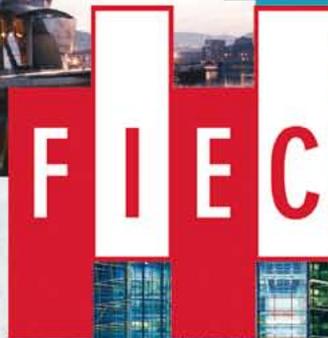


# 2008

ANNUAL REPORT

European  
Construction  
Industry  
Federation



33  
federations

28  
countries

## FIEC

### Created in 1905

Legal personality of French law

**28 countries** (24 EU, Switzerland, Norway, Croatia and Turkey)

**33 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

### Cooperation Agreements with:

ACBI Association of Contractors and Builders in Israel



Social Partner in the European Sectoral Social Dialogue of the Construction Industry together with FETBB-EBWW-EBFH (European Federation of Building and Woodworkers)  
[http://ec.europa.eu/employment\\_social/social\\_dialogue/](http://ec.europa.eu/employment_social/social_dialogue/)



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)



"Euro Info Centre" Network has been replaced on 7<sup>th</sup> February 2008 by a new network called "Enterprise Europe Network (EEN)". The European Commission has still to decide the status of previous "Associate Members" in this new network.



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)



Member of "EPBD ("European Energy Performance of Buildings Directive") Buildings Platform"  
[www.buildingsplatform.eu](http://www.buildingsplatform.eu)



Partner of PV SUNRISE Project - Dissemination of Photovoltaic technologies across the construction industry  
[www.pvsunrise.eu](http://www.pvsunrise.eu)

## The Sector

Total construction in 2007 (EU 27):

**1.304**  
billion €

**10,7%**  
of GDP  
in 2007 (EU 27):

**51,5%**  
of Gross Fixed  
Capital Formation

**2,9**  
million  
enterprises  
(EU 27),  
of which:

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

**93%**  
with fewer than 10  
operatives

**16,4**  
million  
operatives

**7,2%**  
of Europe's total  
employment

**biggest  
industrial  
employer in  
Europe**  
(30,4% of industrial  
employment)

**26 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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**Meeting with Commissioner Günter Verheugen  
(Enterprise and Industry) - 28/3/2008**



Helmut Echterhoff, Commissioner Günter Verheugen,  
Daniel Tardy, Ulrich Paetzold

Photo: Yann Clavie, Brussels



It gives me great pleasure to present the new FIEC Annual Report, at what is the end of my term as FIEC President. The report sets out FIEC's activities from the 2007 General Assembly in Lisbon to the 2008 General Assembly in Dublin.

FIEC has, as ever, been focused 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**

Following the extremely good year for construction activity in the European Union in 2006, with an overall growth rate of 4.1%, 2007 was marked by a certain slowdown in activity. This was mainly due to the ongoing financial turmoil caused by the subprime mortgage crisis and resulting tightening of lending conditions, the sharp slowdown in the United States economy and the sharp increase of oil and commodity prices. Forecasts indicate a further and more significant slowdown of overall construction activity in 2008. However, our pessimism should be tempered by some positive indicators: Germany, which experienced a strong positive reversal trend in 2006, is expected to continue its recovery – albeit to a lesser extent – in 2007 and 2008. Moreover, the construction sector in Portugal appears to be slowly emerging from the recession under which it has been labouring over the last 10 years and is expected to reach a positive growth rate in 2008.

Our latest statistical report, No. 51, provides details of all these developments.

Looking back at my term as FIEC President, there are two general issues which have struck me in particular, namely the advantages of FIEC's comprehensive representation of all sizes of enterprise and the need to promote not only the construction industry's specific positions on European matters, but also raise awareness of some basic facts which make our sector unique. FIEC's defence of the construction industry's interests will gain credence among decision makers if these facts are known.

### **FIEC's comprehensive representation of small, medium and large construction enterprises**

FIEC's strength resides in representing, without discrimination, the interests of construction enterprises of all sizes. The participation of contractors and experts of the 33 member federations from 28 countries ensures that each FIEC position paper reflects the know-how and the interests of all categories of construction enterprises whether small, medium or large.

### **Promoting better knowledge of particular requirements of the construction industry**

FIEC has realised that some basic facts, unique to our sector, are not well known. We have therefore used our meetings with European decision-makers, in particular with MEPs, Commissioners and Commission Directors-General, to convey some basic information in addition to defending our positions on the specific issues at stake.

It is, for example, not well known that the construction industry has only few large operators and indeed more than 97% of Europe's construction enterprises are covered by the European "SME"-definition. This can be further illustrated by the fact that the turnover of the world's largest construction firm amounts to less than 2% of the European construction market.

Despite this overwhelming SME structure, the construction industry is undertaking considerable effort in research and development as well as in innovation and is therefore capable of providing a

substantial contribution to the energy saving targets of the EU's energy action plan. Finally it should be pointed out that our sector produces immobile products at mobile workplaces and has, therefore, requirements which are not necessarily the same as those of industries producing mobile products at immobile workplaces.

Apart from these general questions, I would like to briefly highlight some of the issues which we have been dealing with over the last year.

**Energy savings and reductions in Greenhouse Gas (GHG) Emissions**

It is regrettable that these two issues are often confused. Climate change, also called "global warming", influenced by CO<sub>2</sub> and other GHG emissions, is a long-term phenomenon which, despite the urgency of addressing the problem, has to be tackled with a long-term perspective and strategy.

On the other hand, energy savings concern the world's fossil energy reserves. As three billion people in the rising economic and industrial powers of China, India and others aspire to enjoy the same standard of living as the billion inhabitants of the developed world responsible currently for the biggest share of energy consumption, it is possible that reserves (currently estimated as lasting for another century) could begin to run out as soon as in 30 to 40 years. This is less than two human generations and shows that the timeframe for taking up the energy challenge is drastically shorter than that for reducing GHG emissions and must be addressed today.

In light of the above and the fact that buildings account for 40% of final energy demand in the EU, it is clear that the potential for energy savings is very high in the built environment. Moreover, much progress can be achieved using today's technologies and at reasonable cost. These energy savings in the built environment alone could help reach the "20% by 2020" target for gains in energy efficiency which is part of the EU's "Climate Change Package" presented in January 2008. Furthermore, this approach would not create any barriers to the free movement of persons, goods and services which are the cornerstone of the EU's economic model, growth and

**Meeting with Commissioner Ján Figel' (Education, Training, Culture and Youth) – 10/9/2007**



Photo: Yvan Clavie, Brussels

Daniel Tardy, Peter Andrews, Ulrich Paetzold, Commissioner Ján Figel'

employment; but would rather have positive effects on these freedoms.

The construction industry has the potential to meet the EU's energy efficiency target and it can be realistically expected that further research, development and innovation will give rise to further progress and opportunities. This includes exporting such solutions to other parts of the world which will have to undertake similar efforts in saving energy and reducing GHGs, in order to develop a global response to this global challenge.

The construction industry is the solution industry and all that is required today is that both the politicians and the consumers take the necessary decisions!

**Reduced VAT for construction activity**

One of these decisions should be the application of reduced VAT to construction services (including the necessary materials and equipment) aiming

**Meeting with Commissioner Vladimir Špidla (Employment, Social Affairs and Equal Opportunities) – 13/7/2007**



Photo: Yvan Clavie, Brussels

Daniel Tardy, Ulrich Paetzold, Peter Andrews, Commissioner Vladimir Špidla

### Meeting with Commissioner Janez Potočnik (Science and Research) – 7/4/2008



Photo: Yvan Clavie, Brussels

Bernard Raspaud, Daniel Tardy, Ulrich Paetzold, Commissioner Janez Potočnik, Christine Simon (Member of Cabinet)

at improving the energy efficiency of the built environment. The application of reduced VAT on such products alone, as proposed by some, would however be counterproductive for two reasons: it would fuel undeclared labour and it would neglect the fact that energy efficiency solutions tend to be technically complex, hence requiring specific training and know how, in order to achieve the best possible results.

Despite the major success that FIEC and its member federations have achieved, it should not be overlooked that the current VAT system remains in force only until the end of 2010. Work on a definitive system from 2011 is ongoing and we hope that those countries which currently apply reduced VAT on certain services will be allowed to continue this arrangement on a permanent basis.

Nevertheless, considering that tax issues at EU level require unanimity, it will be considerably more difficult to obtain general agreement on a

### Meeting with Commissioner Andris Piebalgs (Energy) – 27/3/2008



Photo: Yvan Clavie, Brussels

Ulrich Paetzold, Daniel Tardy, Commissioner Andris Piebalgs, Stina Soewarta (Member of Cabinet)

new system beyond 2010. Given that fact, it is now essential to ensure at national level that the successes already achieved by the construction sector in some countries can benefit as many others as possible.

### Further details and other themes

The following pages contain details of FIEC's activities in the environmental, technical, legal, social and economic fields. Their content makes worthwhile reading!

### 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 FIEC Team 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.

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.

Daniel Tardy,  
President of FIEC



Daniel Tardy, FR

President



Johannes Lahofer, AT

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



Helmut Echterhoff, DE

Vice-President  
ECO  
(DE)



Peter Andrews, GB

Vice-President  
SOC  
(GB)



Zdenek Klos, CZ

Vice-President  
TEC  
(CZ-PL)



Bernard Huvelin, FR

Vice-President  
Communication  
(FR)



Georgios Romosios, GR

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



Dirk Cordeel, BE

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



Luisa Todini, IT

Vice-President  
TENS  
(IT)



Juan Lazcano, ES

Vice-President  
MEDA  
(ES-PT)



Per Nielsen, SE

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



Gian Alfonso Borromeo, IT

Vice-President  
EIC

**GENERAL ASSEMBLY**

**COUNCIL**

**STEERING COMMITTEE**

**Economic and Legal Commission (ECO)**

President:  
Helmut Echterhoff, DE  
Rapporteur:  
Christine Le Forestier, FIEC

**Temporary Working Groups**

**Accounting rules and Financing**  
Chairman: Jean-Jacques Massip, FR

**PPPs and Concessions**  
Chairman: Jean-Jacques Massip, FR

**Internal Market**  
Chairman: Thierry Ceccon, FR

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

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

**Social Commission (SOC)**

President:  
Peter Andrews, GB  
Executive President:  
John Stanion, 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:  
John Goodall, FIEC  
Rapporteur Designate:  
Frank Faraday, FIEC

**TEC-1:  
Directives, Standards and Quality Assurance**  
Chairman: Rob Lenaers, BE

**TEC-2:  
Innovation and Processes**  
Chairman: Bernard Raspaud, FR

**TEC-3:  
Environment**  
Chairman: Jan Wardenaar, NL

**TEC-4:  
Plant and Equipment**  
Chairman: Juan A. Muro, ES

**Ad Hoc Working Group "TENs" (Trans-European Transport Networks)**  
President: Luisa Todini, IT

**Ad Hoc Working Group "SMEs" (Small and medium-sized Enterprises)**  
President: Dirk Cordeel, BE

**EIC – European International Contractors e.V.**  
President: Gian Alfonso Borromeo, IT



Photo: Yvan Clavier, Brussels

Domenico Campogrande	John Goodall	Maxime Wotquenne	Frank Faraday	Ulrich Paetzold
Rapporteur Social Commission	Rapporteur Technical Commission	Documentalist - Webmaster	Rapporteur Technical Commission Designate	Director General
Yasmina Koeune	Muriel Lambelé	Christine Le Forestier	Joëlle Caucheteur	Sylvie Masula
Secretariat	Accountant	Rapporteur Economic and Legal Commission	Secretariat	Secretariat

**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).





**Urban Development**  
**FIEC Declaration in support of the "Leipzig Charter"**

**FIEC warmly welcomes** the adoption of the "Leipzig Charter" adopted by the Member States' Ministers responsible for Urban Development on 24<sup>th</sup> May 2007.

**FIEC fully supports** the main objectives and strategies of the "Leipzig Charter", which are in line with FIEC's "Paris Declaration" on Urban Development adopted on 20<sup>th</sup> October 2006.

**FIEC particularly welcomes :**

1. The commitment to initiate a political debate at national level on how to integrate the principles and strategies of the "Leipzig Charter";
2. The commitment to use the tool of integrated urban development and the related governance for its implementation and, to this end, the establishment of any necessary framework;
3. The recognition that all dimensions of sustainable development (economic, social, environmental) should be taken into account at the same time and with the same emphasis;
4. The need to develop a coordinated "Baukultur", which must be tackled jointly by the State, regional and local authorities, as well as by citizens and businesses;
5. The need for a better coordination of public and private funds;
6. The need to encourage cities to network more closely with each other at the European level and not in isolation;
7. The need for a sustainable, accessible and affordable transport infrastructure with coordinated links to the city-region transport networks;
8. The need for improved energy efficient buildings, both existing and new, as part of the overall policy for combating climate change;
9. The recognition of Urban Development as key factor for social cohesion and integration, amongst others through proactive training and education policies;
10. The recognition of the significant role that EU Institutions can play both through the Cohesion Policy and through the promotion of exchange of experiences and best practices.

**The European Construction Industry, in particular its SMEs,** which together constitute the "economic motor" of the EU and which make a significant contribution to increasing competitiveness, are capable and willing to provide real added value to the solutions of these issues, in the economic, social and environmental fields.

**FIEC takes a sincere commitment**

- to promote and facilitate the practical implementation of the objectives and strategies laid down in the "Leipzig Charter"
- by strengthening its actions, both at the European and national levels, through its member associations.

Lisbon, 1<sup>st</sup> June 2007

**Daniel Tardy**  
President of FIEC

## 1. FIEC lends its support to the “Leipzig Charter” on urban development

As a follow-up to the Congress held in Paris in 2006 and which had as main theme “Urban development: a major challenge for the competitiveness of the EU”, during the FIEC Congress in Lisbon, which took place in June 2007, FIEC President Daniel Tardy handed to the representatives of the German and Portuguese governments a FIEC Declaration (see annex) in support of the “Leipzig Charter” on “Sustainable European Cities”, which was adopted on 24<sup>th</sup> May 2007 by the EU Ministers responsible for urban development.

Daniel Tardy underlined that this Declaration “represents a sincere commitment by FIEC to promote and facilitate the practical implementation of the objectives and strategies laid down in the “Leipzig Charter” by strengthening its actions, both at the European and national levels, through its member associations”.

With the “Leipzig Charter” the Ministers agreed upon common principles and strategies for urban development policy and committed themselves :

- to initiate a political debate in their states on how to integrate the principles and strategies of the “Leipzig Charter” into national, regional and local development policies;
- to use the tool of integrated urban development and the related governance for its implementation and, to this end, establish appropriate frameworks at national level and
- to promote the establishment of balanced territorial organisation based on a European polycentric urban structure.

The “Leipzig Charter” does not only stress the need for a stronger and more coordinated approach to urban development both at the EU and the national levels, but underlines also, amongst others, the recognition of the significant role that EU Institutions can play both through the Cohesion Policy and through the promotion of exchange of experiences and best practices.

Today some 80% of Europe’s citizens are living in cities. This figure clearly indicates that the expansion

and modernisation of urban areas will constitute the major challenge for sustainable growth in the coming decades. Urban development is not solely a spatial planning matter, but it has become a fundamental element in economic policy that is essential to achieving the objectives of the Lisbon Strategy, aiming at making the European economy the most competitive in the world.

The role and the nature of cities have changed dramatically over recent decades from manufacturing to “knowledge centres”. This is especially true in the wake of the latest and probably not the last enlargement of the EU, since urban areas are perceived as motors of economic change and one of the key element in regional development within the European Union. A reinforced and innovative global approach to their development, involving all the concerned stakeholders, is therefore needed.

