that they do not need any expensive European loans.
- They have a sufficiently high level of experience so that they do not need much administrative staff and do not run any risk of not respecting contractual dates and incurring penalties.
- They have significant reserves in material and machines, all CE-marked and corresponding to European and national law, in China and can ship them over.
- They can employ experts, specialists, technicians and workers from China whose salary cost is considerably lower than their European counterparts. They respect all European and national laws, including the salary classes of workers and specialists active on the local (Polish) market.
- They have gained the necessary experience from much larger projects in China.
- Their calculations are based on the assumption that they win two lots of the project, so that there are further economies of scale.
- They expect to achieve the usual profit.

Without questioning the logic of any of these arguments, the Polish client accepted all explanations as plausible and finally awarded the two contracts to the consortium.

This development raises a number of questions, none of which has received a satisfactory response so far.

### **"No infringement" of Public Procurement Rules?**

In the area of public procurement, FIEC has been told by the Commission that no infringement of the EU directives has been proven. No discrimination is detectable and there is no discrepancy between the published call for tenders and the evaluation of tenders by the contracting authority.

Even so, and despite the Polish authorities' investigation of the abnormally low tender, FIEC maintains that the fact that no other European private sector bidder could have provided a similar low price and no EU member state could have provided support of this nature to an EU firm, is a clear sign that the procurement procedure discriminated against the other European bidders.

Whether all social and environmental provisions are respected, can only be checked once the works have commenced.

### **EU funding in support of third country state aid?**

Another question which FIEC believes should be raised is whether a contracting authority which accepts an offer which includes state aid from a third country should, at the same time, benefit from EU-funding from whatever source. This question has specific resonance given the large amount of funding provided, directly and indirectly, by the European Investment Bank.

### **Reciprocal access to markets**

And then there is the question of reciprocity of access to markets through the WTO/ GPA (World Trade Organisation/ Government Procurement Agreement/). European construction firms find it increasingly difficult to participate in public procurement in China. The number of statutory conditions and their nature present considerable barriers. Negotiations on these issues have been on-going for many years and the EU should now seriously consider introducing carefully targeted restrictions on access to parts of the EU procurement market, to encourage these partners to offer reciprocal market opening.

### **European Solidarity in Trade Negotiations**

Another interesting question is whether the exclusive negotiation mandate given to the European Commission by the Member States should not prevent those Member States from creating facts on the ground which undermine the EU's negotiation position.

If the current EU legal framework does not allow the prevention of such developments, as FIEC has been told, then it should be adapted in line with internal market principles and EU international commitments. FIEC, together with EIC, will continue to lobby intensively in favour of open markets and fair competition on a level playing field, worldwide.



Bernard Huvelin, FR

Co-President

*Christine Le Forestier, FIEC  
Rapporteur*



Luisa Todini, IT

Co-President  
Chairman Working Group "Infrastructure"

*Stefano de Marinis, IT  
Coordinator "Infrastructure"*

Temporary Working Groups:

International Accounting Rules



Carl-Gustaf Burén, SE

Chairman

*Christine Le Forestier, FIEC  
Rapporteur*

PPPs and Concessions



Vincent Piron, FR

Chairman

*Marie Eiller-Chapeaux, FR  
Rapporteur*

Internal Market – Lead Markets



Thierry Ceccon, FR

Chairman

*Myriam Diallo, FR  
Rapporteur*

Reduced VAT



Frank Dupré, DE

Chairman

*Philipp Mesenburg, DE  
Rapporteur*

EU Contract Law



Wolfgang Bayer, DE

Chairman

*Christine Vöhringer-Gampper, DE  
Rapporteur*

Public Procurement



Philippe Van der Mersch, BE

Chairman

*Frank Vanseveren, BE  
Rapporteur*

## A. ECONOMIC AND LEGAL ACTIVITIES

### 1. Construction activity: is the financial and economic crisis over?

In its interim forecast on the overall EU economy published in February 2010, the Commission and Eurostat indicated that:

- Economic growth is forecast to have shrunk by 4.1% in 2009. However, due to the exceptional crisis measures put in place, which played a major role in turning the economy around, GDP is projected to grow at 0.7% in 2010;
- The strong disinflation process over most of 2009 (very moderate annual rate of 1%) was mainly explained by downward base effects from the energy and food components and by a growing slack in the economy. Looking forward, price stability is expected to be maintained, with inflation projections only marginally revised up to 1.4%;
- Financial market conditions have recovered since early 2009, but balance-sheet adjustment is not complete and uncertainty remains abundant;
- A muted outlook for investment typically implies a weak labour market ahead, which in turn is likely to dampen private consumption;
- All in all, the recovery of the EU economy is now materialising but it is still fragile. The two major challenges ahead are to consolidate both the economic recovery and Member States' public finances.

In this context, FIEC has laid great emphasis on monitoring the impact of the crisis on the construction sector and pressing the EU institutions and Member States to create the right conditions for renewed sustainable growth and jobs. In the lead-up to the European Parliament elections and the FIEC Annual Congress in Madrid, both in June 2009, as well as in November 2009 in Strasbourg during a meeting with the newly elected Members of the European Parliament, FIEC reiterated the same key messages (see also specific report on FIEC Annual Congress p. 11):

- speed up decision making and implementation of projects already in the pipeline;
- keep investing in infrastructure – namely Trans-European Networks for transport and energy

- for both quick recovery and the EU's long-term development, making up for the delay in investment;
- invest in the energy efficiency of the building stock to secure energy supplies, fight climate change and create new skilled employment;
- avoid red tape and legal burdens to ensure projects are swiftly started;
- ensure timely payment by public clients and access to lending for viable companies, especially SMEs.

According to the latest data released by FIEC in the May 2010 editions of its Statistical Report and construction annual "key figures", the construction industry represented, at the end of 2009, 9.9% of EU GDP, with a total output amounting to 1,173 billion €. To this total amount, the new housebuilding segment made up 18%, the non-residential segment represented a share of 31%, rehabilitation and maintenance activities amounted to 29% and the civil engineering segment represented a substantial share of 22% of this total amount. Regarding the share of the construction sector in terms of jobs, it represented 7.1% of the EU's total employment and 29.1% of EU industrial employment.

Despite the significant share of the construction industry in the EU economy and following a healthy decade for the sector, overall construction activity experienced negative growth in 2009, due to the global financial and economic crisis which started in the summer of 2008. Although signs of recovery are now apparent, a return to normal activity is expected to take several years.

According to initial estimates, and although the situation varies greatly from one country to the other, rehabilitation and maintenance activities and the civil engineering segment, as well as - to a lesser extent - the public non-residential segment, fared relatively well in 2009. This is due to the positive impact of the various recovery plans, which almost all supported investment in the "green economy" –representing a huge opportunity for the construction industry, namely through investment in the energy efficiency of buildings – as well as investment in major public transport infrastructure. By contrast to these optimistic estimates, the new housebuilding and private non-residential segments suffered a major decline in private investment. (see also FIEC Statistical Report n°53, edition May 2010)

## 2. Public procurement, PPPs and concessions: a buoyant activity since the 2<sup>nd</sup> half of 2009

As a crucial issue for the construction sector, FIEC has dedicated one of its Temporary Working Groups (TWGs) to “general aspects” of public procurement chaired by Mr. Philippe Van der Mersch (BE-Confédération Construction), and another one more specifically to Public-Private Partnerships and concessions, chaired by Mr. Vincent Piron (FR-FNTF).

2008 already experienced strong activity in the field of public procurement, with various EC initiatives on environmental and social<sup>1</sup> aspects of public procurement, as well as electronic procurement, while initiatives concerning more specifically PPPs and service concessions suffered some delay.

Since the 2<sup>nd</sup> half of 2009, a whole range of initiatives – concerning all areas of public procurement – have been launched almost at the same time, with the prospect of future potentially major changes in the legislation in this field. Here are two major initiatives followed up by FIEC:

### European Parliament Own-initiative Report on new developments in public procurement:

In an attempt to steal an advance on the Commission in this field, the Parliament decided in autumn 2009 to draw up an own-initiative report assessing where are the remaining gaps and/or uncertainties in the legislation and propose solutions in order to use the full economic potential of public procurement with the aim of helping to meet major challenges facing society: the economic, financial and social crisis, climate change, etc.

The idea of the rapporteur, Mrs Heide Rühle (Greens/EFA-DE), was more particularly to screen the recent European Court of Justice case law in this field (inter-municipal cooperation, in-house, etc.), as well as to assess the possible gaps in the legislation for the inclusion of environmental and social considerations in public procurement.

The FIEC Secretariat had a first exchange of views with the rapporteur on this issue, following which FIEC was invited to present the views of the

construction sector in a public hearing organised by the EP Internal Market and Consumer Protection Committee on 27/1/2010.

During his presentation, Mr. Van der Mersch highlighted three points:

- The existing European rules are adequate and sufficient, including those regarding environmental and social aspects;
- If the legislation were modernised, then it should focus on the promotion of innovation in public procurement: through the promotion of the Most Economically Advantageous Tender criterion (MEAT), the freedom to propose alternative offers and the strict respect of the confidentiality of offers;
- The European construction industry currently faces unfair competition from third countries state-owned companies in public procurement contracts (see special chapter in this report, p. 12).

With the publication of Mrs. Rühle's draft report on 5/2/2010, FIEC noted with pleasure that many of the points it had proposed were contained in the document. These are namely that a revision of the 2004 Directives on public procurement in the near future would be premature, the Commission should better coordinate its legislative and non-legislative initiatives in this field to avoid confusion; socially-responsible procurement does not require further legislation but clear guidance; IPPPs and public-public cooperation have already been clarified sufficiently by recent ECJ case law; and a specific Directive for service concessions is not needed.

However, Mrs. Rühle's draft report, as well as the two draft opinions from the International Trade and Regional Policy Committees, were all disappointing to the extent that they omitted to adequately address the crucial issue of the Internal Market's weakness towards unfair competition from third countries state-owned companies.

FIEC will therefore continue its efforts regarding this report until its adoption by the EP plenary meeting in May 2010.

<sup>1</sup> At the time we are writing this report, the announced publication of an EC Guide on socially-responsible public procurement took several months of delay and is now awaited for Eastern 2010.

### Commission Communication on PPPs and studies on concessions:

In the last few years, the Commission and Parliament have been very active in the field of PPPs and FIEC has used repeated occasions to contribute to the debate, more specifically to the 2004 EC Green Paper on PPPs, the 2005 EC Communication on PPPs and Community law on public procurement and concessions, the 2006 EP "Weiler Report", and the 2008 EC Interpretative Communication on Institutionalised PPPs (iPPPs). Since the 2004 Green Paper however, neither a global initiative on PPPs, nor the anticipated initiative concerning concessions have been adopted by the Commission.

It is finally the current adverse economic context which has encouraged the Commission to accelerate its work on a global initiative on PPPs. After having followed up these works through close contacts with various services of the Commission, and namely the Secretariat-General, FIEC warmly welcomed, in a press release dated 19/11/2009, the adoption of the communication entitled "Mobilising public and private investment for recovery: developing Public-Private Partnerships".

FIEC applauded notably that all concerned Directorates General (DG MARKT, DG TREN, DG REGIO, etc.) have contributed to the drawing up of this global communication coordinated by the Secretariat-General. Furthermore, the communication puts forward the specific advantages of PPPs, not only to support the economic recovery through infrastructure investment, but also to address structural challenges on the long term.

As FIEC has consistently recommended since the 2004 Green Paper on PPPs, the communication promotes, beyond EU and national practices and models, a common approach based on the multiplicity of tasks endorsed by the private partner: *"financing, design, construction, renovation, management or maintenance of an infrastructure asset; in others, they incorporate the provision of a service traditionally delivered by public institutions"*, the long duration of the contract and other specificities such as the transfer of risks and responsibilities or differed payment.

FIEC has also stressed that the EU has a major role to play in disseminating expertise and capacity

building towards national and local public entities as experience gained over the years demonstrates that successful PPPs require an adequate "socio-economic return", and efficient financial and management schemes.

Following the launch by the European Commission and the European Investment Bank (EIB), of EPEC (European PPP Expertise Centre), FIEC is contributing the specific experience of the construction industry to this work via the participation of two experts, Vincent Piron (FR/FNTP) and Stefano de Marinis (IT/AGI).

In the meantime however, the initiative concerning concessions has been further postponed, due to the European Parliament elections and the establishment of the new Commission. As the question of a further legislative or non-legislative proposal on service concessions – which are currently excluded from the scope of the public procurement directives – is very controversial, DG MARKT has indicated that two further studies have been commissioned to consultants.

Consulted in the framework of one of these two studies, FIEC has indicated that no further legislation is needed in this field, as service concessions have, in any case, to respect the fundamental principles of the EU treaty (transparency, non-discrimination, etc.). If, despite this, a legislative proposal were made in this field, then FIEC would support a so-called "light approach", namely to extend the existing provisions for works concessions to service concessions. The Commission is expected to finally present a proposal in the spring of 2010.

### 3. International accounting rules: new issues on the table

After the work undertaken in the past on IFRIC 12 on *Service Concession Arrangements* until its publication in the OJEU in March 2009, it was decided in September 2009 that the TWG "International accounting rules", under the new Chairmanship of Mr. Carl-Gustaf Burén, would deal with several new issues developed by the International Accounting Standard Board (IASB) and having an impact on construction activities.

### Replacement of IAS 39 Financial Instruments: Classification and Measurement

Against the backdrop of the financial and economic crisis, the G20 asked the IASB to replace IAS 39 *Financial Instruments: Classification and Measurement* with the aim of simplifying the current numerous classification categories for financial instruments.

For that purpose, the IASB published on 14/7/2009 a so-called "Exposure Draft" in which it proposed to replace the current IAS 39's numerous classification categories with only two measurement categories: derivatives would always be measured at fair value, while other financial assets could be measured at amortised costs.

However, this proposed solution was criticized by experts from the construction industry, who stressed that it would lead entities to report at fair value many instruments which should not be classified in that way from the point of view of decision-useful information. The obligation to always measure derivatives at fair value – rather than amortised costs – would introduce high volatility in the equity of the companies, and in certain situations it would not enable a fair valuation of the companies.

In this context, FIEC sent a comment letter to the IASB and EFRAG (European Financial Reporting Advisory Group), proposing to change the accounting treatment of some derivatives linked to loan agreements in order to eliminate the obligation to measure those derivatives at fair value. This solution was expected to have a positive impact in financing activities for infrastructure projects and be of benefit to the entire European construction industry.

On the basis of the various comments received, the IASB then developed a new international standard, called IFRS 9 *Financial instruments*, to replace IAS 39 which however did not take into account FIEC's concerns and was supposed to be endorsed by the EU before being applied in Europe.

The EFRAG decided that more time was needed to correctly consider the output from the IASB project to improve accounting for financial instruments and postponed its endorsement advice to the Commission.

In a letter addressed to EFRAG on 13/11/2009, FIEC welcomed this decision and urged EFRAG to advise the Commission against endorsing IFRS 9 *Financial instruments* in the form it currently takes, in order to allow progress to be made on a comprehensive standard on accounting for financial instruments that would be acceptable to all parties.

### Revenue Recognition in contracts with customers

The IASB issued in December 2008 a Discussion Paper entitled "Preliminary Views on Revenue Recognition in contracts with customers", aimed at replacing the current existing standards on revenue recognition – namely IAS 11 *Construction contracts* and IAS 18 *Revenue* – for one revenue model intended to be applied across all industrial sectors.

In September 2009, the FIEC Secretariat established contact with the European Commission and the EFRAG to discuss this issue and put forward the view that the suggestions presented by the IASB could have a direct and negative impact on construction contracts.

In this single model, the IASB bases the revenue recognition on the concept of "transfer of control", to be applied to revenue of both goods and services. According to this concept, the revenue recognition would occur all at once at the very end of the contract, when the constructed asset is completed and the client has taken possession of the building, unless a concept of "continuous transfer" can be applied.

On 14/12/2009, a group of representatives of the TWG met the IASB Staff in London in order to discuss the various aspects of the model and explain the possible problems which could arise from such a new single model for construction contracts. Together, FIEC and IASB experts discussed namely the concepts of transfer of control, segmentation of the contract, recognition of revenue, re-estimation of incomes, cost treatment, onerous performance obligations, as well as the investor's needs.

