

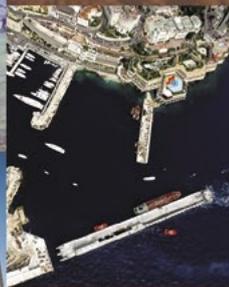
# Annual Report 2007

33 federations

in 28 countries



**F I E C**



European  
Construction Industry  
Federation

## 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-EFBWW-EFBH (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)



Associate member of "Euro Info Centres" (Network of the European Commission DG ENTR for the information of enterprises and in particular for SMEs)  
<http://ec.europa.eu/enterprise/networks/eic/eic.html>



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"  
<http://www.buildingsplatform.eu>

## The Sector

Total construction in 2006 (EU27):  
1.196 billion €

10,4% of GDP, 50,5% of Gross Fixed Capital Formation

2,7 million enterprises (EU27), of which 95% are SMEs with fewer than 20 and 93% with fewer than 10 operatives

15,2 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 sectors\*

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

Council of Ministers "Industry" Meeting 7/5/1998  
**Conclusions on the Competitiveness of the construction industry**

"The Council

*... III. recognises that the European construction industry is a key economic sector in Europe not only in terms of the level of production and employment, but also in its capacity to generate indirect employment and in its effect on the competitiveness of other industrial sectors, users of the buildings and transport infrastructure that construction realises; ..."*

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**President: Daniel Tardy**

I have pleasure in being able to present to you the new FIEC Annual Report, the first one of my mandate as President of FIEC. It presents the activities of FIEC in their economic and political context from the 2006 General Assembly in Paris to the 2007 General Assembly in Lisbon. In accordance with tradition, our colleagues of the European International Contractors (EIC) and of the Confederation of International Contractors' Associations (CICA) also report on their activities.

### **Enterprises of small, medium and large size**

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 interests of all enterprises whether small, medium or large. In the same way, this comprehensive representativeness is illustrated throughout this Annual Report of FIEC.

### **The economic environment**

in which the construction enterprises operate has improved considerably in 2006 and practically all EU countries have been able to benefit from this, even if with varying intensity from one country to another. The really major change has taken place in Germany, where, after ten years of recession, the construction sector has started to grow again. The only exception in the EU is Portugal where,

following a very positive development, there has, for some years, been a considerable decrease in various activity. Our new statistical report, No. 50, provides details of these evolutions, which differ both between the countries as well as between the various sectors of activity.

### **The communication policy of FIEC**

One of the priorities of my mandate as President is the communication policy of FIEC, both towards our members as well as outside: promoting our position papers as well as our activities are our principal objectives.

### **Personal contacts with the European institutions**

Another priority of my mandate is the development of personal contacts with European decision-makers, in particular with the Parliamentarians, the Commissioners and the Directors-General of the European Commission. In this context I have had the occasion to meet in particular the Commissioners Almunia and Barrot, accompanied by my Steering Committee colleagues responsible for the theme to be discussed as well as by our Director General. Our discussions have been very useful in making known the specificities and arguments of the contractors represented by FIEC.

By way of a small "appetizer", I would like to briefly mention a few themes which have recently kept us busy:

### **Sustainable urban development**

The integrated approach of the Declaration adopted by FIEC during its Congress in Paris has been highly appreciated by our counterparts in the European institutions.

This theme also forms part of the priorities of the agenda of the German Council Presidency, highlighting the Leipzig Charter, which will be adopted on 24<sup>th</sup>/25<sup>th</sup> May by the Ministers responsible for urban development.

### **Trans-European Transport Networks (TEN-T) and Public Private Partnerships (PPP)**

FIEC continues to commit itself for the effective execution of the TEN-T, an essential basis for the future of Europe, its economy, its social systems, its society and its citizens. These TEN-T have been decided and regularly confirmed since 1994 by our Heads of State and Government. It is, therefore, highly astonishing to see that our political leaders have never given themselves the means for the materialisation of their decisions. It is also very interesting to note that the priorities decided by the Heads of State and Government are not necessarily to be found very high on the list of national priorities.

Such statements are based on the "Blue Book", published by FIEC each year, in order to give an "Etat des lieux" on the TEN-T projects called "priority", initially 14 and since 2004, 30 in number.

In this way, FIEC continues to encourage the Member States to transform their decisions and solemn declarations into real actions, where appropriate with the assistance of the private sector in the framework of real partnerships, namely PPP, including by means of concessions upon which the services of the Commission are currently working.

### **Reduced VAT for construction activity**

Following the major success that FIEC has been able to achieve at the European level, thanks to the active support of the member federations as well as through personal contacts, it should not be overlooked that this is only a provisional system which, for the time being, remains in force until 31/12/2010. The preparatory work aimed at establishing a definitive system of VAT has already



Daniel Tardy, Commissioner Joaquin Almunia (22/2/2007)

commenced. We encourage, therefore, our member federations to do already now everything which is necessary at their national level, in order to ensure that the successful experiences already achieved by the construction sector are effectively recognised for their real value in the official reports and that our sector can continue to benefit from a reduced rate of VAT when the current provisional regime comes to an end.

### **Social affairs**

In this area, FIEC has dealt with numerous themes, for example professional education and training (including that for health and safety), the transparency of qualifications, the reduction of accidents, the rules to be respected during posting, the combat against undeclared labour, the transportability of complementary sectoral pensions and working time.

### **The Sectoral Social Dialogue "Construction"**

The major part of these sectoral social themes with which FIEC deals, are also part of the Sectoral Social Dialogue which FIEC and EFBWW, the two social partners in the construction industry, have continued to progress on issues of common interest. For some of these issues, the social partners have undertaken research projects and I express our gratitude to the European Commission for its co-financing, without which the social partners would not have been able to carry out these projects.



Ulrich Paetzold, Daniel Tardy, Commissioner Jacques Barrot, Jean-Jacques Massip (22/2/2007)

### Technical and environmental matters

In this area, FIEC deals with statutory matters such as the "Construction Products Directive", CE marking and European standards (as associate member of CEN), research and innovation (7<sup>th</sup> Framework Programme, Construction Technology Platform, "competitiveness and innovation" programme for SMEs). Two issues merit particular mention, namely the "waste" directive where FIEC has succeeded in convincing the European Parliament that uncontaminated naturally occurring excavated materials should not be classified as waste.

The other theme is the energy efficiency of buildings. In this debate attention is regularly turned towards automobiles. But it has to be seen that the potential for energy saving is by far bigger in buildings and moreover, it can be done using today's technology at a reasonable cost. Moreover, it should be possible to achieve the objective of a reduction of greenhouse gas emissions by 20% by 2020, compared to the base year of 1990, a commitment taken by the Heads of State and Government in March 2007, by the building sector alone. Such an approach, compared to the reductions requested from the transport sector or industry, would have only positive effects and would not present any danger to economic growth. Construction enterprises have the solutions for all these problems. All that is required is that consumers and politicians take the necessary decisions.

### Further details and other themes

in the area of economy, law, social matters, technical and environmental matters are addressed on the following pages. Consult them! It is worthwhile!

### New offices

The move prepared under the presidency of my predecessor Wilhelm Küchler has taken place as planned and FIEC is now established in more adequate offices, appropriate for the European federation of construction enterprises. These offices and the meeting room are, of course, also at the disposal of our member federations during their visits to Brussels.

### My thanks

I take this opportunity to address my thanks to everybody who during the first period of 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, of course, all our interlocutors in the European institutions and the associations/federations with whom we have cooperated in full trust in the numerous themes linked to construction.

In conclusion, I invite the readers of this report to grant their attention to the activities presented and to send us their suggestions, if any, which are always welcome.

A handwritten signature in dark ink, appearing to read 'Daniel Tardy', written in a cursive style.

Daniel Tardy,  
President of FIEC



Daniel Tardy, FR

President



Johannes Lahofer, AT

Vice-President  
Treasurer



Helmut Echterhoff, DE

Vice-President  
(ECO)



Peter Andrews, GB

Vice-President  
(SOC)



Zdenek Klos, CZ

Vice-President  
(TEC)



Bernard Huvelin, FR

Vice-President  
(Communication)



Georgios Romosios, GR

Vice-President  
(SME)



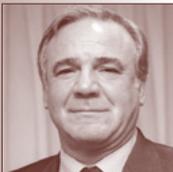
Dirk Cordeel, BE

Vice-President  
(Competitiveness)



Luisa Todini, IT

Vice-President  
(CEEC)



Juan Lazcano, ES

Vice-President  
(MEDA)



Per Nielsen, SE

Vice-President  
(Ethics)



Gian Alfonso Borromeo, IT

Vice-President  
(EIC)

**GENERAL ASSEMBLY**

**COUNCIL**

**STEERING COMMITTEE**

President  
**Daniel Tardy, FR**

Vice-President (Treasurer)  
**Johannes Lahofer, AT**

Vice-President (CEEC)  
**Luisa Todini, IT**

Vice-President (SME)  
**Georgios Romosios, GR**

Vice-President (ECO)  
**Helmut Echterhoff, DE**

Vice-President (Ethics)  
**Per Nielsen, SE**

Vice-President (EIC)  
**Gian Alfonso Borromeo, IT**

Vice-President (SOC)  
**Peter Andrews, GB**

Vice-President (Communication)  
**Bernard Huvelin, FR**

Vice-President (Competitiveness)  
**Dirk Cordeel, BE**

Vice-President (MEDA)  
**Juan F. Lazcano, ES**

Vice-President (TEC)  
**Zdenek Klos, CZ**

**Economic and Legal Commission (ECO)**

President:  
*Vice-President Helmut Echterhoff, DE*  
Rapporteur:  
*Domenico Campogrande, FIEC*

**Working Group "Statistics"**

**Temporary Working Groups**

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

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

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

**"Remedies"**  
Chairman: *Wolfgang Bayer, DE*

**Social Commission (SOC)**

President:  
*Vice-President Peter Andrews, GB*  
Executive President:  
*John Stanion, GB*  
Rapporteur:  
*Laetitia Passot, 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*

**Ad Hoc Group  
Central and Eastern Europe "CEEC"**  
Chairman: *Luisa Todini, IT*  
Rapporteurs:  
*Hasso von Pogrell, EIC*  
*Giulio Guarracino, IT*

**Technical Commission (TEC)**

President:  
*Vice-President Zdenek Klos, CZ*  
Rapporteur: *John Goodall, 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*

**EIC – European International Contractors e.V.**

President: *Gian Alfonso Borromeo, IT*

Director: *Frank Kehlenbach, EIC*



Ulrich Paetzold  
Director General



Domenico Campogrande  
Rapporteur

Economic and Legal Commission



Laetitia Passot  
Rapporteur

Social Commission



John William Goodall  
Rapporteur

Technical Commission



Muriel Lambelé

Accountant



Joëlle Caucheteur

Secretariat



Maxime Wotquenne

Documentalist/Web



Yasmina Koeune

Secretariat (-02/2007)



Sylvie Masula

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).

**AT**

- BIB – Bundesinnung Bau
- FVBI – Fachverband der Bauindustrie

**BE**

- Confédération Construction  
Confederatie Bouw

**BG**

- BBCC – Bulgarian Building and Construction Chamber

**CH**

- SBV – Schweizerischer Baumeisterverband  
SSE – Société Suisse des Entrepreneurs

**CY**

- OSEOK – Federation of the Building Contractors Associations of Cyprus

**CZ**

- SPS – Svaz Podnikatelů ve Stavebnictví v České Republice

**DE**

- HDB – Hauptverband der Deutschen Bauindustrie
- ZDB – Zentralverband des Deutschen Baugewerbes

**DK**

- Dansk Byggeri

**EE**

- EEEL – Estonian Association of Construction Entrepreneurs

**ES**

- SEOPAN – Asociación de Empresas Constructoras de Ambito Nacional
- ANCOP – Agrupacion Nacional de Constructores de Obras Publicas

**FI**

- RT – Confederation of Finnish Construction Industries RT

**FR**

- FFB – Fédération Française du Bâtiment
- FNTP – Fédération Nationale des Travaux Publics

**GB**

- The CC – The Construction Confederation

**GR**

- PEDMEDE – Association Panhellenique des Ingénieurs Diplômés Entrepreneurs de Travaux Publics

**HR**

- UPGH – Udruga Poslodavaca Graditeljstva Hrvatske

**HU**

- EVOSZ – National Federation of Hungarian Contractors

**IE**

- CIF – The Construction Industry Federation

**IT**

- AGI – Associazione Imprese Generali
- ANCE – Associazione Nazionale Costruttori Edili

**LT**

- LSA – Lithuanian Builders Association

**LU**

- GEBTP – Groupement des Entrepreneurs du Bâtiment et des Travaux Publics

**NL**

- Bouwend Nederland

**NO**

- EBA – Entreprenørforeningen – Bygg og Anlegg

**PT**

- FEPI COP – Portuguese Federation of construction and public works' industry

**RO**

- ARACO – Asociatia Romania a Antreprenorilor de Constructii

**SE**

- BI – Sveriges Byggindustrier

**SI**

- CBMA – Construction and Building Materials Association

**SK**

- ZSPS – Zvaz stavebných podnikateľov Slovenska

**TR**

- TCA – Turkish Contractors Association

**Associate Member**

- EFFC  
European Federation of Foundation Contractors

**COOPERATION AGREEMENT with**

- ACBI  
Association of Contractors and Builders in Israel



**“Urban development: a major challenge for the competitiveness of the EU”  
FIEC adopts a declaration on urban development**

FIEC decided to make “urban development” the main theme of its annual Congress, which took place on 18-20 October 2006 in Paris.

The main reason motivating this choice is the fact that across the world between 1970 and 1995, the proportion of people living in cities expressed as a percentage of the total population, has grown from 37% to 45%. According to a recent forecast, this proportion should reach 55% in 2015 and over 60% in 2025. More than half of the world’s population will then live and work in urban areas.

In Western Europe, 80% of citizens already live in cities.

The expansion and modernisation of urban areas, facilitated amongst others by the demographic developments and the globalisation of our economies, will constitute one of the major challenges for sustainable growth in the coming decades.

The role of contractors has changed over time. Whether large, medium or small, they are less and less simple “builders”. Their competences today include design, setting up complex financing schemes, establishing partnerships with public authorities, and operating and maintaining public infrastructure. Contractors can therefore play an increasingly significant active role in urban development.

Although “urban development” as such is not a European policy, the European Institutions also play a significant role in this area, through the implementation of various other EU policies such as cohesion policy, and environmental or transport policies. Urban matters are high on the agenda of both the Commission and the European Parliament.

For these various reasons FIEC decided to present during its Congress its views for a new approach to urban development.

On the basis of practical case studies, several keynote speakers from various horizons discussed the views and proposals presented by FIEC: Jean-Marie Beaupuy, Member of the European Parliament and President of the EP Intergroup “Urban-housing”, Mrs. Annie-Brouwer-Korf, Mayor of Utrecht, Mr. Marco Orani, Head of Unit in DG REGIO of the European Commission, Mrs. Annukka Lindroos, from the city of Helsinki, Prof. Dieter Läßle, from the University of Hamburg/Technical University of Hamburg-Harburg (Institute for Urban and Regional Economics).

At the end of the debates a declaration entitled “Urban development: a major challenge for the competitiveness of the EU” was adopted (*the complete version of this declaration can be downloaded in EN, FR and DE from the FIEC website: [www.fiec.eu](http://www.fiec.eu)*).

The main message of this declaration is that only an integrated global approach to urban development can be instrumental in the realisation of the sustainable development of our cities. This approach is necessary for their development as both attractive places for living as well as efficient centres for economic activity.

**Opening Ceremony, Théâtre Athénée Louis Jouvet**



Dominique Perben,  
French Minister  
of Transport, Infrastructure,  
Tourism and the Sea



Mrs Nicole Fontaine,  
MEP, former  
President of European  
Parliament

**Conference “Urban development: a major challenge for the competitiveness of the EU”, FNTP auditorium**



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Such an approach necessitates the taking into account of the integration and the interaction of the 3 pillars of sustainable development:

1. the economic activities, which are more and more “services” oriented
2. the social aspects (housing, education, health, accessibility, employment,...)
3. the environmental aspects (mobility within the city, but also from and towards the periphery, links with more distant regions, pollution attenuation, collection and treatment of waste, reduction of greenhouse gas emissions...).

In each of these fields contractors can provide a real added value:

1. **in the economic field:** in view of the budgetary difficulties confronting many public authorities, contractors are able to offer expertise in setting up complex financing schemes in partnership with the public sector, for the construction and/or the operation and maintenance of public infrastructure (schools, hospitals,...); the know-how of contractors in terms of technology and innovation can bring solutions to some specific urban problems;
2. **in the social field:** construction is a labour intensive sector, offering to qualified and non-qualified individuals prospects for employment, and therefore also of social integration, training and education throughout their working life;
3. **in the field of environment:** the built environment is responsible for approximately 30% of the greenhouse gas emissions. The construction sector can therefore play a significant role in the development of more energy efficient buildings.

All the enterprises in the construction sector and in particular the SMEs, which together constitute the “economic motor” of the EU and which make a

significant contribution to increasing competitiveness, are able to participate in each of these areas. Cities are places where not only difficulties, but also social, environmental and economic perspectives tend to be concentrated. The development, construction and maintenance of attractive, efficient and well connected urban areas is therefore a condition *sine qua non* for sustainable growth in Europe.

Urban infrastructure development is not solely an exercise in spatial planning let alone a mere pretext for Keynesian pump-priming measures, but rather a fundamental element in economic policy that is essential to achieving the objectives of the “Lisbon Strategy” and to the effective realisation of the Single Market.

Although urban policies are the competence of national, regional and local authorities, structured and focussed EU intervention can lead to significant added value.

The role and the characteristics of cities have changed dramatically over recent decades. All the more so since the latest and probably not the last enlargement of the EU. A reinforced and innovative approach to their development, involving all stakeholders concerned, is therefore needed.

In order to support an overall strategy that takes into consideration not only the social and environmental aspects of urban development, but also its role in economic growth, as outlined above, FIEC’s declaration also addresses a number of requests and encouragements to the European Commission, the various public authorities concerned and to the European Parliament.

FIEC is willing and ready to provide its contribution to the European Institutions and, through its member associations in the various countries, to the relevant national authorities, in order to facilitate the putting



1. Wilhelm Küchler, Ulrich Paetzold and Patrick Bernasconi, FNTF President
2. Prof. Daniel Tardy: Presentation of the FIEC Proposals
3. Prof. Dr. Dieter Läßle, Economist, University Hamburg/Technical University Hamburg-Harburg, Institute for Urban and Regional Economics
4. Mrs. Annie Brouwer-Korf, Mayor of Utrecht (NL)
5. Mrs Annukka Lindroos, Deputy Director of Town Planning Division – City of Helsinki
6. Dott. Marco Orani, European Commission, Head of Unit DG REGIO/D/2 “Urban Actions”
7. MEP Jean-Marie Beaupuy, Member of the European Parliament, President of the EP-Intergroup “Urban-Housing”

in place of the necessary measures for the realisation of these ambitious objectives.

As concerns the “institutional” part of the Congress in Paris, the General Assembly elected Daniel Tardy, former President of the Economic and Legal Commission, as new FIEC President succeeding to Wilhelm Küchler, as well as the Vice-Presidents members of the Steering Committee for the period 2006-2008.

The General Assembly also awarded to Ioannis Papaioannou the title of “Honorary President” for the distinguished services that he has rendered to FIEC over a period of 16 years, between 1988 and 2004, as delegate of the Greek Federation PEDMEDE, as FIEC Vice-President, as President of the Technical Commission and finally as FIEC President. Among the visible results of his participation in FIEC one can highlight: the revision of Statutes and Standing Orders, the creation of the European Construction Forum and FIEC’s associate membership in CEN.