This global approach requires considering the functional integration and interaction between the various aspects of sustainability, namely:

- the economic activities, which in cities tend to be increasingly oriented towards “services”;
- the social aspects (housing, leisure, education, health, accessibility,...) and
- the environmental aspects (mobility within the city but also from and to its suburbs, connections with more distant regions, pollution, waste treatment,...).

Given the significant role that the construction sector can play in such an integrated and global approach to the sustainable development of cities, urban development will certainly continue to have its place in the agenda of FIEC.

Council/General Assembly – Pestana Palace 31/5/2007



FIEC Steering Committee



Council/General Assembly

Photos: PT/FIECOP

**2. FIEC turned its attention to the issue of “efficiency” of construction processes.**

The second part of the FIEC conference paid attention to a recent study<sup>1</sup> on behalf of the European Commission which has revealed marked differences in the relative efficiencies of national construction processes.

Raising efficiency is evidently of the utmost importance from an economic point of view, but it also addresses the wider challenge of sustainability, such as reducing the use of natural resources and alleviating the strains on the workforce, against a background in which demographic ageing and a lack of qualified workers is increasingly apparent in many European countries.

In this context, the conference presented:

- experiences with the industrialisation of the construction process;
- the fundamental importance in terms of efficiency of training initiatives against a background in which -in very general terms- the lack of qualified personnel is becoming increasingly evident across Europe;
- Finally the necessity to develop efficient systems of project management and of the organisation of production through making better use of new engineering techniques based on information and communication technologies.

In general terms, these various presentations agree on the necessity, in order to effectively impact productivity, to increasingly open up the function of design to the contractor, whether this is arranged in the form of collaboration “designer-builder” prior to construction, or by delegating the essential element of the design to the contractor.

An alternative approach is to open up the possibility for bidders to propose “variants” (alternative technical solutions), thus providing increased opportunities for clients to benefit from the know-how and competences of contractors in terms of innovative solutions at optimal cost. This approach is especially efficient when the construction works are separately insured against latent defects (arising as a result of deficiencies in either design or execution) by means of a specific policy of “project insurance” without any possible legal recourse against the projects’ designers and constructors in the event of a failure.

<sup>1</sup> Bernard Williams Associates: “investigate the factors which influence the relative resource usage and competitiveness in construction industries with particular reference to national framework conditions” February 2006.

Welcome Reception and Dinner 31/5/2007



Electricity Museum

Opening Ceremony –  
Cultural Centre Belém 1/6/2007



Photos: PT/FIECOP

1. Daniel Tardy, FIEC President
2. Mário Lino, Portuguese Minister of Public Works, Transportation and Communication
3. Dr. Engelbert Lütke Daldrup, State Secretary at the German Federal Ministry of Transport
4. Paulo Campos, Secretary of State Assistant to the Portuguese Minister for Public Works and Communication



Photos: PT/FEPICOP

**Conference “Competitiveness” –  
Pestana Palace 1/6/2007**



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Photos: PT/FEPICOP



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8

1. Bernard Huvelin, FIEC Vice-President
2. Dirk Cordeel, FIEC Vice President
3. Jan Byfors, NCC Komplet (Sweden)
4. Crétien De Cauwer, Ergon (Belgium)
5. Bernard Williams,  
Bernard Williams Associates (United Kingdom)
6. Prof. Linda Clarke, University of  
Westminster Business School (United Kingdom)
7. Dr. Werner Leifert, Bilfinger Berger (Germany)
8. Antonio Mota, Mota-Engil (Portugal)

**Gala Dinner – Beato Monastery 1/6/2007**



Photos: PT/FEPICOP

Honorary Presidency awarded to FIEC past President Wilhelm Küchler



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Photo: Yann Clavie, Brussels

In line with its involvement in the development of infrastructure and in particular the Trans-European Transport Network (TEN-T), FIEC on 13<sup>th</sup> March 2008 organised a conference on priority project n°30 of the Trans-European Transport Networks "Canal Seine-Schelde" in Brussels.

Supported by INE (Inland Navigation Europe) and placed under the patronage of the European Commission (DG TREN), this event was a great success. A select audience of more than 150 stakeholders appreciated the highly informative, encouraging presentations given by the 14 speakers (power points available at [www.fiec.eu](http://www.fiec.eu)).

With more than 420 million € allocated for the 2007-2013 period, this TEN-T priority project (estimated cost: 3,4 billion €) enjoys a relatively high level of support from the European Commission. The project is a genuine "missing link" in the TEN-T and will connect existing high capacity inland waterway systems. Furthermore, it will lead to the creation of new multi-modal platforms for the use of the logistics industry (transport).



1. Daniel Tardy, FIEC President
2. Karin De Schepper, Secretary General, Inland Navigation Europe (INE)
3. Karla Peijs, TEN-T Waterway Coordinator, European Commission
4. François Bordry, President, Voies Navigables de France (VNF)
5. Eric van den Eede, Director General, Waterwegen en Zeekanaal NV (Flanders – Belgium)
6. Henri Brouet, Inspector General, Direction Générale des Voies Hydrauliques (Wallonie – Belgium)
7. Nicolas Bour, Director, Mission Seine-Nord Europe (MSNE) - VNF
8. Laurence Van Prooijen, Finances Director, MSNE - VNF
9. Roland Dachs, President, European Logistics Association (ELA)



- 10. Willy Robijns, President, European Federation of Inland Ports (EFIP)
- 11. Claude Martinand, Vice-President, Conseil Général des Ponts et Chaussées (French Environment Ministry)
- 12. Jonathan Scheele, Director, European Commission DG TREN/B (TEN-T)
- 13. Yves Cousquer, Engineer General, Conseil Général des Ponts et Chaussées (French Environment Ministry)
- 14. Laurent Winter, Head of Projects, Mission d'appui aux PPP (MAPPP)
- 15. Benoît Le Bret, Head of Cabinet of Vice-President Jacques Barrot, European Commission



Photo: Yan Clavier, Brussels



Helmut Echterhoff, DE

**President**

*Christine Le Forestier, FIEC  
Rapporteur*

Temporary Working Groups:

**Accounting Rules and Financing /  
PPPs and Concessions**



Jean-Jacques Massip, FR

**Chairman**

**Internal Market**



Thierry Ceccon, FR

**Chairman**

**Reduced VAT**



Frank Dupré, DE

**Chairman**

**EU Contract Law**



Wolfgang Bayer, DE

**Chairman**

## 1. Construction activity: still a good trend in 2007, but some concerns for 2008

After having experienced buoyant widespread growth in 2006 (+4.1% according to the definitive data), overall construction activity in the EU recorded growth of 3.2% in 2007, which remains a good performance compared with the overall slowdown of the global and European economy since the end of 2007.

With the exception of Portugal, which now appears to be slowly emerging from the recession which has afflicted it for the last 10 years, it can be affirmed that in 2007, all the EU countries experienced a positive growth rate in their overall construction activity.

These developments have been mainly driven by the very good performance of private non-residential construction (+6.2%), which clearly continues to recover from the negative growth of the previous years, as well as by public non-residential construction and rehabilitation and maintenance work of dwellings, both of which maintained good performances in 2007 (+2.1% and +2.6% respectively).

A further slowdown in the growth rate is however expected in 2008, as European macroeconomic developments will impact the construction sector.

In its macroeconomic forecasts of autumn 2007 and in the interim forecast of February 2008, the European Commission indicated that:

- following the materialization of the risks identified in the autumn forecasting exercise – ongoing financial turmoil, sharp slowdown in the US, and high energy and raw materials prices – a growth rate of 2.0% for the EU economy is expected in 2008;
- mainly driven by marked increases in energy and commodity prices, inflation in the EU remained contained at an estimated average of 2.3% in 2007, but is expected to increase to 2.9% in 2008;
- relatively strong improvements in the labour market have been observed in 2007: the annual average unemployment rate declined to 7.1% in the EU, but in the autumn forecast, the Commission projected a deceleration of employment growth to around 1% a year in 2008 and 2009;
- relatively low public deficits placed the European economies in a good position to face the gradually deteriorating global outlook in the course of 2007, but that falling economic activity is expected to impact public finances and the 2008 budgetary position in the EU;
- investments and private consumption remained robust in 2007, but could slowdown in 2008.

In this context, the main developments relating to construction activity in the Union, which are detailed in Statistical Report n° 51, can be summarised as follows:

1. **Total construction activity:** after a surprisingly good year in 2006 (+4.1%), a more moderate trend (+3.2%) was recorded in 2007, and this slowdown is expected to continue in 2008 (+1.6%).
2. **New house building:** after having driven overall construction activity in 2006 (+6.9%), this sector experienced a significant slowdown in 2007 (+1.8%), which is expected to lead to negative growth in 2008 (-1.7%).
3. **Renovation and maintenance:** this sector is sustained by the general trend of energy efficiency improvements of private dwellings and increasing prices of new housing. It had a steady evolution over the past few years (+2.7% in 2006, +2.6% in 2007, +2.0% forecast in 2008).
4. **Non-residential construction:** private non-residential construction achieved a very good performance in 2007 (+6.2%), following the significant recovery of +4.7% in 2006. A growth rate of +3.6% is expected in 2008. Highly linked to public investments, public non-residential construction recorded a growth of +2.1% in 2007 and this trend should remain stable in 2008 (+2.2%).
5. **Civil engineering:** the performance of this sector also depends a lot on state and local budget constraints. However, it is expected to experience 3 years of steady growth rates (+2.7% in 2006, +2.3% in 2007 and +2.6% forecast in 2008).

## 2. What future for reduced VAT rates? The question is still pending

Adopted on 14/02/2006, the Directive 2006/18/EC extended once again - until 31/12/2010 - the provisions of the initial "reduced VAT rate" Directive (1999/85/EC) aimed at enabling Member States to apply a reduced VAT rate to a certain number of labour-intensive services, including renovation and maintenance works.

Following the adoption of this Directive, the Council asked the European Commission to present an overall assessment report on the impact of reduced rates applying to locally supplied services. This study, awarded to the university institute "Copenhagen Economics", was finalised on 21/06/2007. In its Communication of 5/7/2007 (COM(2007)380), the European Commission then presented the conclusions of this study, as well as some possible future orientations regarding the application of reduced VAT rates across the EU.

The Commission then put forward some ideas on how to simplify the current legislation by proposing - amongst others - a 3-level structure of VAT rates (very low, intermediate and standard rates).

Further to this Communication, the European Commission launched, in March 2008, a public consultation to collect stakeholder's views on the impact of an initial proposal for a possible European legislation applying reduced VAT rates on various categories of goods or services, such as labour-intensive services provided locally. The Commission then intends adopting a legislative proposal by July 2008. This initiative should above all concern services of high labour intensity provided on a local basis, presently covered by Directive 2006/18/EC until end 2010.

FIEC is continuously monitoring the development of this issue and undertook significant lobbying actions from the very beginning of this legislative process.

In reaction to both the study of "Copenhagen Economics" and the Communication of 5/7/2007, FIEC adopted a position paper promoting, for those Member States that so elect, the application of the lowest VAT rate on renovation and maintenance of private dwellings. Indeed, FIEC continues to stress

the positive impact that such a permanent measure can have not just on employment; but also on the fight against undeclared labour; and indeed in promoting the implementation of energy efficient investments in the built environment aimed at combating climate change.

According to a FIEC study carried out in March 2005, it was estimated that the eventual non-renewal of the possibility to apply these reduced VAT rates would threaten up to 250.000 jobs. But the main negative side-effect would be a major increase in undeclared work, which would destroy all the benefits obtained hitherto in this field.

This issue has a growing dimension which is linked with one of the most important and topical issue on the EU agenda, namely climate change and energy efficiency.

Following the adoption by the Commission of its "Action Plan for energy efficiency: realising the potential" in March 2007, which promotes various solutions - including reduced VAT rates - for more energy-efficient buildings, the European Council reactivated its idea of "green VAT" to promote products that help reduce greenhouse gas emissions. The Commission has now been invited by the Council to examine areas where economic instruments, including VAT rates, can have a role to play in increasing the use of energy-efficient goods and energy-saving materials.

As regards the construction sector, the European Commission already recognised in its Action Plan for Energy Efficiency that buildings are the single largest source of greenhouse gas emissions in Europe and offer potential savings estimated at 28%, which in turn can reduce EU final energy demand by 11%, and that buildings offer the largest potential for the most cost-effective solutions (i.e. more than in industry or transport).

Therefore, FIEC welcomes this new initiative but firmly insists that the starting point for the application of a "green VAT" system should not be energy-efficient materials as such, but the corresponding services, undertaken by qualified building contractors, including the energy-efficient materials required.

Indeed, applying a reduced rate of VAT exclusively on products may be expected to encourage building owners to resort to employing undeclared workers or “do-it-yourself” solutions, when in fact the installation of energy-efficient and energy-saving products should be carried out by construction operatives possessing the relevant skills. Furthermore, applying a reduced level of VAT exclusively on products, in contrast to a reduced level of VAT applied on works, would have an impact on the Single Market.

### 3. Public procurement: the directive on « concessions » postponed to an uncertain future

Following the publication of a “Green Paper” on public-private partnerships (PPPs) by the Commission (DG MARKT) in April 2004, with the aim of checking whether a legislative initiative on PPPs at the EU level was needed, and the comments received to this “Green Paper”, the Commission published in November 2005 a Communication summarising the main outcomes of the consultation, to which FIEC contributed.

In this Communication, the Commission indicated that it intended to undertake:

1. an EU legislative initiative on “concessions”, as a preferable option which should however be further analyzed under the principle of “better regulation”;
2. an “Interpretative Communication” on “institutionalized PPPs” (IPPPs), which are public-service undertakings held jointly by both a public and a private partner, aiming at clarifying the Community rules that apply when an IPPP is set up.

With the Resolution inspired by the “Weiler Report”, adopted in October 2006, the European Parliament provided a broad support to the proposals of DG MARKT.

Taking advantage of the debates which took place in the European Parliament, FIEC expressed/clarified again some aspects of its position on the PPPs issue (cf. FIEC position on the draft “Weiler Report” on PPP, dated 24/10/2006).

Further to this reaction, FIEC decided to give a more detailed input concerning the Commission’s initiative on IPPPs (cf. FIEC comments on the possible content of a Communication on IPPPs, 7/9/2007). FIEC’s main comments were:

1. The setting up of the IPPPs should be limited:
  - to situations where the private sector on its own would not be able to provide a solution to the needs expressed by the public authority;
  - to the strict scope of the initial object of the contract;
  - and to a strictly limited local territory.
2. The private partner must be selected according to the provisions of the public procurement directives and respecting the principles of the EU Treaty, in order to effectively achieve the objectives of non-discrimination, mutual recognition, proportionality, transparency, equal treatment and fair competition.
3. The private partner must not be selected as a purely financial partner, but both for its financial AND operational roles.
4. As regards possible “additional contracts” assigned to the IPPP, they should be authorized without any new tender, ONLY as far as the new task to be assigned to the IPPP has already been clearly specified in the procurement procedure for the selection of the private partner.

On 18<sup>th</sup> February 2008 the European Commission published its “Interpretative Communication” on IPPPs. It is based on a ruling of the EU Court of Justice (C-26/03 Stadt Halle), which requires transparent and competitive award procedures whenever public contracts or concessions are awarded to PPPs, and clarifies IPPPs general regime.

1. Depending on the nature of the task (public contract or concession) to be assigned to the IPPP, either the public procurement Directives or the general EC Treaty principles (or both sets of provisions) apply to the selection procedure of the private partner.
2. Community law does not require double tendering (one for selecting the private partner and another one for awarding public contracts or concessions to the PPP) when an IPPP is established.
3. An IPPP must also remain within the scope of its initial objective, i.e. the original contract awarded, and cannot obtain any further public contracts or concessions without another procedure in accordance with EC public procurement rules.

However, as IPPPs are usually set up to provide services over a fairly long period they must be able to adjust to certain changes in the economic, legal and technical environment.

Basically, FIEC's views on this matter found an echo in the Commission's Interpretative Communication.