The FIEC experts stressed the majority view<sup>2</sup> that the proposed new model would not provide fair and useful information regarding revenue recognition of construction contracts. They made clear that construction contracts are service contracts from

<sup>2</sup> Minority position: It is to be noted that Spanish accounting experts have a divergent approach on this issue to the other national experts. In Spain, contracts are already divided into "performance obligations", within which the PoC method is applied. The proposed new model proposed by the IASB is therefore relatively in line with what Spanish accounting experts already apply in construction contracts.

which the client obtains a continuous and progressive benefit as construction progresses. Beyond this “benefit”, the client of a construction contract also exerts specific control all along execution of the contract (change orders, general owner of the construction site, etc.). As a consequence of this continuous effective transfer of control and benefit to the client, the revenue recognition should occur continuously as the work progresses and until the contract is completed. Concerning complex and long-term construction contracts, the current existing PoC method (Percentage of Completion) should also continue to be applied as it is the most effective and appropriate.

On the basis of the comments received from the stakeholders, as well as further discussions between the IASB and the FASB (the US Financial Accounting Standards Board) on additional issues, the IASB is expected to publish a so-called “Exposure Draft” during the 2<sup>nd</sup> quarter of 2010. According to present plans, the issue of a final standard should occur during the 1<sup>st</sup> half of 2011.

#### **4. The “Lead Market Sustainable Construction”** (see also the TEC Commission report, p. 37)

At the end of 2007, The European Commission launched the “Lead Market Initiative”, aimed at promoting the innovation and the development of large-scale markets with international potential. This horizontal policy concerns six key markets of which one is sustainable construction. In the roadmap prepared for the Commission by the “Taskforce on Sustainable Construction,” a number of policy instruments have been identified in order to take the Lead Market Initiative forward.

In this framework, the TWG chaired by Mr. Thierry Cecon (FR-FFB) followed up the various studies undertaken by the Commission (Enterprise and Industry DG) and provided input through exchanges with the national experts.

One of these studies promoted the use of a Life-Cycle Costing methodology developed by the Commission a few years earlier through its implementation in a series of specific cases of construction public procurement. Awareness raising

campaigns and staff training in the use of the methodology proved successful in most cases.

Another study resulted in the drawing up of a Guide – targeting above all SMEs – on collaborative working schemes in construction projects. This study started from the recognition that too many construction projects resulted in legal disputes between the various stakeholders and that this could be avoided by adopting voluntary extra-contractual arrangements, as already exist in some EU countries.

A third (on-going) study screened the national liability and insurance regimes in the construction sector within the EU, with the aim at making a series of recommendations in this field. Results are expected to be presented in the first half of 2010. FIEC stressed that it should by no means lead to the forced harmonisation of national regimes.

The key study of this construction LMI, concerning the renewal of the 1997 Sector Competitiveness Strategy, was postponed several times in the course of 2009 to only start in January 2010. The TWG will now provide initial guidance to the Commission and the consultant by June 2010.

#### **5. Late payment: towards strengthened European legislation?**

Following the end of its implementation period on 8/8/2002, Directive 2000/35/EC now covers payment deadlines in commercial transactions, both B2B and business to public authority relations. It introduces the right to charge interest for late payments “from the day following the date or the end of the period for payment fixed in the contract.” Unless the parties to a contract agree on a different period, the Directive foresees that a default deadline of 30 days shall apply. A possible derogation up to a maximum of 60 days is also foreseen in the Directive.

As stipulated in the Directive, the Commission initiated in 2004 a series of studies and impact assessments in order to examine the costs and benefits of various proposals which are being considered to support the objectives of the Directive in combating late payments, and to which FIEC

participated assiduously. Despite some improvements during the past few years, the Commission concluded that late payments were still a major problem for EU businesses, and especially for SMEs. Surveys also showed that, in general, the payment periods in the public sector were even longer than the payment periods in private sector contracts.

The Commission therefore published on 8/4/2009 a legislative proposal to recast Directive 2000/35/EC, while proposing a stricter frame for payment periods. In the meantime, this initiative had been given more political exposure by being integrated into the implementing measures of the Small Business Act of June 2008 and the European Economic Recovery Plan of December 2008.

In general terms, the EC proposal introduces a general statutory payment period of 30 days for both businesses and public authorities, while respecting the contractual freedom of parties which can agree – under strict conditions as concerns business to public authority relations – on a longer contractual payment period; and reinforces disincentives towards public authorities to late payment (usual interests for late payment plus 5% lump sum interest from the first day plus compensation for recovery costs) in order to make them show the right example in this field. It remains to be seen whether these ideas will survive the political discussions in the European Parliament and the Council.

In position papers, dated 23/11/2009 and 1/3/2010, addressed to the Parliament, FIEC highlighted, amongst others, that:

- Irrespective of size, it is important for all construction enterprises that invoices are paid in due time. The respect of fair payment period rules should therefore be ensured throughout the payment chain.
- The proposed legal payment period of 30 calendar days is therefore welcomed by the construction industry.
- The deletion of the current exemption, which authorises a maximum payment period up to 60 days, is particularly welcomed. Nevertheless, this deletion should, by no means, lead to the introduction of new exemptions, which would make the current payment situation even worse, instead of improving it.
- Compared to the treatment envisaged for private undertakings, it is fair that public authorities be subject to stricter rules and imposed higher

dissuasive compensation in case of late payment, since they have a more secure financial basis.

While the final report of the European Parliament is expected to be adopted in May 2010, on-going discussions within the Council are very tough, in particular concerning specific treatment for public authorities.

## B. INFRASTRUCTURE CHALLENGES

In the framework of a new working group integrated into the ECO Commission and replacing the former Ad-Hoc working group on TEN-T, FIEC Vice-President Luisa Todini has taken on a range of new competencies, all related to transport infrastructure issues: "greening" of transport – in particular the revision of the "Eurovignette" Directive – urban mobility and cohesion policy, under its infrastructure aspects<sup>3</sup>.

As these topics developed at a slower pace in 2009 because of the EP elections and the renewal of the Commission (freezing of the "Eurovignette" proposal at Council level, adoption of an action plan for urban mobility in September 2009 with little impact on the construction sector and follow-up of the EC 2008 Green Paper on territorial cohesion still awaited) the newly set up "Infrastructure" Working Group therefore focused on the two hot topics which are the revision of the EU transport policy and the revision of the TEN-T policy and guidelines.

These two issues are also part of the priorities of the new Commissioner for Transport, Mr. Siim Kallas, who wants to help tackle climate change through a more sustainable transport policy. Following the reorganisation of DG Transport and Energy (DG TREN) within the new Commission, these two issues will now be dealt with by the new "Mobility and Transport" DG (DG MOVE).

<sup>3</sup> All details about earlier developments can be found in FIEC Annual Report 2009.

## 1. Revision of EU transport policy: towards a sustainable future for transport

The Commission intends to publish in June 2010 a White Paper on a renewed EU transport policy for a sustainable future for transport, which will replace and update the existing White Paper from 2001. For this purpose, the Commission launched at the beginning of 2009 a broad public debate on the main challenges and opportunities for the transport sector in the long term (20 to 40 years).

This consultation process went on with the adoption, in June 2009, of a Communication entitled: "A sustainable future for transport: towards an integrated, technology-led and user-friendly system" (COM(2009)276 – 17/6/2009), which put forward some initial policy principles regarding EU transport challenges (environmental challenges, ageing of the population, migration and internal mobility, urbanisation) and objectives (sustainable system, quality and accessibility of transport, integrated network, use of ITS and smart pricing schemes) and opened a further debate on this basis.

Once more, through its contributions to the EC consultation and to the EP draft report (respectively dated 29/9/2009 and 1/3/2010), FIEC actively participated in the debate and namely stressed that one crucial aspect of EU transport policy was the financing of sustainable transport infrastructure, through the optimisation of existing and construction of sustainable new infrastructure.

For that purpose, FIEC recalled that it is necessary to mobilise all possible financing resources in view of developing an integrated transport network using the full potential of each mode of transport. The EU budget dedicated to transport should be increased, as well as European funds and EIB loans. The newly set-up "Marguerite" fund for energy and transport infrastructure should swiftly become a key financial instrument of EU transport policy. Smart pricing of infrastructure should be encouraged to reflect all costs actually generated by users and as an incentive to use more "environmental friendly" modes. Private investment should also be efficiently involved, namely through PPP schemes. Furthermore, to maximize their effect, all resources should be

combined and concentrated on a range of specific projects with European added-value.

## 2. Revision of the TEN-T policy and guidelines: a core network at the heart of EU's future sustainable transport policy

In parallel, the Commission is also working on the revision of the Trans-European Transport Network policy. In this framework, FIEC also contributed to the consultation launched by the EC Green Paper adopted in February 2009, criticising some Commission proposals for the future organisation of the network, which may lead to capacity and financial means spread over too many projects, and also focusing on the funding of TEN-T projects.

FIEC's messages were presented both during the TEN-T DAYS 2009 in Naples, where FIEC Vice-President Luisa Todini participated as speaker on the "Funding of TEN-T projects" issue, and during a major stakeholders' event organised in Brussels on 20/11/2009, where various key speakers recalled that the optimal use of each mode and infrastructure was a crucial aspect of the future EU transport policy and that matching objectives and financial means would be another crucial priority.

There are now two further platforms where FIEC will be able to present its key messages for the support of sustainable transport infrastructure: on one hand, the EPEC "Private Stakeholders' Forum" (see above), and on the other hand, a Commission expert group dedicated to the financing of TEN-T, in which a FIEC economic expert, Mr. Jean Delons (FR-FNTP), has been invited to participate. Further developments and the first results of the group are expected in summer 2010.

**Here are just a few examples of what the Economic and Legal Commission has delivered over the past year:**

- Actively conveyed, together with its Member Federations, FIEC's message to the EU Institutions and Member States on how to speed European recovery from the financial and economic crisis by investing in sustainable infrastructure and in energy efficiency in buildings.
- Effectively conveyed FIEC's key messages on the need for stable public procurement rules promoting innovation during a public hearing organized by the European Parliament (IMCO Committee), and
- Repeatedly raised the EU Institutions' awareness on unfair competition in public procurement from third country state-owned companies.
- Succeeded in making the contractors' voice and arguments heard regarding the financing of TEN-T infrastructure projects during the TEN-T DAYS 2009.
- Provided expert input to a DG MOVE expert group dedicated to the financing of TEN-T infrastructure projects.
- Provided expert input to the "Private Stakeholders' Forum" of the EPEC (European PPP Expertise Center) which has been jointly set up by the European Investment Bank and the European Commission in order to provide and exchange information on best practices for PPPs with national public authorities.

**Position Papers**

FIEC comments to IMCO draft report on "combating late payment in commercial transactions" (1/3/2010)

FIEC comments to TRAN draft report on "a sustainable future for transport" (26/2/2010)

FIEC contribution to the European Parliament's own initiative report - "Public Procurement - meeting the new challenges"(27/1/2010)

FIEC comments and amendments' proposals - European Commission's proposal: Recast of Directive 2000/35/EC on combating late payment in commercial transactions (23/11/2009)

FIEC letter to EFRAG - Endorsement of IFRS 9 financial instruments (18/11/2009)

FIEC contribution on the EC communication on the future of EU transport policy (29/9/2009)  
 FIEC comment letter to IASB Exposure Draft on IAS 39 (14/9/2009)

**Press Releases**

FIEC Press Release - "Investing in Construction for Sustainable Growth and Jobs in the EU" (27/11/2009)

FIEC Press Release - "FIEC welcomes the EC Communication "Mobilising private and public investment for recovery and long-term structural change: developing Public Private Partnerships" (19/11/2009)

FIEC Press Release - "Annual Congress of the European Construction Industry Federation in Madrid: Creating employment and growth, Construction is the Solution Industry!" (22/6/2009)

**Answer to (public) consultations**

FIEC submitted answer - Review of the financial regulation - Commission's public consultation (21/12/2009)

FIEC answer to EC questionnaire on service concessions (30/11/2009)

**Other**

FIEC speech (by Luisa Todini) on funding TEN-T projects - TEN-T DAYS 2009, Naples (22/10/2009)

*All these documents are available on FIEC website [www.fiec.eu](http://www.fiec.eu)*

## EP-IMCO Hearing “Public procurement – Meeting the new challenges” FIEC contribution to the European Parliament’s own initiative report

27/1/2010 (The following are extracts. The full version can be found on the FIEC web site : [www.fiec.eu](http://www.fiec.eu))

### I. The existing rules are adequate and sufficient

FIEC believes that European legislation on public procurement (Directives 2004/18/EC and 2004/17/EC) is adequate and sufficiently clear, **including as regards environmental and social aspects.**

All actions in this field must strictly comply with the provisions of the Treaty and the directives. In this regard, FIEC would like to recall that:

- a) “Soft law” is not law (i.e. “explanatory notes”, “Interpretative Communications”, “guides”, etc.).
- b) The various Directorates General of the Commission should coordinate their actions.
- c) Public procurement legislation needs stabilization.

### II. How to better promote innovation in public procurement?

FIEC recalls that supporting innovation in public procurement is possible **ONLY IF:**

1. The **Most Economically Advantageous Tender (MEAT criterion)** approach should systematically be used to award the contract, rather than the lowest price criterion only. Only the former enables procurers to properly take into account the whole life-cycle cost of the building or infrastructure, as well as those additional aspects, e.g. social or fair trade aspects, which the directives allow.
2. The opportunity of presenting **alternative offers** (variants) is ensured to the contractors. A company should, by default, be free to present an alternative offer, and not only in cases in which this is specifically permitted by the client which is the case in the current directives.
3. The **confidentiality** of tenders and technical solutions submitted by contractors must be strictly respected. It is unacceptable that contractors’ ideas are cherry picked or stolen.

### III. Third country state-owned “enterprises” on the EU public procurement market

Recently, a third country state-owned “enterprise” has been awarded two out of five lots of a road construction project in an EU Member State. This case has led to many questions regarding the respect of EU procurement and competition rules.

#### 1. Unfair competition / State aid:

As the owner of such “enterprises” is a state, it provides no normal commercial basis for the calculation of risks and prices. It is unacceptable that third country state-aid, which would not be allowed from an EU Member State, is admitted on the Internal Market, even receiving significant EIB funding.

#### 2. Risk of negative impact on social and environmental European standards.

#### 3. Abnormally low tenders:

As a consequence, the winning third country contractor has been able to make an offer with an extremely low price: the two offers corresponded to 26,7% and 28,9% of the estimated budget. This is of the responsibility of the contracting authority to reject such an offer.

#### 4. The EU Internal Market opened without limits?

We have all been working on the opening of the Internal Market in the EU, with quite some success regarding public procurement. The current state of EU law is not adequate for protecting our Internal Market against third country competitors who increase their competitiveness by not respecting the EU rules on the level playing field in state aid matters, social standards or environmental requirements.

It is a political decision whether we want to adapt our legislation or whether we want to continue the way of exclusively trying to convince by giving a good example. FIEC believes that:

- a) EU public procurement markets must not be open without limit for enterprises from countries which do not undertake serious efforts to open their own markets to EU companies. The principle of reciprocity has to be respected.
- b) If no efforts are made, or do not lead to tangible results, the EU should adapt the access of third country enterprises to the conditions which EU enterprises have themselves to respect.
- c) In cases where trading partners take advantage from the general openness of the EU, but show no real move towards reciprocity, the EU should introduce carefully targeted restrictions on access to parts of the EU procurement market, to encourage these partners to offer reciprocal market opening.

**FIEC contribution to the EC Communication****“A sustainable future for transport: Towards an integrated, technology-led and user friendly system” Infrastructure at heart of EU transport policy**

29/9/2009 (The following are extracts. The full version can be found on the FIEC web site : [www.fiec.eu](http://www.fiec.eu))

**3) Economic and financial instruments.**

- **Economic instrument:**

FIEC strongly supports the increased participation of users in the cost of construction, maintenance and generated environmental impact cost, namely through infrastructure charging and through the process of internalisation of external costs, which will enable the cost of externalities generated by transport users to be suitably reflected in transport infrastructure pricing/charging (“user/polluter pays” principle).