**General Assembly and Council of Presidents, FFB auditorium**



Daniel Tardy, new FIEC President (2006 – 2008)

**FFB Convention, “les 24 h du Bâtiment”, Palais-Omnisports Paris Bercy**



Christian Baffy, FFB President, Wilhelm Küchler and Johannes Lahofer

**Gala Dinner, Château de Versailles**



Honorary Presidency awarded to FIEC past President Ioannis Papaioannou by FIEC President Wilhelm Küchler



**President:**  
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## 1. Construction activity: 2006, a surprisingly good year

In 2006 the overall construction activity in the EU recorded the highest growth rate since 1999. The latest available figures exceed the forecast and indicate an annual increase of +3,6% in real terms.

With the exception of Portugal, all the other Member States benefited from this positive development and in particular Germany where after more than 10 years of decline a positive trend was finally observed in construction activity.

These positive developments have been driven mainly by the construction of new dwellings (+6,2%), but also by a recovery in the non-residential sector (+3,4%), which suffered during the previous years of the overall economic slowdown.

Although in 2007 we do not expect to reach the same levels as in 2006, we can however look at the future with a certain measure of optimism.

In its macroeconomic forecasts of Autumn 2006 and in the interim forecast of February 2007, the European Commission indicated that:

- following the signs of recovery recorded in 2006 (+2,8% for the GDP of EU25) growth rates of 2,7% and 2,4% for the European economy are expected in 2007 and 2008 respectively;
- investments should be sustained (+3,6% in 2007 and +3,3% in 2008), as well as domestic demand, which should however ease slightly from its good performance in 2006;
- gradual improvements can also be observed in the labour market: the economic recovery has led to an upturn in employment growth (+1,4%) in 2006 and the unemployment rate is expected to decline to 7,4% in 2008;
- mainly driven by marked increases in energy prices, inflation has remained slightly above 2% in 2006, but it is expected to decrease to 1,9% in 2008;
- in most of the Member States, public finances have turned out better than expected and the deficit is set to remain on a declining path, reaching 1,3% of GDP within the Euro area in 2008.

Furthermore, in the framework of the "cohesion policy" the significant EU financial intervention in the New Member States over the period 2007-2013 will certainly also positively influence construction activity. However, the effects will probably only be visible from 2008 onwards and their strength will also depend on the administrative absorption capacities of these countries.

In this context, the main developments relating to construction activity in the Union, which are detailed

in Statistical Report No. 50, can be summarised as follows:

1. **Total construction activity:** after the slowdown recorded in 2005 (+0,9%), 2006 has been a surprisingly good year with a growth rate of +3,6%; a positive trend, although more moderate, is also expected for 2007 (+1,8%).
2. **New housebuilding** has been the driving sector in 2006 (+6,2%) and in 2007 it should return to a similar growth rate as in 2005 (+2,4%).
3. **Renovation and maintenance:** this is a sector which is generally less sensitive to economic cycles (+1,4% in 2004, +2,2% in 2005; +1,8% in 2006) and which was sustained in several countries during the past few years by a reduced VAT rate; it is expected not to exceed +0,8% in 2007.
4. **Non-residential construction:** since 2002 private non-residential construction had been particularly affected by the economic slowdown but it recovered significantly in 2006 (+3,9%) and should remain on a positive trend also in 2007 (+3,2%). The fiscal constraints that have to be respected by public authorities negatively affect the development of the public non-residential sector (+0,4% in 2007).
5. **Civil engineering:** this sector of activity also experienced difficulties linked to the fall in public investment. Although a modest growth rate of 1,6% is expected for 2007, the significant needs for investments in the new Member States will offer positive perspectives from 2008 onwards.

## 2. Public procurement: the protection of confidentiality must be the backbone of the "competitive dialogue"

At the beginning of 2006, the Commission (DG MARKT) published on its Internet site, with a two-year delay, four "explanatory notes" regarding certain specific aspects of the new Public Procurement Directives (Directive 2004/17/EC coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors and Directive 2004/18/EC on the coordination of procedures for the award of public works contracts and public supply contracts) adopted in March 2004 and which were to be transposed into national legislation by no later than 31 January 2006. The aim of these "explanatory notes" was to facilitate the transposition exercise and to clarify the conditions governing application of some new provisions introduced by the Directives.

An analysis of these two "explanatory notes" – the one relating to the "competitive dialogue" and the one relating to "framework contracts" – has shown inconsistencies with the principles and objectives pursued by the new Directives.

For example, the note on the "competitive dialogue" contains contradictions with the clearly expressed wish of the new Directives to protect the principle of the confidentiality of proposals submitted by candidates and thus opens the door to cherry picking.

In a footnote of this explanatory note the Commission indicates that it is possible for contracting authorities to stipulate in the tender notice or in the descriptive document that acceptance of the invitation to participate in the "competitive dialogue" implies the consent of the candidate to reveal to the other participants the solutions he/she proposed.

A reliable relationship of trust, namely the principle of confidentiality, is the indispensable foundation of any entrepreneurial investment and therefore the "backbone" of any "competitive dialogue". The principle of confidentiality enables contractors to be innovative and protects them from any "stealing of ideas". This is especially valid for construction contracts, where contractors have hardly any opportunity of protecting their ideas by intangible property rights.

In a letter to Commissioner McCreevy, responsible for the Internal Market, FIEC expressed its concerns on this matter and indicated its willingness to collaborate with the DG MARKT for the improvement of these "explanatory notes".

### 3. Public procurement: the revision of the "Remedies" directives will provide more effective review procedures

The results of a wide consultation undertaken in 2004 by the European Commission (DG MARKT) of all the stakeholders showed that in practice the current national review procedures do not always allow for the correction of unfair award decisions and the effectiveness of the available remedies was shown to vary considerably from one Member State to another.

Figures on remedies activity also seemed to indicate in many Member States an overall lack of confidence of economic operators in the effectiveness of the national review systems concerned.

Finally, even though the practice of illegal direct awards of public contracts is still widespread today and constitutes a serious breach of EU law in the field of public procurement, most Member States have not tackled this problem in their national laws. The current existing Remedies Directives do not

provide for specific and adequate remedies against this illegal practice.

The Commission therefore presented in June 2006 a proposal for a Directive amending the current Remedies Directives (89/665/EEC and 92/13/EEC), to provide businesses, wherever in the EU they bid for public contracts, with more effective national review procedures when awarding authorities have infringed the EU public procurement Directives.

The main new provision proposed by the Commission is the obligation for public authorities to wait a certain number of days ("standstill period") before they can effectively conclude a public contract within the scope of the new public procurement Directives 2004/18/EC (works, supplies and services sectors) and 2004/17/EC (special sectors). This would give rejected bidders the opportunity to start an effective and swift review procedure at a time when any unfair decisions could still be corrected. It would apply not only to contracts awarded following a tender procedure, but also to contracts awarded directly to a single bidder, which under EU law are allowed only exceptionally and under very restrictive conditions.

FIEC welcomed the proposal presented by the Commission and several of the provisions contained in it.

However, in a position paper dated 14/12/2006 (see extracts in the annexes of this chapter) FIEC underlined, amongst others, the need for:

1. clarifying some aspects and reducing the number of exemption clauses contained in the proposed text, in the interest of effective and harmonised provisions;
2. having a "standstill" period, which is on the one hand sufficiently long for allowing enterprises, and mainly the Small and Medium Sized (SMEs) ones, to decide whether or not to start a review procedure and, if appropriate, to undertake the necessary preparations, and, on the other hand, sufficiently short in order not to hinder the development of public procurement across the EU;
3. having a harmonised suspension/standstill period.

According to the co-decision procedure, the issue is now in the hands of the European Parliament (EP) for the 1<sup>st</sup> reading phase, which the MEPs hope to be able to conclude under the German EU Presidency (i.e. by the end of June).

FIEC had very constructive contacts on this matter with the Rapporteur of the EP, Mr. J-C. Fruteau (F-PSE), and will continue to follow it very closely because it considers the "Remedies" directives as an indispensable complement for an efficient functioning of the Internal Market and the public procurement directives.

#### 4. TENs-Transport policy: several important initiatives at the EU level but a stronger political commitment is needed at the national level

##### Background

The Trans-European Networks policy is not new. In 1994, during a European Summit which took place in Essen (Germany), the Heads of State and Government defined a list of 14 transport "Priority Projects", known as the "Essen projects", and committed themselves to complete them by 2010. These "priority projects" form the so-called Trans-European Transport Networks (TENs) whose contribution to 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.

The cost of these 14 "Essen projects" represented in 2004 a total amount of approximately 213 Bln.€ (1,3% of the EU15 GDP).

In 2004, in order to take into account the enlargement of the EU and the needs of the new Member States, the list of the TENs was extended and now includes 30 "priority projects": the original 14 "Essen projects", with some extensions for some of them, plus 16 new projects, including the European satellite GALILEO project (Nr.15) and the "motorways of the sea" (Nr.21), which are of significant importance for the EU but which have a lower impact on the construction sector. The Member States committed themselves to complete these projects by 2020.

At the end of 2005, the total cost of these 30 "priority projects" represented an amount of 313 Bln.€ (2,8% of the EU25 GDP). But these 30 projects are only the ones identified as having the highest priority: it is estimated that the investment required to complete and modernise a true Trans-European network in the enlarged EU would amount to some 600 Bln.€.

##### Where are we today, 13 years after their launch?

FIEC published the results of its 13<sup>th</sup> annual survey on the development of the 30 TENs "priority projects", which presents the situation as at 31<sup>st</sup> December 2005, and the following main indications can be highlighted (*the detailed survey is available on FIEC website: [www.fiec.eu](http://www.fiec.eu)*):

1. on average, 52,2% of the financing of all the projects is programmed; there is a significant difference between, on the one hand, the 14 "original Essen projects", of which 7 are fully financed and only 2 have funding available for less than 50%, and, on the

other hand, the "new projects", for which most of the financing is still lacking;

2. as regards the overall progress of the works, on average 36,9% of them have been carried out for a total amount of approximately 115 Bln.€; here also there is a significant difference between the "Essen projects" (only 3 of them have a percentage of completion lower than 50%) and the "new" ones;
3. 197,4 Bln. € value of works remain outstanding for completion by 2020.

Despite the progress observed in recent years the overall picture remains disappointing. Amongst the "Essen projects" only 3 are effectively fully complete and the 3 largest ones (which represent together a total amount of 126 Bln.€) are not yet fully financed and have not even reached a percentage of completion of 50%.

##### Positive signs from the European Institutions...

Despite the decision of the Member States to provide the Commission with only 8 Bln.€ for the TENs priority projects for the period 2007-2013 (whilst the Commission had asked for 20,4 Bln.€ for the same period, in order to be able to play a real leverage role), some important initiatives have been undertaken for facilitating and accelerating their development:

1. 6 Coordinators have been nominated for the 6 most complex priority projects; their task is mainly to facilitate and promote the dialogue between the various stakeholders, in particular the Member States, and the progress reports that they presented in September 2006 clearly indicate that they have effectively played a significant role;
2. in December 2006 a political agreement was reached regarding the "Financial regulation" for the period 2007-2013; according to this agreement the share of EU co-financing could now reach 50% of the total costs of the studies and 20% (30% for the cross-border sections) of the actual works, while 85% of the budgetary resources will be reserved for the priority projects;
3. an "Executive Agency" for the TENs has been established, with the task of providing technical/administrative expertise and support to the Commission concerning the implementation of the projects.

##### ...but a stronger political commitment from the Member States is needed

However, these encouraging initiatives from the European Institutions are not enough on their own. They need to be complemented by direct interventions from the Member States.

FIEC's survey clearly indicates that between 1994 and 2005:

- 61% of the total financing was provided by national or regional governments and public authorities;
- 24% was provided by EU funds (European Investment Bank, Cohesion funds, TENs budget line of DG TREN);
- 10% was provided by private capital;
- and the remaining 5% by other sources.

These shares will not change dramatically in the future.

Recently, some legal, administrative or political difficulties have been observed in some Member States on some specific sections and it should not be overlooked that such local obstacles negatively impact the development of entire projects.

It is therefore clear that without a stronger political commitment from the Member States these priority projects, which are essential for the competitiveness and cohesion of the EU, as the Member States themselves have underlined on several occasions, will not be completed in the foreseeable future.

### 5. Public-Private Partnerships (PPPs) and concessions: a new legislative framework at the EU level?

In April 2004, the Commission published a "Green Paper" on Public-Private Partnerships (PPPs) with the aim of launching a wide debate on the desirability of adapting the Community rules on public procurement and concessions. The main objective was to identify any uncertainties and assessing to what extent Community intervention might be necessary. In other words, to see whether or not it is necessary to improve or complement the current rules, in order to ensure that economic operators have access to PPPs under conditions of legal clarity and real competition.

The term Public-Private Partnership ("PPP") is not defined at Community level. In general, the term refers to any form of cooperation between public authorities and the world of business which aim to ensure the funding, construction, renovation, management or maintenance of an infrastructure or the provision of a service.

Over the last ten years, the use and application of PPPs has been increasingly developed in several Member States. They are now used in many areas of the public sector. The choice of a private partner by a public authority must be made in accordance with Community rules for the award of public contracts. However, there is no specific system under Community law applicable to PPPs and the Community rules on awarding public contracts are also applied to PPPs with

differing degrees of intensity: some PPPs fall within the cope of the definition of a "works" contract, some others take the form of "works concessions" and will therefore follow the specific provisions for these types of contracts, whilst others take the form of "services concessions", which at the moment are not covered by the EU directives.

On 15 November 2005 the Commission published a Communication summarising the main outcomes of the consultation undertaken through the Green Paper, to which FIEC contributed, and namely that:

- an EU legislative initiative is the preferable option as regards "concessions"; however, before formally proposing legislation further in-depth analysis will need to be undertaken in accordance with the principles of "Better Regulation";
- an Interpretative Communication would be better suited than fully-fledged legislation as concerns "institutionalised PPPs", i.e. public service undertakings held jointly by both a public and a private partner.

The European Parliament waited until end 2006 before expressing its position on the Green Paper, but with the "Weiler Report" it finally gave an overall support to the initiatives proposed by the Commission.

FIEC took the opportunity of the debates in the European Parliament for clarifying some aspects of its position on this important issue:

1. concessions are one of the possible forms of PPPs and therefore PPPs and concessions should fall within the scope of the same regulatory framework;
2. at the moment, the only existing legislative framework covering some types of PPPs is the one defined by the new EU public procurement directive 2004/18/EC; this directive is not yet fully implemented in all the Member States and some more years will be needed in order to determine whether or not there is a need for the elaboration of a specific separate legislative regime for PPPs at the EU level;
3. in order not to hinder the development of PPPs across the EU, it will therefore be extremely important to check whether the existing legislative framework is effectively adequate for the award of all forms of PPPs; only in the case where the existing framework would have proven to be inadequate, could a new legislative framework at the EU level, covering all forms of PPPs, be envisaged;
4. some clarifications on IPPPs (Institutionalised PPPs) are needed, in order to ensure a level playing field between the public and the private competitors in the award of public contracts;
5. the new procedure for complex contracts, the "competitive dialogue", is one of the possibilities provided for by the directives for the award of some types of PPPs, but it is not the only one and

therefore the selection of the adequate award procedure should be made on a case by case principle; the "competitive dialogue" is a new procedure and, in order to avoid some possible misuses, which have already been observed in some cases, some clarifications regarding the modalities of its application would certainly be extremely helpful.

The European Commission (DG MARKT) is currently analysing the results of the "impact assessment" and on this basis it will decide which initiatives to effectively undertake.

FIEC will closely monitor the developments on this issue and intervene as and when necessary on future initiatives that may be taken in this area.

## 6. The international accounting rules for concession contracts: the last lap

An EU Regulation of July 2002 (Regulation No. 1606/2002) makes provision for the application, as from 1 January 2005, of the international accounting standards defined by the IASB (International Accounting Standards Board) to all companies listed on a stock exchange in the EU. However, today there is no specific accounting standard suited to concession contracts.

During recent years, FIEC has played an active role in the discussions within the EFRAG (European Financial Reporting Advisory Group), the advisory European body of the European Commission, and has contributed to the reflections of the IFRIC (International Financial Reporting Interpretations Committee), which resulted in the adoption of IFRIC interpretations at the end of 2006.

These IFRIC interpretations propose the application of two very different accounting methods which depend on the way in which the concessionaire is remunerated either by the party granting the concession (financial assets model) or by users (intangible assets model).

These interpretations have now to be adopted at the EU level. The first step for this adoption was the endorsement of the interpretations by the EFRAG, which took place in March.

FIEC considers that it would be important to have a specific international accounting standard for concession contracts, which would adequately take into account their specificities, but its elaboration would take several years. In the meantime, although the IFRIC interpretations have been partly criticised, their application will certainly help in improving the harmonisation in the presentation of accounts.

## 7. Reduced VAT rates: what future?

After extremely difficult discussions at the Council of Ministers level, the directive 2006/18/EC was finally adopted at the beginning of 2006. This Directive extends until 31/12/2010 the provisions of the "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.

FIEC undertook significant lobbying actions for the prolongation of this Directive in the last few years, amongst others because according to a study that FIEC carried out at the beginning of 2005, a return to the previous VAT levels would have had disastrous effects on employment in the countries in question. Indeed, elimination of the current system in force since 1999 would have had as a consequence a loss of 200.000 to 250.000 jobs in the construction sector from the beginning of 2006.

According to the provisions of Directive 2006/18/EC, a study on the impact of the application of reduced VAT rates in general is currently being carried out on behalf of the Commission by an independent consultant and the conclusions of this study should be presented by the Commission to the Council and the European Parliament in June.

On the basis of this study the Commission will probably present new proposals regarding the application of reduced VAT rates across the EU.

FIEC is continuously monitoring the developments of this issue and it is pertinent to recall that in July 2003 the European Commission already tabled some proposals providing for overall simplification and rationalisation of the reduced rates regime. However, despite the attempts by the various Presidencies of the Union, the Council of Ministers for Finance (ECOFIN) never succeeded in achieving the unanimous agreement provided for by the Treaty in order to decide this question.

This issue now has a new dimension which is closely linked with one of the most important and topical issues on the EU agenda, namely climate change and energy efficiency (see the "Action plan for energy efficiency: realising the potential" adopted in March 2007).

The built environment accounts for approximately 40% of overall energy demand and therefore the application of a reduced VAT rate on renovation works, in order to encourage consumers to undertake these type of works, constitutes certainly one of the most efficient tools to use for tackling the market failures in the renovation sector.

**Letter to Commissioner for Internal Market and Services, Charlie McCreevy**

7/6/2006

Dear Commissioner McCreevy,

I am writing to you on behalf of FIEC (European Construction Industry Federation) to express concerns over the "Explanatory notes" on some specific aspects of the new Public Procurement directives, published earlier this year by DG MARKT. FIEC is concerned that contradictions contained within the texts could not only have important consequences for the overall credibility of the "Explanatory notes", but also have a detrimental knock-on effect upon the way in which the new Public Procurement Directives themselves are interpreted.

[...]

After a careful analysis of 2 of these "Explanatory notes", namely those concerning the "competitive dialogue" and "framework agreements", which are of specific interest for our sector, FIEC would like to express the following concerns:

**Regarding the "explanatory note" on the "competitive dialogue":**

1. Whilst the directive explicitly states that the dialogue with the candidates must be carried out individually with each of the participants on the basis of the ideas and solutions of the economic operator concerned and that "confidentiality" must be respected not only during, but also before and after the dialogue phase, the text of footnote No.21 (No.22 of the FR and DE versions) of the "Explanatory note" leads to opening the door to actually allow "cherry picking" and "the use of ideas/solutions of one of the participants by another one".
2. Although the text of the directive (Art.6) recognises the principle of "confidentiality" both in the "competitive dialogue" and in the "negotiated procedure", the text of the "Explanatory note" says that this fundamental principle is not foreseen for the "negotiated procedure" [section 3.2, paragraph 2, last sentence]. This contradicts the World Trade Organisation's 1994 Government Procurement Agreement (Article XIV, paragraph 3).

3. Explanations concerning the possibilities of dialogue with the tenderers before and after the submission of their final binding tender [section 3.2, paragraph 3; section 3.2.1; section 3.3] contradict the wording and system of directive 2004/18/EC and could lead to an ambiguous and unlawful interpretation of its provisions, in particular regarding "new specifications" at the end of the dialogue.