As regards the initiative on "concessions", following the numerous contributions received from the business world and after months of internal discussions at the Commission, the question of the real need for a directive on "concessions" is still pending. The impact assessment is still running and no clear decision has been taken yet regarding a possible legislative proposal on such an issue. Whatever happens, it seems likely that no directive on "concessions" will be proposed until 2009 and the setting up of the next Parliament and Commission.

FIEC, which started a few months ago to work on this issue, will closely monitor the future developments and intervene as and when necessary on any possible future initiative.

#### **4. Transport policy: the way towards sustainable transport**

FIEC closely followed the EU transport policy for many years. The recent setting up of a special FIEC Ad-Hoc Working Group dedicated to the Trans-European Transport Networks (see special chapter in the report p. 48) and the elaboration of FIEC's annual "Blue Book" clearly demonstrates the importance attaching to this issue.

In the context of global warming, the EU-Commission (DG TREN) considers that the transport sector is particularly concerned and continues launching various initiatives which can play a role in improving the situation and which have a potentially direct interest for the construction sector.

##### **« Towards a new culture on urban mobility »**

In this context and in the framework of the mid-term review of the White Paper on European Transport, the European Commission published on 25 September 2007, a Green Paper on "urban

mobility". This Green Paper addresses the main challenges relating to urban mobility, such as congestion, pollution and public transport efficiency, and launched a reflection on the possible solutions that could be provided.

Although the EU does not have a formal competence in urban transport policy and most urban transport issues (e.g. parking policy, traffic charges and restrictions) will have to be addressed at the national and in particular local levels, the Commission is approaching this matter through related policy areas which impact urban mobility. This is for instance the case of environmental and human health policies; energy and climate change policy, as well as transport safety and consumer protection policies, all of which strongly impact the provision of public transport and transport infrastructure.

Therefore, according to the impact that this initiative can have on urban transport infrastructure and although this Green Paper addresses mainly local authorities, FIEC was able to contribute to the debate.

In this context, FIEC recalled that: all modes of transport are of equal importance in terms of urban development; and that promoting the development of public transport and greening cities should not hamper the mobility of citizens which is the basis of economic growth. Furthermore, any arrangement aimed at charging motorists for the use of urban transport roads should be hypothecated for the improvement of such infrastructure.

Following the conclusions of this debate based on the Green Paper, the Commission intends to put forward concrete measures in an Action Plan in autumn 2008, which will be carefully monitored by FIEC.

##### **Internalisation of external costs**

According to the request of the European Parliament when it approved the "Eurovignette" Directive in May 2006, the European Commission should present by June 2008, a proposed strategy for the internalisation of external costs generated by the various modes of transport (congestion, air pollution, climate change, accident, noise), according to the principle of the "polluter pays".

For this purpose, the Commission undertook a public consultation in winter 2007 and published in January 2008, a "Handbook", compiling studies and best practices in calculating the external costs generated by transport activities, that will serve as a basis for the future proposal.

The forthcoming Commission Communication should mainly propose specific external costs to be internalised and methods and tools for their internalisation, in particular market based instruments such as differentiated charges, specific taxes and an ETS (emission trading system).

At the same time, the Commission is expected to propose a review of the "Eurovignette" Directive of May 2006.

This issue is of a high importance for the construction sector as, by internalising external costs, the transport prices paid by the transport users could be used to improve the efficiency and quality of transport infrastructure and consequently reduce negative externalities. This is also what FIEC called for when it participated to the public consultation.

### **5. A « Small Business Act » for Europe: European SMEs in the forefront**

In 2005, the European Commission renewed its commitment to the Lisbon objectives of growth and jobs including through the launch of a coherent, inclusive and proactive Modern SME policy. In the framework of this SME policy, the Commission will publish in June this year a "Small Business Act for Europe" (SBA).

The European Commission identified 6 main areas where improvements should be promoted:

- 1) Regulating better for the benefit of SMEs
- 2) Putting SMEs and entrepreneurship at the forefront of society
- 3) Facilitating SMEs' access to the Single Market and in particular to public procurement
- 4) Supporting SMEs' access to finance and innovation
- 5) Turning the environmental challenge into opportunities for SMEs
- 6) Enhancing the implementation of EU SME policy principles

As representative of companies of all sizes, small, medium and large, FIEC participated in the public consultation launched by the Commission on the basis of these identified areas at the beginning of the year.

This initiative demonstrates that, in the past few years, Europe's 23 million SMEs have become the centre of interest not only at EU level, but also in most Member States.

Indeed, SMEs are an important driver of European economic growth and social cohesion in Europe. SMEs create approximately 100 million local jobs and make up over 99% of all businesses in the EU. However, their size makes it difficult for them to find orientation in legislation, to access innovation and research, to be protected by intellectual property law, to reach financial instruments, to reach competitive strength in a globalised world, etc...

The SBA should take the form of a transversal/horizontal action plan aiming to release the full potential of SMEs to create jobs and growth. According to the Commission, the SBA is a "final step" to the SME policy undertaken in the past few years and its goal is not to copy the American "SBA". Using the same name should only indicate the ambitious and unique character of this initiative.

The result should be a combination of legislative actions, political commitments, concrete practical steps and common principles to guide action at EU and Member States level. For the European Commission however, it seems that the legal form of the SBA remains an outstanding question. Some organizations are calling for a legally binding instrument, as is the case in the US. SME policy remains however largely the preserve of national authorities – under the principle of subsidiarity – and therefore a strong commitment will be needed on their side.

For further information on this issue, please also refer to the SME Working Group chapter (p. 50).

### **6. Towards a review of the Directive on "late payment" : improving the existing legislation**

Directive 2000/35/EC on combating late payment in commercial transactions entered into force on

8th August 2000. This Directive had been originally proposed by the Commission following the finding that a major part of bankruptcies (1 in 4 at this time in 1998) were due to late payment and that they were mainly affecting SMEs.

As requested in the Directive, the Commission presented in 2006 a review of the effectiveness of this new legislation. Although the conclusions of this study were optimistic and showed the generally positive effect of the Directive, the Commission however admitted that the situation remained worrying in specific sectors and individual countries. This optimism was furthermore balanced by a set of recommendations aimed at improving the situation.

According to an internal survey carried out by FIEC in 2005, it appeared clearly that – even if the situation varied from one country to the other – in the construction sector, the Directive has not been an efficient instrument in combating late payment. This was – and is still – mainly due to the fact that the Directive does not take into account sufficiently the specific characteristics of the construction sector; and that contractors avoid using the instruments provided for in the Directive against their clients – in particular the public ones – fearing that they will be denied the award of future contracts.

On the basis of its previous study and the recommendations that were made, the Commission is now elaborating a set of legislative proposals to revise Directive 2000/35/EC. In this context, the Commission undertook in 2007 a broad assessment on the potential impacts of possible measures to be proposed, such as, for instance, reinforcing existing legislation, creating new legal, taxation/financial and judicial instruments, creating specific funds, etc.

Using this new opportunity to express the position of the construction sector on this issue, FIEC recalled that, before proposing new legal instruments, the Commission should focus on improving the existing ones. For that purpose, FIEC requests in particular, that the current Directive be amended by removing the provision which allows for a possible prolongation of the payment period from 30 to 60 days.

The experience of several countries that have adopted specific national provisions, and are better adapted to national practices, seems also to be a

good track to follow, for instance in the framework of the exchange of “best practices”.

In any case, the most efficient element for combating the phenomenon of late payment would be a stricter discipline by clients, both public and private, in their engagements as regards payments, and which should be passed on from the main contractor to its subcontractors.

The Commission's impact assessment will run until June 2008.

### **7. A Lead Market Initiative for Europe (LMI): a special focus on « sustainable construction »**

In its Communication of 21st December 2007 entitled «A Lead Market Initiative for Europe », the European Commission identified 6 market areas which have a high innovation and economic value. The aim of the LMI is to speed up the development of these fast-growing markets – without interfering with competitive forces – through concerted actions supported by key policy instruments. In this context, European enterprises – especially SMEs – should profit from fair and better chances of entering new fast growing world-wide markets with a competitive advantage as lead producers.

One of the areas identified is “sustainable construction”, understood as meaning an integrated life-cycle oriented approach.

To justify this choice, the Commission took into account: first, the economic and environmental relevance of the construction market in the EU, and second, the numerous obstacles that hinder a fast growing development of this market – in particular “sustainable construction”.

According to the Commission, the introduction of life-cycle and cost-benefit assessments could facilitate the procurement of sustainable construction works by public authorities.

In this context, a road map for the coming years presented a set of policy instruments which aim at boosting the competitiveness of this market:

- a) **Legislation:** by improving the coordination of the various sets of regulations across different policy areas and avoiding further burdens.
- b) **Public procurement:** the aim is to mobilize public authorities to act as "launching customers" by promoting the use of innovation-friendly procurement practices, taking into account risks and regulatory limitations.
- c) **Standardization, labeling, certification:** in the sense that more consistent technical, performance and product standards along the whole chain, from raw materials to end products, could make standardization more innovation-friendly.
- d) **Complementary instruments:** such as business and innovation support services, training, communication, financial support and incentives. Such schemes could involve Structural Funds and State aid funding.

Amongst the presented instruments, the Commission intends to:

- analyse and assess the innovation potential and cumulative effects of EU and national legislations on innovative approaches in construction;
- develop guidance for the choice between EMAT and the Lowest Price, and for the use of Life Cycle Costs in construction works;
- publish a guide on how to establish collaborative working schemes in construction projects, general provision of contractual, management and insurance rules, as well as good practices for SMEs;
- analyse the national liability and insurance regimes and assess the feasibility for the insurance sector to promote alternative warranty/label schemes.

As this initiative is a "horizontal" one, both the "TEC" and "ECO" Commissions are dealing with this issue.

**FIEC position paper on reduced VAT**

20/2/2008 (The following are extracts. The full version can be found on the FIEC web site: [www.fiec.eu](http://www.fiec.eu))

[...]

FIEC welcomes the initiatives launched by the European Commission to find a permanent solution regarding the application of reduced VAT rates, namely the study undertaken by "Copenhagen Economics" (hereafter "the Study") – finalised on 21/6/2007 – and the Commission's Communication [COM(2007)380] published on 5/7/2007, which presents the main conclusions of the Study, as well as some ideas on how to simplify current legislation.

[...]

**The positive impact of reduced VAT rates in the construction sector****a) Impact on employment**

[...]

According to the Study, there is a strong argument in general terms for having uniform VAT rates in the EU and that the permanent application of a reduced rate of VAT to some products/locally provided services – including renovation works – is justified in terms of increased productivity and employment in labour intensive services.

**b) Impact on final consumer prices**

The Study came to the conclusion that permanently reducing VAT rates would eventually lead to providers passing on the reduction in the final price to the consumer.

[...]

**c) Fighting against the shadow economy**

[...]

The Study highlights empirical evidence that shows that in those sectors where reduced VAT is applied, the price decreases whilst demand, production and employment increase and that by lowering VAT rates on some locally provided services, such as renovation works – in other words by decreasing the gap between declared and undeclared activities – activities are shifted from the "informal" or "underground" economy towards the "formal" one. This is particularly true in labour intensive services such as renovation works.

**d) Contribution to energy efficiency**

The possibility for Member States to apply reduced VAT rates for renovation works (including the necessary material and appliances) is justified in

order to incite building owners to carry out measures improving energy efficiency.

[...]

In contrast to different levels of taxation applicable to products, which may create distortion of competition in the Internal Market, a reduced level of VAT, applied on **labour intensive services which encourage private owners to undertake energy efficiency measures** (such as better insulation) can **ultimately** have a significant and positive impact on the attractiveness and development of energy efficient investments.

[...]

**Reduced VAT rates to locally provided services do not affect the proper functioning of the Internal Market and should fall under the scope of subsidiarity**

The Study underlines the fact that for those products/services that are not traded across EU borders, which is certainly the case of renovation works, the application of reduced VAT rates will not have negative implications for the smooth functioning of the Internal Market.

Consequently and according to the principle of subsidiarity, more flexibility should be given to the Member States as regards the level of VAT rates to be applied to locally provided services.

[...]

**Consequences for the construction sector**

If the 3-level structure put forward by the Commission in its latest Communication<sup>1</sup> were to be implemented, social housing would continue to enjoy a very low VAT rate (0% to 5%), but, on the other hand, it seems that the renovation of private dwellings would fall within the scope of the "intermediate rate" category (10% to 12%).

[...]

According to a FIEC study undertaken in March 2005<sup>2</sup>, it was then estimated that the non-renewal of these reduced VAT rates would threaten up to 250.000 jobs. The abolition of this measure would mainly affect SMEs, which are its principal beneficiaries. **But the main negative side-effect would be a major increase of undeclared work,**

<sup>1</sup> [COM(2007)380] of 5/7/2007

<sup>2</sup> FIEC study, March 2005 (available on the FIEC website: [www.fiec.eu](http://www.fiec.eu))

which would destroy all the benefits obtained hitherto in this field.

[...]

FIEC therefore requests that:

- 1) if such a 3-level VAT structure as that tabled by the Commission is put into effect, then renovation and maintenance works (including the necessary material/appliances), both for social housing and

private dwellings, should fall in the lowest VAT rate category;

- 2) under the principle of subsidiarity, Member States decide whether or not to apply, in a flexible manner, reduced VAT rates for locally supplied services;

[...]

### FIEC comments on the possible content of a Communication on IPPPs

7/9/2007 (The following are extracts. The full version can be found on the FIEC web site: [www.fiec.eu](http://www.fiec.eu))

In its answer to the Green Paper of 2004, as well as in its position paper of 24/10/2006 on the "Weiler Report" of the European Parliament, FIEC underlined the need for a clarifying document at the EU level on Institutionalised Public-Private Partnerships (IPPPs), in order to effectively achieve the objectives of non-discrimination mutual recognition, proportionality, transparency and equal treatment as well as safeguarding fair competition.

[...]

A fundamental aspect of PPPs and IPPPs is that they concern a specific project, contrary to private, public or mixed enterprises which deal with a variety of activities. The final communication should explicitly indicate that an IPPP must remain within the strict scope of its initial object and should not be authorised to extend its activities, without respecting the relevant European and national rules.

[Therefore] IPPPs must be created respecting a strict limitation of their object, their territory of operation and their duration in time.

[...]

The private partner, must be selected according to the provisions of the public procurement Directives and respecting the principles of both the former Directive 71/304/EC on the "Public Works Liberalisation" and the EU Treaty, on the basis of the procurement procedure which is best suited to the needs of the contracting authority and to the nature and object of the contract.

However, FIEC would like to underline the possible difficulties linked to the isolated selection of a purely financial partner.

First of all, the fundamental basis of all PPP schemes, including IPPP, is the combination of financing and design/ build/ operate, in which the interrelations are such that is impossible to submit an offer for only one of these tasks.

In addition, it seems difficult to apply to the purely financial partner, not having any operational role, the qualification requirements aiming at assessing the capacities of a tenderer to execute the object of the contract.

[...]

Only as far as the task to be assigned to the IPPP later on has already been clearly specified in the procurement procedure for the selection of the private partner, an additional procurement for a subsequent assignment of tasks would not be required.

[...]

It is also absolutely necessary in terms of transparency, non-discrimination and undistorted competition that, as soon as the capital of a publicly owned enterprise is open to a private partner, the enterprise must lose its "in-house" status. Further contracts cannot therefore be awarded to the IPPP without a full and transparent competitive tendering procedure.

[...]



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Executive Chairman

## 1. Vocational training and education : Promoting transparency

In a labour intensive sector like construction, **vocational training and lifelong learning play a key role in raising the competitiveness of our industry**, its long term sustainability and in achieving the objectives of the "Lisbon Strategy".