FIEC believes that it is not a realistic option to entirely self-finance infrastructure through infrastructure charging and internalization of external costs. The list of externalities (air and noise pollution, congestion, GHG emissions, accidents...) and the earmarking of generated revenues to sustainable transport infrastructure remain sensitive areas, which Member States are not ready to solve.

- **Financial instrument:**  
**Public money remains the most important resource to finance a sustainable EU transport policy.**

However, this resource is often insufficient at national level to cover the entire costs of the various projects. The situation has now worsened due to the financial and economic crisis. Additional European – direct or indirect – financial intervention is thus needed. FIEC also calls the Commission to strengthen and coordinate all possible financing sources, and for example:

- **Structural funds** already play a major leverage role in the financing of transport infrastructure. FIEC calls for the increased and optimized use of this budget line for the next financial period.
- FIEC welcomes the **involvement of the EIB** in financing of infrastructure and in guarantee schemes. The EIB should be further encouraged to guarantee risks in this field and relax access conditions to these guarantee schemes.
- FIEC calls for the further development of the recently set up « **Fonds Marguerite** », which will finance transport infrastructure. FIEC also

invites the Commission to evaluate the possibility of creating a special fund entirely dedicated to financing transport infrastructure projects, whose operational management could be ensured by the TEN-T EA.

- FIEC welcomes the future inclusion of maritime transport and aviation in the **EU ETS scheme** and calls for the earmarking of generated income to the transport sector, and in particular to the development and optimization of sustainable transport infrastructure.
- Taking into account the recent proposals in this field, FIEC calls again the Commission to evaluate the possibility to finance infrastructure projects of European strategic interest through a system of **European bonds**.
- For what specifically refers to the realization of TEN-T, FIEC calls for a **strong increase of the TEN-T budget** which has been cut down to €8 billion for the 2007-2013 financial framework while the Commission is committed to providing around €20 billion. FIEC also calls for a **higher rate of co-funding** from this budget line.
- Finally, the best efficiency of these resources should be ensured through the **concentration and even combination of these resources on EU key projects** with socio-economic, environmental and European added-value (e.g. TEN-T Priority Projects, multimodal platforms, etc...).



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**Sub-Commission SOC-3**

**“Economic and Social  
Aspects of Employment”**



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## A. VOCATIONAL TRAINING AND EDUCATION: A KEY INVESTMENT IN TIMES OF CRISIS

The global economic crisis that has hit the EU economy has also strongly affected the construction industry, although with a different degree of intensity between countries.

Despite the many jobs already lost, the construction industry suffers from an almost constant shortage of qualified workers and it therefore needs to increase and adapt its vocational training facilities.

Among the various priority policy areas identified for recovering from the the current crisis, vocational training and education have been recognised as playing a key role.

Substantial efforts will therefore have to be made at EU and at national level, in order to ensure, on the one hand that workers have the adequate skills required by future market drivers, such as climate change and accessibility concerns brought about by demographic changes whilst, on the other hand, facilitating labour market transition and strengthening construction workers' skills.

The priorities for FIEC in the area of vocational training and education have been set according to this framework.

### 1. Improving the image of the sector

In most countries the construction industry still suffers from a negative image which affects its attractiveness and which, to some extent, explains the difficulties in hiring and in keeping young people as well as skilled workers. Whilst in some areas further improvements certainly need to be made, many of the stereotypes that are still used to describe the construction industry do not correspond to reality.

This situation is largely due to a lack of information and to bad communication and information provided to the outside world and in particular to young people in schools.

Initiatives will therefore be undertaken in this area. However, young people are only one target amongst others and therefore these initiatives will need to have a wider scope and will also address issues such as how to attract more women to the sector, as well as how contractors themselves can play a role in improving the image of their industry by paying attention to the quality of their work, the way their workers are dressed, the tidiness of their building sites, etc.

Several initiatives in these areas have already been undertaken in many countries and therefore, together with EFBWW (European Federation of Building and Woodworkers), it is envisaged to develop a website presenting such best practice examples.

Discussions have also started in order to develop joint collaboration with "Euroskills" ([www.euroskills.org](http://www.euroskills.org)) and "Worldskills" ([www.worldskills.org](http://www.worldskills.org)). These initiatives take the form of biannual international skills competitions among young people, with the aim of improving the quality, the results and the attractiveness and promotion of vocational education and vocational skills.

### 2. Future skills and qualifications needs

Adapting education and training systems to the specific future skills and qualifications needs of each sector is a crucial element for adaptation to both industrial change and increased competitiveness and has particular relevance in light of the current global economic crisis. This is at the heart of the European Commission's (DG EMPL) initiative entitled "New skills for new jobs", which contributes to the EU 2020 Strategy, the follow-up of the EU's Lisbon Strategy for Growth and Jobs.

This initiative includes 19 sectoral studies highlighting the common challenges, the differences and the relative position of the different sectors under review in relation with competences and skills requirements. FIEC has actively participated in the study focusing on the specific future qualification and skills needs of the construction sector.

The identification and assessment of future skills needs and competences is based on four possible

scenarios for future development, on an analysis of the ability of existing education and training systems to address future skills needs, as well as on innovative measures and methods to address those skills needs identified.

The study also formulates some proposals for a flexible strategy concerning measures for upgrading skills and competences in the European construction sector. The proposed strategies should enable the provision of capacity-building based on the profile and abilities of the target companies to take up economic, demographic, technological and management developments. These should take into account, on the one hand, the varying social and economic conditions throughout the EU, whilst on the other, the diversity of national education systems.

Finally, the study also presents some recommendations for measures and actions to adapt to future skills needs, so that construction companies, and in particular SMEs, which constitute the vast majority of the sector, can pursue competitive advantages by focusing on innovation, quality, sustainability, competence development and offering attractive working conditions.

### 3. Facilitate the recognition of qualifications

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In contrast to other industrial sectors, in construction it is not the "final product" that moves within the single market, but rather the enterprises and their workforces that have to move to where the "product" is to be constructed. Such mobility plays a crucial role in the competitiveness of the sector and should therefore not be hindered by training and education policies, which are national competences, and which - due to the specificities of each country - sometimes differ significantly one from another.

For these reasons, the transparency and the mutual recognition of qualifications is a priority on the agenda of the European Social Partners for the construction industry, FIEC and EFBWW, who are undertaking a joint pilot project focusing on the mutual recognition of qualifications for bricklayers/masons.

The objective of this project currently on-going is to develop a framework to be applied in the assessment of bricklaying qualifications, to analyse and compare the nature, content and regulation of different qualifications and vocational training systems for bricklaying in eight EU countries (Belgium, Italy, Germany, the Netherlands, Denmark, the United Kingdom (England), Poland and France) and to identify the learning processes whereby qualifications are acquired in each country, including formal and informal learning.

Further information on this on-going project can be found at [www.bricklayer-llp.eu](http://www.bricklayer-llp.eu)

### B. IMPROVING HEALTH & SAFETY (H&S) : FOR THE BENEFIT OF ENTERPRISES AND THEIR WORKERS

Despite the overall reduction in the number of work related accidents and illnesses, statistics clearly indicate that construction is still among the sectors where further improvements are needed.

One of FIEC's main priorities is the improvement of health and safety, not only through legislation and schemes at EU and Member State level, but also through creating a real culture of health and safety within each company. In order for this to be achieved, all concerned stakeholders should be actively involved.

Since the signature of the "Bilbao Declaration" in 2004 on "Building in Safety", FIEC and EFBWW, the European Sectoral Social Partners, have continued to develop their joint and individual activities on H&S with the aim of implementing the objectives of this declaration.

### 1. Facilitating the development of a H&S culture amongst SMEs through a European guide

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In several countries, clients are increasingly insisting that companies prove that they have set up H&S management systems and actually comply with them. In most cases these management systems are specific to each client and therefore companies have to

draw up a large number of different specific sets of documentation.

Therefore, on the initiative of FIEC, a joint working group with EFBWW was set up in order to draw up a European guide for encouraging and helping companies to introduce and develop a H&S management system. Such a system, to be endorsed on a voluntary basis, would take into account the needs and capacities of SMEs and would be flexible enough so as to take into account measures already existing at national level.

This guide would on the one hand describe the basic steps and requirements necessary to develop a H&S system in a construction enterprise and, on the other, present a series of fact sheets and practical examples in order to effectively implement and further improve a H&S management system; with the aim of promoting a H&S culture amongst clients and companies.

Once finalised, it will become a tool to be promoted by the social partners in the various EU Member States.

## 2. Support for OSHA (European Agency for Safety and Health at Work) campaigns

The European Agency for Safety and Health at Work (OSHA) was set up in 1996 as a tripartite organisation, in which representatives of governments, employers and workers are present.

Its mission is to make Europe's workplaces safer, healthier and more productive by bringing together and sharing knowledge and information, and to promote a culture of risk prevention.

Since 2000, in order to achieve its objectives, OSHA has launched several European thematic awareness raising campaigns. FIEC has actively supported the OSHA campaigns, mainly since the 2004 campaign on "Building in Safety", which was the first to be focused on a specific sector, until the 2007 "Lighten the Load" campaign on musculoskeletal disorders.

Along these lines FIEC was partner to OSHA's risk assessment campaign, which was run through 2008

and 2009. The main objectives of this campaign were, amongst others, to raise awareness of the statutory responsibility and the practical need to assess risks in the workplace, to promote and demystify risk assessment, to encourage enterprises to carry out their own risk assessment and to promote the involvement of everyone in the workplace in risk assessment, not only employers.

Risk assessment is the start of the risk management approach and a first step in the development of a culture of health and safety management.

FIEC and EFBWW are now examining the possibilities of applying the online risk assessment tool developed by OSHA in the frame of this campaign within the construction industry.

## 3. Reducing administrative burden for companies without affecting H&S achievements

Within the framework of the "Better Regulation" initiative of the European Commission, a High Level Group chaired by former Bavarian Minister President Edmund Stoiber, dubbed the "Stoiber Group", examined, amongst others, the possibilities of reducing the administrative burden for companies by amending some of the existing EU legislations in the working environment area.

Amongst the proposals presented by the "Stoiber Group" some directly concern some pieces of legislation on H&S, namely the "Framework Directive" (89/391/EC of 12/6/1989) and the "Mobile construction sites" Directive (92/57/EC of 24/6/1992).

The proposals formulated by the "Stoiber Group" have been strongly criticised in particular by trade union organisations, both as regards the methodology used as well as the perceived risk they seriously put in danger much of the progress achieved over the years in the field of H&S.

FIEC is convinced that the size of a company should not affect its commitment to H&S policies and that therefore there should be flexibility in existing legislation, in order to adequately take into account the needs and the capacities of SMEs, which are

often unable to organise an internal H&S department for example.

However, the extremely positive objective of reducing the administrative burden for enterprises, which can significantly affect competitiveness, should not be achieved to the detriment of a reduced attention to H&S matters.

#### 4. Nanotechnologies in the construction industry: opportunities and challenges

The European Union is paying much attention to the emerging industrial use of nanotechnologies and nano-products. The further development of this technology is not easily predictable and encompasses a wide range of possible applications in more or less all industrial sectors.

A highly qualified workforce, able to adapt to new technologies and to implement new opportunities into their traditional work processes, making intelligent use of the possibility of new combinations, is vital for the competitiveness of our sector, competing on an increasingly international market.

The ability to cope with new opportunities also includes the aspect of dealing adequately with possible emerging risks. This ability to anticipate new risks is of the highest importance for the successful implementation of a new technology.

Nanotechnologies will directly or indirectly influence or interrelate with the following policy areas :

- **Sustainability:** innovative nano-materials/products are claimed to be able to reduce the total use of materials, to improve properties of specific materials resulting in, for example, energy savings, reduced maintenance needs, higher material durability, better weather resistance, etc. The claims that are made are promising and in this respect a growing use of nano-materials/products in the construction industry is expected.
- **Health and safety:** the new properties of nano-materials/products resulting in new products, with possible (new) health and environmental risks are widely discussed in the scientific literature and in

public forums. The, current lack of information on health hazards and accompanying risks encourages a precautionary approach when new materials are introduced to the workplace.

- **Vocational training:** the introduction of nano-materials/products in the construction industry may necessitate adaptation of "traditional" working methods to ensure a safe workplace at sites where these new nano-materials are being applied. Therefore broad activity in vocational training will certainly be required.

Already today, there are a number of very different applications of nanotechnologies in construction; nano-materials/products are used, for example, in paints and coatings, flame retardants, glass facades, cement or mortar, cleaning agents, insulation materials, etc.

Undoubtedly, the further development of nano-technologies carries much potential but also risks. EFBWW and FIEC, the European Social Partners for the construction industry, have therefore undertaken a joint project on this issue, co-financed by the European Commission, aiming both at assessing the situation and the level of knowledge within the construction industry, and at evaluating the opportunities and risks.

The report presenting the outcomes of this study was finalised in November 2009 and will be used as a starting point for future social dialogue activities. It is available in various languages on the FIEC website ([www.fiec.eu](http://www.fiec.eu)).

The main outcomes of this study can be summarised as follows:

1. the level of awareness of the different actors in the construction industry concerning the availability and performance of nano-materials/nano-products needs to be improved; this is true for both employers and workers, but also for the related professions like architects, construction engineers and clients; improving the level of awareness must start from information provided by materials producers;
2. the higher costs of nano-ingredients is an additional factor limiting the amount of nano-products used in construction today,

3. on the one hand some nano-materials/products can bear H&S risks for workers using or handling them (for example by drilling, sanding or cleaning activities), whilst on the other, exposure risks to nano-particles by handling solid (prefab) nano-products like nano-enhanced ceramics, glass, steel, plastics, composites, insulation materials, concrete or wood without machining these in any way, are expected to be extremely small;
4. measurement devices to determine actual exposure at the worksite are highly expensive and provide only limited answers with respect to true exposure levels;
5. further research is needed in order to understand the impact of such exposure on health, and how best to devise appropriate exposure monitoring and control strategies;
6. until a clearer picture emerges, the limited evidence available would suggest the application of the precautionary principle.

This report will constitute the basis for further discussions within the Social Dialogue and in particular as regards the definition and the possible application of a practical precautionary principle within the construction industry.

## C. ECONOMIC ASPECTS OF EMPLOYMENT

### 1. The construction industry provides solutions for emerging from the global economic crisis

In the aftermath of the global economic crisis the European construction industry is facing several major challenges, which need to be urgently addressed with concrete actions, adequate resources and adaptations of policies both at European and national level.

FIEC and EFBWW have therefore launched a joint appeal calling on the European Union and Member States to seriously step up their efforts, not in words but in action, in order to foster the development of a sustainable construction industry.

In this joint paper the European social partners of the construction industry have identified key policy areas where strengthened co-operation between the EU and Member States will contribute significantly to

Europe's employment and climate change ambitions, not through subsidies but through targeted investments and a consistent long-term policy. It therefore also constitutes a concrete contribution to the debate on the EU 2020 strategy.

Recent economic analysis and forecasts clearly indicate that the current economic situation is not expected to improve substantially in the near future and that both the public sector, which is struggling to contain record deficit levels, and the private sector, which is hoarding financial resources while waiting for economic recovery, are postponing investment. This situation risks endangering the beginning of economic recovery and seriously undermines the sustainable development of the EU economy. It is precisely in this situation that long term European and national recovery and stimulus programmes have a significant role to play in helping the EU economy to emerge from the crisis. However, most of these recovery and stimulus programmes adopted in Europe are unsatisfactory in respect of both their content and their scale, as well as their objectives. They only provide short term solutions, whilst what is equally needed is investment that can ensure long term sustainable development.

The construction industry plays a key role in the EU economy (9.9% of EU GDP in 2009), in employment (7.1% of total EU employment) and in climate change energy policies (buildings make up around 42% of EU final energy consumption and produce about a third of all greenhouse gas emissions).

Given this backdrop, the construction industry is a key player. Securing sustainable long term development, in full respect of fundamental social rights, together with targeted shorter term measures, are essential levers for rapid recovery from the global economic crisis, for meeting the EU's employment, environmental and energy strategies and for ensuring the sustainable long term development of the EU's economy.