**Regarding the "explanatory note" on the "framework contracts/agreements":**

1. By indicating [section 1.1, paragraph 2] that the terms applicable to any orders of the contracting authority are set out in a binding manner on all the parties, whilst adding that the contracting authority is not obliged to use the "framework contract/agreement", the Note opens the door to possible abuses by the contracting authority, such as using it for "testing" the market, in order to decide whether or not to use an alternative procedure.
2. The Note explains [section 2.1, paragraph 3] that "framework contracts/agreements" are a closed system which no other party can enter, either as a purchaser or a supplier, and that although their duration is limited to 4 years, in some exceptional cases they may have a longer duration; the effect of this explanation would be in clear contradiction to the objective of opening up public procurement.

Indeed, there is some fear that contracting authorities could take advantage of these "Explanatory notes" leading to unacceptable and incorrect behaviour in contradiction with the provisions of the Public Procurement Directives.

It is for these reasons and in line with our constructive approach of cooperation with the Commission, that we would like to discuss together with you and the representatives of DG MARKT concerned, how the necessary corrections to these "Explanatory notes" could be achieved as quickly as possible.

Yours sincerely,

Daniel Tardy  
Vice-President  
President of the Economic and Legal Commission

**Answer from Cabinet of Commissioner McCreevy**

6/7/2006

Dear Mr Tardy,

Commissioner McCreevy thanks you for your letter of 7<sup>th</sup> June. He has asked me to reply on his behalf.

[...]

Let me first of all clarify certain points in respect of the nature and aims of these documents. The principal purpose leading DG Market services to prepare these explanatory notes was their desire to assist Member States informally in their implementation of the Directive. As you rightly state, the documents express the views of the services only and do not engage the Institution as such, let alone introduce any form of new obligations or legislation.

[...]

Given their informal status, these documents were **not** placed under the heading "Key Documents: Interpretative Documents, Thresholds" (i. e. documents clearly having an "official" status), but rather under a new category "Explanatory Notes", precisely to underline their non-official status. DG Market will proceed to clarify their status, as it does not seem to be sufficiently clear.

As for the substance, your concern in respect of the notes on competitive dialogues is centred on the issues of confidentiality and your fear of "cherry picking".

Let me first of all underline that for some Member States the political agreement on the competitive dialogue was conditional upon the prohibition of Article 29(3) third sub-paragraph against revealing solutions or other confidential information **not** being absolute. Hence the formulation in the final text that "Contracting authorities may not reveal to the other participants solutions proposed or other confidential information communicated by a candidate participating in the dialogue without his/her agreement". Secondly, the issue dealt with in footnote 21("It would be possible for contracting authorities to stipulate in the tender notice or in the descriptive document that acceptance of the invitation to participate implies consent".) was dealt with following a request for guidance by a Member State on precisely that question. As the services did not see anything in the Directive or Community law in general to prevent such stipulation nor did they know of any specific examples of practical problems

of application in that context, footnote 21 was inserted in its current form. However, due to their informal status, these explanatory documents can (and will) easily be kept up-to-date as experience is gained as to the kind of problems that actually arise in the context of competitive dialogue is acquired and/or as jurisprudence may come into being on the subject. If, therefore, FIEC has concrete and substantiated examples of problems in respect of "cherry picking" within a competitive dialogue, the responsible services would appreciate being informed thereof.

In respect of confidentiality requirements under negotiated procedures, it should be noted that the sentence you query limits itself to stating that "...in particular, **no provision comparable to that in the third subparagraph of Article 29(3)** exists for the negotiated procedure." This statement is therefore explicitly limited to the abovementioned provision of Article 29(3) and it was not felt necessary in a technical document to point out that the **general** provision on confidentiality in Article 6 does indeed apply also to negotiated procedures. There is therefore no contradiction with the provisions of the WTO Agreement on Public Procurement. However, as the sentence is not essential and as it would seem to be open to misunderstandings, it will be eliminated.

The last part of your remarks concerning the competitive dialogue would seem to indicate that you consider it unlawful to issue new specifications at the end of the dialogue based on the outcome of the discussions with participants during that stage of the procedure. This is, however, based on the – incorrect – assumption that the prohibition against the transmission of information from one participant to the next would be unconditional. The purpose of the explanations given in the document is simply to underline that issuing new specifications at the end of the dialogue remains an exception which is possible only and exclusively in case the economic operators concerned have agreed to such transmission of otherwise confidential information.

[...]

Yours sincerely  
Michael Murray

**FIEC detailed comments on the DG MARKT "Explanatory notes" on some specific aspects of the new public procurement directives**  
4/7/2006

[...]

FIEC would like to express its concerns regarding these "explanatory notes", because we fear that they could, rather than providing clarifications, lead to unacceptable behaviour by the contracting authorities and even contradict some of the basic principles of the directives.

Our concerns are based on the following arguments:

**Detailed comments on the explanatory note concerning the "Competitive dialogue"**

**Protection of confidentiality**

[...]

A reliable relationship of trust, namely the principle of confidentiality, is the indispensable foundation of any entrepreneurial investment and therefore the "backbone" of any "competitive dialogue".

Only the principle of confidentiality enables contractors to be innovative, i.e. to invest in personnel and economical resources in order to develop solutions, which can bilaterally be discussed with contracting authorities and adjusted to the contracting authorities' individual needs.

In a market economy, no contractor could afford to develop solutions, which demand a significant expenditure on personnel and economical resources, and then provide these solutions to its competitors, hereby losing its competitive advantage.

Fair competition requires to promote and effectively protect innovative contractors from any "stealing of ideas". This is especially valid for construction contracts, where contractors have hardly any opportunity of protecting their ideas by intangible property rights.

Contracting authorities may not deviate from this fundamental decision of the European legislator, which is clearly expressed in the wording and system of Directive 2004/18/EC, by contradicting conditions for participation.

[...]

**Protection of confidentiality in the "competitive dialogue"**

On "competitive dialogue" the protection of confidentiality is complemented (Article 29, paragraph 3, sub-paragraph 3):

*"Contracting authorities may not reveal to the other participants solutions proposed or other confidential information communicated by a candidate participating in the dialogue without his/her agreement."*

[...]

The footnote 21 (French / German versions: footnote 22) now provides:

*"It would be possible for contracting authorities to stipulate in the tender notice or in the descriptive document that acceptance of the invitation to participate implies consent" (= to "cherry picking", respectively a "joint dialogue" with all participants).*

This devaluates the "explanatory note" in a substantive point and exposes it to justified criticism.

[...]

the principle of confidentiality requires unconditional validity.

Particularly inadmissible would be the request of a "consent" to the passing-on of proposed solutions to competitors as a "condition for participation".

**Characteristics of the dialogue phase**

According to Directive 2004/18/EC the dialogue phase deals with "proposed solutions" (paragraphs 3 and 5), whilst legally binding "tenders" are not submitted before the dialogue phase is completed (paragraph 6). This is a fundamental element distinguishing the "competitive dialogue" from the "negotiated procedure", as Article 29, paragraph 2 clarifies. It states that in the negotiated procedure:

*".. contracting authorities shall negotiate with tenderers the tenders submitted by them..."*

By contrast, the purpose of a "competitive dialogue" was that – before the submission of legally binding tenders – contracting authorities should have the opportunity of a confidential "dialogue" with contractors about their proposed solutions.

In order to avoid misunderstandings, it should be clarified that – once the dialogue phase has been concluded and legally binding tenders have been submitted – their contents may no longer be "negotiated".

[...]

**FIEC position on the proposal for a Directive amending Directives 89/665/EEC and 92/13/EEC with regard to improving the effectiveness of review procedures concerning the award of public contracts ("Remedies") [COM(2006)195 final/2]**  
14/12/2006

[...]

FIEC welcomes and supports the European Commission's (EC) proposals for amending the "Remedies" Directives 89/665/EEC and 92/13/EEC, based on the EC Treaty and the Jurisprudence of the European Court of Justice (ECJ)<sup>1</sup>. Transparent and effective review procedures, which are independent from the contracting entities, are an indispensable complement for an efficient functioning of the Internal Market and the public procurement directives.

In the EC's proposal FIEC particularly welcomes:

- 1. the provisions regarding contracts, which are awarded in violation of the advertising and procurement rules of European legislation (so-called "direct awards");**
- 2. the introduction of a standstill period between communication of the intended award decision and subsequent conclusion of the contract, both in cases of formal procurement procedures as well as in cases of "direct awards";**
- 3. the deletion of the provisions concerning procedures that have not proven to be successful in practice.**

However, in order to have transparent, efficient and balanced review procedures, FIEC would appreciate, if the following aspects could be taken into consideration:

### **General remarks – "Better regulation"**

In the interest of effective and harmonised provisions, FIEC is of the opinion that the number of exemption clauses contained in the proposed directive should be reduced. This regards for example Article 2b (b), (d) and (e).

Concerning Articles 1 (4), 2a (2) and 2e (3), a harmonised and adequate period for standstill / suspension would be required, which also takes into account the specific situation of small and medium-sized enterprises.

[...]

### **Formal procedure – Standstill period (Article 2a (2))**

Enterprises must have the opportunity to understand the reasons of the contracting entity for the intended conclusion of contract, check their correctness, ask questions and, if need be, translate texts and obtain legal advice. The preparation and formally correct submission of review documents to a review body, for cross-border tenders in another Member State and in the respective language, requires additional time.

This situation becomes even worse for small and medium-sized enterprises, which normally do not have an internal legal department and must therefore rely upon external legal support.

FIEC is of the opinion that the proposed period of at least 10 calendar days is too short. Where, for example, an information is communicated on Friday evening, the enterprises would only have available 6 working days for analysis and, if need be, preparation of review documents and their correct submission to a review body, for cross-border tenders in another Member State.

**A period of at least 14 calendar days seems indispensable** and would also help to avoid overhasty (and potentially unnecessary) applications for review.

[...]

### **Derogation from standstill period – Extreme urgency (Article 2a (3) and (4))**

FIEC is of the opinion that only cases of extreme urgency within the meaning of Article 31 (1) (c) of Directive 2004/18/EC can justify a possible derogation from the standstill period.

[...]

### **Direct award – Information (Article 2e (2))**

FIEC welcomes and supports that information about intended direct awards must be provided, and for this purpose a "sufficient degree of publicity" must be ensured.

<sup>1</sup> In particular: C-81/98 "Alcatel", C-26/03 "City of Halle", C-20/01 "Waste Collection" cases.

In order to establish the necessary harmonisation and exclude misunderstandings or confusion, a specific information form would be required, which is clearly distinct from existing forms. For this purpose, the Annex proposed by the EC is a very good basis, which would however need some amendments.

From FIEC's point of view, a "sufficient degree of publicity" can be ensured, if contracting entities publish this (clarified) information form in the Official Journal of the European Union (Supplement S).

Such publication would be simple, quick, and cost-effective for contracting entities and would avoid any discrimination of enterprises, which are potentially interested in the contract.

[...]

#### **Direct award: "Legal effects" (Article 2f (3) and (4))**

Where enterprises have concluded contracts in good faith with contracting entities, which infringed their obligation to provide information, it seems sensible that these contracts may obtain legal effects after a period of at least six months (Article 2f (3)).

However, in order to avoid misuse, effective sanctions are indispensable in these cases (Article 2f (e)) and unlawfully disregarded enterprises must maintain their opportunity of claiming damages.

In this context, FIEC considers that the wording of Article 2f (3), which specifies that the Member States may provide that a contract "...nevertheless has certain effects between the parties concerned or with regard to third parties...", should be clarified in order to avoid legal uncertainty, in particular as regards which effects.

Since the date of conclusion of the contract could easily be "adjusted", the period of at least six months should, at least for construction contracts, also refer to the actual start of performance of the contract on site.

[...]

#### **Consultation with the Advisory Committee (Article 12 (2))**

FIEC is of the opinion that the future revision of the "Remedies" directives should be carried out also in consultation with the Advisory Committee on the Opening-up of Public Procurement, which is composed by independent procurement experts, and not just the government representatives.

[...]

**Press release: FIEC asks the Member States to accelerate the development of the Trans-European Transport Network (TENs)**  
27/3/2007

[...]

The latest annual survey carried out by FIEC on the development of the TENs indicates that at the end of 2005, despite some progress observed in recent years, the rate of completion of these projects remains disappointing:

1. amongst the 14 original "Essen projects" only 3 are now complete while just 7 are fully financed;
2. as regards the overall progress of the works on the 30 priority projects, on average only 36,9% of them have been completed for a total amount of approximately 115 Bln.€;
3. an outstanding value of works of 198 Bln. € remains to be completed by 2020.

**FIEC is very concerned about the delays observed in the construction of these priority projects.**

**FIEC urges the Member States to define the adequate tools and overall framework for facilitating the setting up of innovative financing schemes. Furthermore FIEC strongly regrets the inadequate allocation of resources decided by the Member States to be provided at the European level: only 5 Bln.€ are effectively available in the Commission's TENs budget line over the period 2007-2013 for the priority projects while 198 Bln.€ of works remain to be carried out within the next 15 years.**

**Furthermore, FIEC deplores recent developments in some Member States** which (regardless of the juridical evaluation of such measures) may be expected to have a negative impact on the realisation, not only of the individual projects concerned, but also of linked projects/ corridors and the TENs-T as a whole, undoubtedly thereby incurring further unnecessary delays.

The TENs priority projects are essential for the cohesion and the competitiveness of the EU and therefore **FIEC requests the Member States to respect their commitments and avoid taking initiatives that may further hinder the development of any of the TENs priority projects.**

**FIEC position on the draft "Weiler report" (dated 16/10/2006) on Public-Private Partnerships**  
24/10/2006

FIEC welcomes several of the issues highlighted in the draft "Weiler report" concerning Public-Private Partnerships (PPPs) and in particular:

1. the fact that PPPs can enable a more efficient use of public funds, in particular in times of scarce budgetary public means, and that they can help in the modernisation of the functioning of the public administration through acquiring know-how from the private sector;
2. the need for the respect of the basic principles of the EU Treaty, namely non-discrimination, mutual recognition, proportionality, transparency and equal treatment, in the selection of the private partner(s);
3. the necessity for an adequate protection of the confidential information provided by the candidates in the discussions/negotiations with the public authority;
4. the necessity for a Europe-wide definition of PPPs.

However, FIEC would like to raise the following concerns, which could become an obstacle in the development of PPPs across the EU:

**1. PPPs and concessions should fall within the scope of the same regulatory framework**

Although there is no clear definition of PPPs at the EU level, it is generally agreed that the term PPP defines any form of partnership between the public and the private sector with the purpose of carrying out infrastructure projects and/or providing public services.

The main characteristics of these partnerships being their "long" duration (*as regards this duration see item 6. hereafter*) and the existence of some risks, linked to their exploitation and maintenance for example, that have to be adequately shared between the partners.

In this respect, concessions are one of the possible forms of PPPs.

FIEC is therefore of the opinion that there should be a single regulatory framework covering the award of PPPs in general (IPPPs, contractual PPPs, services concessions,...).

**2. At the moment, the only existing legislative framework covering some types of PPPs is the one defined by the EU public procurement directive 2004/18/EC**

[...]

All forms of PPPs (including services concessions) should fall within the scope of the existing provisions of directive 2004/18/EC regarding works concessions.

In this respect, FIEC is therefore of the opinion that at the moment there is no need for the elaboration of a specific separate legislative regime for PPPs at the EU level.

**3. In the future, some adaptations of the existing legislative framework could be necessary**

[...]

In order not to hinder the development of PPPs across the EU, **it will therefore be extremely important to check whether the existing legislative framework is effectively adequate for the award of all forms of PPPs**, in particular for the ones that currently do not fall within their scope, like "services concessions".

Only in the case where the existing framework, even after some specific adaptations, would have proven to be inadequate, then a new legislative framework at the EU level, covering all forms of PPPs, could be envisaged.

[...]

**4. Some clarifications on IPPPs (Institutionalised PPPs) are needed**

In order to effectively achieve the objectives of non-discrimination, mutual recognition, proportionality, transparency and equal treatment, as well as safeguarding fair competition, FIEC is of the opinion that some clarifications are needed as regards the award of IPPPs.

**A level playing field between the public and the private competitors must be ensured in the award of public contracts.**

## **5. The “competitive dialogue” is one of the possible procedures for the award of PPPs**

Given the complexity of PPPs, the negotiation between the public and private partners should take place before the contract can finally be awarded. The public procurement directives contain a new provision, the “competitive dialogue”, which allows this negotiation. **It is one of the possibilities provided by the directives, but it is not the only one and therefore the selection of the adequate award procedure should be made on a case by case principle.**

The “competitive dialogue” is a new procedure and, in order to avoid some possible misuses, which have already been observed in some cases, **some clarifications regarding the modalities of its application would certainly be extremely helpful.**

In this respect, FIEC would underline the need for a strict respect of the principles of confidentiality of the information provided by the candidates, **in order to avoid any form of “cherry picking”** by the contracting authorities, which would hinder the development of PPPs and of innovation within the EU.

## **6. PPPs should have an adequate duration**

[...]

FIEC would like to underline the need for allowing an adequate and not too long duration of PPPs, which on the one hand ensures the amortisation of the investment and an appropriate return on the capital employed and, on the other hand, doesn't unnecessarily restrict market access.

**FIEC answer to the consultation on "The future of the Internal Market"**

15/6/2006

FIEC considers that there is an absolute need for a coherent and efficient Internal Market, capable of facing new and future challenges, in order to allow the EU to achieve its objectives defined in the framework of the "Lisbon Strategy".

[...]

**Question 2: In which ways have you benefited from the opportunities offered by internal market? Where, in your views, does it function well? Where do you see shortcomings?**

One of the shortcomings in the efficient functioning of the Internal Market is the problem of "late payments", mainly by public clients, which affects in particular SMEs and which constitute a serious obstacle to the competitiveness of enterprises in general.

Directive 2000/35/EC, aiming at combating late payments in commercial transactions, entered into force on 8/8/2002. However, according to the results of a survey carried out amongst our member associations and published in December 2005, it clearly appears that in those countries where "late payments" are considered to be a serious problem the Directive has not proven to be an efficient instrument: no significant reduction of the payment periods was observed following the introduction of the Directive.

In this framework and in view of a possible forthcoming amendment of Directive 2000/35/EC, FIEC would like to see Article 3 §2, which allows for the possibility of prolongation of the payment period from 30 to 60 days, deleted.

This provision, which FIEC considers to be unacceptable, contradicts one of the objectives of the Directive, which defines a benchmark of 30 days as a payment period, unless a different payment period has been agreed by the parties.

**Question 9: Do you think that public authorities are sufficiently aware of the opportunities the EU public procurement framework offers for fostering innovation? If not, how could they be made better aware of it?**

In the consultation document, the Commission underlines the use of variants by public authorities as a possible tool for encouraging and promoting innovation through public procurement. It indicates that the new public procurement Directives "*allow public authorities to ask for variants, which open up bids to alternative approaches*".

FIEC considers this possibility as an essential tool for fostering innovation and therefore regrets that the new public procurement directives, 2004/17/EC and 2004/18/EC, adopt a restrictive approach in this respect. According to the provisions of these new Directives, the possibility for presenting variants has to be explicitly authorised by the contracting authority in the tender notice. This was not the case with the previous Directives, 93/37/EC and 93/38/EC, which provided for an implicit authorisation for presenting variants.

FIEC considers that although a revision of the new Directives is not needed in the short term, a wide information campaign should be carried out, in order to encourage the contracting authorities to authorise the presentation of variants as often as possible.

Another element favouring investments in innovation and its dissemination is the effective protection of the confidentiality of the information presented by the tenderers in a call for tender, regardless of the award procedure used. Companies must be protected against "cherry picking" of ideas, also by the contracting authorities. Without this protection there cannot be any incentive for companies to develop and propose innovative solutions.

Such a protection implies a strict application by the contracting authorities of the provisions of the new Directives on this matter (Article 6 and Article 29 §3 of Directive 2004/18EC).