Contrary to other industrial sectors, in construction it is not the "final product" that moves within the geographical limits of the single market, but rather the enterprises and their workforces that have to move to where the "product" is finally built. It is also a very fragmented sector comprising a significant share of SMEs, approximately 95% of which have less than 20 workers.

Furthermore, training and education policies are national competences, which, due to the specificities of each country, differ sometimes significantly one from another.

For these reasons and with the aim of facilitating the potential mobility of workers, **EU policies** in these areas such as for example ECVET (European Credit for Vocational Education and Training) or Europass (a set of harmonized documents aimed at facilitating the recognition of competences and skills across the EU), **focus on transparency and on the mutual recognition of qualifications**.

### a) European Qualification Framework (EQF) : the starting point...

At the core of the EU policies on training and education, as well as on the FIEC agenda, the **EQF is a "horizontal" (non-sectoral) common European reference framework linking together countries' qualifications systems**, and acting as a "translation" device to make qualifications more readable.

It was formally adopted by the European Council on 14<sup>th</sup> February 2008 as a Recommendation and it can therefore be applied by the Member States on a voluntary basis.

At the national level, the EQF promotes the development of national qualifications frameworks (NQFs) aimed at facilitating lifelong learning by making it easier for people to move between

different types of education and training institution, for example between higher education and vocational education and training.

From a practical point of view, the EQF comprises 8 reference levels covering all certificates awarded from the end of compulsory schooling to the higher levels of university education and professional training. They describe the "learning outcomes" of the certificate holder (what he or she knows, understands and is capable of doing), irrespective of the system under which their qualifications were awarded and the resources applied to acquire such knowledge (length of learning experience, type of institution), shifting the focus away from the traditional approach.

Although the **EQF is not intended to replace or modify existing national systems**, it foresees that Member States relate their national qualifications systems to the EQF by 2010 and that their qualifications contain a reference to the EQF by 2012. It will therefore enable individuals and employers to use the EQF as a reference tool to compare the qualifications levels of different countries and different education and training systems.

### b) ...for a future "construction" sectoral qualification framework (SQF)

In this respect and with the aim of adequately taking into consideration the specificities of the construction industry, FIEC decided to participate as partner in a project financed by the European Commission (DG EMPL) and led by "Berufsförderungswerk der Bauindustrie-NRW e.V."

**The objective of this project is to develop by 2009 a Sectoral Qualifications Framework (SQF) for the construction industry and implement it across the EU.** This SQF will serve as a reference framework for qualifications, knowledge, skills and competences in national construction industries.

As a complement to this "top down" approach, the European Social Partners for the construction industry, **FIEC and EFBWW (the European Federation of Building and Wood Workers)**, decided to **undertake a joint project focusing on the mutual recognition of qualifications for "bricklayers"**.

The objective is to develop a framework to be applied in the assessment of bricklaying qualifications, to assess and compare the nature, content and regulation of different qualifications and vocational training systems for bricklaying in 8 EU countries (Belgium, Italy, Germany, the Netherlands, Denmark, England, Poland and France) and to identify the learning processes whereby qualifications are acquired in each country, including formal and informal learning. On these bases, the bricklaying qualifications will then be related to the respective national qualifications frameworks (NQFs) (where applicable) and an assessment will be made regarding the possibilities, means and difficulties concerning the implementation of EQF/ECVET and the above mentioned sectoral qualification framework in relation to bricklaying.

For this project, the decision regarding a possible financing by the EU Leonardo programme is still pending.

#### c) Training and education : a key role in the sustainability of the construction industry

Vocational training and education policies can play a key role in at least **3 of the major challenges facing the construction industry** and impacting its long term sustainability.

The first of these challenges is the difficulty in convincing young people to join a sector such as construction, which wrongly suffers from a bad image and is too often associated with negative stereotypes (working in bad weather, dangerous, low wages, few career prospects, etc.). In order to demystify this image and to demonstrate to young people that construction is a sector that can provide extremely motivating professional perspectives, **FIEC is envisaging the development of a computer game to be distributed to schools and downloadable from Internet websites.** On the basis of an experience undertaken a few years ago by FIEC's French member association FFB (Fédération Française du Bâtiment), the objective of this game would be to provide, through the simulation of a construction worksite, an overview of the construction process and the opportunities that it offers, an overview of the various professions and crafts, as well as answers to the main issues that discourage young people from joining the construction industry.

**Another major challenge that is affecting construction activity in several Member States is the lack of skilled labour.** The cyclical nature of the sector, the mobility of the labour force, and the enlargement of the EU, are all factors that influence the labour market and that explain the present situation. The pro-active training and lifelong learning policies developed and promoted at national level combined with the above-mentioned EU initiatives (EQF, ECVET,...) aimed at facilitating the transparency and the recognition of qualifications, should help the sector to address this challenge. The initiatives of the European Social Dialogue partners, FIEC and EFBWW, on the qualification of "bricklayer" and for the development of a Sectoral Qualification Framework, provide an additional added value that is tailored to the specificities of the construction industry.

**Finally, the significant role that the construction industry can play in the policy areas of energy efficiency and climate change** (for more details on this issue see the chapter on the TEC Commission p. 42) must ultimately impact training policies, in order to equip construction enterprises and their workers to adequately respond to the fast-growing needs in reducing greenhouse gas emissions from the built environment. This is another issue on which FIEC will increasingly concentrate its attention in the future.

## 2. Improving Health & Safety (H&S): for the benefit of enterprises and their workers and the overall image of the sector

**Improving Health and Safety** in the construction sector through contributing to the development of adequate H&S schemes and policies at the EU level, as well as through the exchange of best practices between FIEC and its member federations, **constitutes a topical issue on the agenda of FIEC's Social Commission.**

In a joint Declaration issued at the OSHA (Occupational Safety and Health Administration) European Construction Safety Summit held in Bilbao in November 2004, FIEC and EFBWW announced a series of joint actions to improve occupational safety and health on construction sites. These announcements were also included in the Declaration

"Building in Safety" signed on 22<sup>nd</sup> November 2004 during the Bilbao European Construction Safety Summit by FIEC and EFBWW, the European Sectoral Social Partners, together with several other European organisations in the sector.

Since then, FIEC and EFBWW have continued to develop their joint and respective activities on H&S with the aim of implementing the objectives of this "Bilbao agreement".

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

In several countries, clients are increasingly insisting that companies prove that they have set up H&S safety systems and are complying with them. **In most cases these systems are specific to each client and therefore companies have to draw up a large number of different specific sets of documentation.**

Therefore, FIEC decided to elaborate a European guide for a H&S management system. Such a system, to be endorsed on a voluntary basis, would focus specifically to SMEs, which do not necessarily have the resource to develop and implement such a system. The use of such European guide should facilitate the development of a H&S culture amongst clients and companies.

A FIEC ad-hoc Working group is currently working on the content of this draft European guide, which would on the one hand describe the basic requirements necessary to develop a H&S system in a construction enterprise and, on the other, present a series of fact sheets on the various steps to be taken in order to effectively implement a H&S management system.

#### b) Health & Safety (H&S) cards : an important instrument that should not become an obstacle to mobility

Several Member States introduced at their national level individual H&S cards which are increasingly being demanded by major industry organisations, employers, clients and Government agencies as proof of competence regarding their H&S skills, with the aim of helping the construction industry improve quality and reduce accidents.

**Promoting and facilitating the development of H&S cards within Europe is of the utmost importance for FIEC** in the context of an industry such as construction, which is increasingly having to evaluate the H&S skills of the growing numbers of EU migrant workers it hires. However, the systems existing in the various countries refer to different forms of training; to different types of occupations and their respective scopes that sometimes differ significantly.

FIEC therefore decided to analyse and compare the existing systems in order to ensure that either through mutual recognition mechanisms, which are currently being developed or, if appropriate, through a European H&S card or mutual recognition system, **they do not become an obstacle to the mobility of enterprises and workers within the Internal Market.**

#### c) European Information System on Chemical Products used in the Construction Industry (ICPCI) : a project aimed at facilitating the handling of chemicals on worksites

**The particular characteristics of the construction industry (mobile jobs, constantly changing working conditions, etc.) increase the risks related to the handling of chemicals on worksites.** This is particularly true for SMEs for which it can be very difficult to guarantee adequate health and safety provisions for their workers handling dangerous substances.

Against this background, **a pragmatic and efficient approach would be to set up a European Information System on Chemical Products used in the Construction Industry (ICPCI).** This would be a practical aid both for European construction firms, which have to take measures to minimise the risks of working with dangerous substances, and also for manufacturers of construction chemicals, which have to draw up the exposure scenarios required under the REACH Regulation (2006/1907/EC).

There are already a certain number of similar approaches at the national level, which are also supported by the manufacturers and their organisations, such as the MAL Code (Denmark) or GISCODE (Germany), which could be a starting point for this ICPCI European system.

The main objective is to develop an instrument allowing the information on risk-minimising measures, contained in the REACH code, to be passed on in a simple way to enterprises and workers handling chemicals. **The information provided must be adapted to the requirements and capacities of the workers on construction sites : it must be clear, easily understandable and readily accessible.**

FIEC and EFBWW have therefore decided to apply for a grant under the Social Dialogue budget line in order to launch this ambitious project, which, due to its complexity is split into 3 distinct phases :

1. Phase 1 : aiming at defining the structure and the content of the project with all the stakeholders concerned (social partners, representatives of the chemical industry, national prevention bodies, the European Chemicals Agency,...);
2. Phase 2 : to be financed by the 7<sup>th</sup> R&D framework Programme, aiming at developing the information system;
3. Phase 3 : effective functioning of the system.

Against this background, and depending upon the availability of the EU financing for the development phases, the aim is to get the project up and running within three to five years. Another project on REACH complementary to ICPCI, « ChemXChange », in which FIEC is participating, was initiated by the Norwegian association EBA (Entreprenørforeningen – Bygg og Anlegg). For further information on « ChemXChange » see item 13 of the TEC report (p. 44-45).

#### **d) Support of the 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.

In order to achieve its objectives, since 2000 OSHA launched several European thematic awareness raising campaigns. FIEC actively supported the OSHA campaigns, mainly since the 2004 campaign

on "Building in Safety", which was the first one focused on a specific sector, until the 2007 campaign "Lighten the Load" on musculoskeletal disorders.

Along these lines FIEC therefore decided to support also the new campaign, which for the first time will be bi-annual, covering the period 2008-2010, and which will focus on "Risk assessment", with the aim of promoting an integrated management approach across the EU that takes into account the various steps of risk assessment.

The main objectives of the campaign are, amongst others, to raise awareness of the legal 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.

### **3. Economic aspects of employment**

#### **a) "Posting" Directive : further efforts needed for facilitating its practical implementation**

**The "Posting" Directive (96/71/EC) is one of the central pieces of EU legislation for a sector such as construction**, which is characterised amongst others by the high level of mobility of its workforce. Its practical 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 by 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 whilst ensuring the protection of workers' interests.

In a Communication published in 2007 [COM(2007)304] the Commission underlined that despite the significant progress achieved so far, **there is a need for urgent action to improve administrative cooperation** and called on Member States to **review**

certain control measures which, according to the Commission, go beyond the protection of posted workers and are unjustified obstacles to the free movement of services, a fundamental right under the Treaty.

On 11/12/2007, FIEC and EFBWW adopted a joint position paper in which they reconfirmed that the Posting of Workers Directive does not need to be revised. It is a well balanced instrument for achieving the objectives of articles 49 and 50 of the EC Treaty, including fair competition and social protection. FIEC and EFBWW are pleased, as indeed is the Commission, with the progress made by some Member States regarding access to information relative to posting and the diversity of the tools developed in order to make such information available to everyone, even if transnational administrative cooperation still needs to be improved

FIEC and EFBWW however regretted that the European Commission never expressly mentioned that prior declarations are adequate and proportionate formalities to ensure that the host Member State's social law is respected. On the contrary it considers such a formality as a suspicious control measure and not as a tool aimed at reinforcing the control measures foreseen in the "Posting" Directive. In fact, prior declarations are not synonymous with prior controls but they do allow the authorities of the host countries to be properly informed of the existence of posted workers on their territories and to organize controls, if and when necessary. FIEC and EFBWW also underlined that it would be helpful to have a harmonised EU standard form for such "prior declarations" and offered their assistance for developing it.

In its Communication, and with the aim of improving the implementation of the Directive, the Commission proposed, amongst others, to set up a High Level Committee of government experts, involving social partners, which would facilitate the exchange of good practices. In a joint letter addressed to Commissioner Spidla, FIEC and EFBWW fully supported this initiative and expressed the wish to be effectively involved in such a Committee.

Finally, also with the objective of facilitating the practical application of the "Posting" Directive, FIEC and EFBWW decided to apply for a grant under the European Social Dialogue budget line of the

Commission (DG EMPL) for financing the completion and the update of the existing database on the "Posting" Directive.

The aim of this project is not to collect general information which may be available from other sources, but to focus on those aspects that characterise the specificities of the construction sector.

**This database 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.

#### **b) Proposal for a Directive on "Sanctions against employers of illegally staying third-country nationals" : a narrow approach to a significant problem**

In May 2007 the European Commission presented a proposal for a Directive on "Sanctions against employers of illegally staying third-country nationals" [COM(2007)249].

As part of the EU's comprehensive migration policy, which covers policies to fight illegal migration and trafficking in human beings, this proposal for a Directive aims at ensuring that all Member States introduce similar penalties for employers of such third-country nationals and enforce them effectively.

This proposal for a Directive considers employment as a key pull factor for illegal immigration and indicates, amongst others provisions, that in view of the prevalence of subcontracting in certain affected sectors, it is necessary to ensure that all the undertakings in a subcontracting chain are held jointly and severally liable to pay financial sanctions levied against an employer at the end of the chain who employs illegally staying third-country nationals.

The construction sector is a labour intensive one which in several Member States is faced by an increasing lack of skilled labour. Moreover, legislative initiatives taken in this area can have a significant direct impact on its structure and functioning. FIEC therefore welcomed the main objective of the

proposal presented by the European Commission, namely the fight against the employment of illegally staying third country nationals, which is one of the various components of undeclared labour.

However, FIEC, in a position paper dated 7/12/2007, expressed some serious concerns about several important provisions of the proposed Directive, which unfortunately addresses only some of the symptoms of the problem and not its causes : employment is only one of the many pull factors for illegal immigration, which is an extremely complex and wide ranging phenomenon and consequently **sanctions against illegal migration must be accompanied by complementary measures in favour of legal migration**. Isolated provisions will only transfer the problems from one area to another without really solving them.

FIEC will continue to monitor developments and to provide input to MEPs in view of the forthcoming vote at 1<sup>st</sup> reading in the European Parliament, which has been postponed until November 2008.

**c) Fight against undeclared labour : on “joint and several liability” let’s not put the cart in front of the horse**

Several EU Member States have introduced national provisions on “joint and several liability”, in other words the liability of the main contractor for the obligations (fiscal, taxation,...) of its sub-contractor(s), as one of the possible instruments for fighting against undeclared labour.

There are currently some political pressures, mainly coming from the trade union representatives, for introducing legislative measures at the EU level on this matter.

**The existing provisions, which are linked to the specificities of each country, vary significantly one from another and therefore cannot realistically be benchmarked against each other.** In this framework, FIEC considered that the “cart should not be put in front of the horse” and that **it is premature to introduce European legislation on this matter before having assessed the existing provisions**. It was therefore decided to set up a Working Group with the aim of examining the existing systems and evaluating their efficiency.

**A study on “joint and several liability” in the construction industry was also launched at the beginning of 2008 by Eurofound**, the European Foundation for the improvement of the living and working conditions (known also as the “Dublin foundation”), whose aim is to provide information, advice and expertise – on living and working conditions, industrial relations and managing change in Europe – for key actors in the field of EU social policy on the basis of comparative information, research and analysis. The objectives of this study are to assess the existing systems of joint and several liability in 8 Member States (AT, BE, DE, ES, FI, FR, IT, NL), to undertake a cross-national comparison, to identify best practices as well as problems raised by the existing legislations and to examine the feasibility of establishing a European framework for liability in subcontracting.