In order to tackle short term needs with an eye to the future, in their joint appeal FIEC and EFBWW urge the EU and the national authorities to focus action on:

1. investments that promote sustainability and energy saving
2. vocational and professional training facilities
3. investments in R&D and innovation
4. ensuring access to credit for enterprises and citizens
5. securing long-term investment.

The construction industry is not asking for subsidies, but for the steady and consistent flow of investment that is needed for securing, social and economic development and the well-being of Europe's citizens for today and future generations.

## 2. "Posting" Directive: key legislation for the construction industry

The "Posting" Directive (96/71/EC) is a centrepiece of EU legislation for a sector such as construction, which is characterised, amongst others, by the high level of mobility of its workforce. Its application in all the Member States plays a crucial role in preventing social dumping and therefore in the competitiveness of our industry. Mobility is vital to addressing labour shortages and in the Internal Market companies should not be confronted with unnecessary barriers when providing services using posted workers. At the same time, host countries must be able to use proportionate control measures to fight illegal employment and social dumping, whilst ensuring the protection of workers' interests.

Several judgments of the European Court of Justice (ECJ), namely the "Laval" (C-341/2005), "Rüffert" (C-346/2006) and "Luxembourg" (C-319/2006) cases have led MEPs and representatives of the trade unions to question the efficiency of the "Posting" Directive and to lobby for its modification.

On this matter FIEC's position has remained unchanged: the "Posting" Directive does not need to be amended. It is a well balanced instrument for achieving the objectives of cross border service provision, including fair competition and the social protection of workers temporarily posted in another Member State. FIEC considers that the

judgments referred to above point to the incomplete or incorrect implementation or application of the Directive by the Member States concerned.

In a recommendation published in March 2008, the European Commission expressed similar views as FIEC and indicated that urgent action is required to remedy shortcomings in the implementation, application and enforcement of the legislation pertaining to the posting of workers, by reinforcing administrative cooperation between the Member States, through using more effective systems of exchange of information, improving access to information and promoting exchange of information and on best practice.

In this respect, an EU "Group of experts", in which FIEC is represented by its Honorary President Wilhelm Küchler, was set up and started working in March 2009 on the priorities highlighted by the European Commission.

Also with the objective of facilitating the practical application of the "Posting" Directive, FIEC and EFBWW have jointly developed a website ([www.posting-workers.eu](http://www.posting-workers.eu)), co-financed by the European Commission (DG EMPL), which has been freely accessible on the internet since 1/10/2009.



The aim of this website is not to collect general information which may be available from other sources, but to focus on those aspects that specifically relate to posting of workers in the construction sector. It should therefore act as an innovative, important and useful instrument for ensuring an efficient practical application of the "Posting" Directive by providing a centralised source of information, available both for enterprises and

workers, on the specific provisions in force in all the EU Member States.

The website presents, in a clear and user friendly manner, information on rules regarding working conditions in the construction industry (minimum wages, working time, health and safety, etc.) applicable in the various Member States of the European Union. In other words, an enterprise or a worker intending to work on a temporary basis in another Member State will be able to find all the relevant information (available in English and in most cases also in the national languages) on this website at the click of a button, together with links to national web sites on which further information can be found.

Its main added value lies in the fact that the information is provided by the national social partners themselves and that it will be updated on a regular basis.

### 3. Self-employment and bogus self-employment : joint FIEC-EFBWW declaration

There have always been self-employed workers in the construction industry (craftsmen in particular are often self-employed), however, during the last few years an increase in this form of working relationship has been observed across the EU.

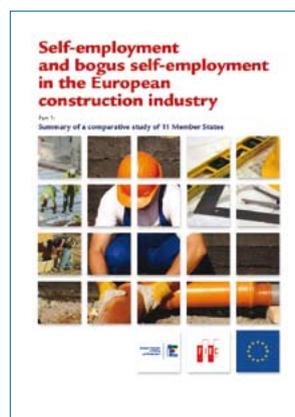
The distinction between self-employed workers and employees has significant fiscal, social and economic consequences, in particular in a labour intensive sector such as construction. Self-employed workers work under their own professional responsibility; the method of payment of taxes and social security contributions differ between self-employed workers and employees; some working conditions (wages, working time, rest periods etc...) governed by collective agreements or by specific legislative, administrative and regulatory provisions are not applicable to self-employed workers.

The appearance of these new forms of employment may at some stage have contributed to the growing flexibility of the labour market, but it has also led to a growing number of workers with an unclear employment status and who are therefore outside

the scope of protection normally associated with a traditional employment relationship.

FIEC and EFBWW therefore decided to launch a study, with the financial support of the European Commission (DG EMPL), aiming at comparing how several member states define self-employment status and how they tackle the problem of bogus self-employment, i.e. workers who to the outside world behave as employed, although they are registered as self-employed.

One of the main outcomes of the study is that the broad character and the lack of precision in legislation often require courts to complete the existing statutory definitions, through the use of tests or on a case by case factual analysis, aimed at distinguishing between a direct employment and self-employment status based on objective criteria, which however increase complexity and uncertainty. Furthermore, forms of bogus self-employment have gradually become more and more sophisticated, therefore increasingly difficult to identify and national measures for combating this kind of fraud are usually tailored nationally and are difficult to apply in a trans-national context.



In February 2010 FIEC and EFBWW organised a conference in Prague (CZ) in order to present and discuss this study with the stakeholders concerned. At the end of this conference a document presenting joint conclusions and

recommendations was adopted and signed by the presidents of both organisations.

In this joint document FIEC and EFBWW:

- recognise the added value of genuine self-employment, the development of which within the construction industry is due, among others factors, to the desire for entrepreneurship and self-determination, the expectation of a higher net income even at the price of a lower level of social protection;
- reject all forms of undeclared labour, bogus self-employment included, which are illegal and have serious social, economic and health and safety consequences for the entire sector, both at the macro level (e.g. fiscal and social security) and between individual workers and their employers;
- consider that a set of common European criteria would provide a significant improvement of legal clarity to enterprises and workers. Such criteria would provide guidelines for determining the nature of the employment status, independently of the legitimate wish of the parties, taking into account the realities of the construction industry; Any initiative in this area should take into account the subsidiarity principle;
- express criticism of the E101 form, which can be easily falsified, which can contain errors and which are often unchecked, and underline that the determination of a worker's employment status should be the legal responsibility of the public authorities in the country in which the works are carried out;
- underline that in order to combat bogus self-employment, a coherent policy is required, comprising a mix of preventive and punitive measures, to promote the protection of workers as well as the competitiveness of the genuine self-employed in the long term.

FIEC and EFBWW also recognise that bogus self-employment is not visible and that in order to root out malpractice, there is a clear need to put sector specific measures in place. One of the possible practical measures identified, in order to facilitate transparency on construction sites, could take the form of a Social ID-card or, according to national practice, any other alternative instrument providing a similar level of transparency. Such instruments would facilitate the verification of a worker's employment

status and help ascertain whether fiscal and social requirements have been respected.

The Social Partners consider that everyone on a building site must be in possession of a personal recognition document, issued by the competent national authority or by the concerned body. Such a document should at least allow the identification of the person concerned, his/her employment status (directly employed or self-employed) and the contact information of the issuing national authority or the concerned body.

Further discussion will take place in order to examine the possibility of introducing such an instrument within the EU

**Here are just a few examples of what the Social Commission has delivered over the past year, on its own or jointly with EFBWW (European Federation of Building and Wood Workers) within the sectoral European social dialogue:**

- Finalisation of the "Posting" website ([www.posting-workers.eu](http://www.posting-workers.eu)) which presents in a clear and user friendly manner, information on the applicable working conditions in the construction industry in the various Member States of the European Union.
- Participation in the Committee of Experts on "Posting" set up by the European Commission
- Participation in the BusinessEurope/ETUC "Joint analysis of the ECJ rulings in the Viking, Laval, Ruffert and Luxembourg cases.
- Partner of the OSHA (European Agency for Safety and health at work) campaign on "risk assessment".
- Study on risks and opportunities of nano-products/materials in the construction industry.
- Study and joint recommendations with EFBWW on "Self-employment and bogus self-employment in the construction industry".
- Joint appeal with EFBWW on "Emerging from the Crisis: Fostering growth and jobs for a sustainable construction industry".
- Active participation in projects aiming at facilitating the transparency and the recognition of qualifications.

### Position Papers

FIEC position on the Draft "Bauer Report" of the European Parliament on the Proposal for a Directive amending Directive 2002/15/EC on the organisation of the working time of persons performing mobile road transport activities (COM(2008)650) (10/3/2010)

EFBWW-FIEC Joint conclusions and recommendations of the European social partners in the construction industry on self-employment and bogus self-employment (5/2/2010)

EFBWW-FIEC Joint appeal - Emerging from the Crisis : Fostering growth and jobs for a sustainable construction industry (29/1/2010)

EFBWW-FIEC Declaration on "The global economic crisis and its consequences for the European construction industry (30/6/2009)

### Press Releases

FIEC-EFBWW press release : Tackling short term needs with an eye to the future through sustainable investment in construction (9/2/2010)

FIEC Press Release - Posting construction workers in Europe: know your rights and obligations (25/9/2009)

FIEC-EFBWW letter to Commissioner Barrot on a proposed Directive to facilitate the employment of third-country nationals for seasonal activities (23/6/2009)

### Answer to public consultation

FIEC comments on the Draft Outline of the future Communication on the European Sectoral Social Dialogue (11/1/2010)

### Initiatives financially supported by the European Community

FIEC-EFBWW report "Nano-products in the European Construction Industry – State of the Art 2009" (1/11/2009)

FIEC-EFBWW comparative study on Self employment and bogus self employment in the European construction industry (30/4/2009)

*All these documents are available on FIEC website [www.fiec.eu](http://www.fiec.eu)*

## Joint conclusions and recommendations of the European social partners in the construction industry on self-employment and bogus self-employment

29/1/2010 (The following are extracts. The full version can be found on the FIEC web site : [www.fiec.eu](http://www.fiec.eu))

### I. EFBWW and FIEC recognise the added value of genuine self-employment

6. EFBWW and FIEC recognise that unfair competition and social fraud are unacceptable in the construction industry and demand that these phenomena are eradicated, using a combination of prevention, information and enforcement.
7. EFBWW and FIEC recognise that genuine self-employment requires specific legal, professional, financial, regulatory and administrative knowledge and skills, as well as commercial risk taking. Allowing persons to be registered as self-employed without this knowledge, skills and acceptance creates unfair competition between genuine self-employed and bogus self-employed, and distorts the construction market.

### II. EFBWW and FIEC reject all forms of undeclared labour, bogus self-employment included

9. EFBWW and FIEC agree that there are very harmful consequences to 'undeclared labour' in the construction sector. Undeclared labour practices, which include bogus self-employment, are illegal and have serious social, economic and health and safety consequences for the entire sector, both at the macro level (e.g. fiscal and social security) and at the level of individual workers and their employers.

### IV. Member State competence for determining the employment relationship

EFBWW and FIEC reject the argument of the ECJ (cases C-178/97 and C-2/05) that the information contained in an E101 certificate determines the employment status. The determination of the employment status should be the legal responsibility of the country in which the work is done, which must decide whether subordination/control is apparent from the working circumstances and the contractual terms. EFBWW and FIEC call upon the EU-legislator to clarify this immediately.

### VI. Combating bogus self-employment

18. In order to combat bogus self-employment, a coherent policy is required, comprising a mix of preventive and punitive measures, which provide the protection of workers as well as the competitiveness of the genuine self-employed in the long term.

### VII. Preventive measures

#### A. Need for awareness raising campaigns

20. The European social partners recognise the need for organising awareness raising campaigns in the industry in all the Member States. Such campaigns are necessary in order to inform the various concerned parties and to show them the consequences and risks of bogus self-employment.

#### B. Public procurement

21. In public procurement, the awarding authorities should favour the award of public contracts to the "economically most advantageous tender" (EMAT), rather than to the lowest bidder.

#### C. Need for an improved cooperation between administrations

22. In order to tackle bogus self-employment efficiently, it is absolutely essential to improve cooperation among the national authorities and between authorities in different countries (social security, insurance, tax, investigation and supervisory bodies).

### IX. Facilitate transparency on construction sites

28. The European social partners recognise that bogus self-employment is not visible. In order to root out malpractices there is a clear need to put sector specific measures in place, in order to facilitate transparency on construction sites. Such measures could take the form of a Social ID-card or, according to national practices, of any other alternative instrument providing a similar level of transparency. Such instruments would facilitate the verification of whether the information on the employment status contained in such an instrument corresponds with the facts.
29. EFBWW and FIEC propose that everyone on a building site must be in possession of a personal recognition document, issued by the competent national authority or by the concerned body. Such a document should at least allow the identification of the person concerned, his/her employment status (directly employed or self-employed) and the contact information of the issuing national authority or the concerned body.

## **EFBWW-FIEC Joint Appeal – Emerging from the Crisis: Fostering growth and jobs for a sustainable construction industry**

29/1/2010 (*The following are extracts. The full version can be found on the FIEC web site : [www.fiec.eu](http://www.fiec.eu)*)

### **4. Investing in sustainability: a leverage for emerging from the crisis**

Given the significant role of the construction industry in the EU economy (10.4% of EU GDP in 2008), in employment (7.6% of total EU employment) and in climate change policies, securing its sustainable long term development in full respect of fundamental social rights together with targeted shorter term measures are essential levers for rapid recovery from the current global economic crisis, for meeting the EU employment and environmental strategies and for ensuring a sustainable long term development of the EU economy.

FIEC and EFBWW therefore urge the governments of the Member States and EU authorities to rapidly develop targeted policies and secure the necessary resources for priority investments in the following areas :

#### **a) Towards focused sustainable and energy-saving investments**

Public development programmes for investment in energy- and carbon efficient buildings and technologies (e.g. energy-saving renovation of buildings and the use of energy efficient heating systems together with the progressive rolling out of smart building technologies) will play a significant role in the future EU-ambitions.

The EFBWW and FIEC consider that current and future European and national investment programmes should have a clear focus on:

- 1) increasing green public infrastructure schemes (trams, railways, inland waterways, bicycle trails, eco-districts and eco-cities) and use of renewable energies (solar energy and wind power plants, generating geothermal power, tidal power stations, combined heat and power, energy grids, carbon capture and storage projects, etc.);
- 2) upgrading energy efficiency and renovation of private and public buildings on a large scale with a special focus on the energy efficient renovation of existing buildings, better insulation, waste management, more energy efficient heating and lighting, etc.;

#### **b) Stepping up vocational and professional training facilities for the construction industry**

The construction sector needs to increase and adapt its vocational training facilities in order to face the challenge of sustainability and climate change mitigation. This will involve a transition in planning, production and management of building sites and a boost in vocational training of construction site operators.

The EFBWW and FIEC therefore appeal for a substantial increase in efforts for sector specific vocational and professional training facilities at Member State and EU level, to help ensure, on the one hand that workers have the required skills to carry out energy efficiency upgrades in the housing sector whilst, on the other hand, to facilitate labour market transition and the strengthening of construction workers' skills.

#### **c) Stepping up EU investments in R&D and innovation**

Clean technologies are already available to help foster a low carbon future but they need to be further improved and deployed on a wider scale. Factors such as their cost, current low levels of deployment, the restrictive application of patents and lack of political will are responsible for the poor diffusion of technological innovations. National governments as well as companies must increase efforts in research and development in the construction industry and on renewable energy, renewable materials and energy efficient facilities management.

#### **d) Ensuring access to credit**

At the same time building companies are confronted with difficulties in access to financing, which is slowing down investment in the construction industry. The EFBWW and FIEC therefore appeals to the Commission to clearly issue a financial policy which stimulates a sustainable economic growth. EFBWW and FIEC definitely advocate a transparent and reliable mortgage market, which protects consumers and companies by eliminating large-scale fluctuations and adverse impacts on the market.

The EU-climate change agenda is a very ambitious programme, which will not be achieved without the required funding. The EFBWW and FIEC therefore urge the EU and national authorities to channel the resources available into investments which ensure a long term sustainable development of the EU economy rather than in short term subsidies.