SOC



President:  
Peter Andrews, GB

Rapporteur:  
Laetitia Passot, FIEC

SOC



Executive President:  
John Stanion, GB

Sub-commission SOC-1

"Vocational Training"



Chairman: Alfonso Perri, IT

Rapporteur:  
Rossella Martino, IT



Executive Chairman: Jacques Lair, FR

Sub-commission SOC-2

"Health and Safety"



Chairman: José Gascon y Marin, ES

Rapporteur:  
Ricardo Cortes, ES

Sub-commission SOC-3

"Economic and Social Aspects of Employment"



Chairman: André Clappier, FR

Rapporteur:  
Jean-Charles Savignac, FR

**SOC-1**

The vocational training sub-commission's objective is to develop skills in the construction sector by means of suitable training policies and through programmes and exchanges of good practices between the FIEC member federations. Vocational training plays a vital role in reinforcing the competitiveness of the construction industry. The following topics and projects have been given high priority in 2006-7:

**Social dialogue****1. FIEC-EFBWW pilot project on the transparency of qualifications**

Construction is a sector in which the worker moves, not the product, therefore it is crucial that workers' qualifications acquired in one country of the EU be easily recognised in other European countries. In view of improving the recognition of qualifications within Europe, and facilitating the potential mobility of workers, FIEC and EFBWW took the decision to work on a "transparency" document which would clearly show the qualifications possessed by workers in order that these could be recognized by an employer in an EU country other than the one in which those qualifications were acquired. The project is initially limited to one trade within the sector, namely bricklayers.

The project had been delayed due to the lack of resources within EFBWW and FIEC. But the objectives and methodology of the project have been agreed and it should resume in the second half of 2007. The expected project output should be a comparative table of the qualifications that bricklayers are requested to hold in the different EU Member States or the minimum set of qualifications which have to be held by all bricklayers in Europe. The national credentials for the profession of bricklayer already collected by FIEC will serve as first hand material for the project.

**2. European Commission proposal for a European Qualification Framework for Lifelong Learning**

The European Qualification Framework proposed by the European Commission in 2005 and adopted in September 2006 was discussed by the FIEC and EFBWW member federations during their social dialogue working groups on Vocational Training in 2005 and 2006.

This European Qualification Framework is designed to facilitate the transfer and recognition of national qualifications of workers within Europe, by establishing common references to help the Members

States, businesses and citizens compare certificates issued in the various European systems.

The proposed EQF is not intended to replace or modify existing national systems. It comprises eight levels of reference 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 this knowledge (length of learning experience, type of institution), shifting the focus away from the traditional approach.

During their discussion on this issue, FIEC and EFBWW analysed how this system could facilitate the transfer of qualifications across the different EU countries and education and training systems, and how it could facilitate the validation of non-formal and informal learning in the sector, with the ultimate aim of implementing it.

**3. FIEC and EFBWW support to the ENETOSH project: improving Health and Safety Training**

The improvement of Health and Safety Training is one of the ways to improve Health and Safety culture on construction sites and prevent accidents. In view of achieving progress in this field, FIEC and EFBWW made a commitment in November 2004 in Bilbao (FIEC-EFBWW Declaration at the OSHA European Construction Safety Summit) to urge their member organisations to take adequate action at the national level and to use their communication network for lobbying national education ministers in order that they introduce health and safety training at all levels. Some guidelines have been sent to FIEC members in this regard.

In parallel, FIEC and EFBWW agreed to be project partners in a Leonardo da Vinci project aimed at establishing a European network of experts relating to education and training in occupational safety and health. This project, which should be completed by September 2007, has already produced a website (available at [www.enetosh.net](http://www.enetosh.net)) detailing Health and Safety training good practices and providing innovative approaches and tool-boxes for teachers and trainers in this field.

The project follows an integral approach in which safety and health education does not begin with entry into working life but is conducted at all levels, from kindergarten, through primary and secondary school, vocational training and academic study.

As co-partners of the project, FIEC and EFBWW will use their network to disseminate the good practices collected, with the aim of improving the inclusion of health and safety into the sector's training and education systems.

### Other issues

During their 2006 meeting, FIEC and EFBWW member federations also examined the EP report on Key competences for lifelong learning (Empl/6/31797), exchanged best practices activities undertaken at national level in order to improve the quality of the Vocational Training systems of the sector, discussed also FIEC and EFBWW member federation's strategy for qualifying workers to build energy efficient buildings and to audit buildings accordingly.

With the election of a new Steering Committee, SOC-1 has received the support from an "executive chairman", Mr. Lair, a contractor who has been, for many years, the chairman of FFB's vocational training committee.

### SOC-2

The role of SOC-2 is to improve 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. Increased Health and Safety in the construction sector is a key factor in improving the image of the sector.

The following topics and projects have been given high priority in 2006-2007:

#### 1. H&S management systems: drafting of a European model to be used by SMEs

In certain countries, clients are increasingly insisting that companies prove that they have set up safety systems and are complying with them. In most cases these systems are specific to the client. So companies have to draw up a large number of different sets of documentation which are specific to each client.

Considering this, FIEC member federations decided to develop a European Model for a H&S management system to be disseminated to SMEs in the sector by the FIEC member federations. Such a system should be endorsed by SMEs on a voluntary basis, hoping that the existence of a "European" model will encourage clients to use a H&S management system of this sort.

A FIEC adhoc Working group met several times to work on the content of this European model, which should contain two parts, first a general description of the basic requirements to develop a H&S culture in a construction firm, then a series of fact sheets on the various steps to be taken in order to introduce a H&S management system. The document should be available by the end of 2007.

#### 2. Dissemination and recognition of H&S cards held by workers on construction sites to demonstrate H&S skills

All UK construction workers will have to hold a Health and Safety card on construction sites by 2010 to demonstrate that they hold basic Health and Safety skills. Similar cards also exist in Ireland and Finland. The UK card system was presented to FIEC member federations during the thematic visit organised in London in November 2004. Following this, several member federations expressed the will to promote such a tool in their own country.

A manager of the UK card has been invited to present the card in more detail during the SOC-2 meeting planned in the second half of 2007. Steps which need to be taken to operate the system will be discussed, including who manages and runs the system, how training schools and accredited examiners operate and how controls on sites are implemented. This will allow a thorough exchange of information with those federations willing to take up the tool.

Improving the recognition of H&S cards within Europe is of the utmost importance for some FIEC member federations in the context of their industry hiring an increasing number of EU migrant workers and the need for asserting their H&S skills. At a later stage, FIEC member federations will also discuss how a European recognition system of the already existing H&S cards could be developed.

#### 3. Prevention of accidents among young workers (OSHA 'Safe Start' campaign 2006)

In 2006, FIEC decided to support the European campaign of the European Agency for Health and Safety at Work focused on young people ("Safe Start" campaign).

Young people, when they enter the world of work, lack experience, maturity and awareness of health and safety issues. They are less aware of accident risks, which make them more vulnerable to accidents. The aim of the campaign organised by the Agency was to ensure that risk awareness and risk prevention are promoted in enterprises, schools and colleges and

that young people make a safe and healthy start to their working lives.

The campaign was officially launched in June 2006 and mainly consisted of awareness raising activities and in the dissemination of effective preventive measures. FIEC encouraged its members to:

- review their health and safety policies and risk assessment towards young people,
- participate in the awareness raising activities organised by the Agency,
- organise appropriate health and safety events for young workers in the sector – in particular during the European Week scheduled from 23<sup>rd</sup> to 27<sup>th</sup> October 2006,
- use the set of tools produced by the Agency to convey information and to promote good practices (information packs, awareness-raising posters, leaflets, fact sheets for employers, website database with examples of good practices, available in all official EU Member state languages).

The construction sector needs to achieve tangible progress in this area. According to European statistics, the incidence rate of accidents at work is about 50% higher among those aged 18-24 years than in any other age category (as regards non-fatal accidents at work).

Several FIEC member federations participated in the events organised in their countries by the Agency, used the tools it produced, and some took specific initiatives within the frame of the campaign to raise awareness of young workers to the H&S risks at their workplaces.

## Social Dialogue

### 4. Follow-Up Summit to assess the implementation of the 2004 Bilbao Declaration "Building in Safety"

In a joint Declaration issued at the OSHA 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 several European organisations of the sector: the Architect's Council of Europe (ACE), the European Federation of Engineering Consultancy Associations (EFCA), the European Council of Civil Engineers (ECCE), the European Builders Confederation (EBC), and the European Social partners in the construction sector EFBWW and FIEC.

With respect to the commitments taken, the Social Partners, FIEC and EFBWW, along with the other signatory parties to the Declaration "Building in Safety", organised on 21<sup>st</sup> September 2006 a Follow-Up-Summit in the premises of the European Economic and Social Committee in Brussels to present the joint actions they had undertaken since November 2004 to improve safety and health on construction sites. This Follow-Up Summit consisted in a one-day conference during which each signatory party reported on its implementation activities. A joint statement presenting all the achievements of the signatory parties was issued during the event.

FIEC and EFBWW organised, in parallel to the OSHA follow up summit, their own Social Dialogue Summit, in order to evaluate the implementation of their joint declaration. During this meeting, held on 28 June 2006, FIEC and EFBWW presented some H&S good practices from FIEC and EFBWW member federations regarding the prevention of falls from heights, accidents with machines, musculo-skeletal disorders and the inclusion of H&S aspects into the design of building and structures. Since then, FIEC and EFBWW continue activities to implement this agreement.

### 5. Prevention of falls from heights

Following the adoption of the FIEC-EFBWW recommendation on the working at heights directive in 2003, FIEC and EFBWW agreed jointly in 2005 to support a Leonardo da Vinci project called 'Euro-scaffolder', aimed at developing European qualification/training modules for scaffolders, in accordance with the European Directive 2001/45/EC on "Working at Heights". Some "Train-the-Trainer" courses have been developed in the project, together with a CD-ROM to present "best-practice" examples of measures of prevention to avoid falling from heights. The project was finalised in March 2007 and the results of the project will be disseminated through FIEC and EFBWW networks, which should contribute to the prevention of falls from heights.

In parallel, FIEC and EFBWW also disseminated the Guide of the European Commission on the prevention of falls from heights finalized in May 2007. Considering the difficulties met in the interpretation of the Directive (underlined in FIEC-EFBWW recommendation on the Working at Heights Directive dated 2003), the European Commission issued a Guide in order to facilitate the proper implementation of the Working at Heights Directive (2001/45/EC) at national level. The Guide is available in 20 EU languages. It should be used at national level by FIEC and EFBWW member federations and their affiliates for the prevention of falls from heights.

## SOC-3

The role of SOC-3 is to improve the social and economic aspects of employment in the construction sector through the development of adequate policies and schemes and through the exchange of best practices between FIEC member federations. Better working conditions in the construction industry are a key factor in improving the image of the sector.

The following topics and projects have been given high priority in 2006-2007:

### 1. Working time directive

In October 2004, the EU Commission issued a proposal for a revision of the Working time Directive. A FIEC position paper on the Commission's proposal was circulated to MEPs, prior to the vote of the Employment and Social Affairs Committee in April 2005 and prior to the adoption of the text in plenary session of the European Parliament in May 2005. FIEC also circulated its revised position paper directly to the EU 25 Permanent Representatives in Brussels and asked FIEC Member Federations to contact their national Ministers responsible for the issue before the Employment Council on 1<sup>st</sup> June 2006.

Given the differences in labour market situations in the Member States and the character of the new provisions, no agreement was reached in the Employment Councils held in June and November 2006. The key issues still to be resolved relate to the "opt-out" provision and the maximum weekly working time. The German Presidency decided not to reopen the dossier in the first half of 2007. The text is blocked in the Council.

However, from the Commission's point of view, work is still on-going. As social partner, FIEC has been consulted by the European Commission on the practical implementation of the provisions of the Working Time Directive and should provide its comments by June 2007. These comments will be taken into account by the Commission, in parallel with contributions of the Member States, to prepare a report on the current application of the Working Time Directive.

### 2. Corporate Social Responsibility (CSR)

The FIEC principles for sustainable development were adopted in June 2005 during the FIEC Annual Congress. In so doing, FIEC and its member federations confirmed their commitment to work

together with all the industry's stakeholders (clients, workers, suppliers, public authorities and all parties involved in the construction process) towards the improvement of the economic, social and environmental performance of the industry and to go beyond minimum legal requirements in this field.

One year after their adoption, FIEC member federations were invited to report on the CSR initiatives they had undertaken to implement these principles and to encourage their affiliates to become more sustainable. Some good practice initiatives were collected by SOC-3 members, on the basis of which a draft brochure was prepared to present and promote these achievements towards all FIEC members.

Following the Communication of the European Commission creating a "European Alliance for corporate social responsibility" (COM(2006)136), on 22 March 2006, the Employment Committee of the European Parliament proposed in December 2006 a motion for a European Parliament resolution on "Corporate Social Responsibility" (A6 0471/2006). FIEC adopted a position on this motion (see document in annex), which was circulated to the European Parliament on 13<sup>th</sup> March 2007.

FIEC agreed with the orientations proposed by the European Parliament in its motion but considered that paragraph 37 of the motion for a resolution, which suggested the creation of a European framework to regulate joint and several liability of general contractors should be deleted. FIEC considered that the systems of joint and several liability of general contractors are complex and vary considerably between the Member States concerned, which calls for a thorough analysis of the existing systems. The adoption of such legislation would only be feasible if law-abiding contractors had the possibility to prove their correct behaviour and avoid further joint and several liability. Eventually, the European Parliament deleted its reference to the joint and several liability of general contractors towards their subcontractors in paragraph 37.

## Social Dialogue

### 3. Posting Directive: FIEC and EFBWW in favour of its proper implementation

Since construction is an activity in which the workers are particularly mobile, FIEC and EFBWW have been heavily involved in lobbying the Commission, the Parliament and the Council to reach agreement on the current version of the "Posting of Workers Directive" (96/71/EC), which regulates the working conditions of workers employed in one EU country and posted to another. FIEC and EFBWW are now keen to see it properly implemented.

During the last two years, FIEC and EFBWW undertook joint lobbying activities in order to avoid that the "Services Directive" renders the posting directive ineffective and in order to convince the institutions that the posting directive does not need to be revised but rather to be genuinely applied (FIEC response to the Commission's consultation on the Posting Directive dated 20/2/2006, FIEC-EFBWW joint position on the Commission's Communication on the posting directive and on the EP report dated 1/6/2006).

- FIEC answer to Commission's questionnaire on the current implementation of the Directive

In its Communication "Guidance on the posting of workers in the framework of the provision of services", COM(2006)15 adopted in April 2006, the European Commission committed itself to assess the progress on the implementation of the directive made in the Member States and to adopt within 12 months a report which will examine the situation in all Member States. To collect some information on measures of control enforced by the Member States and on access to information, the European Commission issued a questionnaire to be answered by the social partners which had been in contact with a liaison office or a monitoring authority. FIEC sent the responses it had received to the European Commission in February 2007.

The European Commission will decide on the basis of the contributions received from all sectors and stakeholders whether or not a revision of the directive is needed. FIEC opposes the idea of a revision and points out that the practical difficulties met in its implementation should be resolved by better access to information, closer administrative cooperation between EU member states and the use of prior declarations. Additional lobbying action will be organized in this regard.

- FIEC-EFBWW Posting Database

In order to facilitate the access to information, FIEC and EFBWW decided in 2005 to produce a web-based database aimed at collecting the national statutory and conventional provisions, which have to be respected when workers are posted.

This database was realised with the financial support of the European Commission (DG Employment) and the assistance of "Ius Laboris", a network of specialised law firms across Europe. It was not intended to be exhaustive in every detail, but to facilitate the process of finding out about the broad parameters involved when posting a worker to another EU country. It should allow its users to identify the persons or organisations from whom they could obtain more detailed and up-to-date information. Links to reference texts are also available on the web site.

The database has been conceived to be as practical as possible, in order to be easily accessible and understandable. To this extent, it is available in English, French and German. However, reference texts are not translated. The first draft edition of the database was completed in October 2006 and will be available, after final completion, on a dedicated website as well as on the FIEC and EFBWW websites.

This initiative of the European Social Partners in the construction industry has been welcomed by the European Commission. FIEC and EFBWW are currently working on some promotion activities, in particular in the new EU member states, to inform workers and employers in the construction sector about the existence of this database. Evidently, the database will also need to be regularly updated since the national statutory and conventional provisions which have to be respected when posting a worker to another EU country are continuously evolving.

#### 4. Portability of supplementary pension rights

The European Commission issued a proposal for a Directive on supplementary pension rights in October 2005 in order to reduce the obstacles to mobility caused by present supplementary pension schemes provisions. These obstacles relate to the conditions of acquisition of pension rights (such as different qualifying periods before which workers acquire rights), the conditions of preservation of dormant pension rights (such as pension rights losing value over time) and the transferability of acquired rights, when workers change employers within their countries or within Europe. The proposal aims at setting minimum standards and seeks also to improve the information given to workers on how mobility may affect their supplementary pension rights.

Mobility is of great importance to the competitiveness of the construction industry since its activities are by definition not linked to a permanent production site but move from place to place to fulfil contracts. A FIEC position paper was adopted in November 2006 in order to convey the views of the sector to the European Institutions, and in particular to the EP Employment and Social Affairs Committee before its vote on the draft proposal on 5<sup>th</sup> October 2006 (see document in annex). This position outlined to the MEPs that the text proposed by the European Commission could increase the costs of certain schemes in the sector in a way that could make them no longer viable.

In order to ensure a better understanding of the impact of the proposed Directive on the sector's supplementary pension schemes, FIEC together with EFBWW also commissioned a survey with a researcher of Ghent University, Prof. Yves Jorens. This survey was financed by the European Commission,

### European conference on the prevention, reduction and sanction of undeclared labour in the construction industry, 14-15/12/2006 – Helsinki (Finland)



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Mrs Tarja Filatov,  
Finnish Minister of Labour  
and Peter Andrews

which was keen on having a sectoral impact assessment of the draft directive. The first results of the survey were presented to FIEC and EFBWW during a seminar organised on 11<sup>th</sup> October 2006 in Luxembourg. On this occasion several national experts presented the functioning of the existing systems in the sector and FIEC and EFBWW outlined the current stage of their position. The research survey, which was finalised in December 2006, concluded that the draft Directive would contribute to the workers' acquisition, preservation and transferability of supplementary pension rights in the sector without endangering the viability of the existing systems, except in Germany.

Considering the discussion on the text in the Council as regards the transferability of rights (Art.6 of the directive), the EP Employment and Social Affairs Committee spoke on 21<sup>st</sup> March 2007 against the Commission's proposal to include this right into the new directive. This position, which should be confirmed during the plenary vote of the European Parliament on 24<sup>th</sup> April 2007, is in line with FIEC's views, as well as with the position of AIEP, the European Association which represents the Paritarian Institutions of Social Protection in Europe towards the European Institutions.

## 5. Combat against undeclared work

The black economy has numerous negative consequences for the sector, such as unfair competition due to the breach of collective agreements on minimum wages and statutory obligations, random compliance with health and

safety rules, low quality and poor image. FIEC has always supported efforts aimed at combating the black economy.

In 2005, a FIEC ad-hoc working group developed a guide of best practices, in order to disseminate relevant initiatives to combat undeclared work among FIEC members. This guide of best practices is available since mid-2006 on the FIEC website at [www.fiec.eu](http://www.fiec.eu) under "publications" (only in English). It should encourage FIEC member federations and its affiliates to take actions against undeclared work.

In parallel, FIEC participated in a joint research project with EFBWW in order to evaluate the practical implementation and impact of the initiatives undertaken by the social partners and the public authorities at national and European level to combat undeclared labour in the construction industry. The project, which was financed by the European Commission, was subcontracted to Construction Labour Research (CLR), a Dutch research institute specialized in construction research. Its results were presented on 14-15<sup>th</sup> December 2006 during a conference on undeclared labour organised by FIEC and EFBWW in Helsinki (Finland) to which social partners, researchers and representatives from public authorities had been invited. The results of this research are available on the FIEC website.

## Guide of good practices to combat undeclared and illegal work (9/6/2006)

### Preamble

"Undeclared work has severe consequences both for enterprises and their employees. Not only does it compromise efforts aimed at improving productivity but also, it slowly erodes the stability of well-established registered companies."