FIEC is carefully monitoring the development of this study and will analyse the outcome in the light of the results of the work undertaken by its own Working Group.

**d) Study on self-employment and bogus self-employment : a practical contribution to the discussions on the modernisation of labour law**

Amongst the activities undertaken in the framework of the European Social Dialogue, **FIEC and EFBWW decided to launch a study, with the financial support of the European Commission (DG EMPL), on self-employment and bogus self-employment in the construction industry.**

The distinction between self-employed workers and employees has important fiscal, social and economic consequences : self-employed workers work under their own professional responsibility. Moreover, 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, ...) governed by collective agreements or by specific legislative, administrative and regulatory provisions are not applicable to self-employed workers; etc.

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.**

According to "Employment in Europe 2005", approximately 14% of construction workers are today self-employed, however such share is higher in some countries, such as Greece (40%), Poland (29%), Cyprus, Italy, Portugal, United Kingdom, than in others.

This increase is due, amongst others, to the specific organisational and economic developments of the construction sector in each country, whereby the main contractor is surrounded by a constellation of companies and self-employed workers with which they have flexible relations. This development has led to an increased creation of "dependent self-employment" or "dependent outsourcing" towards one employer, which may blur the distinction between the self-employed status and the employee status.

FIEC and EFBWW therefore decided to undertake this study, which is currently in its preliminary phases, **with the aim of assessing the legal, regulatory, administrative, organisational and practical aspects of self-employed workers in the construction industry.** As such the study will examine the positive impact of genuine self-employment on the labour market and will also look at the measures, which have been developed to prevent, detect and sanction bogus "self-employed", as well as their effective impact.

The outcome of this study will contribute to the discussions at EU level on the modernisation of labour law.

#### **e) Promoting social dialogue and paritarian social funds in the new Member States (Conference in Warsaw)**

Another important activity undertaken in the framework of the European Social Dialogue, was the conference on paritarian funds in the construction industry organised on 6-7 March 2008 in Warsaw (PL), and financed by the European Commission (DG EMPL), by FIEC, together with the EFBWW and in collaboration with the AEIP (European Association of Paritarian Institutions of Social Protection).

**Through collective agreements and paritarian social funds for "vocational training", "health and safety", "occupational pensions", "social security", "quality standards",... the social partners have proven**

**that they are capable of regulating and promoting a sustainable construction industry.** At the same time the collective agreements and the paritarian institutions also play an important role in bringing together the social partners and as such are the "engine" that promotes industrial relations. Often, the paritarian social funds are also considered as the "cement" which holds together social partners and their industrial relations.

Depending of the specificities of each country, **the vast majority of the existing paritarian social funds are established, funded and managed by the social partners themselves and often they fulfil a complementary role to the existing governmental structures.**

Such paritarian bodies exist in most of the "old" Member States, but at the moment however, from the Eastern or Central European countries, it is only Romania that has a paritarian social fund in the construction industry.

Due to the significant role that these paritarian funds can play in both the organisation of the industry, as well as in the promotion of a reinforced social dialogue, FIEC, EFBWW and AEIP decided to organise this conference with the objective of promoting these values in the so-called "Visegrad countries", namely the Czech Republic, Hungary, Poland and Slovakia.

The purpose was not to try to impose different social models in these countries, but to present the experiences that have led to the setting up of various forms of social paritarian funds in the "old" Member States, according to their respective specificities, and to have an exchange of information on their framework, their structure and their functioning.

**FIEC believes that through such an exchange of best practices and of mutual learning, significant progress can be achieved in favour of reinforced industrial relations and of the role of the social partners.**

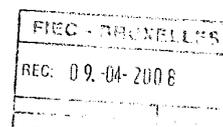
**A joint FIEC-EFBWW declaration in this sense was signed** at the end of the conference by Daniel Tardy and Domenico Pesenti, Presidents of both organisations respectively (*the "Warsaw declaration" can be downloaded from the FIEC website [www.fiec.eu](http://www.fiec.eu)*).

## Letter from Commissioner Špidla to the Social Partners on "Posting of Workers"

3/4/2008

VLADIMÍR ŠPIDLA  
MEMBER OF THE EUROPEAN COMMISSION

Brussels, 3. 04. 2008  
D(2008)5004



Dear Messrs Hägglund and Paetzold,

Thank you for your letter of 28 February 2008 concerning the high-level committee envisaged in the Commission Communication on "Posting of workers in the framework of the provision of services: Maximising its benefits and potential while guaranteeing the protection of workers".

I am pleased to notice your interest in this initiative and appreciate your willingness to act as observer on the committee.

I wish to inform you that the Commission adopted on 3<sup>rd</sup> April 2008 a Commission recommendation on enhanced administrative cooperation. The recommendation invites the Member States to take part in cooperation forums the Commission may set up, such as the envisaged high-level committee.

As to the committee's membership, the Commission favours formally involving the social partners on a regular basis—in accordance with national law and practice—in particular the social partners' representatives in sectors with a high incidence of recourse to posted workers. The precise membership, objectives and working methods of the high-level committee are, however, to be defined at a later stage, in line with the outcome of the debate in the Council following the adoption of the recommendation.

The Commission would welcome further comments and suggestions from your organisations.

Yours sincerely,

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EFBWW  
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BE – 1000 Brussels

Mr Ulrich Paetzold  
Director General  
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Avenue Louise 225  
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## FIEC-EFBWW Joint declaration on paritarian funds

Warsaw – 7/3/2008 (The following are extracts. The full version can be found on the FIEC web site : [www.fiec.eu](http://www.fiec.eu))

### Social dialogue and industrial relations as a driving force

1. The European and national social partners of the construction industry are strongly committed to building a long-term sustainable sector. In keeping with this approach, industrial relations are seen as an indispensable instrument.
2. [...]
3. [...].  
In addition the EFBWW and FIEC strongly recommend all member states to recognize and support bilateral industrial relations between the recognized social partners within the construction industry.
4. The EFBWW and FIEC strongly underline that officially recognized social partners should be the only ones authorised to set up paritarian social funds.

### Paritarian social Funds as a driving force

5. [...]  
paritarian social funds play an important role. Depending on the specificities of each country, various activities, such as vocational training, occupational health and safety, occupational pensions, complementary social protection, savings and investments, etc. are issues which can be dealt with jointly in paritarian social funds set up, organised and managed by the autonomous social partners.
6. [...]
7. [...]
8. [...]
9. The EFBWW and FIEC consider that the compulsory participation of all workers and companies, at least in certain fields, can play a central role in ensuring the effectiveness of a social fund. [...].
10. Finally, the EFBWW and FIEC consider that solidarity, especially when applied to social protection schemes, constitutes a cornerstone of the European social model

### The EFBWW and FIEC

**Recognize that paritarian social funds in the construction industry are an essential instrument for the cohesion of the industry and its sustainability. Both organizations fully agree on the following and :**

- **State** that the European Treaty explicitly recognizes the role of the social partners and their industrial relations;
- **Demand** that the construction industry be recognized by national public authorities and legislators as a sector in which the autonomy of paritarian industrial relations, negotiations and subsequent agreements are fully recognized and facilitated;
- **Request** that when necessary and where the framework existing at national level allows it, the provisions of a bilateral collective agreement be declared generally applicable throughout the country for all employees and workers working in the construction sector concerned.
- **Urge** that where it does not yet exist, national authorities set up a legal framework in which national sectoral social partners can autonomously negotiate:
  - collective agreements;
  - the creation of paritarian social funds and how they should operate
- **Ask** the public authorities to safeguard the full autonomy of the social partners from any political influence which may reduce the effectiveness of their joint action.
- **State** that the full autonomy of the national social partners is an essential factor for the sustainability and the flexibility of paritarian social funds to meet the challenges of the construction industry.





Zdenek Klos, CZ

**President**

*John Goodall, FIEC  
Rapporteur  
Frank Faraday, FIEC  
Rapporteur Designate*

Sub-Commission TEC-1

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



Rob Lenaers, BE

**Chairman**

*Eric Winnepeninckx, BE  
Rapporteur*

Sub-Commission TEC-3

**"Environment"**



Jan Wardenaar, NL

**Chairman**

*Niels Ruyter, NL  
Rapporteur*

Sub-Commission TEC-2

**"Innovation and Processes"**



Bernard Raspaud, FR

**Chairman**

*André Colson, FR  
Rapporteur*

Sub-Commission TEC-4

**"Plant and Equipment"**



Juan A. Muro, ES

**Chairman**

*Ricardo Cortes, ES  
Rapporteur*

## 1. Introduction

The activities of the Technical Commission relate to 4 principal themes:

- The completion of the internal market in construction products;
- The promotion of research and development;
- Environmental aspects of construction and
- Constructional 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.

### Lead Market Initiative

On 21<sup>st</sup> December 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. 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.
- In the revised Construction Products Directive, provide for better procedures to obtain European Technical Approvals that take into account sustainability criteria.

For further information on this initiative please refer to the Economic and Legal Commission (p. 22–23).

## 2. The Internal Market Package for Goods

At the time of going to press, the European Parliament has approved the Internal Market

Package for Goods at first reading. The vote took place in plenary session on 21<sup>st</sup> February 2008 after a compromise text presented by the Slovenian presidency was agreed upon with the Council.

The package's "*Regulation setting out the requirements for accreditation and market surveillance relating to the marketing of products*" strengthens accreditation by more effective coordination of national accreditation at European level and, for the first time, creates a common legal framework for market surveillance procedures in the Member States for the placing on the market of products. In order to tackle technical barriers to trade, once the regulation enters into effect, it will be incumbent on Member States to prove that a product is unsafe for it to be withdrawn from the market. The regulation is scheduled to enter into force in 2010. A Decision ("*Decision on a common framework for the marketing of products*") has also been adopted that is intended to serve as a toolkit for the future revision of new approach directives.

FIEC's main concerns were raised in a position paper dated 13<sup>th</sup> July 2007 concerning the "Package for Goods" as well as in the subsequent letter addressed to the late Mr Michel Ayrat, Director of Regulatory Policy within the Commission's Directorate-General for Enterprise and Industry. These were namely:

- The importance of a developed system of market surveillance to ensure that defective or non-conforming construction products are detected and withdrawn from the market before being incorporated into building works. This is of paramount importance as it is often impossible to check the integrity and performance of products bearing the CE marking after market access especially in cases of discrepancy between actual and declared performances.
- In terms of information exchange, FIEC has stated that not only unsafe products should be included in such exchanges of information, but also products performing below the criteria set out in the declaration appearing on the CE marking.
- The need for the manufacture and installation of products by construction enterprises **themselves for use in their own works** to be excluded from the definition of 'making available on the market', in order to ensure that contractors are not considered as "economic operators" (in the meaning of the Directive) and hence that **they are in no way drawn into CE marking activities**.

FIEC has taken issue with a number of amendments introduced at committee stage in the European Parliament that could be interpreted in such a way as to provide for different levels of rigour in conformity assessment procedures depending on the **size of the economic operator**. In this respect great concern has been voiced about the possible **undermining of confidence in the CE marking**. During a working breakfast organised by the European Parliament's SME Union on 13<sup>th</sup> February 2008, FIEC restated its position that **for non-series and customised products, the appropriate level of conformity assessment should be specified in the texts of harmonized standards** and not given specific provision in this legislative package.

As far as the **CE marking itself** is concerned, much attention has been given to ensuring clarification as to the role of the marking which is neither a quality label nor a safety mark but **simply an indication of conformity to the relevant European Union directive**. Furthermore, for the first time the legislation provides for the protection of the CE marking as a trademark.

#### The outcome:

- The package's regulation, strengthens accreditation and, for the first time, creates a common legal framework for market surveillance procedures in the Member States for the placing on the market of products. The FIEC sponsored amendment calling for market surveillance measures to take into account declared performances as well as the characteristics of the product was not adopted.
- Many of the amendments introduced during the first reading calling for facilitated conformity assessment procedures for SMEs have not been retained in the compromise text. There are, however, a number of provisions of concern to FIEC, notably the requirement for notified bodies to have procedures that take into consideration "the size, the sector, the structure of the undertakings, the degree of complexity of the product technology in question and the mass or serial nature of the production process." FIEC remains attentive to the risk that this provision, by suggesting that different levels of conformity assessment could arise for certain categories of economic operator, may cast doubt on the reliability of the CE marking.

- The FIEC amendment on the definition of 'making available on the market' was regrettably not kept. FIEC will pursue this issue during the upcoming revision of the Construction Products Directive.

The Council has still to approve the Parliament's first reading adoption of the text, however at this stage it seems that the package has the support of the necessary qualified majority of Council votes and that it will enter into force. It remains to be seen to which extent the adoption of the "New Approach" package will influence the forthcoming revision of the Construction Products Directive.

### 3. The Construction Products Directive (89/106) (CPD)

The implementation of the directive remains focused on efforts in CEN and EOTA (European Organisation for Technical Approvals) for the production of "harmonized technical specifications". CEN ultimately expects to publish about 483 product standards as well as some 1500 supporting standards, principally dealing with test methods and evaluation of conformity. By end February 2008, a total of 369 product standards had either been formally approved or had reached the formal vote stage, of which 314 had been cited in the Official Journal. A further 50 had either passed - or had reached - the CEN enquiry stage, whilst a further 20 were under preparation for CEN Enquiry.

The Commission is expected to adopt its proposals for the revision of the CPD in late April 2008 and there is a degree of speculation as to whether the new document will take a form of a Regulation as opposed to a Directive. Initial soundings from the Commission as to the shape of the future legislation are of concern to FIEC as it appears the Commission has decided on a **complete overhaul of the directive** involving a change of terminology. This can hardly be considered as simplification as had been vaunted in the lead-up to the revision.

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

For some time, it has been the intention of certain product manufacturers, to put most, if not all, of 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 attempt to reach a common position on this topic.**

Meanwhile, an adapted version of the ZA annex template that accompanies standards (in so far as their harmonised part is concerned) has been 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<sup>rd</sup> December 2007 this template was approved by the Standing Committee. However the European Committee for Standardisation (CEN) has decided not to circulate it until FIEC's agreement on the matter is forthcoming.

A number of meetings have been held between CEPMC and FIEC on the issue with a view to reaching a common position. Certain member federations do, however, continue to have reservations about such a development. These reservations are as follows:

- **For the purposes of product identification, the contractor must continue to receive all required information linked to the product on site without recourse to using the internet.** All declared values covering the "essential requirements" of the CPD should physically accompany the product.

#### 5. Future status and revision of the Eurocodes

FIEC has expressed concerns about plans put forward by some CEN members to already begin revising the "Eurocodes". In a letter addressed to the European Commission's Enterprise and Industry DG in December 2007, FIEC called for a **standstill period of undetermined duration** to be placed on future revision of the Eurocodes and cited the following reasons:

- Full implementation will only be completed once all National Application Documents (NADs) are finalised.
- Revising the Eurocodes should not occur until the revision of the Construction Products Directive has been approved and implemented.
- The Eurocodes are, at the current time, linked to the first, and parts of the second and fourth Essential Requirements (ERs) under the CPD, namely "Mechanical resistance and stability", "Safety in the case of fire" and "Safety in use" It is inadvisable to attempt to link the Eurocodes to all ERs of the CPD. For instance, there are currently no international design standards that can address "Essential Requirement N°3 -Hygiene, health and the environment."

FIEC will continue to monitor developments in this area.

#### 6. The contribution of standardisation to innovation

In June 2007, the European Commission made known its intention to adopt a Communication on the topic of "Innovation and Standardisation". To this end it circulated a "Discussion Paper" inviting interested parties to respond to a number of questions. Several of the questions raised addressed the topic of the role of SME associations and the services provided in responding to their members' needs in the field of standardisation.