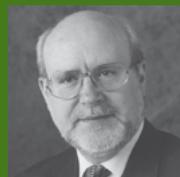
Zdenek Klos, CZ

**President**

*Frank Faraday, FIEC  
Rapporteur*

Sub-Commission TEC-1

**"Directives, Standards  
and Quality Assurance"**



Rob Lenaers, BE

**Chairman**

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Sub-Commission TEC-3

**"Environment"**



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Sub-Commission TEC-2

**"Research, Development  
and Innovation"**



Bernard Raspaud, FR

**Chairman**

*André Colson, FR  
Rapporteur*

Sub-Commission TEC-4

**"Plant and Equipment"**



José Ramón Yannone, ES

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*Ricardo Cortes, ES  
Rapporteur*

## 1. Introduction

The activities of the Technical Commission relate to **four** principal themes:

- The environmental pillar of sustainable construction.
- The completion of the internal market in construction products.
- The promotion of research and development.
- Issues linked to construction plant and equipment.

The Commission continues with its practice of holding one plenary meeting each year, with the sub-commissions holding meetings as and when necessary.

## 2. Environmental pillar of sustainable construction

**Sustainability is at the core of the work of FIEC's Technical Commission. Independently of other initiatives promoted through standardisation or through Commission initiatives, FIEC is defining its own vision of sustainability to ensure that construction enterprises are at the forefront of the drive towards sustainability and can fully grasp the market opportunities that will be created through new drivers for change in the industry such as adaptation to climate change and the challenge of securing Europe's future energy supply.**

### CEN/TC 350 for "Sustainability of Construction Works"

The major venue for concerns linked to the environmental performance of buildings has been within the European Committee for Standardisation (CEN) and more particularly within **CEN/TC 350 for "Sustainability of Construction Works"**. The suite of standards, when implemented, will provide a method for evaluating a building over its entire life-cycle. During 2008, the work of the TC in developing life cycle assessment criteria was extended from covering simply environmental considerations to social and economic aspects. FIEC continues to monitor the work of this committee which expects the first standards to be published during the course of 2010.

The ongoing work in CEN has triggered debate as to how labelling schemes for buildings can be used to support or complement standards once adopted or indeed how labels, using other indicators that those being drawn up in CEN, can be useful in promoting a new generation of green buildings. In this regard, FIEC believes that demand for such labels should be a predominantly market driven process and represents a huge opportunity for building firms.

**Lead Market Initiative** (see also the report of the ECO Commission, p.19)

At the end of 2007, The European Commission launched the "**Lead Market Initiative**", aimed at promoting the innovation and the development of large-scale markets with international potential. This horizontal policy concerns six key markets of which one is **sustainable construction**. In the roadmap prepared for the Commission by the "Taskforce on Sustainable Construction," a number of policy instruments have been identified in order to take the Lead Market Initiative forward. As far as matters linked to FIEC's Technical Commission are concerned, these include:

- Action to assess **national building regulations** in order to adopt a performance based approach.
- Strengthening the **Energy Performance of Buildings Directive** to include "performance targets and evolving standards for new construction.
- Expand the scope of "**Eurocodes**" in order to integrate sustainability aspects into construction design.

A steering group and working groups dealing with different aspects of the Initiative have been established by the European Commission. In a recent development, the Commission has awarded a contract for a study to **screen national regulations** and standards linked to construction and how they deal with pre-defined aspects of sustainability. FIEC has cooperated on the study the results of which are expected to feed a future legislative package from the Commission aimed at boosting the competitiveness of the construction industry.

The role of **Eurocodes** as a potential contributor to sustainability has also been brought into the spotlight. The Commission will, by summer 2010, prepare a new mandate to CEN on the possibilities of expanding the Eurocodes principles. Given the structural standards' perceived complexity among

practitioners and the lack of experience in the usage of the codes, FIEC has appealed for a pause in the development of new Eurocode parts in order to give sufficient time for experience in the field to be gathered. In order to better articulate its message, FIEC is preparing a position paper on this issue.

### 3. Energy Efficiency and Climate Change

The “Climate Change Package” adopted by the EU Heads of State at the end of 2008 with the highly publicized but ambitious “20 20 20” goals; i.e. a 20% increase in the use of renewable energy, 20% reduction in CO<sub>2</sub> emissions and a 20% gain in energy efficiency is now in the process of implementation. Within the Climate Change Package FIEC has been specifically monitoring efforts to raise energy efficiency. The EU’s goals for reducing emissions of carbon and other GHGs are the most ambitious in the world and cast Europe as a leader during the Copenhagen UN Climate Change Summit which took place in December 2009. FIEC gave its active support to the European Commission and the Member States in pressing for a legally binding global agreement for bringing down greenhouse gas emissions through an **appeal** made in the run-up to the summit (see annex). The appeal articulates how the construction sector can contribute in the fight to mitigate climate change and what regulatory framework will help the industry in bringing about the low-carbon society.

#### Energy Efficiency

Energy efficiency has been the focus of much attention from the European Commission in recent years and a central tenet of this policy has been the Energy Efficiency Action Plan that was launched in October 2006. “The Action Plan outlines a framework of policies and measures designed to realise the estimated savings potential of over 20 % of the EU’s annual primary energy consumption by 2020”. As far as buildings are concerned, the potential for gains in efficiency are, according to Commission figures, around 25-30%. At the time of writing, the new Commissioner for Energy, Mr Günther Oettinger has announced he plans to publish a revised Energy Efficiency Action Plan in the latter part of this year. FIEC hopes to see a revised report that will set down a quantifiable financial package available for action in the building sector. In order to prepare a unified response from the entire

sector, FIEC is working together in a taskforce with the ACE (architects) and other representatives from organizations such as CECODHAS (social housing), manufacturers of insulation material and NGOs such as WWF.

#### Energy Performance of Buildings Directive Recast

In November 2008, as part of the overall Second Strategic Energy Review, the Commission unveiled its proposal for a recast of the Energy Performance of Buildings Directive (EPBD), that was originally adopted in 2002. The current Directive has been difficult to implement, in large part, through a lack of trained energy certifiers. One of the major innovations of the recast has been to bring down the threshold that applies to certification of existing buildings undergoing major renovations and which is currently set at 1000m<sup>2</sup>. One of the priorities behind the Commission proposal is moving towards low and zero energy buildings. The European Parliament and the Council have reached a political agreement that will need to be formalized over the course of the coming months.

FIEC supports bringing all buildings into the scope of the Directive and continues to emphasize that **the most cost-effective solution for securing gains in the energy efficiency of buildings is when they undergo major renovation**. FIEC therefore is satisfied that the text of the political agreement as it currently stands recognizes the need for a solid financial framework to encourage renovation works for energy efficiency especially in privately owned homes. In this regard, the role of **reduced VAT** as it is practiced in some countries cannot be underestimated. FIEC cautions however that in order to ensure the effectiveness of energy efficient renovation works, the use of experienced professionals should be encouraged. In this light, the application of a reduced rate of VAT to energy saving construction products **alone** should be ruled out as it would undermine the very aim of improving energy efficiency and would also promote undeclared work.

#### Energy Networks

FIEC has recently established a working group under the aegis of TEC-3 (Environment) to look at the challenge of establishing an integrated energy grid infrastructure.

#### 4. Commission proposal for a Construction Products Regulation COM(2008)311 of 23/5/2008

The Commission unveiled its proposed Construction Products Regulation on 23/5/2008. There are a number of points of concern to construction enterprises in this new regulation. These are:

Unlike the situation at present, the proposed legislation effectively enables the manufacturer to **declare performances** only for those "essential characteristics" of the product that are mandatory in the Member State where he wishes to market his product. By permitting the manufacturer to make available CE marked products on the single European market that are based on declarations of performance that contain information for one or only a few Member States, users will need to be more vigilant than ever in order to know whether the products meet the required performance. This may well generate an extra burden for contractors who, in some cases, will need to test products themselves to know its performance and whether and under which circumstances it can be used.

FIEC continues to hold the view that the Declaration of Performance and therefore CE marking should be obligatory when an essential characteristic of a product in relation to basic works' requirements is covered in the harmonized technical specification. This means that the Declaration of Performance should continue to make reference to all essential characteristics covered by the harmonised standard including the use of "No Performance Determined" (or NPd) to ease the burden of product testing.

Another point of concern as regards the reliability of the CE marking is the Commission's proposal for the creation of a Specific Technical Document (STD). As a result of intense lobbying from organisations claiming to act in the interests of micro and small and medium sized enterprises, the Commission has introduced a simplified procedure for micro-enterprises and for the non-series production of construction products. This procedure will enable a manufacturer to replace performance assessment (formerly referred to in the CPD in this context as "conformity assessment procedure") with a STD. Both FIEC, representing without discrimination the interests of both SMEs and larger firms, and CEPMC, the European Council of Producers of Materials for

Construction, have long been concerned that the use of such a facility by certain categories of enterprise would lower confidence in the CE marking and maintain that the appropriate place for deciding the level of, and procedure for conformity assessment should be set out in the texts of the relevant harmonized standards and should be set on the basis of the volume of production rather than the size of enterprise.

#### 5. CE Marking cross-referenced to websites

For some time, it has been the intention of certain product manufacturers, to put most, if not all, the information accompanying the CE marking on websites. FIEC has insisted that the **information called for by the CPD must continue to appear on the CE marking itself** (hardcopy) even if additional information (e.g. recommended fixing instructions) are cross referenced from the CE marking to a website. Since this is an issue of profound importance to both FIEC and CEPMC, it has been mutually decided that FIEC and CEPMC **should establish a dialogue on the matter with a view to finding common ground**.

Meanwhile, an adapted version of the ZA annex template that accompanies standards (in so far as their harmonised part is concerned) was put to the Standing Committee for Construction to make provision for information accompanying the CE marking to be made available via electronic means, notably through the use of websites. On 3/12/2007 this template was approved by the Standing Committee and was taken up by some technical committees in the European Committee for Standardisation (CEN). Subsequently the European Commission announced its decision to prevent the revised ZA annex from being adopted and has instructed CEN to amend all standards featuring the modified annex.

In the context of the future Construction Products Regulation, having the right information regarding a given product on hand on the construction site will be essential. FIEC has been campaigning to ensure that information - linked to regulatory CE marking - regarding the performance of a product continues to appear on the batch of building materials themselves or when more practical

is delivered in paper form with the product. Representatives of product manufacturers have been campaigning to replace such information with a unique identification code that would be linked to a database on the Internet. While FIEC believes that IT solutions have their place on the construction site, it cannot be the responsibility of product users who incorporate thousands of different products on site to search through information on the Internet to identify and know the declared performances of the product purchased. This would effectively transform the responsibility of the manufacturer to provide information to the user to actively search on databases and on websites.

A number of meetings have been held between CEPMC and FIEC on the issue with a view to reaching a common ground. While these discussions are ongoing, FIEC continues to maintain that:

- **the contractor or engineer must continue to receive all required information linked to the product on site without recourse to using the Internet** in order to identify the product and know the product delivered corresponds to what was ordered.

## 6. Standardisation Issues

### FIEC's vision of Standardisation:

As of the end of March 2009, building and civil engineering works represented the second largest sector in terms of the volume of documents published by the European Committee for Standardisation (CEN).

Given the significant share of construction in the volume of standards CEN produces both through construction product standards and through design standards such as the Eurocodes, it is vital that construction enterprises are aware of how standardisation affects their work. By the same token, it is also crucial that the voice of construction enterprises are heard in CEN Technical Committees (TCs). Construction enterprises are, for the most part, small and medium sized companies and have specific needs in the development of product standards. Their needs are very different to those of SME product manufacturers for example.

FIEC is currently in the process of finalising its "Principles for Standardisation" recalling that standardisation is not be an aim in itself but rather must respond to needs of the market. One of the key problems expressed by companies and especially SMEs is the way in which standards are written and the need to cross reference what can amount to dozens of standards to apply one correctly. In this regard some kind of guidance document for standards use describing how to apply test methods in a step by step manner could be of use, in particular, to SMEs.

FIEC is also involved with activities within CEN to improve the clarity and applicability of standards for small and medium sized enterprises.

### SME access to standardisation:

In the Council conclusions of September 2008 on Standardisation and Innovation, The Council of Ministers pointed, among other items, to the need to promote SME access to the standardisation process. The Council was responding to Commission Communication COM (2008) 133 "Towards an increased contribution from standardisation to innovation in Europe" published in March 2008.

Previously FIEC had expressed concern about the way in which increased funding aimed at improving the participation of SMEs in the standardisation process was allocated. These concerns were as follows:

- Funding does not currently represent value for money in the building sector.
- Money should not be disbursed to those organizations claiming to represent interests that are in fact conflicting (such as manufacturers and contractors).
- **Prior to making any further decisions about additional funding, the Commission should carry out a detailed and transparent consultation and analysis of the impact of funds already disbursed.**

Partly in response to such observations, the Commission commissioned a study on "SME Access to Standardisation" and at the same time investigated the effectiveness of the action undertaken by organisations receiving Commission funding for the promotion of SME interests in standardisation. FIEC was consulted on both studies

and this exercise contributed to the drafting of FIEC's own Principles for Standardisation.

One of the first results of this exercise is that one such organisation, the European Office of Crafts, Trades and Small and Medium sized Enterprises for Standardisation, NORMAPME, has contacted FIEC on several occasions, stressing FIEC's representativeness for construction SMEs and offering closer collaboration.

## 7. FIEC involvement in research activities

The on-going RTD framework programmes contain significant provisions in the field of energy, both in terms of energy efficiency and renewable technologies. More particularly the EU Commission's Executive Agency for Competitiveness and Innovation (EACI), previously known as the Intelligent Energy Executive Agency (IEEA) has allocated funding amounting to € 730 million over 7 years (2006-2013) aimed at the dissemination of energy technologies as well as training initiatives. In general FIEC involves itself in dissemination activities of research results.

FIEC is currently involved in the following research projects:

- **ChemXchange** project on chemical safety management for construction SMEs- (see "Implementing REACH in the construction industry").  
Website: [www.chemxchange.com](http://www.chemxchange.com)
- **Sunrise** project on promoting the uptake of photovoltaic installations in buildings. (see "Photovoltaic technology in buildings- Sunrise Project").  
Website: [www.pvsunrise.eu](http://www.pvsunrise.eu)
- **ASIEPI** project (*Assessment and Improvement of the EPBD Impact (for new buildings and building renovation,)*) covering technical aspects of implementation of the Energy Performance of Buildings Directive in the Member States through benchmarking and awareness raising. The project has secured funding under the European Commission's Intelligent Energy Europe (IEE) SAVE programme.  
Website: [www.asiepi.eu](http://www.asiepi.eu)
- **Cygnum** project: This research proposal will investigate a process for the manufacture of pre-insulated timber-frame wall panels, using

recycled materials. The results will provide low-cost panels which will enable greater accessibility to low-energy ecological housing, with a target U value of 0.16 or better. It will also maximise air tightness, thus minimising the natural air movement from outside to inside.

- **Mobi3con** will provide an inexpensive, robust handheld solution for easy 3D data management at the construction site that could save the sector/industry € 6.2bn annually Reduce design deviations in construction SMEs that cost an estimated € 2.8bn in annual maintenance. Support the growth of construction industry SMEs for 6.6% with 70% ROI.  
Website: <http://mobi3con.eii.ee>

## 8. The European Construction Technology Platform (ECTP)

The "Cooperation" work programme in FP7 may be expected to contribute to the implementation of the **Strategic Research Agenda (SRA)** of the ECTP. The real challenge here for the industry will be its success or otherwise in coming forward with RTD proposals to match the provisions of the SRA.

The ECTP was restructured in 2007 with a view to rendering the platform more simple and intelligible and to improve its internal communication. The representation of stakeholders and especially the role of the National Technology Platforms (NTPs) was reinforced and a new post of Secretary General created. The High Level Group (HLG), assisted by a new Executive Committee will remain the principal decision making body and will oversee implementation of the Strategy Research Agenda as approved in June 2007. The European Council for Construction Research, Development and Innovation (ECCREDI) has joined the HLG. While ECCREDI seeks to encourage innovation and research in the so called 'technology followers' which for a large part comprise SMEs, ECTP is more involved with assisting the construction access to funding at the EU level. Both FIEC and ECCREDI are members of the ECTP.

### Energy Efficient Buildings – Public Private Partnership (E2G PPP):

One of the key projects that the ECTP has sought to promote is the Energy Efficient Buildings – Joint Technology Initiative (or E2B JTI). The initiative,

announced by the ECTP at its conference in November 2006, is intended to become a large scale industry driven research programme that seeks to achieve the Commission's climate change goals by investing heavily in improving the energy performance of the built environment.