[...]

"FIEC member federations call for a real change in attitude towards the occurrence of undeclared work. As an industry, we must destroy the perception that it is the illegal practice of undeclared work itself which pays dividends, in favour of promoting the reality that it is a fair and balanced labour market based on healthy competition respected and upheld by all concerned which guarantees construction firms healthy and satisfactory conditions of growth and prosperity."

### Part 1

#### Combating undeclared work: a mix of various measures can be implemented

[...]

"The employers in the European construction sector recommend that a combination of preventive and repressive measures be adopted in all EU countries in order to transform undeclared work into properly declared employment."

#### 1. Preventive measures

[...]

"The employers in the European construction sector favour simplifying the economic environment and removing unnecessary and excessive administrative formalities within the EU. They are also in favour of promoting incentives relating to tax and added-value schemes in the Member States of the EU."

#### Simplifying formalities

The employers in the European construction sector encourage the use of:

- the prior and single hiring declaration which obliges employers to make – prior to hiring

workers and on a single form – all the declarations to which they are subject by the social security bodies, the bodies collecting social security contributions and the bodies managing unemployment insurance. Collecting together in a single document several administrative formalities is a first step in the direction of easing the constraints put on companies, which can therefore save time and concentrate on their economic activities.

- a single document which proves that the construction firm is "in order" as regards the payment of its contributions to the State and to the sectoral schemes (this document should be put in place before any work is undertaken on a construction site);

[...]

#### Awareness raising campaigns towards employers and workers in the sector

The employers in the construction sector should encourage the organization of awareness raising campaigns in order to inform all actors in the sector about the negative consequences of undeclared work on construction activities.

#### Financial support

The employers in the European construction sector are in favour of the introduction of appropriate measures as regards the tax and value-added schemes of the EU Member States in order to combat undeclared work:

- VAT rates should be reduced permanently in the EU Member States concerned.

[...]

- The final cost of work should thereby be reduced, in particular as regards employers' social security contributions which weigh heavily upon employers. The rates of social security contributions should be revised downwards so that ultimately companies are not excessively burdened. This discourages them from employing undeclared workers.

[...]

## 2. Repressive measures

The employers in the European construction sector recommend that a combination of repressive measures should also be adopted at the national level in order to transform undeclared work into properly declared employment. Legislation should be improved in this regard. Specific initiatives should in any case be also taken such as developing communication and cooperation between the authorities and strengthening checking procedures.

[...]

## Part 2 – National Actions

- Belgian construction industry action plan to combat undeclared work
- Measures against undeclared work implemented in the French construction sector
- Measures taken in the German construction industry
- Preventing Undeclared Work in Finland

### **FIEC Position on the European Commission's Proposal for a Directive on improving the portability of supplementary pension rights (COM(2005)507)** 16/11/2006

Mobility is of great importance to the competitiveness of the construction industry, whose activities are by definition not linked to a permanent production site but move from place to place to fulfil contracts.

Uncertainty in the consolidation, preservation and transferability of acquired pension rights can constitute limitations to the free movement of workers. For posted workers, who are quite numerous in the construction sector, cross-border membership has already been facilitated. The posting Directive as well as Directive 98/49/EC on safeguarding the supplementary pension rights of employed and self-employed persons moving within the Community, provide the possibility for contributions to continue to be paid into supplementary pension schemes in the workers' Member State of origin.

However, there are still instances in which the situation is not compatible with the increased mobility needs of the construction sector. Consequently, FIEC supports the Commission's initiative to propose a draft Directive intending to address such instances.

### **Fundamental concerns about the proposed Directive**

Despite general support for the underlying principles of the proposal, FIEC would like to draw the attention of the European institutions that the text contains dangerous provisions which will jeopardise the existence of some supplementary pension systems in the construction sector. In addition to the problems posed by the variety of the existing systems, the reasons for this warning are expectations that the proposed rules

1. will increase the costs of certain systems in a way that would make them no longer viable;
2. will bring enterprises which run their own supplementary pension scheme into serious operational problems if invested funds need to be paid out earlier than expected.

Should these very real risks not be taken into account in the proposed text, the idea of facilitating the free movement of workers is likely to produce precisely the opposite effect by depriving workers of the benefits of a number of supplementary pension systems.

**Specific remarks:****Art.1: Objective**

FIEC considers that the objective of this Directive should not be limited to the exercise of workers' rights to freedom of movement and occupational mobility "within the same Member State", but also "within the European Union", thus facilitating their movement between the EU Member States.

**Art. 2: Scope**

FIEC agrees with the scope of the Directive, but draws attention to the fact that it should not interfere with the scope of the Regulation 1408/71 which should not be jeopardized by the new Directive.

**Art. 4: Conditions governing acquisition**

In order to improve the structure of Article 4, FIEC suggests introducing a different order to the paragraphs, which should be amended to the following: c) d) b) a) instead of a) b) c) d).

Regarding Art.4 b) FIEC suggests introducing a transitional period for the Member States and systems for which the minimum age is much higher than the minimum age proposed in the draft Directive. This is in order that they have time to adapt to the new rules.

Regarding Art. 4 c) to provide greater clarity FIEC suggests that this article is reworded as follows: "A worker is entitled to join a supplementary pension scheme after a maximum period of employment of one year, provided that by the end of this employment period the worker has reached the minimum age required by article 4 b) if any".

*This maximum period of one year is applicable only once, if the worker remains a member to the same sector supplementary pension scheme.*

**Art. 5: Preservation of dormant pension rights**

FIEC agrees with paragraph 1 which stipulates that Member States should ensure a fair adjustment of dormant pension rights for outgoing workers.

Should the transferability of pension rights be difficult to organise (as described in Art 5 §2), the rights of outgoing workers will be preserved by means of such a fair adjustment.

In paragraph 2, after "when these do not exceed a threshold established by the Member State concerned", FIEC suggests adding "or the supplementary scheme concerned". A similar addition should consequently be introduced in the last sentence of the paragraph after "the Member State": "The Member State or the supplementary pension scheme shall inform the Commission of the applicable threshold".

**Art 6: Transferability**

In order to clarify the meaning of paragraph 4, FIEC believes that it should be reworded as follows "When administrative costs for transfer are due, Member States should check that they are fair and reasonable". FIEC considers that if administrative costs are due because of the transfer, these costs should not be proportionate to the duration of the worker's affiliation to the supplementary pension scheme and should neither be linked to the amount of money involved.

**Art 9: Implementation**

FIEC considers that paragraph 3 should refer to the entire Art 6 rather than referring only to Article 6.1.

FIEC also recommends deleting the last part of paragraph 3: "together with the measures adopted or planned with a view to improving the transferability of rights from the schemes concerned", since it is impossible to organise money transfers from schemes such as "pay-as-you-go".

**New Art. 10: Social Partner Agreements**

Derogations from art 4 to 9 may be introduced by collective agreement. The derogating rules agreed by collective agreement should be applied also to the employers and workers who are not generally subject to collective agreements, as long as they agree with the application of the corresponding collective agreements.

**FIEC position on the motion for a European Parliament resolution (A6 0471/2006) regarding "corporate social responsibility: a new partnership", adopted by the EMPL Committee on 21 December 2006**  
6/2/2007

FIEC welcomes the adoption by the EMPL Committee of the European Parliament of a motion for a European Parliament resolution on "Corporate Social Responsibility", which follows the Communication of the European Commission creating a "European Alliance for corporate social responsibility" (COM(2006)136), published on 22 March 2006. The aim of such an Alliance is to encourage the formation of partnerships promoting corporate social responsibility rather than creating a new legal instrument.

In June 2005, FIEC adopted its own Principles for Sustainability, in which it recommends construction enterprises implement 10 principles of sustainability on a voluntary basis<sup>1</sup>. In so doing, FIEC, its member federations and all the construction enterprises they represent, confirmed their commitment to work together with all the industry's stakeholders (clients, workers, suppliers, public authorities and all parties involved in the construction process) towards the improvement of the economic, social and environmental performance of the industry and to go beyond minimum legal requirements in terms of corporate social responsibility.

**Considering this, FIEC agrees with the orientations proposed by the European Parliament in its motion for a resolution on Corporate Social Responsibility. FIEC considers however that Paragraph 37 of the motion for a resolution, which proposes the creation of a European framework on the joint and several liability of general contractors towards their subcontractors, should be deleted.**

The construction sector is totally aware of the difficulties which can occur in the case of subcontracting. FIEC has decided to study this question thoroughly since abuses in the subcontracting chain also occur while workers are posted. Construction is an activity where the workers rather than the product are mobile. It is thus of utmost importance for the construction sector that all construction firms respect the rules when posting workers, and in particular the working and employment conditions applicable in the host Member State.

**Nevertheless, FIEC is in favour of deleting Paragraph 37 since it considers that:**

- It is untimely to propose new legislation on joint and several liability considering the recent consultation of the European Commission on the modernisation of labour law in which one of the question raised deals with the problem of responsibilities in multiple employment relationships<sup>1</sup>.
- The systems of joint and several liability are complex and vary considerably between the Member States concerned, which calls for a thorough analysis of the existing systems. The European Social Partners in the construction sector have decided to analyse the problems of the sub-contractor chains and various possibilities to come to an efficient solution in this regard in order to combat undeclared labour linked to an abusive use of the subcontracting chain.
  - The adoption of such legislation would only be feasible if considered in the context of the framework of a wider initiative on the whole issue of subcontracting.

<sup>1</sup> The Green paper on the modernisation of labour law published on 22<sup>nd</sup> November 2006, mentions this problem in question n°9 (Do you think the responsibilities of the various parties within multiple employment relationships should be clarified to determine who is accountable for compliance with employment rights? Would subsidiary liability be an effective and feasible way to establish that responsibility in the case of sub-contractors?)



TEC

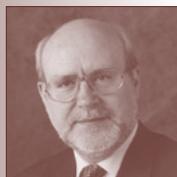


President:  
Zdenek Klos, CZ

Rapporteur:  
John Goodall, FIEC

Sub-commission TEC-1

"Directives, Standards  
and Quality Assurance"



Chairman: Rob Lenaers, BE

Rapporteur:  
Eric Winpenninckx, BE

Sub-commission TEC-2

"Innovation and Processes"



Chairman:  
Bernard Raspaud, FR

Rapporteur:  
André Colson, FR

Sub-commission TEC-3

"Environment "



Chairman:  
Jan Wardenaar, NL

Rapporteur:  
Niels Ruyter, NL

Sub-commission TEC-4

"Plant and Equipment"



Chairman:  
Juan A. Muro, ES

Rapporteur:  
Ricardo Cortes, ES

## 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 "Sustainable 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.

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

The implementation of the directive remains focussed on efforts in CEN and EOTA (European Organisation for Technical Approvals) for the production of "harmonized technical specifications". CEN ultimately expects to publish about 550 product standards as well as some 1500 supporting standards principally dealing with test methods and evaluation of conformity. By end February 2007, a total of 370 product standards had either been formally approved, or had reached the formal vote stage, of which 304 had been cited in the Official Journal. A further 53 had either passed – or had reached – the CEN enquiry stage, whilst a further 36 were under preparation for CEN Enquiry.

These figures indicate that 18 years after the enactment of the directive, progress is at last reaching the point where a substantial body of product standards are now publicly available and the CE Marking of a considerable number of construction products is possible.

During the period under review, the Commission has begun in earnest to look at revising the CPD and has begun with two distinct initiatives.

The first has been to carry out a public consultation of stakeholders across the sector on the changes needed to make the CPD more cost efficient and easier to understand for enterprises and authorities while addressing the reality that the CPD only partially eliminates barriers to trade and does

not establish optimal conditions allowing the free circulation and use of construction products.

Having first responded to the Commission's public consultation in spring 2006, FIEC decided to follow up with a specific position paper setting out its own concerns and requirements to be taken into consideration when the directive is revised.

This position paper takes a strong stance warning the Commission against any radical overhaul of the present directive. As far as FIEC is concerned, the underpinning of the quality of products on the one hand, and market confidence in the various systems of marking on the other, will constitute the benchmarks against which the eventual success of the on-going revision of both the so-called "New Approach to Technical Harmonisation" and the CPD itself will be judged.

Moreover FIEC has emphasised that:

- a) The confusion and misunderstandings over the true meaning and significance of the CE Marking must be cleared up and the same goes for clarification of the relationship between CE Marking and voluntary (third party) marks. Furthermore, FIEC believes that the use of additional third party certification marks will always be necessary in order to demonstrate:
  - i) compliance of the product with the entire text of the standard (voluntary and harmonized parts); and
  - ii) where appropriate, product characteristics not covered by the relevant standard(s); and
  - iii) the involvement of third parties, over and above that foreseen for CE Marking.
- b) If the CE Marking is to be useful for construction enterprises, it should be made clear that it relates exclusively to the harmonised part (Annex ZA) of the standard and, furthermore the CE Marking must provide all the information about the products' characteristics as may be required by construction enterprises in order to satisfy their customers and this information must be reliable.
- c) The attestation of conformity procedure laid down in EC decisions must be such that it instils contractors' confidence in this reliability.
- d) FIEC insists that construction enterprises should never themselves become involved in CE Marking activities (e.g. contractor mixed concrete). In particular, the CE Marking of custom made products (non-series production) such as doors, windows and staircases, which is of particular concern to craftsmen and SME, should remain a possibility but should not be mandatory.

- e) The texts of the various guidance papers (of which there are many) should be rationalised and either integrated into the text of the Directive itself or included as annexes in order to arrive at a comprehensive document.

The Commission's second initiative has been to appoint consultants to undertake a study to evaluate the Internal Market and competitiveness effects of the CPD. The objectives of the study include the evaluation of the impact of the CPD on intra-EU trade and competitiveness on the EU construction sector (manufacturers and builders and especially SMEs) and to conclude on its strengths and weaknesses and the potential for the improvement of its provisions. The study was due for completion in March 2007.

Being thoroughly dissatisfied with the draft text of the study, in February 2007 FIEC adopted a position paper that is very critical of the study's interpretation of the terms of reference and the overall conclusions presented.

In FIEC's opinion, the draft text of the study as formally presented was unbalanced and lacked sufficient emphasis on the impact of the directive on construction enterprises, in particular SME. FIEC stressed that the CPD is not just about "trading construction products", but also about "fitness for use" of the products and "using construction products" and the criteria to be fulfilled in this respect by means of the harmonised product specifications.

The position paper concluded that:

- a) The entire study reflects a profound misperception of contractors' justified interests and their needs.
- b) FIEC remains unconvinced that the so-called "Conclusions" set out in the study are based on the evidence presented, but would be better described as mere hopes which effectively qualify the entire study to the effect that it would be better titled "a reflection paper".
- c) The study fails to comply adequately with the terms of reference determined by the Commission Services which were clearly described in the contract notice
- d) The CPD has been gravely misunderstood: Its objective is not the "approximation" of building regulations in Member States but rather the approximation of laws, regulations and provisions

relating to construction products. All conditions affecting the execution and sustainability of construction works in the Member States that stem from geographical, climatic, "ways of life" and safety conditions are explicitly safeguarded in the Article 3 (2) of the CPD. Every Member State regulation having its source in one of these four above-mentioned "national conditions" needs to be taken into account when writing harmonised specifications for construction products, even if they materialise only at regional or local levels! Only if Article 3 (2) of the CPD is properly taken into account, can Article 6 (3) of the CPD be heeded by Member States.

- e) The statement "the CPD is not a new approach directive" if not completely wrong, is certainly controversial if not an academic discussion. In any event the directive is included in the list of New Approach Directives in the annex to the current New Approach Regulation. This statement should therefore be deleted from the text.
- f) Finally, the study as actually presented therefore should, as the basis of any future decisions, be used with the utmost circumspection.

### 3. Revision of the "New Approach"

In 2005 already, FIEC wrote a letter (cf. Annual Report 2006) to Mr. Jacques McMillan (Head of Unit, DG Enterprise C/1) pointing out the difficulties arising with the definitions (or interpretations) of the words "placing on the market", "putting into service" and "manufacturer". Then on 15<sup>th</sup> January 2007, FIEC wrote a second letter to Mr. McMillan commenting on the Commission's un-adopted draft text dated 25<sup>th</sup> October 2006 amending the New Approach legislation and pointing out that most of FIEC's early remarks had evidently gone unheeded.

On 14<sup>th</sup> February 2007, the Commission formally adopted its legislative proposals. An initial analysis would suggest that the following points require attention:

- a) Article 3.2, defines "Making available on the market" and still contains the words "for payment or free of charge" and this in spite of FIEC's letter to Mr. McMillan requesting that the words "or free of charge" be deleted. FIEC wonders why these words have been left in.

- b) Article 13.5 stipulates that in addition to the CE Marking "any other marking may be affixed to the product provided that the visibility, legibility and meaning of the CE marking are not thereby impaired". This statement effectively confirms that the Commission has seen fit to acknowledge the reality – if not the need – for additional markings in addition to the CE Marking.
- c) CHAPTER IV of the Commission's proposal addresses the issue of "Market Surveillance". The provisions proposed will clearly affect the various member states in different ways according to their existing market surveillance arrangements. Its success or otherwise remains to be seen but at least it has been addressed.
- d) From the standpoint of underwriting or promoting the quality of products, the text deals purely with regulations affecting the health and safety of the public which falls far short of the essential requirements described in the CPD (e.g. as concerns thermal comfort; environmental impact, etc.)
- e) The proposals offer little if any comfort in raising the confidence of users in the meaning and understanding of the CE Marking but does hold out the prospect of an "information campaign".
- f) Every other aspect (other than the safety of the public) has been left to the development of alternative systems of marking (additional voluntary marking systems)

FIEC needs to decide whether these on-going concerns should be addressed now, in the context of the revision of the New Approach, or whether they can be safely left to the revision of the CPD itself.

#### 4. 2010 Revision of EN 206-1 for concrete

CEN/TC 104 is gradually beginning work on the revision of the European Standard for concrete, EN 206-1. FIEC has appointed a representative to attend meetings of this CEN Technical Committee providing him with a position paper setting out FIEC's opinion on certain aspects to be taken into account.

The "typical structure" of EN-product standards is a first part including the description of the product (specification, performance) whereas in a second part are described the factory production control and the evaluation of conformity (e.g. EN 197-1 and EN 197-2 for cement). It would be clearer for the producers and for the notified bodies if they would be able to base their work on a clearly differentiated document. The European Ready-mixed Concrete Organization (ERMCO) is interested in such a distinction in two parts to find a clear border between general requirements of the production (⇒ part 1 of a future EN 206) and the conformity criteria for the product itself (⇒ part 2 of a future EN 206). Of course, the division into two parts cannot be done by only incorporating chapters 8, 9 and 10 in a second part without any changes. On the other hand, the necessary changes should remain at an editorial level. Technical changes, e.g. a reduction of frequency of testing, should not be accepted by FIEC.

TC104/SC2 "Execution of Concrete Structures" is currently working on a conversion of ENV 13670-1 into an EN 13670. In this new EN for the execution of concrete structures, so-called self-compacting concrete (SCC) will be integrated. That is a new situation because SCC has not been standardised as concerns its production and its performance at a European level so far. However, FIEC believes that SCC has to be clearly defined with respect to its performance and conformity. Therefore, an amendment to EN 206 ("EN 206-100") dealing with this task, currently in preparation by TC104/TG16 "Provisions for SCC", should be integrated into EN 206 before EN 13670 can refer to the use of SCC. The goal is to help the contractor to define his demands concerning SCC at the interface to the producer on an accepted and sufficient level.

Last year, the Fédération de l'Industrie du Béton (FIB) published a model code on service life design. In this code, methodologies are described, how a consultant (or anybody else) can design a concrete structure or a single concrete member concerning its durability with a so-called "probabilistic approach". The current status of EN 206-1 is based on so-called "deem-to-satisfy rules" which are defined on a national basis (e.g. max water/cement-ratio, minimum cement content, minimum concrete cover). Nevertheless, Annex J sets out general remarks how performance-related design methods can be applied in connection with EN 206-1. FIEC cannot accept that the service life design for a structure for which the contractor

is liable can simply be carried out by the producer of concrete alone. The reason is that service life design for a structure is not only dependent on the performance of the concrete but also on the design of the structure itself (e.g. crack width, concrete cover) and the execution (e.g. tolerances, curing of the concrete after concreting). Therefore, FIEC intends pushing for a joint working group dealing with this topic on a CEN basis to find a coordinated approach which can be referred in Eurocode 2, in EN 206 and in EN 13670.