In an accompanying letter, FIEC expressed concern about the way in which increased funding aimed at improving the participation of SMEs in the

standardisation process is allocated. These are 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.**

FIEC added that it has been the Commission's very process of mandating standards in a "top-down manner" for the purposes of opening up the single market (albeit with the support and agreement of industry as a whole) that largely explains the time that it has taken to draft standards for the implementation of the Construction Products Directive. In more normal circumstances the standards writing process should be a "bottom-up" industry driven process that responds to industry's needs. In this context, provided that the appropriate structures are in place and function efficiently, the process should in large measure take care of itself.

Soon after, the Commission launched a call for tenders for a study on "Access to Standardisation". The study, which has now been awarded, is due for completion in early 2009 and FIEC expects, during the course of 2008, to provide input to the appointed consultant by putting forward proposals for a more efficient system of financial support to improve SME participation in the standardisation process.

## 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. Some years ago, FIEC

adopted a policy towards its involvement in EU financed RTD projects that, as a general rule, should limit its involvement exclusively to "dissemination activities".

FIEC is currently involved in the following research projects:

- **ChemXchange** project on chemical safety management for construction SMEs- (cf. "Implementing REACH in the construction industry" p. 44-45).
- **Sunrise** project on promoting the uptake of photovoltaic installations in buildings. (cf. "Photovoltaic technology in buildings- Sunrise Project" p. 42-43)
- **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.

## 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 has recently been restructured 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) have been reinforced and a new post of Secretary General has been 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) expects to join the HLG when voting to the body takes place in April. 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 funding at the EU level. FIEC has confirmed its intention to remain a member of the platform, a decision that has been mirrored by ECCREDI.

#### Energy Efficient Buildings - Joint Technology Initiative (E2B JTI):

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.

### 9. Climate change policy and energy efficiency in buildings

The Commission on 23<sup>rd</sup> January 2008 unveiled its long awaited Climate Change Package in which it aims to give concrete form to its 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**. The package has now been passed on to the European Parliament and the Council where both institutions aim to see the various texts approved by the end of 2008. The package consists of a number of specific legislative proposals aimed at setting national targets for reductions in carbon emissions, improving and widening the European emissions trading scheme, measures relating to carbon sequestration as well as encouraging gains in energy efficiency.

Energy efficiency has been the focus of much attention from the 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 the Commission's figures, in the order of 28%. The Commission is also keen on moving towards "zero carbon" houses in new build. What is lacking in the report however

is the importance of fiscal stimuli to favour energy efficient renovation of the existing housing stock. To compensate this, FIEC succeeded in placing an amendment in the European Parliament's Resolution on the Action Plan which was adopted in January 2008. The amendment calls for the Council to encourage the **Member States to apply a reduced rate of VAT on labour for works to improve energy efficiency**.

Concerning the Energy Performance of Buildings Directive (EPBD), the requirements for an energy certification scheme for buildings are only now being implemented in the Member States, two years after the deadline for transposition, mainly due to a lack of qualified assessors in the issuing of energy performance certificates. Partly as a result of the Climate Change Package, the Commission is planning the overhaul of the directive with a view to bringing down the threshold that applies to certification of existing buildings undergoing major renovations and which is currently set at 1000m<sup>2</sup>.

FIEC continues to emphasize that **the most cost-effective solution for securing gains in the energy efficiency of buildings is when they undergo major renovation**. This is a much more effective approach to tackling climate change as, unlike the transport sector, it can be achieved at negative economic cost (i.e. with a benefit). 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 promote a "do it yourself" approach that would undermine the very aim of improving energy efficiency and will also tend to promote the phenomenon of undeclared work.

### 10. Photovoltaic installations in buildings – Sunrise project

In May 2007 FIEC signed an agreement with EPIA (European Photovoltaic Industry Association) as leader, together with "Wirtschaft und Infrastruktur GmbH & Co Planungs-KG", the "European Association of Electrical Contractors" and the "International Union of Architects" for a "Coordination Action" under the 6th FP. The duration of the contract is 30 months. FIEC's role will be the dissemination of RTD results and other relevant information across the

industry in favour of promoting the increased use of photovoltaic applications in buildings.

In this vein, **the Sunrise project will be presented at the FIEC annual conference to be held this year in June 2008 in Dublin.**

## 11. Environmental Performance of Buildings

The major venue for concerns linked to the environmental performance of buildings has been within CEN and more particularly within **CEN/TC 350 for "Sustainability of Construction Works"**. The Commission gave a mandate to CEN in March 2004 to proceed with drawing up a standard for the assessment of the "integrated environmental performance of buildings". The standard, when implemented, will provide a method for a building to be evaluated over its entire life-cycle. There have recently been attempts within the TC to extend the scope of life cycle assessment from purely environmental considerations to social and economic aspects. FIEC continues to monitor the work of this committee which expects to adopt the draft text of a standard within the next two years. In the meantime, France has already indicated that it plans to make the use of the standard mandatory once adopted in CEN and other Member States may follow suit. FIEC notes that the possible reference to the standard in national law in certain Member States may lead the Commission to harmonise legislation throughout the Union effectively making the use of the standard mandatory EU wide.

The ongoing work in CEN has triggered debate as to how labelling schemes can be used to support any standard once adopted. One such initiative in the LEnSE (Methodology Development towards a Label for Environmental, Social and Economic Buildings) project led various national research institutes. The project has received funding under the European Commission's Sixth Framework Programme for Research. FIEC participated in the presentation of the project's results on 5<sup>th</sup> March 2008 and during a presentation on the environmental labelling of buildings, brought home the point that **the demand for labels needed, as much as possible, to be a market driven process.**

## 12. The revision of the Waste Framework Directive

The Council adopted its common position on the revision of the Waste Framework Directive on 20th December 2007 in reaction to the Parliament's amendments at first reading. Regrettably the Council did not retain the amendment introduced at FIEC's request, namely 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*" and instead opted to limit the exemption to excavated material used only on the same site. The article adopted in the Council's common position reads as follows:

[to be excluded from the scope of the directive]

*"uncontaminated soil excavated in the course of construction activities where it is certain the material will be used for the purposes of construction in its natural state on the site from which it was excavated;"*

This text if adopted, would be utterly unacceptable and defeats the entire objective of the amendment. The most serious development of all is the removal by the Council of the words "or another site", since most if not all public administrations already interpret the existing directive by implication to mean that waste only arises when materials are actually removed from a construction site. It is precisely the removal of "uncontaminated excavated material" from construction sites that under the present directive triggers the change in status of the material; it is immediately deemed waste because the holder no longer wants it on that particular site, never mind that it can immediately be re-used on another one. It is this utterly illogical and incoherent change in the status of the material that FIEC is so anxious to put right. Furthermore, FIEC estimates that more than 1000 million tonnes of uncontaminated soil is moved annually and if the waste status were lifted, this would ease administrative burdens on contractors and possibly reduce transportation and additional handling.

The matter has now returned to parliament for second reading. As far as the scope of the directive is concerned and in response to the Council's common position, FIEC sent a letter to the rapporteur Caroline

Jackson (MEP) in February 2008 asking her to continue her support for the amendment.

Were the Council to reject the idea of extending the exclusion to material taken to another site, the only other solution may be to have "naturally occurring excavated materials" excluded in the "end of waste criteria" (Article 11) to be determined under the comitology procedure which will follow the adoption of the directive. But that may take several years and the outcome remains uncertain. Moreover, the material would still have the burden of administrative procedures until its waste status ends.

In a further development, a number of other amendments have been introduced to article 8 of the proposal on recovery of waste that seek to create an EU wide target **for recycling of 70% of all construction waste by 2020**. FIEC is concerned that such targets may be **unrealistic and impractical** as many Member States already recycle a higher proportion of their construction waste than the 70% target whereas for others, due to local geological conditions and distance, a high rate of recycling is difficult to achieve. One must also bear in mind that the transportation of waste over long distances is not sustainable from an environmental point of view.

The vote at second reading in the European Parliament's Environment, Public Health and Food Safety Committee was held on 8<sup>th</sup> April 2008 and regrettably saw the rejection of the FIEC supported amendment in favour of a set of contradictory amendments; namely one amendment that calls for all uncontaminated excavated material to be excluded from the provisions of the directive whether used on site or transferred to another site, whereas another construction specific amendment, has been adopted that excludes naturally occurring unexcavated material for use on the same site, adding the additional proviso that these materials have no characteristics "that are likely to result in a notable impact on the receiving environment". It remains to be seen how negotiations with the Council in the run up to the plenary vote will affect the content of any compromise amendment. FIEC will, in any event, continue to monitor developments in the run up to the plenary vote at second reading which is scheduled for the middle of June 2008.

### 13. Implementing REACH in the construction industry

The "Registration, Evaluation and Authorisation of Chemicals" (REACH) Regulation entered into force on 1st June 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 will begin on 1<sup>st</sup> June 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 and end 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 interpretive 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.

#### ChemXChange project – Helping SMEs implement REACH

**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.

An important initiative in this field is the “ChemXchange” project under the leadership of FIEC’s Norwegian member federation EBA which is in the process of securing 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

For more details on this issue, please also refer to the ICPCI proposal under item 2.c) of the SOC Commission report (p. 29-30).

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 mechanical plant**. The responses received are currently in the process of being collated and FIEC has begun to work together with ERA, which has carried out a similar study, with a view to sharing data.

## 14. Constructional 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 results of the questionnaire concerning the training and qualifications of machine operators;
- Information concerning European requirements for the erection of temporary installations;
- The state of progress of the EUROLISTE.
- Impediments to the cross border movement of mechanical plant.

Work on following up the results of the 2006 questionnaire concerning the **training and qualifications of machine operators** is still ongoing. Agreement in principle has, however, been

THE DIRECTOR GENERAL



Mr. Pedro Ortun  
Director  
New Approach Industries, Tourism & CSR  
DG Enterprise,  
European Commission,  
B-1049 Brussels

Brussels, 12<sup>th</sup> July 2007

**Subject: Innovation and Standardisation**

Dear Mr. Ortun,

I write in reply to your letter dated 28<sup>th</sup> June 2007 and the Commission's intention to adopt a Communication on the topic of "Innovation and Standardisation".

We have attempted to answer those questions raised in the Discussion Paper which we consider pertinent or to which we consider we are able to offer a response, and these are being sent under separate cover.

However, there are two aspects which we feel require particular emphasis or further explanation. Clearly different industries have different needs. Indeed, the conclusions of the Competitiveness Council of 4<sup>th</sup> December 2006 clearly state that "The current European standardisation system has to adapt to the needs of fast-moving markets, especially in services and high technology products".

From the standpoint of the construction industry such needs probably only relate to a small minority of products and services. A majority of standards tend to relate to well-known and well tested products and methods of construction. Looked at from this perspective:

**European Standardisation: getting the approach right**

The paper gives the impression that European standardisation is somehow not working properly and that Europe would somehow be much better off with lots more of it, preferably at much greater speed. Moreover, the text appears to infer that some kind of "top-down pro-active approach" to standardisation is the way forward. FIEC is inclined to disagree with such a concept. It is of course important that structures (CEN/CENELEC/ETSI) are in place for introducing, drafting and disseminating standards in an efficient and transparent manner. But it is industry that should instigate and drive the standards writing process and not some kind of all-powerful body whose role it is to "impose" them on industry. It has been the Commission's very process of mandating standards in a "top-down manner" for the purposes of opening up the single market (albeit with the support and agreement of the industry as a whole) that largely explains the time that it has taken to implement the Construction Products Directive. In more normal circumstances the standards writing process should be a bottom-up industry driven process that responds to industry's needs. In this context, provided that the appropriate structures are in place and function efficiently, the process should in large measure take care of itself.

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FIEC LETTER TO MR. PEDRO ORTUN (12/7/2007 – PAGE 2/2)



**Assisting SME: what are their real needs?**

The second point concerns real SME needs. FIEC represents what is certainly one of the largest industries consisting overwhelmingly of SMEs in Europe. For all that it may be surprising, since the official start date of the Single Market in 1992, FIEC has received few, if any requests at all for assistance concerning European Standards from its membership. Other organisations in the field on the other hand continue to insist that SME need lots of help with standardisation. Moreover, they have succeeded in convincing the European Commission of the need to fund initiatives and activities aimed at promoting standardisation for the benefit of SME. Furthermore, and this is what FIEC finds quite unacceptable, they speak with one voice claiming to represent both the producers of construction products as well as the users. The interests are categorically not the same! Yet according to page 15 of the Discussion Paper the Commission now envisages increasing its financial support to SME representation in standardisation at the European level.

Whilst FIEC itself is supporting the interests of its SME members on a daily basis, on the one hand we are not convinced that the present funding is serving any useful purpose, while on the other we cannot support any proposal to increase such funding until a detailed cost-benefit analysis has been carried out of the benefits accruing in respect of the funds already disbursed.

Finally, if the Commission sees fit to continue such funding – at least in the construction sector – then it should not be disbursed in support of those organisations claiming to represent different interests which are in fact conflicting, namely both producers as well as users of products and services.

In FIEC's opinion, the assistance SME need in standardisation is to be able to participate in (for example) CEN/TC meetings when matters of relevance to their own activities (e.g. the standardisation relates directly to a product or service which they manufacture or offer their clients). The only effective way for this to be done is through direct participation of an appropriately experienced member of the firm or organisation concerned. It is utterly unrealistic to imagine that a 3rd party not having an intimate knowledge of the subject matter can usefully represent SME in such instances other than to act as a "post box".

FIEC therefore calls on the Commission prior to making any further decisions about additional funding for SME in standardisation, to carry out a detailed and transparent consultation and analysis of the impact of the money already disbursed.

Should you have any questions, please do not hesitate to contact the undersigned.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Ulrich Paetzold', written in a cursive style.

Ulrich Paetzold

cc.: Mrs. Françoise Le Bail (DG ENTR DGA)

\\FATEC\1\Normalisation - standardisation\CEC\2007 Communication\Discussion Paper\2007-07-12 FIEC Letter to Mr Ortun.doc



Luisa Todini, IT

President

*Stefano de Marinis, IT  
Rapporteur*

Mrs. Luisa Todini, Vice-President of FIEC representing the Italian member federations ANCE and AGI, has been entrusted by the FIEC Steering Committee with the task of chairing FIEC's Ad-Hoc Working Group "Trans-European Transport Networks", thereby confirming the attention given by FIEC over many years to an issue which plays a central role in the cohesion and the competitiveness of the European Union.

**Elaborating FIEC's "Blue Book"**

The principal task of this group is the collection of information and publication of the progress report concerning the 30 "TEN priority projects", known as FIEC's "Blue Book", of which the 15<sup>th</sup> edition will be published in 2008.

By reinforcing the intensity of cooperation with the FIEC Member Federations, the working group is now providing a boost to the elaboration of this annual publication, which covers the objective, the institutional framework, the description, the financing, the state of progress and the time schedule for the construction of the TENS 30 priority projects.

For 15 years, the "Blue Book" has represented a very important communication and lobbying tool for FIEC, especially in its relations with the Commission's Directorate General Transport and Energy (DG TREN), as it collects data coming from those contractors that are actually undertaking the works.

**Collaborating with the European Commission**

Another important task of the Ad-Hoc Working Group will be to continue and deepen the

constructive and long lasting relationship with the European Institutions (DG TREN, European Parliament, European Investment Bank, etc...). In this respect, the Working Group will put forward specific suggestions and proposals for the elaboration of a "Green Paper" aimed at revising the TENS guidelines and policies, which the Commission intends to publish at the end of 2008.

Taking advantage of this great opportunity, the Ad-Hoc Working Group initiated a process of a reflection leading to specific proposals that it suggests should focus on the following issues:

- 1) The identification of both "best practices" and obstacles observed, which could help in accelerating the development of the TENS 30 priority projects;
- 2) The identification of financing solutions that can be promoted, since difficulties of financing remain one of the major obstacles for the realization of these projects.