At the end of 2008 it was announced that the Commission would switch its support from the JTI to a **public private partnership** with a budget of € 1 billion (50/50 Commission funding/private funding); The E2B group has now created an association comprising building firms and research institutes that will be the main interlocutor with the Commission for research needs for construction in the field of energy efficiency.

FIEC through ECCREDI is involved with the work of this association.

## 9. The revision of the Waste Framework Directive

The Waste Framework Directive was adopted through a political agreement between the European Parliament and the Council in June 2008. FIEC had long campaigned for the removal from the scope of the directive of **"uncontaminated excavated materials"** which can be used in their natural state whether on the same **or another site**".

Regrettably the text of the adopted Directive does not exclude the transport of uncontaminated excavated material between sites from its scope thus continuing to impose burdens linked to waste and transport permits for contractors in many Member States. In this regard FIEC will now concentrate its efforts on the **"end of waste"** criteria which will be adopted over the coming years through the "comitology" procedure in order to ensure that the procedure for removing the waste definition from material is made as streamline as possible.

**In order to prepare FIEC's position for the drafting of such criteria, a temporary working group has been created within FIEC's Environment sub-commission.**

## 10. Implementing REACH in the construction industry

The "Registration, Evaluation and Authorisation of Chemicals" (**REACH**) Regulation entered into force on 1/6/2007 and is the most stringent legislation to date, covering the manufacture, import and placing on the market of substances used alone or in preparations and articles. REACH seeks to replace the piecemeal legislation that preceded its adoption. In future only substances that are registered by the importer or manufacturer will be permitted for use.

Pre-registration of substances under REACH ended on 1<sup>st</sup> December 2008 and many in the construction industry are looking to understand how this complex and far-reaching regulation will affect them as **downstream users of chemicals**.

### Construction workers as downstream users:

Both construction product manufacturers and professional users of such products are **downstream users**. It is important, however, to distinguish between producers of preparations in the process of making construction products (such as concrete and sealants), groups which interpretative documents refer to as **"formulators"**; the suppliers of those products and the so-called **"end users"**, professional users who incorporate products in construction works.

Under REACH such users of substances (whether alone or in preparations) are required to pass on and request information on the risks associated with specific intended uses of the product.

The main **obligations** incumbent on downstream users

- As downstream users, construction firms will need to ensure that their intended use of the product is covered in the **"Exposure Scenario"** attached to the Chemical Safety Report ("CSR"). If that use is not covered, it is their responsibility to inform their supplier and request the latter include that use in the scenario; failing this, the operator may need to draw up its own "CSR".

- Downstream users are required to inform their suppliers of any new information on hazards or flaws in the risk management measures provided in the "Exposure Scenarios".
- For some substances, usage may be subject to certain conditions granted in authorisation further up the supply chain.

**FIEC has been in favour of the REACH legislation from the outset**, as construction enterprises have often had insufficient information as to the hazardous properties of the substances they were handling, both from the point of view of the internal environment of buildings as well as from that of health and safety of workers. Nevertheless, for many contractors the question of their legal obligations under REACH has been the cause of a degree of confusion and concern. FIEC is therefore currently working towards a practical guide for contractors through a specific working group within FIEC's environment sub-commission.

#### **ChemXChange project – Helping SMEs implement REACH:**

An important initiative in this field is the "ChemXchange" project under the leadership of FIEC's Norwegian member federation EBA which has secured funding from the European Commission under the 7<sup>th</sup> Framework Programme (FP7) for research. This project is specifically aimed at SMEs and will offer the construction industry a tailor-made, low cost, fully digitalised system that centralises the collection and quality assurance of the required chemical information thus helping enterprises to meet their requirements under REACH. The project consortium will consist of 13 participants drawn from 5 European countries. FIEC is dissemination manager for the project.

## **11. Construction plant and equipment**

Sub-Commission TEC-4, established in 2006 and managed by FIEC's Spanish member federation SEOPAN, has been following 4 topics:

- The training and qualifications of machine operators;
- Information concerning European requirements for the erection of temporary installations;
- Impediments to the cross border movement of mechanical plant.
- Theft of equipment from construction sites.

Work on following up the results of the 2006 questionnaire concerning the **training and qualifications of machine operators** is still ongoing in cooperation with FIEC's Social Commission. Agreement in principle has, however, been reached as to the need for the mutual recognition of vocational qualifications of tower cranes and excavating machines.

Another questionnaire circulated in September 2007 to member federations addressed impediments to the **cross-border movement of equipment**. The responses received helped FIEC to request an introductory meeting with the European Commission on 25/11/2008 to discuss the problem. Further meetings are likely to follow as FIEC gathers together more practical examples of administrative obstacles that prevent contractors from transporting their own equipment across borders. In this FIEC will collaborate with the European Rental Association (ERA), which has carried out a similar study, with a view to sharing data and possible joint political action.

In another area, FIEC is also tackling the issue of theft from construction sites and is cooperating with rental associations such as ERA, ECED, the European Confederation of Equipment Producers as well as CECE, the Committee for European Construction Equipment to raise more awareness among law enforcement authorities across Europe to the continued problem of theft of construction equipment from construction sites.

**Here are just a few examples of what the Technical Commission has delivered over the past year:**

- Helped secure a reference to financial means and improved training in the political agreement to the recast Energy Performance of Buildings Directive.
- Issued its vision of standardisation in preparation of the overhaul of the European Standardisation System planned for later this year.
- Brought home the message how construction can help in contributing to the fight against climate change in the run up to the Copenhagen Climate Change Summit.
- Established a working group on the development of future energy infrastructure.
- Succeeded in winning recognition in the Council and the European Parliament on the need to ensure contractors are excluded from CE marking activities under the CPR.
- Effectively conveyed its message to the European Parliament and Council that information concerning regulated characteristics should remain on construction products and not simply be transferred to websites.

**Position Paper**

FIEC Position – Planned Revision of Directive 2002/91/EC on the Energy Performance of Buildings (EPBD) (30/9/2009)

**Press Releases**

FIEC Press Release – Standardisation of Support Services for Innovation Management – “FIEC says yes to innovation but no to increasing costs and burdens on enterprise” (20/1/2010)

FIEC Press Release – how Europe can show Leadership at Copenhagen – FIEC’s Climate Change Action Appeal (7/12/2009)

FIEC Press Release – Recast energy performance of buildings directive – FIEC welcomes political agreement between European Parliament and Council (24/11/2009)

FIEC Press Release – Commission Proposal for Construction Products Regulation: a step in the right direction, but more is needed (9/11/2009)

**Answer to public consultations**

FIEC submitted contribution on EC consultation on revision of energy efficiency action plan (31/7/2009)

**Other**

FIEC Principles for Standardisation (2/11/2009)

*All these documents are available on FIEC website [www.fiec.eu](http://www.fiec.eu)*

## FIEC PRESS RELEASE – How Europe can show Leadership at Copenhagen FIEC's Climate Change Action Appeal

7/12/2009 (The following are extracts. The full version can be found on the FIEC web site : [www.fiec.eu](http://www.fiec.eu))

Scientific models are now nearly unanimous in indicating that, unless urgent remedial action is taken, average global temperatures will increase by as much as +4-6°C by 2050, leading to the melting of the polar ice caps and mountain glaciers, rising sea levels with the threat to low-lying countries as well as the prospect of extinction to many of the Earth's species.

**It is therefore crucial that every effort be taken to limit global warming to beneath +2°C on pre-industrial levels through a binding international agreement to reduce CO<sub>2</sub> emissions at the end of the UN Summit in Copenhagen.**

The European Union has set itself the goal of bringing down greenhouse gases by 30% by 2020 in the framework of an international agreement at Copenhagen and is already committed to a total reduction of 20% by 2020 under the EU's own Climate Change Package passed at the end of last year. **The European construction industry, from the craftsmen through to the global players, stands ready to contribute to helping Europe meet its targets and fight the effects of climate change and to construct a new sustainable built environment that will help bring down man made emissions of carbon and other climate changing gases.**

### Buildings and Energy Efficiency

- Europe must lead by example: the EU wide 20% target for an increase in energy efficiency must be made binding. Member States should then seize upon the potential of Europe's buildings in order to raise energy efficiency at zero economic cost.
- Increased funding should therefore be channelled into energy efficiency with the objective of leveraging private investment into projects in both the new and existing built environment.
- Buildings account for one third of all greenhouse gas emissions. In order to boost energy efficiency, FIEC urges Member States to ensure regulations on thermal efficiency are set at levels that will lead to a tangible reduction in buildings' primary energy demand. Such regulations should apply to all buildings, both new and existing and should be backed by comprehensive and long lasting fiscal incentives.

### Fostering a Truly Sustainable Market

- FIEC calls for public procurement rules that facilitate the use of variants and that truly foster sustainability through the use of the economically most advantageous tender (EMAT).

- Enterprise and innovation are the most effective way of bringing about sustainability and reducing emissions of climate changing gases. FIEC therefore believes the Lead Market Initiative for Sustainable Construction, should be refocused on innovation within the construction sector. Only with the right framework can Europe be a global leader in sustainability.
- Together with professional bodies, Member States and the EU must make large scale investment in training in the techniques linked to energy efficiency and the installation of renewable energy.

### Sustainable Infrastructure: paving the way for Low-Carbon Communities

- The sustainable usage of natural resources is only possible with well planned and efficient infrastructure.
- The integration of low carbon sources of energy onto the grid requires massive investment in infrastructure. The EU, Member States together with the transmission and distribution operators must provide added resources to grid integration and smart grid systems if the full potential of renewable energy sources is to be met.
- European transport infrastructure also has a key role to play in putting Europe on a path towards sustainable development. Investment here is needed to ensure that public and private transport becomes more sustainable.

### Getting Europe's House in Order: the right approach to policy making

- FIEC calls on the European Commission to adopt a more coherent and coordinated approach to policy making. Initiatives to promote sustainability from different Directorate Generals should be effectively coordinated.

**Construction has always adapted to changes in mankind's circumstances. The challenge of addressing climate change is no different and the European construction industry will meet it with its unparalleled expertise and knowledge. Nevertheless the right regulatory and financial conditions are needed in order to transform the market away from high energy intensity to low carbon. Just like the challenge of reaching a global agreement in Copenhagen, a high level of political will and the corresponding funding will be needed to bring about a permanent change in how we approach our built environment.**

## World Standards Day 2009: FIEC's Principles for Standardisation European Standardisation: getting the approach right

29/10/2009 (The following are extracts. The full version can be found on the FIEC web site : [www.fiec.eu](http://www.fiec.eu))

The construction industry represents over 10% of the EU's GDP and a preponderate part of the standardisation work in the technical committees of the European Committee for Standardisation (CEN). FIEC, as CEN's first associate member and as the only representative of all sizes of construction enterprise, believes the standardisation process should be to the benefit of all industry actors.

Unlike other sectors, given the long-term assets of construction works, innovation in the construction sector needs to be assessed for its durability and compatibility before standardization, taking into consideration the needs of all the trades involved, can take place.

In most cases, FIEC opposes European standardisation of the construction process as it is either simply a collection of national practices or too vague to be of any value as it seeks to be applicable to all national practices.

### Market Relevance of standards:

1. Standardisation is not an aim in itself but is expected to respond to the needs of the market. Confidence in the standardization system and in standards themselves can be reinforced by better screening new proposals for standardization work in order to prevent an excessive number of standards causing undue confusion and creating extra burdens for those who must apply them.

### Access to the process:

2. FIEC believes that standardisation should, wherever possible, be an industry driven, bottom up process involving parties that have the detailed technical knowledge required to make a valuable contribution.
3. It is essential that standards reflect the state of the art.
5. Before new work items are adopted, CEN should carry out a full impact assessment as to the relevance of the proposed item and give sufficient time for **all concerned actors** to make their views known, particularly in the case of SMEs. Furthermore, during enquiry phase, and regardless of the procedure used, consultation on all drafts should leave ample time for all concerned stakeholders to consult and indicate their position.

6. In the understanding that European standardization is based on representation of national delegates, defending national points of view based on national consultation organized by national standardization bodies, in technical committees of the European Committee for Standardization (CEN), the make-up of national mirror committees should reflect the full range of stakeholders, including users. Work on drawing up standards should not only reflect the interests of those who have a direct financial stake in the standard's adoption.
7. Standards written in support of legislation such as the Construction Products Directive should be written in such a way as to better take into account the production and quality management methods used by craftsmen and SMEs. Scientifically and technically substantiated solutions should be incorporated in standards preventing or minimizing the need for evaluation (testing, calculation).
8. It is unacceptable that publically funded organizations claim to represent, for example, both manufacturers and users of construction products when these interests are clearly different.
10. In order for standards to meet societal needs, public funding of pre-normative and co-normative research should allow all interested parties, especially SMEs, to collaborate in standardization activities.

### Usability of Standards and access to adopted Standards:

1. Where possible the language of standards should be made clear.
2. In many cases, easy to understand and affordable guidelines explaining finished standards can be useful to practitioners in helping them to apply the standard.
3. Free abstracts of adopted standards should be made available by national standards bodies.



Frank Dupré, DE

**The SME-Envoy**

*Ulrich Paetzold, FIEC  
Rapporteur*

### Micro, small, medium-sized and larger firms

The European construction industry is overwhelmingly made up of SMEs and family-owned businesses. This reality is reflected in the membership of FIEC's member federations. Through its membership base, FIEC represents, without any discrimination, all sizes of construction firm ranging from micro, small and medium-sized firms to larger and very large firms. The strength of FIEC's initiatives and positions are rooted in the fact that they are based on the views and experience of such a wide variety of enterprises.

In addition to the general consideration given to the interests of SMEs in each separate issue addressed by FIEC's commissions, sub-commissions and working groups, the FIEC SME Envoy double-checks that no FIEC position paper or action contains elements which would be contrary to the interests of SMEs and family owned businesses.

As a supplement to the general reference to the other chapters of this Annual Report, this chapter will report on two issues which are high on the agenda of the European institutions and in which FIEC is also involved:

### SMEs and doing business abroad

Following up on the high level stakeholder conference on this issue, hosted by Commissioner Ashton (ex Trade) and former Vice-President Verheugen (ex Enterprise) and focusing on the highly successful support services offered by the EEN (European Enterprise Network of which FIEC is an associate member), the successor of both the "Euro-Info-Centre Network" and the "Innovation

Relay Centres Network", FIEC has continued to work on facilitating cross-border activity and cooperation between SMEs and craftsmen, in particular, together with EFBWW, FIEC's trade union counterpart as Social Partner in the Sectoral Social Dialogue, on the publication of a dedicated website showing the obligations to be respected when posting workers in another EU Member State ([www.posting-workers.eu](http://www.posting-workers.eu))

According to former Commissioner Verheugen, economic developments clearly show that large enterprises are less able to react quickly to changes in the economic cycle, whereas SMEs have all the potential and innovative forces to create numerous jobs. Therefore, the principal aim of the EEN is to foster these innovative forces, complementing the Commission's efforts to simplify administrative requirements and improve legislation.

On 16/12/2009, the European Economic and Social Committee's Plenary adopted the own initiative opinion (CCMI/064) "How to support SMEs in adapting to global market changes" drafted by the "Advisory Committee on Industrial Change", CCMI and for which the FIEC Director General was the "co-rapporteur". This report is available, in all EU languages on the EESC website ([www.eesc.europa.eu](http://www.eesc.europa.eu)).



Ricardo Gomes, PT

President

*Maria Angeles Asenjo, ES  
Rapporteur*

In 2009 the FIEC MEDA Vice-Presidency continued its task of informing member federations on important issues related to the Euro-Mediterranean Partnership. These include the following:

The “**Union for the Mediterranean**” was launched in July 2008 with the aim of giving a fresh impulse to the Barcelona Process inaugurated in 1995, by raising the importance of the strategic relationship between the EU and its southern neighbours, increasing the relationship's visibility to its citizens and identifying six priority projects:

- De-polluting the Mediterranean Sea relationship with its Mediterranean partners
- Establishing maritime and land highways
- Civil protection initiatives
- Renewable energy projects including the “Mediterranean solar plan”
- The inauguration of the Euro-Mediterranean University in Slovenia
- The Mediterranean Business Development Initiative focusing on micro, small and medium-sized enterprises

On the eve of the first anniversary of the launch of the Union for the Mediterranean, the European Commission announced an additional contribution of EUR 72 million for 2009-2010 to the priority projects. With that contribution, the total community budget amounts to EUR 90 million to date.