EN 206-1:2000 includes a detailed and sophisticated k value concept. As already established in an impact study carried out by CEN/TC104 to determine the status and extent of implementation of EN 206-1:2000 in the various CEN-member states, this sophisticated approach is not used throughout Europe. For this reason, FIEC should agree that the k value concept should only be described in general principles in a future EN 206.

## 5. Execution Standards

The inclination of construction product manufacturers to write European execution standards for the correct installation and use of their products is quite understandable. As a general principle however, FIEC disagrees with the inclusion of execution clauses in European product standards. As long ago as 1997, FIEC adopted a position paper requesting CEN to put an end to such practices on the grounds that this is a strictly national matter and has nothing to do with the single market in construction products.

Never-the-less, draft texts containing execution clauses do occasionally come to light. Such was the case this year when FIEC addressed a letter to the Chairman of CEN/TC 175 for "parquet flooring" requesting him to refrain from drawing up such a document irrespective of its status under the CEN regulations. In its letter, FIEC also pointed out that to reach agreement on such a text would necessitate the participation in CEN/TC175/WG3 of representatives of specialist flooring firms across most, if not all CEN member countries. If only for logistical reasons, in practice this is a most improbable scenario.

## 6. Progress to date with the forthcoming Seventh Framework Programme for Research and Development (FP7 2007-2013)

FP7 was finally adopted on together with its specific programmes on 18<sup>th</sup> December, with its budget provisions largely intact and the first calls for proposals being published on 22<sup>nd</sup> December 2006. The calls for proposals under FP7 will be set out in annual work programmes which will provide details about the topics, timings and implementation. The "Cooperation" work programme in FP7 may be expected contribute to the implementation of the Strategic Research Agenda (SRA) of the European Construction Technology Platform (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.

## 7. SME and the "Competitiveness and Innovation Programme" (CIP)

The European Commission's long-heralded "Competitiveness and Innovation Framework Programme" (CIP) finally got underway at the beginning of the year. Between 2007 and 2013, some 350,000 small and medium-sized enterprises (SMEs) will between them, receive € 3.6 billion in EU support to invest in all forms of innovation and growth. The new programme will support actions to help enterprises and industry to innovate. It will also boost energy efficiency and renewable energy sources, environmental technologies and a better use of information and communication technology (ICT).

It is important to stress that the CIP is not just another EU research programme. Rather it provides for loan guarantees and access to finance. It has the following objectives:

- to foster the competitiveness of enterprises, in particular SMEs;
- to promote all forms of innovation including eco-innovation;
- to accelerate the development of a sustainable, competitive, innovative and inclusive Information Society;
- to promote energy efficiency and new and renewable energy sources in all sectors including transport.

Whilst eco-innovation will be a transversal theme of the whole programme, CIP is composed of three specific programmes:

- a) Start up and growth of SMEs: the "Entrepreneurship and Innovation Programme" with a budget of € 2.17 billion including € 430 million to promote eco-innovation, will facilitate SMEs access to finance, better integrate the existing networks of business support services (EuroInfoCentres and Innovation Relay Centres) and support innovation activities (INNOVA, Pro-Inno, etc).
- b) Information and communication technologies: the "ICT Policy Support Programme", with a budget of € 730 million, will contribute to competitiveness, growth and jobs through stimulating a wider adoption and more efficient take up and better use of ICT.
- c) Increased use of renewable energy and reduced energy consumption the "Intelligent Energy-Europe Programme" with a budget of € 730 million will support energy efficiency, new and renewable energy sources.

## 8. The revision of the Waste Framework Directive

On 21<sup>st</sup> December 2005, the European Commission simultaneously adopted both its "Thematic Strategy<sup>1</sup> on the prevention and recycling of waste", and its proposal<sup>2</sup> for a "Revision of the Waste Framework Directive<sup>3</sup>". It is pertinent to recall that over the last 15 or more years, FIEC has adopted various position papers and responded to innumerable questionnaires emanating from the European Commission on waste.

Unfortunately, the Commission's proposal failed to take account of FIEC's principal concern, namely the removal from the scope of the directive "*uncontaminated excavated materials which can be used in their natural state whether on the same or another site*".

In September 2006, at FIEC's request, various French and Irish MEPs put down amendments in support of FIEC's position. Subsequently these were included in a set of consolidated parliamentary amendments contained in the rapporteur's, MEP

Dr. Caroline Jackson's report and successfully voted through the Environment Committee and then at 1<sup>st</sup> reading in plenary.

FIEC then requested its member federations to contact their public administrations requesting them to support FIEC's position in the Environment Council. Initial indications suggested that these initiatives were quite promising and that a qualified majority appeared to be almost assured. Then in Council Working Group meetings at the beginning of 2007 the draft text of the amendment started to change with the words "provided its re-use is certain" being inserted in the sentence. This is something FIEC could perhaps accept but on 13<sup>th</sup> March 2007 the Council came up with yet another suggested draft text:

*"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 latest development if adopted would be utterly unacceptable and defeats the entire objective of the amendment. Firstly we are not concerned only about "soil"; naturally occurring materials also include for example "rock" or "gravel". The words "for the purposes of construction" may lead to ambiguity of what is and what is not "construction"; for example filling in landscapes used for agricultural purposes. But most serious of all is the removal 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.

It is pertinent to recall that FIEC's original intention had been to change the definition of the word "waste", but when several years ago it became clear that the Commission would never support such an approach, other solutions to the construction industry's difficulties with the directive had to be found. The definition of the term "waste" is

<sup>1</sup> COM(2005) 666 final

<sup>2</sup> COM(2005) 667 final

<sup>3</sup> 75/442/EEC

important, and most particularly when "waste ceases to be waste" and becomes a "product" again. The interpretation of the present directive is that what is not wanted on one construction site is "waste", and if that same "waste" can be immediately re-used without any further treatment on another site, it then becomes a "product". One man's "waste" thus becomes another man's "product" and even although there is absolutely no difference in the composition of the material, it is at once "waste" and then "product" and therefore subject to two entirely different sets of laws.

Should FIEC fail to have its amendment passed as proposed, 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 remain uncertain. Moreover, the material would still have the burden of administrative procedures until its waste status ends.

## 9. Energy Efficiency Action Plan

FIEC has welcomed the adoption by the European Commission on 19<sup>th</sup> October 2006 of its "Action Plan<sup>4</sup> for Energy Efficiency: Realising the Potential". The plan emphasises that Europe continues to waste at least 20% of its energy due to inefficiency or 100 billion euros<sup>5</sup> offering potential savings in CO<sub>2</sub> emissions of 780 Mt compared to the baseline scenario of 1990, or more than double the EU reductions called for under the Kyoto Protocol by 2012.

On 9<sup>th</sup> March, 2007, the Heads' of State and Governments meeting in Brussels, formally adopted the highly ambitious 20% CO<sub>2</sub> reduction target committing the EU to reduce its emissions by this amount by 2020. How this will be achieved – or whether indeed it is actually achievable in practice – and how the burden will be shared between the Member States remains to be seen. Most significantly – given that the largest single source of CO<sub>2</sub> emissions is in existing buildings – it presents Europe's construction industry with both an enormous challenge and a huge opportunity.

FIEC, for its part will stress that:

- The most cost-efficient method of reducing emissions is when buildings undergo major renovation
- That the 20% target could be achieved in the buildings sector alone using existing technologies
- In this manner, attempts to dramatically cut emissions in the transport sector, which in itself could severely prejudice economic growth as well as the way of life of all Europeans, would be less important, whereas energy efficient buildings benefit both owners and occupiers as well as the economy.
- Taxes on renovation works (in particular VAT) need to be discontinued and incentives offered in the form of tax abatements, subsidies and preferential energy tariffs for energy efficient buildings.

At the time this report was compiled, FIEC was in the process of developing strategies and positions along these lines.

## 10. Constructional plant and equipment

Sub-Commission TEC-4 has been following 3 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.

Firstly as concerns the need to facilitate the movements of skilled plant operatives from one country to another in Europe, it was agreed that there should be some form of mutual recognition of qualifications, based on obtaining certificates of proficiency for equipment operators with specific skills (e.g. for tower cranes, excavators, etc) that would be recognized in the country of destination. It was agreed that SOC 2 (health and safety) should be informed about the results of the questionnaire as well as its conclusions and recommendations. Furthermore, it has been agreed that a position paper will be drawn up and sent to Sub-commission SOC 1 (training) explaining the specific problems of equipment operators with a view to these being taken into account. This document is appended to this report.

<sup>4</sup> COM(2006)545 final

<sup>5</sup> 390 Mtoe at USD 48/barrel net of taxes

## 11. EUROLISTE<sup>6</sup>

The purpose and background to the EUROLISTE were explained in FIEC's annual report in 2006. It is a "live" database and is continually being updated and improved:

- The database is almost complete (95%) including scaffolding and temporary works equipment, as well as the program.
- It was expected that some final testing of the program would be undertaken at the end of November.
- In the cases of Germany and Austria the working parameters of work and cost calculations have been harmonized.
- The program includes a mechanism that allows for adapting the calculations to the intrinsic or genuine variables of each country (depreciation, interest rate, increase in consumption prices, etc).
- The new manual will be presented at BAUMA in Munich in April 2007, in its French, English and German versions.
- This information will be available via the internet as well as on a CD or paper publication.

FIEC intends installing a link between its website and that of the Euroliste.

## Annexes

1. FIEC Position on the forthcoming revision of the CPD (16/11/2006)
2. FIEC Opinion on the Commission's "Study to evaluate the internal market and competitiveness effects of the CPD (2/2/2007)
3. FIEC Position on the 2010 Revision of EN 206-1 for concrete (2/2/2007)
4. FIEC Letter to Mr. McMillan (15/1/2007)
5. FIEC Letter to Mr. Pangault (09/2/2007)
6. FIEC position on the Commission's proposals for the revision of the Waste Framework Directive (11/7/2006)
7. TEC-4 Summary of Answers received to questionnaire (October 2006)
8. Letter from EU-Commissioner Janez Potocnik (30/1/2007)

<sup>6</sup> The name EUROLISTE is copyright

**FIEC Position on the forthcoming revision of the Construction Products Directive  
[CPD (89/106)]  
16/11/2006**

[...]

**Implementing the CPD: contractors concerns and re-focussing on the objective**

The reality of implementation, most significantly the time it has taken, has been a disappointment for almost everyone involved. At one time or another, most players have expressed their frustration and exasperation. For the Commission and the politicians it has essentially been one of frustration at the incredibly slow rate of progress.

For FIEC however, the concerns of contractors have been very different:

- a) Confusion/misunderstandings over the true meaning and significance of the CE Marking;
- b) The relationship between CE Marking and voluntary (third party) marks;
- c) Concerns over the (sometimes inadequate) levels of attestation of conformity linked to CE Marking;
- d) The perceived – or even real – unacceptable level of quality of some products bearing the CE Marking;
- e) Liability concerns should CE Marked construction products fail to perform satisfactorily;
- f) The scope of the directive<sup>2</sup>, in particular FIEC's insistence that construction enterprises should never become involved in CE Marking activities (e.g. contractor mixed concrete; small scale non-series production of customised products) unless they very exceptionally specifically elect to act both as users and producers of products on a commercial basis.

**Responsibility and liability**

Clear lines of responsibility (and hence the attachment of liability for any kind of failure by any party to a construction contract) are a fundamental cornerstone of all national construction processes. Construction firms purchase construction products from many different sources, such as manufacturers, suppliers, distributors, importers, retail outlets, etc. Regardless of the source through which the goods are obtained, a contractor's recourse in the event of their being defective or unsuitable for their declared purpose is through the organisation who contracted to supply them. Moreover, in the eyes of the contractor it is exclusively the supplier of the goods that will be held responsible in the event of failures or shortcomings, including responsibility for incorrect labelling or marking by the manufacturer or incorrect manufacturer's declarations accompanying the CE Marking. This explains why correct and accurate labelling of products as to their declared performances and limitations, is of such fundamental importance. It is this information, together with the relevant "National Application Documents" (NAD) that allows specifiers and contractors to determine the suitability of a product for its intended use. It is impossible to overstate the importance of these apparently simple and obvious facts.

[...]

**FIEC's requests and concluding remarks**

- a) Construction products are purchased and installed by construction enterprises. Ultimately the success of the CE Marking is therefore linked to its meaning and usefulness to construction enterprises irrespective of who the actual owner of the works may be. For the CE Marking to be useful for

construction enterprises it must provide all the information about the products' characteristics as may be required by construction enterprises in order to satisfy their customers and this information must be reliable.

- b) The attestation of conformity procedure laid down in EC decisions must be such that it instils contractors' confidence in this reliability.
- c) As concerns the protracted, and seemingly endless debate concerning the CE Marking of custom made products (non-series production) such as doors, windows and staircases, which is of particular concern to craftsmen and SME, FIEC believes that this should remain a possibility but should not be mandatory.
- d) It is not so much simplification of the directive itself that is required, but rather its clarification, particularly its relationship to certain aspects of the New Approach legislation. Most importantly, this clarification should clear up all the confusion over the meaning and significance of the CE Marking and especially its relationship with other marks.
- e) Furthermore, a credible and reliable system of market surveillance (or its equivalent) in all EEA states will be absolutely fundamental to its success. FIEC is of the opinion that the outcome of the on-going revision of the "New Approach" will therefore be fundamental to the future success of the CPD. Once this is done, FIEC believes that only minor revisions to the text of the CPD will be required, and that most of the text, especially its basic principles, should be maintained.
- f) The texts of the various guidance papers should be rationalised and either integrated into the text of the Directive itself or included as annexes in order to arrive at a comprehensive document. This task can hardly be started, let alone completed, until the text of the New Approach has been adopted and stabilised (at least a "Common Position" between The Parliament and the Council). Ultimately whether the CPD is, or is not a New Approach directive is ultimately an academic discussion.

[...]

**FIEC Opinion on the Commission's "Study to evaluate the internal market and competitiveness effects of Construction Products Directive 89/106/EEC".**  
2/2/2007

**1. Compliance of the study with the terms of reference**

According to the terms of reference of the consultant's contract set out in the contract notice, this study was supposed to provide a comprehensive and structured analysis of:

- the provisions of Construction Products Directive 89/106/EEC for the purpose of considering the principal options as regards its possible revision

and *inter alia*, the specific objectives of a potential revision of the Directive would be:

- ensuring an internal market for construction products; and
- making the Directive supportive of an enhanced competitiveness of the construction sector and its enterprises, for the most part SMEs.....

Thus the study was by no means limited to the examination of the impact of the CPD on "free trade in construction products", but was additionally supposed to evaluate its impact on the construction sector as a whole and its enterprises. The term "construction sector and its enterprises" most certainly embraces construction enterprises as well as construction product manufacturers. In FIEC's opinion, the study as presented, is unbalanced and lacks sufficient emphasis on the impact of the directive on construction enterprises, in particular SME.

**2. Provisions of the CPD**

One important aim of the CPD is to enable Member States to act in accordance with Article 6 (1) which states:

"Member States shall not impede the free movement, placing on the market **or use** in their territory of products which satisfy the provisions of this Directive."

This aim can only be satisfied if the conditions of Article 2 (1) and Annex I are met which state that the products shall:

"have such characteristics that the works in which they are incorporated ..., if properly designed and built, satisfy the essential requirements ... when and where such works are subject to regulations containing such requirements", and "be suitable

for construction works which ...are fit for their intended use, account being taken of economy, and in this connection satisfy the ... essential requirements where the works are subject to regulations containing such requirements. Such requirements ... must be satisfied for an economically reasonable working life."

This makes it abundantly clear that the CPD is not just about "trading construction products", but also about "fitness for use" of the products and "using construction products" (the rules remain the responsibility of the Member States) and the criteria to be fulfilled in this respect by means of the harmonised product specifications.

Only thus will Member States on the basis of the indications of the product characteristics accompanying the CE-Marking, be able to adapt their regulations and provisions as required by Article 2 (1) on the design and execution of works while maintaining the national level of protection and taking into account the prevailing geographical or climatic conditions or ways of life.

**3. Impact of the CPD on construction enterprises:**

For FIEC as a contractors' association, the most important aspect of the CPD is not its impact on the marketing of construction products, but on the:

- assumption of the fitness for use of construction products specified in harmonised specifications in accordance with the provisions of the CPD; and
- the completeness and reliability of product information provided by manufacturers according to such harmonised specifications.

The remark made in the meeting on 14/12/2006 by a Commission representative in the context of the study gave the impression that: "users of construction products expect to have a high level of confidence in construction products to the extent that they are absolved of any responsibility" is, therefore, quite beside the point. Users of construction products are responsible for the "fitness for purpose" of entire works. This is their "builders' responsibility". To meet this obligation, it is indeed indispensable for them **to be able to have complete confidence in the reliability of product information accompanying the CE Marking**, which is self-evidently as much in the interests of clients of the industry.

To be able to also represent the users' concerns, the contractor for the study conducted a consultation meeting lasting two hours with FIEC and other representatives of downstream users of construction products. FIEC regrets that several of the various points raised in this meeting have not been adequately reflected in the comments and suggestions made in the study, in particular:

- The simple fact that construction products to which the CE Marking is affixed does not justify the assumption that they are necessarily fit for any given purpose.
- The possibility of using the "No Performance Determined" option implies that the CE Marking may be affixed to construction products that are totally unacceptable for use in some Member States.
- The question whether or not raising the levels of attestation of conformity would reduce the overall burden on the construction sector (manufacturers and users) as a whole.

#### 4. Conclusions

- a) The entire study reflects a profound misperception of contractors' justified interests and their needs.
- b) FIEC remains unconvinced that the so-called "Conclusions" set out in the study are based on the evidence presented, but would be better described as mere hopes which effectively qualify the entire study to the effect that it would be better titled "a reflection paper".
- c) The study fails to comply adequately with the terms of reference determined by the Commission Services which were clearly described in the contract notice (see item 1 above).
- d) The CPD has been gravely misunderstood: Its objective is not the "approximation" of building regulations in Member States but rather the approximation of laws, regulations and provisions relating to construction products. All conditions affecting the execution and sustainability of construction works in the Member States that stem from geographical, climatic, "ways of life" and safety conditions are explicitly safeguarded in the Article 3 (2) of the CPD. Every Member State regulation having its source in one of these four above-mentioned "national conditions" needs to be taken into account when writing harmonised

specifications for construction products, even if they materialise only at regional or local levels! Only if Article 3 (2) of the CPD is properly taken into account, can Article 6 (3) of the CPD be heeded by Member States.

- e) The statement "the CPD is not a new approach directive" if not completely wrong, is certainly controversial if not an academic discussion. In any event the directive is included in the list of New Approach Directives in the annex to the current New Approach Regulation. This statement should therefore be deleted from the text.
- f) The study as actually presented therefore should, as the basis of any future decisions, be used with the utmost circumspection.
- g) FIEC requests that the final text of the study be amended to take FIEC's comments into consideration.

**Position of FIEC concerning the 2010-Revision of EN 206-1**

2/2/2007

**1. Interface between producer and contractor**

FIEC is of the opinion that the revision should take into account that the interface between producer and contractor (except for those instances where the contractor mixes his own concrete on a construction site) must be clearly defined. For all performance criteria for which the contractor is ultimately liable, sufficient conformity criteria under the responsibility of the producer should be made available by the latter. The factory production control should provide sufficient physical proofing of relevant performance criteria by testing. The frequency of testing (e.g. compressive strength or consistency) must not be reduced compared to the frequency currently defined in EN 206. In this context, FIEC agrees that EN 206 may be split in two parts: EN 206-1 for specification and properties respectively EN 206-2 for factory production control and conformity.