Amongst such solutions, FIEC intends to promote the increase of the amount available in the DG TREN budget line for the TENS (currently €4.8 billion for the period 2007-2013); the use of Public-Private Partnership schemes, taking into consideration the advantages of involving the private sector; the reconsideration of the impact of PPP schemes on the calculation of the Member States debt, in relation to the respect of the "Maastricht criteria"; exploring possible new fiscal or tax instruments for collecting additional funds to be invested in infrastructure; etc...

The work of this Ad-Hoc Working Group will take advantage of the particular emphasis in support of transport policy in general, and of the TENS 30 priority projects in particular, in respect of which the European Institutions are recently becoming increasingly involved, taking into consideration the above-mentioned solutions.

For more information on "transport policy: the way towards sustainable transport", please see the Economic and Legal Commission's Chapter (p. 20-21).





Dirk Cordeel, BE

President

*Vincent Detemmerman, BE  
Ulrich Paetzold, FIEC  
Rapporteurs*

The construction industry is made up overwhelmingly of SMEs and family-owned businesses. This reality is reflected in the membership of FIEC's member federations and in the development of its positions and activities.

#### **SME working group**

FIEC undertook in 2007 a thorough evaluation to ensure that major issues faced by construction SMEs are adequately dealt with within the federation. The general outcome of this scrutiny was that FIEC's commissions, sub-commissions and workgroups are already dealing with most SME issues. Only a few topics were identified by the ad-hoc SME working group, chaired by Dirk Cordeel, as deserving a closer, more "SME" focused approach:

- financing conditions of SMEs, with regards to the specifics of the construction industry;
- high financial securities required in PPP, difficult to meet for SMEs and family owned companies;
- facilitation of SME's succession or takeover.

These issues have been discussed by a temporary SME workgroup which came to the following conclusions:

- Access to financing does not appear to be an issue of much concern for construction SMEs, although some improvements would be welcome. Above all, they experience liquidity problems due to late payments. Adequate legal provisions are necessary but their enforcement is just as important and public-sector clients should show the right example. EU funded works, for instance, should be monitored to ensure prompt payment. Good behaviour by the client encourages good behaviour further down the chain, not forgetting that payment delays tend to accumulate along the way. It is, therefore, regrettable that banks

do not consider an amount receivable by a public debtor as a fully secure asset when making finance available to enterprises.

- Public-private partnerships are generally associated with large-scale projects but experience shows that smaller ones are conceivable and have indeed become reality in several Member States. This opens the door to the participation of SMEs, provided that bidding costs as well as the financial commitment required remain at reasonable levels.
- Succession and takeover issues are best dealt with at national level.

#### **Visit to the SME Envoy**

In July 2007, a FIEC delegation led by the President paid a visit to Ms Françoise Le Bail (Deputy Director General DG Enterprise and SME Envoy). The discussions focussed on a number of topics of particular concern to SMEs.

The main points raised in the meeting concerned the major role that SME and craftsmen can play in raising the energy performance of buildings as well as:

- the obstacles to innovation in public procurement, and FIEC's suggestion that it should be illegal for contracting authorities to forbid the submission of variants in public procurement procedures, and that ways need to be found to convince the EC to drop its opposition to them.
- the long-running discussions about the CE marking of customised construction products, that should be brought to a close, even although some organisations seek to perpetuate them.

FIEC invited the Commission to show an interest and help in financing the further development of the database on "public procurement rules below the thresholds", intended to assist SMEs wishing to work in another country. FIEC explained that the current database had been commissioned by the Bavarian federation of construction craftsmen and SMEs and produced by the University of German Armed Forces in Munich in the German and English languages in order to demonstrate that such a database was feasible prior to seeking access to public funds.

#### **Company law: Consultation on possible European Private Company Statute**

The European Commission (EC) proceeded in autumn 2007 with a public consultation on the obstacles that companies, and in particular small and medium-sized enterprises (SME), face when conducting cross-border business in the EU and on the content

of a possible European Private Company Statute. The answers to this consultation will be taken into account in a forthcoming impact assessment and possible legislative proposal.

According to the European Commission, the average cost of setting up a new company in the EU 15 has fallen to EUR 554 in 2007 compared to EUR 813 in 2002 and coping with the administrative procedures to register a company was reduced from 24 days in 2002 to about 12 days today. This is the main conclusion of the consultation.

#### Commission's mid-term review on SME policy.

It takes stock of the progress achieved since 2005 in five main areas of the Commission's SME policy: cutting red tape, improving access to markets, promoting entrepreneurship and skills, improving growth potential and strengthening dialogue with stakeholders. The SME dimension is more and more integrated in EU initiatives and legislation.

The Commission has also adopted a communication on the stigma of business failures, proposing action to prevent bankruptcy and to promote a fresh start for non-fraudulent bankrupts.

#### Small Business Act

The European Commission launched on 31/1/2008, a public consultation on the content of a European "Small Business Act", and held a public hearing on the topic on 6/2/2008. The idea of quotas reserved for SMEs is not considered anymore. The purpose is rather to put forward various initiatives aimed at improving EU SME policy. The issues discussed by the working group make part of the scope, that includes "better regulation" and implementation thereof, entrepreneurship, skilled labour, access to the international market and public procurement, access to finance and innovation, environmental challenges and opportunities. FIEC responded to the consultation, on the basis of the debate that had taken place in the temporary SME workgroup and the comments received from member federations.

The main elements of the response were that:

- The complex rules with which SMEs deal everyday are the most important problem. At the national level, administrative procedures are a real burden.
- SMEs still have to deal with late payment of invoices. FIEC therefore welcomes the Commission's initiative to propose modifications to the existing directive (Directive 2000/35/EEC). SMEs may also face difficulties in securing financial resources and insurances at a fair price.

- The EU definition of SMEs may not be adequate and should be analyzed according to the structure of each business sector.
- A stable, clear and complete legislative framework is also lacking. However, before elaborating additional specific measures for SMEs, existing national and European legislations should be carefully monitored in order to make sure that they are really appropriate and whether they are effectively enforced or not.
- As regards the question of VAT rates in labour intensive services, FIEC strongly supports the idea that Member States should be free to introduce a permanent reduced rate of VAT for locally provided services, which do not affect the functioning of the internal market. In the sector of renovation of private dwellings, the maintenance/introduction of such a reduced VAT rate would help to tackle undeclared work and consequently lead to the creation of new declared jobs. Furthermore, such a reduced VAT rate would encourage owners to undertake energy efficient renovation of their private dwellings which consequently lead to the reduction of CO<sub>2</sub> emissions. Such a tax incentive would of course stimulate the growth of SMEs.
- Better information about business opportunities (EU database) should be provided. In order to promote enterprises participation in cross-border activities, the EU Commission's Communication on applicable principles for public procurement, which are not covered by EU Directives 2004/17 and 2004/18, is particularly important.
- For SMEs, innovation is indeed an essential way to grow. In the construction sector, innovative solutions are seldom patentable. This is the reason why there should be, in public procurement procedures, a strict obligation of keeping alternative technical solutions which enterprises have elaborated confidential, even though such solutions might not be protected as "intellectual property rights".

For further information on the issue of the SBA, please also refer to the Economic and Legal Commission's chapter (p. 21).





Juan F. Lazcano, ES

**President**

*Maria Angeles Asenjo, ES  
Rapporteur*

The FIEC MEDA Vice-Presidency focuses on the activities of the European Union Institutions with regard to Euro-Mediterranean area, mainly in the framework of the ongoing Barcelona Process. The vice-presidency follows-up and informs FIEC members on aspects such as projects financed by the EU, events and other relevant issues with regard to the construction sector. Informative bulletins are also published at regular intervals: in 2007 five MEDA Newsletters were published and they are available on the FIEC website for members.

It should be underlined that as of 1<sup>st</sup> January 2007, as part of the reform of the EU external assistance instruments, MEDA and various other external programs have been replaced by a single instrument: the European Neighbourhood and Partnership Instrument, ENPI (*Regulation EC N° 1638/2006 of 24 October, laying down general provisions establishing a European Neighbourhood and Partnership Instrument*).

In 2007, a Regional Strategy Paper for 2007-2013 was approved detailing funding allocated under ENPI for the Mediterranean region. Another important aspect is the fact that, in the scope of the European Neighbourhood Policy (ENP), bilateral ENP Action Plans have been agreed between the EU and Mediterranean partner countries. To date such plans have been signed with Egypt, Israel, Jordan, Lebanon, Morocco, the Palestinian Authority and Tunisia. In December 2007 the European Commission published a Communication entitled "A Strong European Neighbourhood Policy" setting out the action needed at EU and national level for progress in the ENP, COM (2007) 774.

Attention has been focused on transport networks and the extension of TEN-Ts to neighbouring countries. In January 2007 the European Commission adopted the Communication "Guidelines for transport in Europe and neighbouring regions" COM (2007) 32, which identifies the five most important transport axes for international trade, some of them involving Mediterranean partner countries.

During 2007, the following significant Euro-Mediterranean Ministerial conferences and meetings were held. These were closely followed by the MEDA Vice-Presidency:

- "Facility for Euro-Mediterranean Investment and Partnership" (FEMIP) ministerial conference held in Cyprus on 13<sup>th</sup> and 14<sup>th</sup> May.
- "Working Together-Strengthening the ENP" ministerial gathering held in Brussels on 3<sup>rd</sup> September.
- Meeting of Finance Ministers in Porto on 15<sup>th</sup> September.
- Meeting of trade ministers at the 6th Euromed Trade Ministerial conference in Lisbon on 20<sup>th</sup> and 21<sup>st</sup> October.
- Foreign Affairs Ministers meeting held in Lisbon on 5<sup>th</sup> and 6<sup>th</sup> November.
- Energy Ministerial conference held in Limassol, Cyprus on 17<sup>th</sup> December.



Gian Alfonso Borromeo, IT

President



Frank Kehlenbach, EIC

Director

### Organisation

European International Contractors (EIC) is 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.

In accordance with a Protocol signed between both federations in 1984, and reaffirmed in 2002, EIC and FIEC carry out complementary tasks. Whilst FIEC represents the European construction industry in the context of European Union integration and harmonisation, the work of EIC aims primarily at improving operating conditions for the European construction industry at international level. For this purpose, EIC 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 2007 EIC "International Contracts Statistics", the total volume of international turnover carried out by EIC member companies in 2006 amounted to around €112 billion. This excellent result was confirmed by the latest survey on the "Top 225 International Contractors", published in the Engineering News Record magazine which illustrated that EIC member companies accounted for more than 60% of new international contracts.

In 2007, the Members of the EIC Board were the following:

Gian Alfonso Borromeo	(Astaldi)	Italy	President
Johan Beerlandt	(Besix)	Belgium	Vice-President
Lefty Panayiotou	(Costain)	U.K.	Treasurer
Thomas Alm	(Skanska)	Sweden	
Michel Démarre	(Colas)	France	
Ebbe Malte Iversen	(Per Aarsleff)	Denmark	
Uwe Krenz	(Bilfinger Berger)	Germany	
Alcibiades Lopez Cerón	(FCC)	Spain	
António Mota	(Mota-Engil)	Portugal	
Gerrit Witzel	(Strukton Groep)	The Netherlands	

President Gian Alfonso Borromeo 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 in connection with international environmental, social and corporate standards; and

3. 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

**EIC repeatedly calls on the Multilateral Development Banks (MDBs), and in particular European donors, to duly take into consideration the intrinsic link between infrastructure investment and economic and social development and hence to expand their commitments for infrastructure projects. At the same time, we strongly disagree with the current strategy of the international donor community to increase the share of budgetary aid and the use of country procurement systems, at least insofar as the infrastructure sector is concerned, because under the budget aid and country procurement systems, donors have much less control over the adequate spending of the funds.**

Some two years ago, the European Union adopted a new "EU Strategy for Africa". One of the main initiatives that underpin this new policy is the creation of the "EU-Africa Partnership on Infrastructure" which forms the EU's policy response to the infrastructure gap that hinders Africa's development. Obviously, the current lack of infrastructure on the African continent severely constrains economic growth and hampers human and social development. Therefore, the Partnership put forward by the European Commission allocates a total of €5.6 billion from the 10th European Development Fund (EDF 2008-2013) to support regional infrastructure development.

EIC appreciates the renewed commitment of the European Commission and other donors in developing the African infrastructure sector. At the same time, EIC is concerned about the tendency in the international donor community to shift funds from the classic "project approach", i.e. external assistance through project grants and loans, to "budget aid" or "sector wide approaches", i.e. to disburse external

assistance into the partner country's budget. EIC believes that the international donor community would be well advised to differentiate its devolution policy on country procurement systems, taking into account the characteristics of each sector. Bearing in mind the well-known complexity of the infrastructure sector, we would suggest a more gradual approach in this particular segment, in comparison to e.g. the field of supplies, where procurement is more straightforward.

EIC has presented its respective concerns to the European Commission in the framework of two high-level "EU-Africa Business Fora" organised jointly by the European Commission and the African Union in November 2006 in Brussels and in June 2007 in Accra (Ghana). At the Brussels Forum in June 2006, EIC was successful in including statements into the Final Declaration which, once implemented, could result in an increased interest of European contractors in EC-financed contracts in Africa. From the EIC perspective, the most important passages are the following:

- *"Business considers that the project approach for infrastructure projects should be maintained and the EC's infrastructure management capabilities reinforced with resources from the private sector and robust project delivery mechanisms should be adopted;*
- *"The European Commission should form an Africa Task Force to address the strategic, policy, trade and infrastructure challenges related to creating a level playing-field with competitors from other regions; key areas to focus on should be export financing, export credit insurance and public procurement";*
- *"There is a lack of long-term contracts including maintenance for improved predictability for the road transport";*
- *"To prequalify for Commission funding, companies should respect environmental, social, ethical and financial standards within the EU acquis communautaire".*

At the Accra Forum in June 2007, EU Commissioner for Development, *Louis Michel*, responded positively to EIC's commitment to involve the local construction

sector (companies and workforce) and to respect international social and environmental standards when executing construction works in Africa. In his speech, Commissioner Michel made a specific reference to the EIC proposal and remarked:

*« J'ai noté avec beaucoup de satisfaction la prise de conscience en la matière des European International Contractors qui rejoint la nôtre et de leur engagement à employer et former la main d'œuvre locale conformément aux standards internationaux, à coopérer avec les entrepreneurs et les fournisseurs locaux, à transférer leur savoir faire et à respecter et protéger l'environnement. »*

A few weeks later, Commissioner Michel offered EIC to represent the private sector as an observer in the Steering Committee of the EU-Africa Partnership on Infrastructure. Thus, **EIC was selected to represent the European private sector at the First Meeting of the Infrastructure Partnership's Steering Committee on 24-25 October 2007 in Addis Ababa, Ethiopia.**

For the future, EIC is determined to engage in a more intense dialogue with the European Commission on procurement policy in order to identify common solutions for the following queries: prequalification process for infrastructure projects, Quality-Based Procurement, updated Conditions of Contract and innovative forms of procurement (DBO and PPP).

## II. Dialogue with the World Bank and OECD on Country Procurement Policy

**EIC remains sceptical about the new strategy of the World Bank, the OECD Development Assistance Committee (DAC) and the European Commission to increasingly use country systems in procurement for donor-financed infrastructure projects. EIC believes that the World Bank's Standard Bidding Documents form an appropriate benchmark for tendering major construction works and that the donors would best support the process by staying committed to and supervising the procurement as well as the execution phase.**

The international donor community decided in March 2005, in the context of the so-called "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". Shortly afterwards the World Bank adopted a strategy on "Expanding the Use of Country Systems in Bank-Supported Operations". EIC immediately drafted its first **Position Paper on Country Procurement Systems** in which we expressed our concern that further decentralisation in procurement will bring less harmonisation and efficiency in aid-funded infrastructure delivery since the application of a multitude of national systems leads to both a watering down of international standards and reduced international competition.