- In April 2009, the **European Commission** presented its annual Progress Reports analyzing the reform achievements made by countries within the **European Neighborhood Policy (ENP)** and identifying those areas where further efforts are needed.

- On 9 December 2009, the **8<sup>th</sup> Euromed Ministerial Trade Conference** was held in Brussels. The conclusions referred to the global economic and financial situation, the importance of strengthening dialogue amongst Southern Mediterranean countries, the state of play in establishing the Euro-Mediterranean Free Trade Area, among other items.
- The **European Parliament** adopted in February resolutions on the **European Neighborhood and Partnership Instrument (ENPI)** and on the **Union for the Mediterranean**. Additionally, in November the European Parliament approved a resolution in relation the **Euro-Mediterranean Economic and Trade Partnership** ahead of the 8<sup>th</sup> Euromed Trade Ministerial Conference.
- As usual, other themes dealt with by this Vice-Presidency are the **extension of the major trans-European transport networks to the neighboring countries, EuropeAid policy, European Investment Bank (EIB) support through the Facility for the Euro Mediterranean Investment and Partnership (FEMIP)**, publications and events of relevance.
- FIEC's Italian member federations, ANCE and AGI, together with the Italian Ministry of Foreign Affairs, will organize a conference with the title “Rebuilding the Mediterranean”, which will address many issues concerning MEDA and related infrastructure issues.
- In order to keep member federations informed on the main aspects of the Euro-Mediterranean Partnership, several **MEDA newsletters** are available on the FIEC website.



President

*Frank Kehlenbach, EIC  
Rapporteur*

### Joint FIEC/EIC Working Group "Ethics"

For a number of years, various international institutions, e.g. the World Bank Group, the Organisation for Economic Cooperation and Development (OECD) and the European Union have rightly been focusing a large amount of attention on issues such as "Good Governance" and "Capacity-Building" in developing countries, and they are particularly concerned with corruption. Yet efforts to curb corruption have intensified not only beyond the borders of the European Union, but also within the EU Member States and at EU level over the past few years. Furthermore, some civil society organisations have singled out the construction industry as a sector which, according to their perception, is particularly prone to unethical business practices.

Against this background, the European construction industry, represented through FIEC and EIC, have identified a need for our sector to respond constructively with a policy statement to the various misconceptions and simplistic policy statements which unjustifiably cast a bad light on the construction sector in general and which neither acknowledge the growing efforts of many construction companies to implement policies aimed at stamping out corruption within the corporate ambit nor the fact that they themselves have been often the victim of extortion and other types of unethical requests.

This is why the FIEC Steering Committee and the EIC Board have decided to set up a Joint FIEC/EIC Working Group on "Ethics" in order to define and draft a policy statement which would enable both federations to present the view of the European construction industry in the political debate. The

group was given the task to produce a document which would be valid for the large stock-listed companies as well as for small and medium-sized enterprises (SMEs). In addition, the policy paper should address both the home market and activities abroad, and it should be fit for being disseminated internally, i.e. within FIEC and EIC Member Federations, as well as to the outside world, i.e. policy-makers on the EU and World Bank level, the EU Member States as well as to NGOs and the public at large.

The joint statement makes it clear that FIEC and EIC strongly oppose corruption in its diverse forms as an unacceptable practice in national and international business transactions. Not only does it raise moral and political concerns, undermines good governance and distorts international competition, it also has negative effects on business, since it adversely affects the quality of works, economic efficiency and potentially damages the image and reputation of the whole construction industry. At the same time, FIEC and EIC expect the public sector to complement private sector initiatives to fight corruption by closing loopholes that allow or even encourage unethical behaviour on the "demand side", in particular during the tender and the project delivery phases. Evoking the adage that *"it takes two to tango"*, the joint statement concludes with concrete recommendations to all parties involved in the construction process which are invited to act simultaneously within their sphere of influence in order to make progress on this important issue.

In many discussions with World Bank officials, European parliamentarians, the European Commission and other organisations active in the field of combatting corruption, the joint FIEC/EIC statement has been highly appreciated for its sound analysis and constructive recommendations for preventive measures. However, one of the main problems repeatedly expressed is the difficulty to include governments, both donors and beneficiaries, in this responsibility for preventive action. This is the more regrettable, as the "two to tango" principle is unimaginable without active involvement of government officials. Much remains to be done and FIEC/ EIC will continue to strive for ethical and sustainable construction worldwide.



Michel Démarre, FR

President



Frank Kehlenbach, EIC

Director

## Organisation

European International Contractors (EIC) was founded in 1970 and since 1984 has been registered as a legally independent association under German law in Berlin, Germany. EIC has as its members construction industry federations from 15 European countries which are directly or indirectly affiliated to the European Construction Industry Federation (FIEC) in Brussels. The association maintains close relations with all international and other organisations whose policy is of relevance for the international construction trade, for instance with various European Commission Directorates General (DGs), (Trade, Development and EuropeAid) the European Bank for Reconstruction and Development (EBRD), the Organisation of Economic Co-operation and Development (OECD) and the World Bank.

According to the 2009 EIC International Contracts Statistics, the total volume of international turnover carried out by EIC member companies in 2008 amounted to some € 150 billion. This excellent result was confirmed by the latest survey on the "Top 225 International Contractors", published in the *Engineering News Record* magazine, which illustrates that EIC member companies account for about 60% of new international contracts.

In 2009, the Members of the EIC Board were the following:

Michel Démarre	(Colas)	France	President
Werner Dekkers	(Besix)	Belgium	Vice-President
Uwe Krenz	(Bilfinger Berger)	Germany	Treasurer
Duccio Astaldi	(Condotte d'Acqua)	Italy	
Håkan Broman	(NCC)	Sweden	
Jon Dale	(Whessoe)	U.K.	
Nico Dirkzwager	(BAM International)	The Netherlands	
George Demetriou	(J&P Avax)	Greece	
Enrique Fuentes	(Group Ferrovial)	Spain	
Sakari Toikkanen	(YIT Corporation)	Finland	

President Michel Démarre represented EIC as Vice-President on the FIEC Steering Committee.

## Tasks and Objectives

The three main objectives of EIC are the following:

1. To lobby for a **bigger market**, e.g. by persuading the international financing institutions, and in particular the European donor agencies, to allocate more funds to the infrastructure sector and by promoting the concept of Public-Private Partnerships;
2. To lobby for a **better market**, e.g. by advocating fair and innovative forms of procurement and contracts and by calling for a level playing-field for European contractors internationally and concerning social and corporate standards; and

- To provide for **better networking**, e.g. by offering European contractors a unique forum for the exchange of experience in all matters relating to the international construction trade.

Within the broad range of operating conditions influencing the work of European international contractors abroad, the following framework conditions have been identified as priority issues for EIC's activities:

### **I. EU-financed infrastructure Projects in Africa**

Following the severe cutback of multilateral, European and bilateral development lending for infrastructure from 1996 to 2003, EIC welcomes the renewed commitment of the European Union and other multilateral donors in developing the infrastructure sector in developing countries, and in particular in Africa. At the same time, EIC strongly opposes the tendency in the international donor community to shift donor funds for the infrastructure sector from the classic "Project Approach", i.e. external assistance through project grants and loans, to "(Sector) Budget Aid", i.e. the disbursement of external assistance into the partner country's budget, as this aid modality remains exposed to a significant risk of misuse and exacerbates the already unlevel playing-field between European international contractors and their overseas competitors in Africa.

On 26 March 2009, EIC and the European Commission met in Brussels for an "EC-EIC Round Table on Infrastructure in ACP Countries" in order to analyse jointly the legal, economic and technical framework conditions for infrastructure projects financed by the European Development Fund (EDF). More than fifty participants from the European Commission and from EIC as well as from the European and the global consulting industry federations, EFCA and FIDIC, and from bilateral donor agencies came together for a full-day conference in order to exchange experience, concerns and expectations with respect to the execution of EU-financed infrastructure works in ACP Countries, and in particular in Sub-Saharan Africa. The conference was jointly opened by the Deputy Director-General of the EuropeAid Co-operation Office, Mr. Richard Weber, and the EIC President, Mr. Michel Démarre.

In the following three working sessions, which were co-chaired by the Director for ACP Countries in EuropeAid, Mr. Gary Quince, and by the Chairman of the EIC Working Group "Africa", Mr. Yannick Moulin, participants discussed the basic parameters regulating the programming, the procurement and the execution of infrastructure works financed by the EDF. Whilst controversial issues, such as the increasing use of (Sectoral) Budget Support and Country Procurement Systems, were not avoided during the talks, agreement was reached that the current regulatory EDF system should be engineered towards allowing a the highest level of quality and sustainability. In this context, participants considered the continuous improvement of the feasibility and design studies and the securing of sufficient respective funding, as one of the priorities.

In the afternoon workshop, EIC presented to the Commission its view on the most important bottlenecks which currently prevent a large number of major European international contractors from participating in EDF infrastructure tenders. Problematic areas, such as poor payment conditions, the inadequate pre-/post-qualification procedure and the lowest bidder rule or the insecurity associated with taxes and duties, pose a heavy risk for a positive cash-flow of the project and thus constitute an in-built deterrent for potential bidders. Subsequent to the event, EIC received a letter in which the European Commission declared its commitment to enter into a **Technical Dialogue with EIC on three topics: The EDF Conditions of Contract, Quality Assurance and Performance-Based Procurement.**

In September 2009 EIC participated for the **third time after November 2006 and July 2007 in the organisation of an EU-Africa Business Forum** which was held this time in Nairobi (Kenya). These business fora are an integral part of the EU Strategy for Africa, adopted in December 2005, and the Joint EU-Africa Strategy, adopted in December 2007. The two-day event brought together more than 250 African and European business leaders representing multi-nationals, large corporations, small and medium-sized enterprises and confederations, multilateral and regional institutions and provided a good opportunity for networking between the public and the private sector. EIC was represented in the forum by Mr. Yannick Moulin, chairman of the EIC Working Group "Africa", who, together with the representative of the African Development Bank, co-chaired a working session on infrastructure.

EIC's proposals for more sustainable infrastructure projects, involving the local construction sector, found its way into the final document which reads: *"The Development Policy objectives for Infrastructure should be changed from "Poverty Reduction" to "Wealth Creation", including the development of local SME's. To facilitate this, the use of project contract procurement structures should be encouraged which focus on the project's life-cycle from design over construction to operation and maintenance. That would provide opportunities for local SMEs to develop and participate in infrastructure projects as sub-contractors to the foreign main contractor and would also assist in improving the level playing field and governance of the infrastructure procurement process.*

## II. Consultation with the World Bank on Country Procurement Systems

The international donor community decided in the context of the "Paris Declaration on Aid Effectiveness" to strengthen national procurement systems and to "progressively rely on partner country systems for procurement when the country has implemented mutually agreed standards and processes". The "Piloting Programme for the Use of Country Procurement Systems in Bank-Supported Operations" was adopted on 24 April 2008. However, shortly before the meeting, a "Supplemental Note" was circulated within the World Bank in which the main EIC concerns were acknowledged and addressed, e.g. through the establishment of an "International Technical Advisory Group" (ITAG).

By the end of 2009, the World Bank had not found any candidate country which would qualify for participating in its pilot programme on "Country Procurement Systems". Therefore, the bank's management proposed to the board to lower the benchmark and to allow potential candidates to participate in the piloting programme even if they do not meet the minimum criteria. In response, ITAG, in which two EIC representatives are active, expressed its concern to the World Bank executive directors that the bank's management had recommended *"to move countries forward even if they do not meet all the required standards, as long as an agreed plan for addressing the gaps is in place"*. ITAG advocated that no country should be qualified until procurement performances, as strengthened by the capacity building initiatives yet to come, were put

in place and then regularly assessed. In order to help the bank to achieve its objectives connected with the pilot programme on Country Procurement Systems, ITAG requested the World Bank to share and discuss "decision memoranda" which detail (i) the procurement policy agreed upon by the country and the bank, including the type of legal instrument binding the pilot country, (ii) the performance objectives the country will have to achieve as stated in the legal instrument, and (iii) the intermediate measures to be implemented during the transition period. In addition, ITAG insisted that adequate external resources as well as an implementation schedule for capacity building actions should be provided by the bank for each country.

## III. International Standard Forms of Contract

International contractors and clients agree in general that the FIDIC standard forms of contract have been and still are important for facilitating the tendering and negotiation of international construction contracts. For almost 40 years, starting with the Third Edition of the old FIDIC "Red Book" back in the 1970s, it has been a well-established tradition that FIDIC consults EIC as a "friendly reviewer" for its new or updated standard forms of contract. Following this tradition, EIC closely follows the development of new FIDIC standard forms of contract through its various drafting stages.

In September 2008, FIDIC published the first edition of the "FIDIC Conditions of Contract for Design, Build and Operate Projects in September 2008". Only seven months later EIC published an **EIC Contractor's Guide to the FIDIC "Gold Book"** in which EIC welcomed, in principle, FIDIC's enlargement of its suite of standard forms of contract with an innovative contract form which is destined to allow construction and engineering industries to compete on quality, efficiency and life-cycle costing. However, EIC did not conceal a certain degree of uneasiness in that the FIDIC DBO contract assigns to the contractor a strict responsibility for the quality, or any loss or damage to the asset, or loss of production of the facility for a period of 20 years or more. By doing so, the contract virtually puts the contractor in the role of a concessionaire, however, exposes him to a much higher degree of financial liability, which might be unacceptable for contractors. EIC, therefore, would have preferred that FIDIC distinguish more clearly between the

Design-Build period and the Operation Service period. Having said this, EIC respects the attempt of the drafting committee to combine the Design-Build period and Operation Service period in one comprehensive contract with on-going responsibilities and obligations for both parties but noted that there are important sector specifics and even sub-sector peculiarities which potential users of this form will have to consider. For instance, in the transport sector the “contractor” referred to in the FIDIC DBO contract may be one or more companies of the same industry, whilst in the energy and water sectors the “contractor” will necessarily be a joint venture composed of members drawn from different industries. Hence, EIC questioned whether a “one size fits all approach” would do justice to such differences and also whether the insurance/surety industry would be ready to offer the corresponding products.

**EIC General Assemblies**

Every six months, EIC holds its General Assembly on the invitation of one of its 15 member federations in a different European country. In connection with these conferences, business workshops are organised on issues related to the international construction business which are traditionally attended by senior international managers from the leading European contractors.

- On 28<sup>th</sup> April 2009, the Swedish member federation hosted an EIC conference in Stockholm with a workshop entitled “**The Impact of the Global Financial Crisis on the International Construction Business**”. On the occasion of the Assembly in Stockholm, the EIC Board met with the executive vice-president and CEO of the International Finance Corporation (IFC), Mr Lars Thunell. During the 45-minute discussion, Mr Thunell informed EIC about the various initiatives of the World Bank Group to ensure a timely and adequate response to the global financial crisis.
- The EIC conference on 8<sup>th</sup> October 2009 was hosted by the Belgian member federation in Antwerp. The workshop was entitled “**Green Construction Trends & Challenges**” and dealt with the challenges that arise from climate change for the construction sector.
- At the spring 2010 General Assembly on 30<sup>th</sup> April in Berlin, **EIC celebrated its**

**40<sup>th</sup> anniversary.** The workshop in Berlin examined the relationship between **international contractors and international consultants** and explored whether there are common concerns, but different strategies.