**2. Self-compacting concrete**

FIEC emphasizes that so-called self-compacting concrete (SCC) should be defined in EN 206 together with all relevant performance and conformity criteria taking particularly into account the required self-compactability qualities of the product for the satisfactory performance of which the producer is responsible. These criteria should ensure that the delivered SCC in fact possesses self-compacting qualities when used on site.

**3. Durability aspects**

FIEC suggests that the performance-related design methods with respect to durability (Annex J of EN 206-1) should follow generally acknowledged methods (see e.g. fib-Model Code on Service Life Design (SLD)). Should Annex J be changed, the resulting safety level of the applied method of SLD should be clearly stated in comparison to the deterministic deem-to-satisfy approach of EN 206-1 in connection with EN 1992-1-1 (Eurocode 2) and prEN 13670 (Execution of concrete structures). FIEC is of the opinion that a concretion of Annex J is a task for a joint working group (JWG) of TC 104, TC 250/SC2 and TC 229.

**4. Principles for the use of type II additions**

Due to the fact that the  $k$  value concept described in EN 206-1:2000 has not yet been completely implemented in any CEN member state, FIEC agrees that a future EN 206 should only contain principles for the use of type II additions (e.g. fly ash, silica fume, granulated blast furnace slag) and the reduction of the water/cement-ratio and cement content. The need for detailed national application documents following these principles should be provided for on a national basis.

**5. Period of use of fresh concrete after manufacture**

FIEC proposes that the period of time that fresh concrete can be used immediately following its manufacture and during which its specified characteristics (e.g. consistency) have to be ensured, should be defined as a requirement in the standard.

**Consultation of interested parties on the review of the New Approach**

15/1/2007

Dear Mr Mc Millan,

We refer to the DRAFT DECISION and DRAFT REGULATION (both dated 25<sup>th</sup> October 2006) destined to replace those currently in force, namely Council Decision 93/465/EEC of 22<sup>nd</sup> July 1993 and Council Regulation 339/93 of 8<sup>th</sup> February 1993 respectively. At this point in time, we have two issues we wish to raise:

**a) Definitions**

You will no doubt recollect that we wrote to you on 24<sup>th</sup> June 2005 pointing out our disagreement with the text of certain definitions which now appear in ANNEX 1 of the revised Draft Decision and Article 3 of the revised Draft Regulation.

FIEC welcomes the revised definition of the word "manufacturer", but for the reasons set out in our letter of 24<sup>th</sup> June 2005 we cannot completely accept the proposed definition (pages 5 and 2 of the documents respectively) of the term "Making available on the market" and in particular the inclusion of the words "whether in return for payment or free of charge".

It is pertinent to recall that the "New Approach" exclusively concerns the "Community Market", and furthermore the meaning of the word "market" implies a "commercial transaction" and in legal terms this further implies the notion of "consideration" for things done or products and services changing hands. Where markets are concerned there is absolutely "nothing for free". There must be consideration. Indeed the very notion of there being no charge or cost involved in a transaction implies that the transfer of a gift must needs fall outside the scope of the proposed Decision and Regulation and that its presence in the text prejudices its coherence. FIEC therefore proposes that the words "whether in return for payment or free of charge" be deleted.

*Justification as concerns the construction industry: The word "market" necessarily implies a commercial transaction and not a "gift" that is provided free of charge. For example, a contractor may either mix his own concrete on site or he may purchase ready-mixed concrete from a third party. Although the resulting product may be identical in both cases, only "ready-mixed" concrete is subject to a*

*commercial transaction, whereas "contractor-mixed" concrete is not.*

*When in 1998, the European Commission submitted for adoption by the Member States a draft mandate addressed to CEN for concrete, FIEC raised no objections provided that the mandate applied exclusively to ready-mixed concrete and not to contractor-mixed concrete. To support its argument, FIEC demonstrated that the specific additional attestation of conformity testing requirements that would be required for "contractor-mixed" concrete would render the latter totally uncompetitive as compared with the former and that the overall perverse effect of CE Marking concrete would lead to a direct increase in the cost of construction works without any corresponding benefit for the clients of the industry. Extrapolating this case to its extreme, anyone mixing his own mortar to build a garden wall on a Saturday afternoon would be obliged - legally speaking - to have his mortar CE marked and tested in a laboratory - before he could use it! The same argument would apply to hundreds of thousands of SMEs who carry out such activities on a daily basis all over Europe!*

The Commission's legal service held none-the-less, that in view of the words in its own definition "or free of charge" that either all concrete be CE Marked or none at all. The Member States' representatives in the Standing Committee on Construction therefore voted that the Commission Services remove any reference to the word "concrete" from the text of the draft mandate. Consequently there is today no harmonised European Standard for concrete.

**b) Market Surveillance**

FIEC is also concerned about certain aspects of the general wording used in CHAPTER 4 of the DRAFT REGULATION dated 25<sup>th</sup> October 2006 as concerns the COMMUNITY MARKET SURVEILLANCE FRAMEWORK. The proposed wording tends to imply that market surveillance activities are essentially concerned with non-compliant products liable to compromise the health or safety of persons or other relevant issues of public interest protection....." This is fine as far as it goes, but it does not go far enough.

FIEC's over-riding concerns go far beyond such important matters as health and safety and the

protection of the public interest. Our contractors are concerned that products placed on the Community market will be imported from all over the world where the affixation of the CE Marking and the related attestation of conformity procedures and declarations will fall far below what is required to ensure compliance with European harmonised specifications. Such shortcomings do not necessarily prejudice public health and safety, but they do threaten the sustainability, durability and long-term performance of construction works. A typical example might be the shortfall in performance of insulation products and consequently the failure of a building to meet its thermal performance requirements. FIEC cannot subscribe to legislation that could put our contractors' interests at risk. Such products need to be strictly controlled and where necessary promptly and effectively removed from the market. FIEC trusts that the Commission will see fit to amend its draft wording to reflect these concerns.

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

Yours sincerely,

Rob Lenaers  
Chairman Sub-Commission TEC-1: Standards and  
Quality Assurance

**Letter to Mr P. Pangault, Chairman of TC 175, CEN**  
**Subject: General guideline for installation of parquet flooring –**  
**Draft technical specification TC 175 WI 00175112**  
9/2/2007

Dear Sir,

It has come to our attention that a "Technical Specification" bearing the title "Parquet flooring – General guideline for installation of parquet flooring" is under preparation in CEN TC 175.

Even if, quoting the draft document, it "*is not intended to replace the existing national guides or standards on installation*", the member federations in FIEC consider that such a technical specification could lead to it being called up in contract specifications for works and consequently that a so-called "European methodology" could be imposed in member states where different practices are customary.

As a general principle, FIEC disagrees with the inclusion of execution clauses in European product Standards. Already in 1997, our position paper regarding this matter stated that "FIEC views with concern the continuing tendency in numerous TCs to draw up execution standards".

Whilst it is understandable that the manufacturers of construction products are concerned that their products are correctly used and installed to meet "end-use conditions", the contractors on the other hand cannot accept that methods of execution and installation are harmonised in Europe through the inclusion of execution and installation clauses in European Standards (ENs). Execution techniques vary widely across Europe for reasons of tradition, culture and climate and the contractors do not want these harmonised"; furthermore "the inclusion of execution clauses in European Standards (ENs) may prejudice the correct legal application of liability and guarantees towards the end-user (client) as between the manufacturer of the product and the installer (contractor). Such aspects should not be covered in standards".

Even if we had no objection to its very purpose, to reach an agreement on such a text would necessitate the participation in CEN/TC175/WG3 of representatives of specialist flooring firms across most if not all, CEN member countries. This is in practice, a most improbable scenario and in the normal course of events the current TC is likely to be constituted of representatives of manufacturers of parquet flooring whose views are not the same as those firms which install it.

I must therefore, with all due respect to the work of those involved, ask you to curtail this activity. Should our request go unheeded, we shall recommend our member federations to request the NSBs to vote against any formal adoption of the draft text.

Sincerely yours,

Rob Lenaers  
Chairman Sub-Commission TEC-1: Standards and  
Quality Assurance

**The Construction Industry's Response to the European Commission's Proposals for the revision of the waste framework directive**

11/7/2006

[...]

**Excavated material**

No less than 1000 million tonnes of excavated material are being moved annually by contractors in the EU. Where material is re-used on the same site, public administrations generally do not consider it as being waste, but this remains an "informal" (and arguably incorrect) interpretation of the legislation in force, that has not always been consistently supported by the Court. The text of the Commission's proposal as it now stands will not alter this interpretation.

But when the same material, which is intended to be used for the same purposes elsewhere, is removed

from that site, it is invariably considered, in the sense of the Community definition, as being waste. This change in the status of the material is not without its consequences. It involves considerable additional costs and administrative burdens for the enterprise concerned as to its further use or disposal which in turn, is reflected in construction prices. The greater the constraints, the more these are reflected in the costs invoiced to the client, not to mention the implications for the local authority.

It would therefore seem appropriate to exclude from the scope of the Directive, natural materials which are not contaminated, which can be used in their natural state, either on the same site or another site.

[...]

**1. Proposed amendments**

Proposal for a Directive of the European Parliament and of the Council on Waste Committee on the Environment, Public Health and Food Safety  
Rapporteur: Caroline Jackson

Commission's proposal	Proposed Amendment
<b>Amendment 1 Article 2</b>	
<p>This Directive shall not cover gaseous effluents emitted into the atmosphere.</p> <p>1. It shall not cover the following categories of waste, as regards certain specific aspects of those categories which are already covered by other Community legislation:</p> <p>(a) radioactive waste;</p> <p>(b) waste resulting from prospecting, extraction, treatment and storage of mineral resources and the working of quarries;</p> <p>(c) faecal matter and other natural, non-dangerous substances used in farming;</p> <p>(d) waste waters, with the exception of waste in liquid form;</p> <p>(e) decommissioned explosives;</p> <p>(f) unexcavated contaminated soil.</p>	<p>This Directive shall not cover:</p> <ul style="list-style-type: none"> <li>- gaseous effluents emitted into the atmosphere,</li> <li>- <b>unexcavated contaminated soil</b></li> <li>- <b>uncontaminated excavated natural materials, which can be used in their natural state, either on the same site or another site.</b></li> </ul> <p>1. It shall not cover the following categories of waste, as regards certain specific aspects of those categories which are already covered by other Community legislation:</p> <p>(a) radioactive waste;</p> <p>(b) waste resulting from prospecting, extraction, treatment and storage of mineral resources and the working of quarries;</p> <p>(c) faecal matter and other natural, non-dangerous substances used in farming;</p> <p>(d) waste waters, with the exception of waste in liquid form;</p> <p>(e) decommissioned explosives;</p> <p>(f) <b>[deleted]</b></p>

#### Justification

No less than 1000 million tonnes of excavated material are being moved annually by contractors in the EU. Where material is re-used on the same site, public administrations generally do not consider it as being waste, but this remains an "informal" (and arguably incorrect) interpretation of the legislation in force, that has not always been consistently supported by the Court. The text of the Commission's proposal as it now stands will not alter this interpretation.

But when the same material, which is intended to be used for the same purposes elsewhere, is removed from that site, it is invariably considered, in the sense of the Community definition, as being waste. This change in the status of the material is not without its consequences. It involves considerable additional costs and administrative burdens for the enterprise concerned as to its further use or disposal which in turn, is reflected in construction prices. The greater the constraints, the more these are reflected in the costs invoiced to the client, not to mention the implications for the local authority.

It would therefore seem appropriate to exclude from the scope of the Directive, natural materials which are not contaminated, which can be used in their natural state, either on the same site or another site.

## TEC 4 Summary of answers received to the questionnaire 10/2006

Taking into account the previous considerations and the results obtained we can underline the following conclusions:

1. As far as legislation is concerned, the transposition of the Directive 89/391/EEC to national legislations makes the information and training of plant operators compulsory, with a special emphasis on questions related with health and safety.  
The results show that in almost all the countries there is some legislation that in a greater or lesser extent request training for the operator of some machines, mainly those which use implies a risk to third parties, as elevation machines, tower cranes, loaders, lifts, etc.
2. Concerning training, the summary Interpretations of answers may be as follows:
  - Generally training is done in Official Centres or in Centres officially authorized even though in some cases training it is done via specific companies.
  - In practice in most of the countries this training is complemented by the employer.
  - Initially, in order to access the training courses it is requested:
    - Minimum of 18 years
    - To overcome an test on working post fitting in some cases)
    - Driving license (in some cases)
    - Medical aptitude certificate
    - Having received general training in Health and Safety.
  - Normally a training course between 200 and 900 hours could be enough to obtain a standard certificate that may be admitted in all the countries. This training period which is in practice nowadays the one applied, would depend on the type of machine and should be complemented with site practice.
  - The validity period of this training could be between 5 and 10 years, with a retraining course for its renovation, which would imply a compulsory new medical revision.
  - 50% of answers admit having recognition problems when moving operators from their country to other EU country.
  - There is a general trend to accept training coming from third countries of the EU, even in the case when the trainee may not be an EU native.
  - It would be advisable to create a database of training organizations, with the aim of validating the training applied in all EU countries.

Considering all the exposed and as a summary it seems that there are no major difficulties to employ operators in the different EU countries, underlining that the employers' concern goes ahead of the legislation on this matter and there is an evident wish of training unification: previous requirements, themes to teach, training duration and trainers homologation, that could lead to an operator validation in the EU territory.

**Letter from Commissioner Janez Potočnik**

30/1/2007

Brussels 30 Jan. 2007

D (2007) 84

Mr Daniel Tardy  
President  
European Construction Industry Federation  
Avenue Louise 225  
1050 Brussels

Dear Mr Tardy,

I wish to thank you for your letter of 21 December 2006, in which you informed me about the activities of the European Construction Industry Federation.

First and foremost, I would like to convey to you my sincere congratulations on your appointment at President of this body.

Without any doubt, the construction sector plays a key role in Europe. That is why I fully support the work carried out by the European Technological Platform in the field of Construction, in which your organization moreover participates. This Platform must now meet a major challenge by giving concrete expression to its strategic research agenda, this being an agenda the priorities of which are well reflected in the initial work programme drawn up in the context of the 7<sup>th</sup> FPRD.

I wish you every success in your new post.

Yours sincerely,

(Signed) Janez Potočnik



**Chairman:** Luisa Todini (IT)

**Rapporteurs:** Hasso von Pogrell (EIC), Giulio Guarracino (IT)

With the accession of Bulgaria and Romania to the European Union on January 1<sup>st</sup> 2007, the enlargement process has come to a preliminary end. Since the foundation of the European Economic Community in 1957 by the six founding states, Belgium, France, Germany, Italy, Luxembourg and the Netherlands with the signing of the Treaty of Rome, the European Union went through five enlargement processes:

- 1973 Denmark, Great Britain and Ireland
- 1981 Greece
- 1986 Portugal and Spain
- 1995 Austria, Finland and Sweden
- 2004 Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Slovakia, Slovenia, Cyprus and Malta.

Within 50 years a vision gradually became reality. A vision of establishing a bond between countries sharing the same high ideals, overcoming national differences in order to create an environment of sustainable peace, stability and prosperity where trade would flourish and borders would eventually dissolve – at that time an ambitious goal with regard to a divided, post-war Europe.

However, the enlargement process is still not completed, there are yet further countries knocking at the doors of the European Union, wanting to come in. Currently it is Croatia and Turkey.

Croatia was officially granted candidate status in June 2004, and accession negotiations were originally scheduled to start on 17 March 2005. However, the launch of talks was put off on 16 March 2005 pending Zagreb's "full co-operation" with the UN War Crimes Tribunal. Finally, on 3 October 2005, Zagreb received a green light for the accession talks to commence.

3 October 2005 also marks the date on which membership negotiations were symbolically opened with Turkey, which has been an associate member of the EU since 1963 and an official candidate since 1999. 3 October signalled the start of the Commission's screening process aimed at taking stock of Turkey's progress in harmonizing its laws

with those of the Union. The accession talks have been defined as an "open-ended process" that may last 10 to 15 years.

The necessary foundation to cope with the challenges of an enlarged Europe was to be the new European Constitution signed on 29 October 2004 by all 25 Member States in Rome. Its aim was to shape a more democratic, transparent and efficient enlarged European Union. It was intended to come into effect on 1 November 2006 after ratification by all member states.

However, whereas ten Member States had already approved the Constitution, in spring 2006, the citizens of France and the Netherlands rejected it – out of concerns about their country's economic and social situation.

Following the negative referenda, the European Council adopted a declaration on the ratification of the Treaty establishing a Constitution for Europe, by which the Heads of State and Government called for a period of reflection, during which a broad debate should take place in each country.

The Commission foresees a step-by-step approach with the adoption by the leaders of a new political declaration in 2007 as a first step. This should then serve as the basis for decisions by the European Council towards a new institutional settlement. A further step will be made in 2008-2009 when the Commission reports on the future financing of the Union.

In the aftermath of the accession process a greater need for information resulted particularly on the part of the new member countries. FIEC, having made its contribution to the enlargement process by supporting its member federations in the new member countries during the screening process which included an analysis of existing national legislation in connection with the *acquis communautaire*, continued its support in the field of adapting to the new environment.

With the phasing-out of the ISPA (Instrument for Structure Policies for Pre-Accession) after 1<sup>st</sup> May 2004, the four Structural Funds – the

27 EU members

European Regional Development Fund (ERDF) for infrastructure and investments, the European Social Fund (ESF) for training, social integration and employment, the European Agricultural Guidance and Guarantee Fund (EAGGF) for rule development and aid to farms, and the Financial Instrument for Fisheries Guidance (FIFG) for the adaptation of the fisheries sector – as well as the Cohesion Fund supporting environmental and transport projects in the least prosperous member states shifted into the focus of the FIEC Ad Hoc Group "CEEC". After all, the structural funds absorbed approximately one-third of the EU budget with the allocation for the 2000 – 2006 period having been Euro 195 billion for the EU-15, plus Euro 15 billion for the new Member States between 2004 and 2006. And, all the same, the Cohesion Fund received another additional 25.6 billion Euro for the EU-25.

For the 2007 – 2013 period, the European Commission, on 14 July 2004, adopted its legislative proposals on cohesion policy reform. From the new objectives ("convergence", "competitiveness" and

"co-operation") replacing the present objectives 1, 2 and 3, the "convergence" objective (ERDF, ESF, Cohesion Fund) is of priority interest to European contractors. Close to the past objective 1, the purpose of the convergence objective is to speed up the economic convergence of the less-developed regions. Regions eligible under the convergence objective are those whose per capita gross domestic product (GDP) is less than 75% of the average for the enlarged EU. Furthermore, support will also be granted, on a decreasing basis through to 2013, for regions whose per capita GDP exceeds the 75% figure due solely to the statistical effect of enlargement.

From the available resources amounting to a total of Euro 308 billion (in 2004 prices) or Euro 347,4 billion (in today's prices), 81,5% (Euro 207,7 billion) are allocated to the convergence objective – the most "construction-related" objective.