The initial proposal was withdrawn by the Bank due to persistent opposition from the U.S. government but was tabled again internally in May 2007 in the lead-up to the resignation of its former president Paul Wolfowitz. Upon becoming aware of the renewed initiative, EIC placed itself at the forefront of criticism both of the content as well as the rather intransparent procedure of the Bank's so-called "Status Report on Country Systems in Bank-Supported Operations". EIC's endeavours prompted echoes from fellow industry federations from the U.S. and several European countries.

As a result, the World Bank Executive Board decided in June 2007 to link the future decision-making process to a large web-based consultation effort. The Bank therefore designed a public electronic forum in order to promote constructive dialogue with a range of stakeholders as the Bank was proceeding in defining a methodology for piloting the use of country systems.

Over that period, EIC became one of the leading actors in the ongoing dialogue between the policy-makers and the private sector. We presented the industry's perspective in the **Meeting between the OECD Business and Industry Advisory Committee (BIAC) and the OECD-DAC / World Bank Joint Venture for Procurement (JV)** on 18<sup>th</sup> September 2007 in Copenhagen. EIC urged the World Bank to differentiate its devolution policy on country procurement systems taking due account of the characteristics of each sector. Bearing in mind the complexity of the infrastructure sector, EIC suggested a more gradual approach in the infrastructure sector, reminding the international donor community of their own pledge given in Article 4(v) of the "Paris Declaration" (2005), that "where corruption exists,

*it inhibits donors from relying on partner country systems".*

### III. Standard Bidding Documents and International Standard Forms of Contract

**EIC constantly monitors the latest trends in International Competitive Bidding and Conditions of Contract in order to advise its member companies on the risks and pitfalls of these standard bidding or contract documents. EIC also liaises with the responsible draftsmen in order to ensure that the sample documents provide for a level playing-field between employer and contractor.**

Over the last two decades, turnkey and design-build(-operate) contracts have become much more commonplace, with the contractor being responsible not only for the design and the management of the project but in some cases also for the performance of the facility. This is a very complex type of contract that demands its own special procedures and processes and to date there has been no standard contract form on the market which would cover the three stages from the project design through to the execution of the construction works and the long-term operation and maintenance phase.

EIC is therefore appreciative of the fact that FIDIC has now taken the initiative to draft an innovative form of contract which over time might pave the way for the construction industry to be able to compete on quality, efficiency, and life-cycle cost rather than the "lowest evaluated construction cost", at least for major infrastructure projects. Thanks to the long-standing dialogue with FIDIC on standard forms of contract, EIC was invited in March 2007 to review the draft version of the new FIDIC Design-Build-Operate Contract. Even though EIC welcomed FIDIC's embracing of the DBO concept, we observed in the **April 2007 commentary** that the FIDIC DBO Draft virtually placed the contractor in the owner's or concessionaire's role, whilst at the same time, limiting his freedom of operation through the schedules and the manuals. We also voiced the concern whether a "one size fits all approach" would do justice to the various sector specific issues in transport, energy and water. Another query raised was whether the insurance industry would be ready to offer corresponding products. When scrutinising the so-called "pre press version" of the FIDIC DBO Contract, which was published in September 2007,

EIC was pleased to note that many of its comments had been taken on board by the draftsmen.

In parallel, the EIC Working Group "Contract Conditions" worked on an "**EIC Contractor's Guide to the MDB Harmonised Edition of the FIDIC Conditions of Contract for Construction**". That EIC commentary will be useful to avoid confusion between the different MDB FIDIC Versions. At the origin of this confusion is the permission, given by FIDIC in 2005 at the World Bank's request, to incorporate a modified version of the 1999 FIDIC "New Red Book" as the General Contract Conditions for the harmonised procurement documents. After some critical remarks from the industry, a revised "MDB Harmonised Edition of the FIDIC New Red Book" was published in March 2006 which, as a matter of fact, took into account several comments from the "EIC Contractor's Guides" published between 2000 and 2002. However, the 2006 document still falls short of an acceptable industry standard when it comes to the independence of the Engineer or the use of the Performance Guarantee – a criticism which is notably equally shared by FIDIC itself. EIC has raised these issues various times with the World Bank and expects the Final Version for 2008.

### IV. Promotion of Public-Private Partnerships

**EIC promotes the PPP concept world-wide as an alternative procurement method which brings additional value for money through the introduction of the life-cycle cost concept. EIC endeavours to make its contribution to PPP capacity-building by sharing its experience with those national administrations that are considering the implementation of the PPP concept in their country.**

Whilst the PPP concept has flourished over the past few years, mainly in sectors that generate adequate cash flows, such as telecoms, ports, airports and natural gas pipelines, the right blend of public and private funding has yet to be determined for transport and water infrastructure projects, where social acceptance of user fees is lacking or there is no guarantee of the necessary return on investment.

With the aim of providing interested public sector entities as well as MDBs with a user-friendly consultation document for the efficient preparation and implementation of privately

developed infrastructure projects, EIC published in April 2003 the **"EIC White Book on BOT / PPP"**. After presenting the recommendations of the "EIC White Book" in the political ambit, it became clear that several recurring misconceptions had entered public debate with the potential of undermining the credibility of the entire PPP philosophy.

Consequently, EIC published a political supplement to the **"EIC Memorandum on Frequently Asked Questions on PPP"** with a more general response to the critical issues in order to contribute the European industry's viewpoint to the discussions on the national, European and international levels. The new EIC Memorandum seeks to explain why the PPP concept has a strategic advantage over conventional project programming and for which types of infrastructure or public sector buildings a Government would benefit from entering into a comprehensive partnership instead of separating the design, construction and operation phases. Subsequent to the launch of the document in September 2006 in Valencia, EIC presented the new PPP Memorandum in the course of 2007 at various political conferences organised by the OECD, the EBRD and the European Commission.

## V. Environmental, social and ethical standards in Export Credit Insurance

**EIC calls for a reasonable wording and interpretation of new environmental, social and ethical standards in the context of the relevant OECD Agreements on export credit finance and insurance in order not to jeopardise the competitiveness of European international contractors vis-à-vis their competitors from non-OECD countries.**

Over the past few years, EIC has observed that the OECD Export Credit Group has tightened the framework regulations on environmental, social and ethical aspects of export finance and export credits. This unilateral commitment has placed the OECD industry at a serious disadvantage vis-à-vis its non-OECD competitors. A renewed round of rule tightening came into force in June 2007 when, for the first time, the OECD Recommendation on "Common Approaches on the Environment and Officially Supported Export Credits" made a reference to the *"International Finance Corporation's (IFC) Performance Standards"* and thus to the core labour standards of the International Labour

Organisation (ILO). One year before, in May 2006, the export credit agencies (ECAs) of the OECD had already agreed to adopt new ethical standards by adopting a new *"OECD Action Statement on Bribery"*.

Whilst being itself in favour of a high standard of competition in the international construction industry, EIC is nevertheless concerned about this "race to the top" which creates an unlevel playing-field in certain market segments due to the fact that competitors from other regions are not interested in keeping pace with OECD standards. As a **Member of the OECD's Business and Industry Advisory Committee (BIAC)**, EIC was able, however, to ensure during the consultations with the OECD Export Credit Group to limit the application of the IFC Performance Standards to cases of non-recourse project finance. Regarding the future ECA agenda, EIC is pleased to note that for 2008, the OECD Committee will have a more balanced agenda and shall discuss the need for increased co-operation with emerging countries and the possibilities to remove the restrictions on ECA support for local costs, which is particularly relevant for international construction projects.

## 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 20<sup>th</sup> April 2007, the British Member Federation hosted an EIC Conference in London with a Workshop entitled **"The British Perspective on Market Opportunities for European Contractors"**. In the three Round Tables, EIC member companies discussed the future opportunities of international contracting in the present growth regions China/ India, the Gulf region and Central & Eastern Europe.
- The EIC Conference on 12<sup>th</sup> October 2007 was hosted by the Portuguese Member Federation in Cascais, Portugal. The Workshop focused on **"Opportunities for European Contractors in the field of Renewable Energies & Energy Efficiency"**.

In the three Round Tables, participants discussed the market potential in building energy-efficient dwellings, hydro and nuclear power plants and in the diversification of the construction business.

- The 2008 EIC General Assemblies will take place on 16<sup>th</sup> May 2008 in Milan, Italy, where the topic shall be **“What Future for the international business of European contractors?”** and on 03<sup>rd</sup> October 2008 in Amsterdam, where the issue of **“Climate Change and Delta Protection”** will be the theme.

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



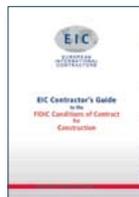
• **EIC Publications**



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

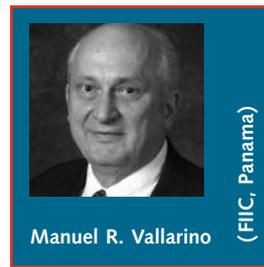


**EIC Contractor's Guide to the FIDIC Conditions of Contract for Plant and Design-Build, 2003**

For FIEC publications, please refer to p. 65



President (11/2006-12/2007)



President (12/2007-)



Director General

During 2007-2008, CICA continued its activities along the lines determined in preceding years:

- Promoting contracts in which the repartition of rights and duties between Owners and Contractors is better balanced as between contractors and owners rather than transferring to Contractors responsibilities that can be better managed by owners.
- Trying to persuade International Organizations that if reputable contractors are not guaranteed financial, contractual and legal certainty in emerging and developing countries, they will "vote with their feet" and shun the very countries where their know-how is most needed for development purposes.
- Developing the concept of the "Turnkey site" implying that preliminary tasks are better carried out by owners before soliciting bids than requiring Contractors to carry them out after the award of the contract. The implementation of such a concept avoids the application of unethical pressure by administrative or local authorities while simplifying and accelerating the administration of claims.
- Fostering a hard line approach to ethical and corruption issues, through discouraging practices in which owners try to avoid using or implementing those very contractual clauses and practices that are specifically intended to prevent their own irresponsible behaviour which in turn lead to compromises in terms of quality whilst encouraging corrupt practices. No progress in this field can be expected from policies aimed at controlling the improper behaviour of contractors alone whilst simultaneously ignoring the malpractices of owners in unethically distorting contractual procedures.
- Promoting the concept of "Owners' Social Responsibility" as a necessary complement to "Corporate Social Responsibility". In the construction sector, no sustainable social progress

can be expected as long as the lowest bidder rule gives a competitive edge to those contractors who care less for the welfare of the workers and their families.

- Advocating a wider recourse to arbitration through recognized jurisdictions chosen by the contractor and agreed on by the owner rather than the current system in which owners impose their own rules through national jurisdictions that may legitimately be suspected of being systematically in favour of the contracting authority.

This line was, during previous years, defined and developed only for the purpose of the dialogue with the World Bank Procurement Department. This year, it has been given much broader publicity and explained in detail to many other International Organizations such as the Inter-American Development Bank (ADB), African Development Bank (AfDB), Asian Development Bank (ADB), EBRD, World Bank Infrastructure Department and to representatives of the US Treasury and American institutions concerned with the fight against corruption. CICA's positions although significantly at variance with present day mindsets and the official stances of NGOs and International Organizations are none-the-less meeting expectations. They have been received with growing interest by many officials in addressing specific problems. It will nevertheless be a long uphill struggle before a broad general acceptance is achieved and implemented through contractual clauses, recognised practices, and regulations in the various national legislations. The realistic approach to these issues by CICA, the consistency of its positions and the persistence with which it puts them forward in spite of its limited resources are CICA's main asset and are starting to pay off in terms of international recognition.

Some news about CICA's main interlocutors during the current year:

## 1. World Bank

- For the first time, CICA was able to present its line to the World Bank Infrastructure Department, which might play a key role in helping with the dissemination of CICA positions on the local level.
- The dialogue with the Procurement Department through the Restricted Working Group was opened up to the Heads of Procurement of the Multilateral Development Banks, thus marking a significant step forward.
- As last year, it is clear that efforts made to participate in setting up a new policy regarding corruption have failed. The World Bank continues to abide by a coercive-punitive policy aimed mainly at the private sector instead of a policy of trying an approach based on "How to help the contractor" as promoted by CICA.. Nevertheless, CICA's approach being better known and disseminated; some progress may be achieved in the medium term.
- The World Bank project of "Increasing the use of Country Systems" has been consigned to oblivion since August 2005. However, since May 2007, it is again high on the World Bank's agenda. CICA submitted its considered position in response to the consultation launched on its website. CICA expressed its agreement in principle but maintained very important reservations on the conditions for its implementation. At stake is easier access to Bank funded projects for SME in some countries selected as "pilots", but an ex-post control by the Bank of the implementation of the contracts once the efficacy of the relevant procurement procedures of these countries have been recognized as "equivalent" to the ones of the Bank. CICA's reservations concern the content of this "equivalence" and the relevance of the benchmarking procedure proposed to evaluate it. CICA's fears are that in time this system may be widely applied and develop in such manner as to make any effective control impossible in the future, let alone make any real progress towards the identification and implementation of "Best Practices".

## 2. FIDIC

- At the request of a Member federation of CICA, the objective to adopt a joint FIDIC-CICA statement in 2007 on the "private sector approach" was postponed to 2008.

## 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
EFCA	European Federation of Engineering Consultancy Associations
EFBWW	European Federation of Building and Woodworkers
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.

- **Transeuropean Transport Network – Progress update** (1/year)



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 (TENs), 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)

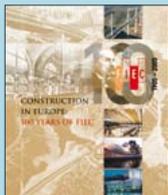


This publication, in practical pocket format, provides the reader with a brief survey of the essential key figures of construction activity in Europe and in the world as well as a brief presentation of FIEC and the sector.

- **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)**

For EIC publications, please refer to p. 59

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

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**CH**



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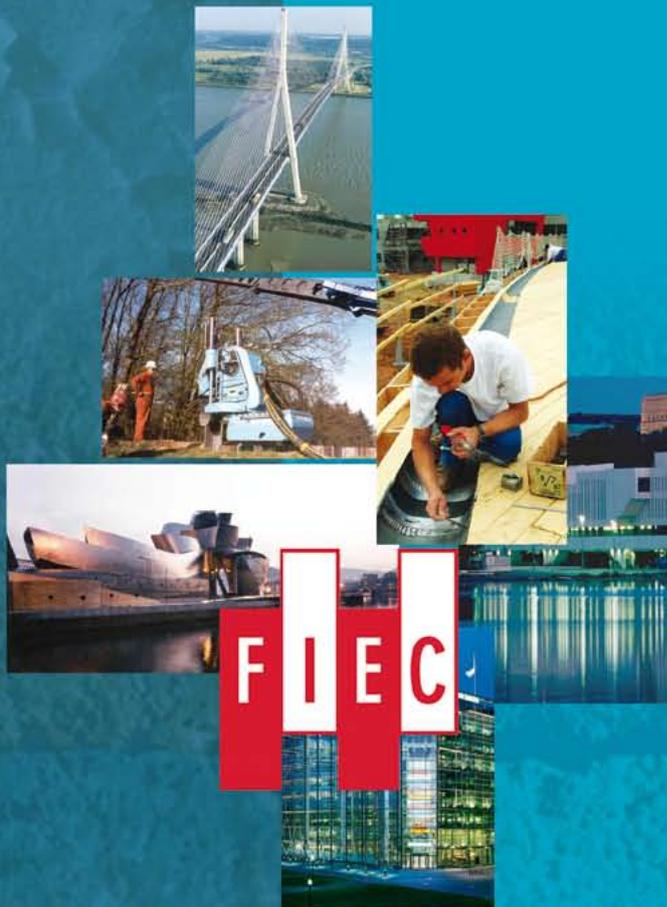
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