More information can be downloaded from the EIC website at: <http://www.eicontractors.de>



• **EIC Publications**



**EIC Turnkey Contract, 1994**



**EIC Contractor's Guide to the FIDIC Conditions of Contract for EPC Turnkey Projects, 2003**



**EIC Contractor's Guide to the FIDIC Conditions of Contract for Construction, 2002**



**EIC Blue Book on Sustainable Procurement, 2004**



**EIC White Book on BOT/PPP, 2003**



**EIC/FIEC Memorandum on Frequently Asked Questions on Public-Private Partnerships (PPP), 2006**



**EIC Contractor's Guide to the FIDIC Conditions of Contract for Plant and Design-Build, 2003**



**EIC Contractor's Guide to the FIDIC Conditions of Contract for Design, Build and Operate Projects, 2009**

For FIEC publications, please refer to p. 61



President



Director General

### New CICA President, Senior Vice-President and Vice-President:

The term of the CICA presidency of Manuel R. Vallarino, put forward by the Inter-American Construction Industry Federation (FIIC), came to an end at the conclusion of the CICA-IFI2010 Conference on Feb. 11, 2010, in Washington D.C.

Each CICA member normally holding the CICA presidency by rotation, it was the turn of the European Construction Industry Federation (FIEC) to nominate a candidate to the council for consideration.

As a result the CICA Council unanimously elected Daniel Tardy as the new CICA President for the 2010-2011 tenure and re-elected Daniel Tardy as the CICA Treasurer

The Council elected Awni Saket, the Federation of Arab Contractors (FAC) representative, as the new CICA Senior Vice-President for the 2010-2011 tenure and Paulo Simão, proposed by FIIC, as the new CICA Vice-President for the 2010-2011 tenure.

### CICA President Daniel Tardy's Programme

#### Strengthening the following issues:

- Relationship between members
- Networking and privileged relationships: club spirit (e.g. "Friends of CICA" )
- Take advantage of lessons learned by CICA members: sharing experience
- When a "system" is in place (CICA must play this role), so that any contractor in the world can take such a reference to improve the image of contractors.

#### Tools for external and internal communication

- The tool for external communication must be concise. "CICA NEWS" must be INTERNAL and EXTERNAL
- **New website: a priority!**

#### CICA Representation

- Attendance at member federations' general assemblies.
- Advertising for recruiting "Friends of CICA"
- Liaison/Networking with top level executives of international organizations with influence in the construction industry, in close cooperation with the related presidents of member federations
- Relationship with stakeholders (eg. Relations with FIDIC) thus continuing efforts made by Mr. Manuel R. Vallarino Q

#### Back Office

- Working groups
- Method of distributing work to be improved: Concise documents with the possibility of further detail for anyone who is interested.

### HoPs-CICA-FIDIC Thessaloniki Meeting (Nov. 2-3, 2009)

#### Revised Master Procurement Document (MPD)

As indicated on the last FIEC annual report, after some years of negotiation, the main clauses have been agreed to the revised Master Procurement Documents with Heads of Procurement (HoPs) of the World Bank & Multilateral Development Banks (MDBs), with a specific exception of the determination of corrupt practices by the sole employer, as exposed here after.

In effect, MDBs consider that contractors cannot enjoy the same prerogatives as sovereign countries which means that symmetry in the treatment of fraud and corruption between the parties was

not accepted by MDBs. CICA made clear its total disagreement on clause 15.6 of the MPD which refers to this issue. CICA asked that at least a third party determine if there is or not unethical behaviour from the contractor's side.

### Revised Standard Bidding Document applicable to Civil Law Countries

CICA's "Civil Law WG" presented a revised Standard Bidding Document applicable to civil law countries to the World Bank, before summer 2009.

WB recognized that the work presented was valuable. Therefore, HoPs Civil Law Working Group under leadership of the World Bank will be launched with the participation of other banks interested in civil law procurement (AfDB and IDB) to review the possible adoption of a new civil law document for works.

### Multilateral Development Banks' Procurement Departments: an on-going cooperation with CICA

Heads of Procurement (HoPs) of all Multilateral Development Banks will continue to engage in a constructive dialogue with CICA in the format of a meeting to be held prior to every other HOP meeting.

The next HoPs Meeting will be held in Washington, DC, in late June 2010.

## CICA Working Groups (WG)

### CICA PPP WG

CICA's PPP WG was set up June 2009. It is important to highlight that its members are delegates from key pre-existing external WGs in order not to duplicate work. As an example, Enrique Fuentes, Chairman of EIC's PPP WG, is one the members.

We summarize some key concepts developed:

- Driving element: the project's economics (including a financial model)
- 3 parties must be equal beneficiaries: public authorities, private operators and users.
- CICA PPP WG proposes definitions of PPPs, a typology of contracts and identifies 3 major possible origins of PPP failures and the related solutions based on lessons learned as for: the

choice of the project, the kind of procurement, the way the contract is managed.

The objective of CICA PPP WG is to issue a PPP handbook

### The "Well Prepared Project" (WPP)

The concept of a "Well Prepared Project" implies that preliminary tasks, to be completed by the project owners are of the utmost importance. These tasks must be very well carried out and include all the permits, surveys, geotechnical and environmental studies, well prepared designs and the definition of the areas where the relevant materials are to be used (e.g. for road construction etc.), this in order for the works on the jobsite to start well and enable the project to be carried out according to the specifications throughout the contract. This will avoid subsequent claims, disputes and/or arbitration procedures. Moreover, a WPP will prevent compromise in terms of works quality as well as irresponsible and unethical pressures on contractors. Whenever possible, involving the contractors before tendering argues in favour of having a WPP. The proper qualification and selection of the design offices, the advisors and the engineers who will be involved in the job are crucial to the success of operations on site.

Based on its concept note, CICA will propose practical measures and clauses in order to try to turn these important principles into reality. A think tank started in September 2009. A CICA WPP WG will start work in April 2010 with the involvement of contractors, consultant engineers, employers and donors. The main objective of this WG is to edit a practical check-list of problems and recommendations, which will lead to:

- issuing good tender documents to minimize causes for claims, corruption &/or poor quality
- avoiding tight and/or unrealistic budgets
- defining of clear responsibilities (client, supervising consultant, donor, contractor)

### Fight against corruption and unethical behaviour

CICA & FIDIC established a joint statement on fighting corruption and promoting ethics and good governance and was signed in the last quarter of 2009 by CICA President Manuel R; Vallarino Q.

and new FIDIC President Gregs Thomopoulos. The document is at FIEC Members' disposal on demand.

## Membership

### Africa

The aims defined in the 2008 FIEC Annual Report have lead to the following actions:

- Relations with the African Development Bank (AfDB)
  - Participation in the AfDB "Procurement Roundtable" & annual meeting in Dakar (May 11-14, 2009) by the CICA DG.
  - Meetings AfDB/CICA in Tunis at AfDB Premises (Jan 14-15, 2010), with three objectives:
    - 1) short term objective: participation at CICA-IFI 2010 Conference
    - 2) medium term objective: set up of a Conference at AfDB Premises on "Construction in Africa- Main concerns"
    - 3) long term objective: establish sustainable link with AfDB (entry point of contact)
- Relations with the African Federation for Construction Contractors' Associations (AFCCA):
  - CICA invited to AFCCA Executive Committee (Rabat - Jan. 21, 2010). Attendance by CICA DG.
  - PPT presentation on CICA in plenary session
  - CICA Membership. AFCCA asked CICA to make a proposal in writing for the status of CICA Observer, as a first step. CICA Board gave its approval to AFCCA suggestion.

### Asia: Liaison with CHINA INTERNATIONAL CONTRACTORS' ASSOCIATION (CHINCA)

- Meeting CHINCA/EIC/CICA in Berlin, organized by E.I.C. - Sept. 18, 2009; Mutual presentations.
- Expression of interest of CHINCA to be a member of CICA.
- Expression of interest of CHINCA of being part of CICA "Well Prepared Project" (WPP) WG. CHINCA put forward case study.
- Invitation by CICA to CICA-IFI 2010 Conference
- Invitation by CHINCA to International Infrastructure Investment & Construction Forum (IIICF), (May 11-12, 2010-Beijing).

## "Friends of CICA"

The status of "Friends of CICA" is defined. The "Friends of CICA" will have a number of significant advantages.

They will be able to attend CICA Council meetings and will be encouraged to participate in specific CICA contacts with leading representatives (presidents/DGs) of international financial institutions, the IMF, United Nations, OECD, ICC, government agencies, etc.

The "Friends of CICA" will also be invited to special events which take place all over the world and to attend a yearly meeting which will be held in Paris at the end of each calendar year.

Last but not least, the Friends of CICA will have their logo on the **new CICA website** with a link to their own website. .

Who will be eligible to be a "Friend of CICA"?

- Contractors who are members of the national federations forming part of the regional Federations which are CICA's full members.
- Institutions related to contractors' activities i.e. insurance companies, banks, construction fairs/ exhibition organizers
- Oil & gas companies
- All related industries, equipment manufacturers and dealers

Subscribe and be a Friend of CICA by contacting us at [cica@cica.net](mailto:cica@cica.net)

## 1. List of participants

Considering the characteristics of the current participants in the ECF, candidates for participation in the ECF must be European federations, adequately representing a significant field of activity in the construction sector and accepting the ECF Policy Paper. Any such federation wishing to become a new participant in the ECF, must be proposed by at least one of the current participants and be accepted by the others.

ACE	Architects' Council of Europe
CEMBUREAU	European Cement Association
CEPMC	Council of European Producers of Materials for Construction
EAPA	European Asphalt Pavement Association
ECCE	European Council of Civil Engineers
ECP	European Concrete Platform
EFBWW	European Federation of Building and Woodworkers
EFCA	European Federation of Engineering Consultancy Associations
EURIMA	European Insulation Manufacturers Association
FIEC	European Construction Industry Federation
UEPC	European Union of Developers and House Builders

## 2. Policy Paper

### The Construction Sector

- construction = building, civil engineering and all related activities
- construction = largest industrial employer in Europe
- construction = high multiplier effect : 1 job in construction = 2 jobs in other sectors (source : SECTEUR study)
- construction = basis for the development of Europe and the well-being of its citizens
- construction = team-work of different key players in a chain of competence and cooperation

### What is ECF?

ECF is a platform for cooperation on issues of common interest between independent organisations representing key players in the construction sector and participating on a voluntary basis (see enclosed list).

ECF is not an umbrella organisation and does not represent the participating organisations.

Consequently, any position paper will carry the names/ logos only of those ECF participating organisations that support it.

Participants in meetings are the Presidents and/or Directors General. Where appropriate, working and drafting meetings are open to any person delegated by an organisation participating in ECF.

### What are the aims of ECF?

- The principal aim of ECF is the establishment and recognition of a single comprehensive policy approach for the European construction sector through raising the awareness of the decision makers at a European level to the specific issues affecting the sector as a whole. To this end, the participating organisations strive to arrive at consensual views on issues of common interest.
- This should lead over time to:
  - an increase of the construction sector's direct involvement in the preparation of all EU legislative acts, programmes and actions that have a bearing on the sector
  - a more coherent and coordinated approach by the European institutions towards the sector.

### Relationship with other Sectoral Coordination Bodies

- ECF participants will remain in close contact and collaborate with sector specific coordination bodies, such as:
  - FOCOPE "The forum for construction in the European Parliament " as well as the Parliament's Intergroup "Urban Logement".
  - ECCREDI, the European Council for Construction Research, Development and Innovation

**With which Issues will ECF deal?**

- Cooperation in ECF shall concentrate on
- general exchange of information on issues of common interest
  - specific work on a limited number of key issues of strategic importance for the construction sector as a whole.
  - common actions to promote the sector’s interests.

**Key Issues**

The participating organisations, in addition to exchanging views on topical matters going through the legislative process in the EU institutions have identified the following key issues:

- the competitiveness of the construction sector
- public procurement
- benchmarking (countries’ infrastructure/ administration and the sector)
- TENs (Pan-European transport networks)
- image of the sector
- spatial and urban development (regional development, social, environmental and transport policies)
- Energy efficiency in buildings and carbon emission reduction in the built environment.

All issues are addressed from various perspectives such as employment, training and education, sustainable development, quality etc.

website:  
[www.ecf.be](http://www.ecf.be)



**www.fiec.eu**

As the FIEC web site is a dynamic tool, its content is being updated on a daily basis in order to better meet the expectations of both Members Federations and the public.



With many further developments, the FIEC

site has now become:

- an essential tool for FIEC members in their work
- a complete shop window for the activities and concerns of the European construction industry aimed at an outside audience.

**FIEC Periodical Publications**

- **Construction Activity in Europe** (1/year)



FIEC publishes a document giving information about construction activity in Europe. Each country is analysed individually and Europe as a whole under the following headings: Overview (General economic situation, General economic policy, Government policies in relation to the construction industry), Overall construction activity, Housebuilding, Non-residential building, Civil engineering, Rehabilitation and maintenance of residential buildings, Construction abroad, Employment. The data are given over a period of 10 years. Forecasts are made for up to one year.

- **Article in Construction Europe** (12/year)



For many years FIEC has worked together with the magazine "Construction Europe", publishing a monthly article on EU current affairs.

- **Trans-European Transport Network – Progress update ("Blue Book")**  
(1/year – latest edition: June 2009)



FIEC publishes the results of its survey on the status of the 30 so-called Priority Projects. These projects form part of the Trans-European Transport Networks (TEN-T), whose role in the long-term development, competitiveness, cohesion and enlargement of the European Union

has been highlighted on several occasions, both at the level of the Heads of State and Government summits as well as by the European Parliament and the Commission.

- **Construction in Europe – Key Figures**  
(1/year)



This publication, in practical pocket format, provides the reader with a brief survey of the essential key figures of construction activity in Europe and in the world as well as a brief presentation of FIEC and the sector.

- **Construction in Europe**  
(1/2 years)

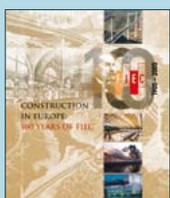


This pocket-sized leaflet gives an overview of FIEC (the voice of construction in Europe), its members and its mission as well as key information on construction industry.

- **Annual Report**  
(1/year)



This document constitutes a complete survey of the FIEC issues and positions between two General Assemblies.



**Construction in Europe: 100 years of FIEC (2005)**



**The FIEC Principles for Sustainability (2005)**



**FIEC Declaration: Urban Development: a major challenge for the competitiveness of the EU (2006)**



**FIEC/EIC Statement on Corruption Prevention in the Construction Industry (2009)**

For EIC publications, please refer to p. 55

**All these publications and further information can be obtained from the FIEC office in Brussels.**

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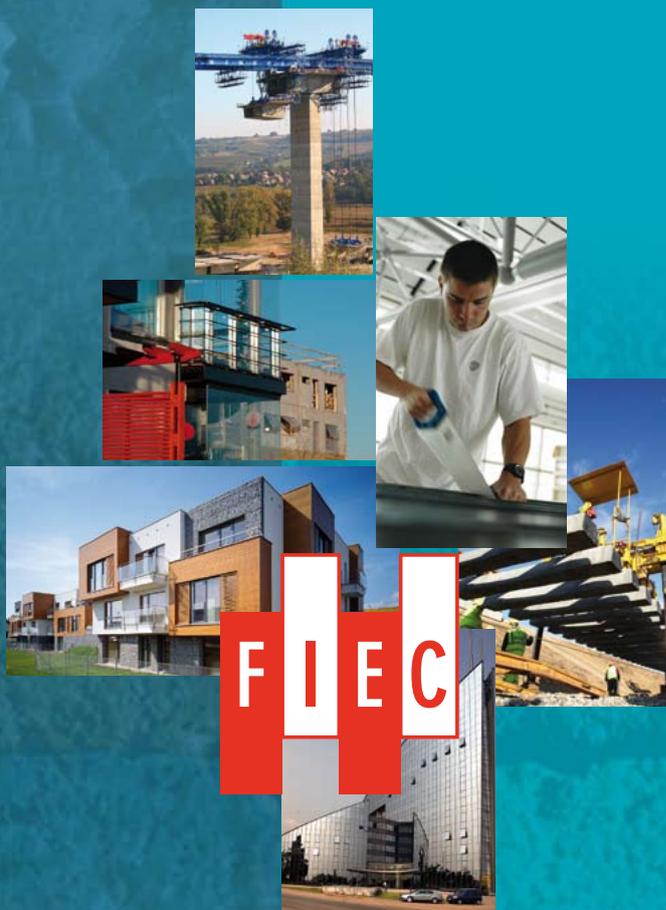
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Original: English  
Translations French and German: DSDB, Brussels  
Design: Acapella, Brussels  
Printing: Arte-Print, Brussels  
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