The indicative allocation of the total funds by Member States is foreseen as follows:

#### Cohesion Policy 2007-2013: Indicative Financial Allocations (Million Eur, Current Prices)

	Convergence Objective			Regional Competitiveness and Employment Objective		European Territorial Cooperation Objective	Total
	Cohesion Fund	Convergence	Statistical Phasing-out	Phasing-in	Regional Competitiveness and Employment		
België/Belgique			638		1 425	194	2 258
Bulgaria	2 283	4 391				179	6 853
Ceska Republica	8 819	17 064			419	389	26 692
Denmark					510	103	613
Deutschland		11 864	4 215		9 409	851	26 340
Eesti	1 152	2 252				52	3 456
Ellas	3 697	9 420	6 458	635		210	20 420
España	3 543	21 054	1 583	4 955	3 522	559	35 217
France		3 191			10 257	872	14 319
Ireland				458	293	151	901
Italia		21 211	430	972	5 353	846	28 812
Kypros	213			399		28	640
Latvija	1 540	2 991				90	4 620
Lietuva	2 305	4 470				109	6 885
Luxembourg					50	15	65
Magyarország	8 642	14 248		2 031		386	25 307
Malta	284	556				15	855
Nederland					1 660	247	1 907
Österreich			177		1 027	257	1 461
Polska	22 176	44 377				731	67 284
Portugal	3 060	17 133	280	448	490	99	21 511
Slovenija	1 412	2 689				104	4 205
Slovensko	3 899	7 013			449	227	11 588
Suomi-Finland				545	1 051	120	1 716
Sverige					1 626	265	1 891
United Kingdom		2 738	174	965	6 014	722	10 613
Romania	6 552	12 661				455	19 668
Interregional						445	445
Technical Assistance							868
<b>Total</b>	<b>69 578</b>	<b>199 322</b>	<b>13 955</b>	<b>11 409</b>	<b>43 556</b>	<b>8 723</b>	<b>347 410</b>

Due to rounding, figures may not add-up exactly to the total shown

For further information:

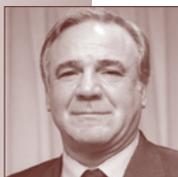
[http://ec.europa.eu/regional\\_policy/sources/docoffic/official/regulation/pdf/2007/publications/guide2007\\_en.pdf](http://ec.europa.eu/regional_policy/sources/docoffic/official/regulation/pdf/2007/publications/guide2007_en.pdf)

With construction-relevant funds of that magnitude at stake, the latest meeting of the FIEC ad-hoc Group "CEEC" which took place on 21 September 2006 in Brussels consequently focused on the EU Cohesion Policy. A high ranking official of DG Regio presented in detail information on the New Structural Funds Regulations as well as on interesting opportunities in the new Member States with respect to social housing and European financing.

A survey among the "CEEC" members identified, among others, as a priority issue for the next meetings, the elaboration of specific instructions on how to lobby as a national federation towards the respective government and the EU, in order to participate at an early planning stage of potential projects with the chance of directing EU financial means towards projects beneficial to the member companies.

The Ad Hoc Group CEEC has set as its objective to further serve as a specific, dedicated platform in FIEC for the exchange of experiences among the FIEC member federations coming from the "old" and the "new" EU countries.





**Chairman:** Juan F. Lazcano (ES)  
**Rapporteur:** Maria Angeles Asenjo (ES)

**FIEC MEDA Vice-Presidency** focuses on the actions of the European Union Institutions with regard to Euro-Mediterranean Policy and the relations with neighbouring countries of this area.

### **EURO-MEDITERRANEAN PARTNERSHIP**

In November 1995, the Euro-Mediterranean Conference of Ministers of Foreign Affairs held in Barcelona marked the starting point of the Euro-Mediterranean Partnership (Barcelona Process), a wide framework of political, economic and social relations between the Member States of the European Union and Partners of the Southern Mediterranean. Currently, the Euro-Mediterranean Partnership covers 35 Members: 25 EU Member States and 10 Mediterranean Partners (Algeria, Egypt, Israel, Jordan, Lebanon, Morocco, Palestinian Authority, Syria, Tunisia and Turkey). Libya has observer status since 1999.

Since 1995 until 31 December 2006 MEDA program constituted the main financial instrument for the Euro-Mediterranean Partnership, the budget allocated was around 8.700 million Euro. The European Investment Bank lending also provided financial support around 11.000 million Euro.

### **EUROPEAN NEIGHBOURHOOD POLICY**

From 1 January 2007 onwards, as part of the reform of the EU external assistance instruments, MEDA and various other 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). Within the budgetary period 2007-2013, the financial support through ENPI will be 11.200 million Euro in general. In addition, the EIB lending will provide 12.400 million Euro (8.700 million Euro for the Mediterranean Partners).

The European Neighbourhood Policy (ENP) was developed in 2004. The ENP was first outlined

in 2003 in a Commission Communication – COM(2003) 104 final – followed by a more developed Strategy Paper published in May 2004 – COM (2004)373 final –. This document sets out in concrete terms how the EU proposes to work more closely with these countries. Since 2004 Mediterranean Partners are included in the ENP. In December 2006, the Commission also made proposals referring to how this policy could be further strengthened – COM(2006) 726 final.

The central element of the European Neighbourhood Policy is the bilateral ENP Action Plans agreed between the EU and each Partner. These set out an agenda of political and economic reforms. Among the key sectors in the ENP are transport, energy and environment. Implementation of the first ENP Action Plans was agreed in 2005 with Israel, Jordan, Morocco, the Palestinian Authority and Tunisia. With Lebanon the Action Plan was agreed in January 2007 and with Egypt in March 2007.

### **TRANSPORT NETWORKS, THE TEN-T AND EXTERNAL DIMENSION**

In the Euro-Mediterranean region, cooperation in the transport sector was launched in 1995 under the Barcelona Process. In 1998 an Euro-Mediterranean Transport Forum was created for coordination in this field. In December 2005 the first Euro-Mediterranean Transport Ministerial Conference was held and focused on the Blue Paper on Euro-Mediterranean Transport Policy and on the final report of the High Level Group on the extension of the trans-European transport network to neighbouring countries. In January 2007 the European Commission has published guidelines on the extension of the major trans-European transport axes to the neighbouring countries – COM (2007) 32 final.

In November 2006, the Conference "Finance for transport networks: meeting the challenge of Euro-Mediterranean economic integration" took place in Monaco, organised jointly by the European Investment Bank and the Government

of Monaco. The Conference gathered experts and professionals in the transport sector from the 35 Euro-Mediterranean Partnership countries. A representative of the FIEC MEDA Vice-Presidency attended this Conference. There were three sessions dealing with different issues in relation to transport networks:

- Integration through transport networks: economic and financial conditions for success.
- Mediterranean Sea and Sky: prospects for development.
- Financing: from all-public to partnership contracts.

The official conclusions are available at:

[http://www.eib.org/news/press/  
press.asp?press=3193](http://www.eib.org/news/press/press.asp?press=3193)

### **FIEC MEDA VICE-PRESIDENCY ACTIVITIES**

To inform on the activities carried out by the EU Institutions, projects financed by the EU, events and other relevant issues with regard to the construction sector in the Euro-Mediterranean area, five Newsletters were elaborated in 2006 for FIEC member Federations available on the FIEC website.



**Chairman:** Georgios Romosios (GR)



**Dirk Cordeel (BE)**  
Working Group "SME 2007"

**Rapporteur:** Ulrich Paetzold (FIEC)

The structure of the European construction industry is characterized by small and medium-sized enterprises (SMEs). More than 95% of all construction enterprises employ fewer than 20 workers. This structure is reflected not only in the FIEC member federations but is also reproduced in the FIEC bodies and working groups. The task of the SME Coordination Group is to double-check and ensure that the special interests of the construction SMEs are effectively reflected in its work at European level. The unique advantage and the great strength of all publications and opinions of FIEC is that they are based on the consensus of construction firms of all sizes and all fields of building and civil engineering in 28 European countries. An extraordinarily high degree of overall representativeness must therefore be attached to the voice of FIEC, especially in the case of issues which concern construction SMEs.

Because of the great importance of SMEs – which is also repeatedly emphasized in policy discussions – for economic development and the creation of jobs in the European Union, FIEC has established the function of SME coordination. As a result, there exists in the case of FIEC an additional guarantee at European level that SME interests will be appropriately taken into account.

In addition to this cooperation in all topics, which is dealt with in the FIEC Commissions and Sub-commissions, the Coordination Group deals with a number of projects which concern the specific situation of construction SMEs.

### **SME Competitiveness and Innovation Programme gets under way**

Following on from its "Think Small First" Communication,<sup>1</sup> the European Commission's long-heralded "Competitiveness and Innovation Framework Programme" (CIP) finally got underway at the beginning of the year. Between 2007 and 2013, some 350,000 small and medium-sized enterprises (SMEs) will between them, receive € 3.6 billion in EU support to invest in all forms of innovation and

growth. The new programme will support actions to help enterprises and industry to innovate. It will also boost energy efficiency and renewable energy sources, environmental technologies and a better use of information and communication technology (ICT).

The CIP has the following objectives:

- to foster the competitiveness of enterprises, in particular SMEs;
- to promote all forms of innovation including eco-innovation;
- to accelerate the development of a sustainable, competitive, innovative and inclusive Information Society;
- to promote energy efficiency and new and renewable energy sources in all sectors including transport.

Whilst eco-innovation will be a transversal theme of the whole programme, CIP is composed of three specific programmes:

- (1) Start up and growth of SMEs:  
the "Entrepreneurship and Innovation Programme" with a budget of € 2.17 billion including € 430 million to promote eco-innovation, will facilitate SMEs access to finance, better integrate the existing networks of business support services (EuroInfoCentres and Innovation Relay Centres) and support innovation activities (INNOVA, Pro-Inno etc). More than € 1 billion will be devoted to boosting the highly successful financial instruments managed by the European Investment Fund (EIF), which co-invest in venture capital funds (covering early stage and expansion stage), and provide co-guarantees on loans.
- (2) Information and communication technologies:  
the "ICT Policy Support Programme", with a budget of € 730 million, will contribute to competitiveness, growth and jobs through stimulating a wider adoption and more efficient take up and better use of ICT. In particular, it will include support for pilot actions using innovative ICT-based services of public interest; for the development of digital content and for enhancing

<sup>1</sup> See FIEC Annual Report 2006

**95% of SMEs with fewer  
than 20 operatives**

the security of, and trust and confidence in, ICT and its applications.

- (3) Increased use of renewable energy and reduced energy consumption the "Intelligent Energy-Europe Programme" with a budget of € 730 million will support energy efficiency, new and renewable energy sources, and technological solution to reduce greenhouse gas emission cause by the transport sector. Studies have shown the high added value in EU support for loan guarantees, with each euro from the EU budget resulting in a loan volume of € 72. In average every Venture Capital backed company maintains or creates more than 50 jobs.

FIEC and its member federations are well aware of the need to help SMEs in every way they can. The CIP offers real opportunities for SMEs to gain access to capital funding which all too often is difficult to obtain.

In order to further raise the awareness of SMEs to these opportunities, and conscious as always that "those who don't ask don't get", FIEC working with ECCREDI intends to publish a brochure to assist SMEs in accessing CIP and research funding under the 7<sup>th</sup> Framework Programme for Research and Development.

More information:  
[http://ec.europa.eu/enterprise/enterprise\\_policy/cip/index\\_en.htm](http://ec.europa.eu/enterprise/enterprise_policy/cip/index_en.htm)

### **Award rules and procedure below the EU threshold values**

The database on public procurement below the thresholds (commissioned by the Bavarian construction craftsmen association and elaborated by the German Armed Forces University in Munich), has now been completed in its German version and it is intended to add an English version as soon as a sponsor has been found.

On the issue of award rules in areas "not, or not fully, subject to the provisions of the public procurement directives", the EU Commission on 23<sup>rd</sup> June 2006, published an "Interpretative Communication" with the intention of shedding light on its understanding of the European Court of Justice's (ECJ) case law and to suggest best practices in order to fully benefit from the Internal Market. The Commission stresses that this Communication does not create any new legislative rules and that the interpretation of EU law is ultimately the role of the ECJ.

This Communication was challenged on 12<sup>th</sup> September 2006 by Germany (receiving the support of some other countries and the European Parliament) in front of the European Court of First Instance. It is expected that the outcome of this litigation will have some impact on the access of SMEs to procurement procedures, including cross-border activities.

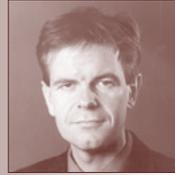
**President:**

**Gian Alfonso Borromeo, IT**



**Director:**

**Frank Kehlenbach, EIC**



President Gian Alfonso Borromeo represents EIC as Vice-President on the FIEC Steering Committee. The EIC Secretariat in Berlin is managed by Frank Kehlenbach (Director) and Hasso von Pogrell (Assistant 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 the European harmonisation and integration process, the work of EIC aims primarily at improving the operating conditions for the European construction industry on the international level. For this purpose, EIC maintains close relations with all international and other organisations whose policy is of relevance for the international construction business, for instance with the European Commission's DG Trade, DG Development and EuropeAid, the European Bank for Reconstruction and Development (EBRD), the Organisation of Economic Co-operation and Development (OECD) and the World Bank.

In 2006, the Members of the EIC Board were the following:

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

**Tasks and Objectives**

**EIC has the objectives**

- to represent and promote the interests of the European construction industry in all matters relating to the international construction business;
- to foster the exchange of views with international and other relevant organisations in order to improve the political, financial, economic and legal environment for European international contractors; and
- to offer European contractors a unique forum for the exchange of experience in all matters relating to the international construction business.

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 the EIC activities:

**I. Donor-financed infrastructure projects**

EIC calls continuously on the Multilateral Development Banks (MDBs), and in particular the European Commission and the EBRD, to duly take into consideration the intrinsic link between infrastructure investments and economic and social development and hence to expand their commitments for infrastructure projects. In this context, EIC strongly advises donors against the "budgetary aid" approach as far as infrastructure is concerned and instead asks the MDBs to rely on the "project approach" for infrastructure investments. Last but not least, EIC is also a constant advocate of integrating quality-related aspects into the procurement process.

Infrastructure needs are huge on a global scale and EIC observes funding difficulties world-wide for new construction, rehabilitation and maintenance. Whilst construction demand exceeds available funds also in much of the industrialised world and in many emerging markets, the governments in the developing world face a particular challenge in providing its people with access to quality infrastructure services. This is particularly true for Africa where governments MDBs sharply reduced the share of resources allocated to infrastructure during the 1990s. The corresponding lack of infrastructure and services on the African continent severely constrains economic growth and hinders social development.

Against this background, the European Union recently decided to focus its development aid on Africa and adopted a new "EU Strategy for Africa". One of the main actions that underpin this new policy is the creation of the "EU-Africa Partnership on Infrastructure", presented in July 2006, which forms the EU's policy response to the infrastructure gap that hinders Africa's development. In the corresponding Communication, the European Commission estimates that e.g. Sub-Saharan Africa needs to spend approximately 5% of its GDP on infrastructure investment and a further 4% on operations and maintenance between 2005 and 2015. The Partnership proposed by the European Commission allocates a total of 5.6 billion € from the 10<sup>th</sup> European Development Fund (EDF, 2008-2013) to support regional development in four priority areas: transport, energy, water, and information technology and telecommunications network. In addition, the EU and the European Investment Bank (EIB) have agreed terms for the creation of a Trust Fund in order support infrastructure investments in Africa. Under this new instrument, up to 320 million € in grants and loans are earmarked for the years 2006-2007.

EIC certainly appreciates the renewed interest of the European Commission and other donors in developing the infrastructure sector. At the same time, EIC is concerned about the tendency amongst the international donor community to move from the so-called classic approach, i.e. external assistance through project grants and loans, to the budgetary approach or "sector wide approaches", i.e. external assistance grants to the partner country's budget. EIC, therefore, drafted a **Position Paper on the EU-Africa Partnership for Infrastructure** in which we held the view that, as far as infrastructure is concerned, the "classic project approach" is clearly preferable, since transaction costs are lower for the European Commission than for the African partner governments which, in many cases, do not possess

the necessary capacity skills to effectively manage the overall contracting process. Moreover, the capital-intensive nature of infrastructure projects, their political sensitivity, their complexity and the risks associated with their implementation (including unethical practices) speak for a high degree of centralised planning and co-ordination.

EIC presented its corresponding concerns and queries in the framework of the high-level "EU-Africa Business Forum" organised by the European Commission on 16-17 November 2006 in Brussels which provided a unique opportunity to strengthen the dialogue between business and the Commission. The Forum was attended by some 100 businessmen from Europe and Africa and by high-level officials from the European Commission, including Commissioners for External Trade, *Peter Mandelson*, and for Development and Humanitarian Aid, *Louis Michel*. At the end of the 2-day deliberations, the Forum adopted an official Final Declaration in which business agreed that EU-Africa economic relations should be increased to foster more political momentum and commitment to create a better investment and business climate in Africa. **EIC was successful in embedding the following statements into the Final Declaration** (dated 29 November 2006) which shall be of importance for the follow-up process:

- "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 technical and environmental quality of projects and the procurement process for infrastructure works should be improved";
- "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 pre-qualify for Commission funding, companies should to respect environmental, social, ethical and financial standards within the EU *acquis communautaire*".

## II. Promotion of Public-Private Partnerships

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**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. Through its publications on PPP, EIC helps to build institutional capacity in this area on a global scale.**

Despite the renewed interest of donors in infrastructure financing the gap between the infrastructure needs and the conventional financial resources – from international aid funds and national budgets – will remain a fact for the foreseeable future. Whereas Official Development Assistance (ODA) has been rising from 2003 to 2005 by 50% from 70 billion US\$ to 106 billion US\$, commitments from the 22 member countries of the OECD Development Assistance Committee decreased in the year 2006 to 103.9 billion US\$ in aid, down by 5.1% from 2005, in constant 2005 dollars. This figure includes US\$ 19.2 billion of debt relief, notably exceptional relief to Iraq and Nigeria; excluding debt relief, other forms of aid fell by 1.8%. EIC regrets that less than 25% of the ODA are in fact disbursed for infrastructure investments, i.e. transport, energy and water projects. Consequently, a new balance has to be found between public and private sector roles for infrastructure financing and services provision.

Current experience in many countries shows that by means of private participation in public infrastructure service delivery, the scope for private investment in infrastructure can be enlarged. Whilst the PPP concept has flourished over the past years mainly in sectors that generate adequate cash flows, such as telecom, ports, airports and natural gas pipelines, the right blend between public and private funding has yet to be determined for transport and water infrastructure projects, where the social acceptance of user fees is either missing or its level is not adequate to guarantee the necessary return on investment.

With the aim of providing the public sector 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"*, reflecting the broad expertise of its member companies acting as investors and concessionaires in view to the political, financial, economic and legal requirements for successful BOT/PPP models. Doing this effort, EIC developed

21 "Key recommendations" in order to improve the project environment, the project preparation, the tendering procedures, the linking of the various types and sources of financing as well as the distribution of risks between the parties involved.

When presenting the recommendations of the "EIC White Book" in the political debate, we noticed, however, several recurring misconceptions with a potential to undermine the credibility of the entire PPP philosophy. EIC, therefore, published in October 2006 with the *"EIC Memorandum on Frequently Asked Questions on PPP"* a political supplement with a more general response in order to contribute the European industry's viewpoint to the ongoing debate on the national, European and international levels. With this Memorandum, EIC advocates the concessionaire's perception, i.e. the perspective of those companies that actually are prepared to put their shareholders' money at risk. The new EIC Memorandum seeks to explain why the PPP concept has a strategic advantage over the conventional project programming and for which types of infrastructures 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 on 29 September 2006 in Valencia, **EIC presented the new PPP Memorandum at various political conferences organised by the OECD, the EBRD and the European Commission.**

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

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**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.**

Since the publication of the so-called FIDIC "New Books" back in 1999, EIC has published three "EIC Contractors' Guides" to this new suite of standard contract forms. These EIC Guides are rather critical of the general tendency in the 1999 FIDIC "New Books" to burden more construction risks than in the past on the contractor. All EIC Guides have been published in the world's leading construction law magazine and are on distribution via EIC's website.

Presently, the EIC Working Group "Contract Conditions" is working on an *"EIC Contractor's Guide to the MDB Harmonised Edition of the FIDIC Conditions of Contract for Construction"*. The origin of the so-called MDB Harmonised Edition dates back to the year 2003 when FIDIC was approached by the World Bank which was at the time leading a process of elaborating Master Procurement Documents for all the MDBs. At the World Bank's request, FIDIC gave in 2005 its permission – under a licensing agreement – to incorporate a modified version of the 1999 FIDIC "New Red Book" as the General Contract Conditions for the harmonised procurement documents. Upon initially scrutinising the "MDB Harmonised Edition", EIC was surprised that none of its comments in the EIC Contractor's Guides had been considered by the draftsmen. Conversely, in balance, the new version increased the risk to contractors even further than the 1999 precursor. Since the MDB Harmonised Version originally should have become the official Second Edition of the FIDIC "New Red Book", EIC drafted within a very short period of time in January 2005 an *"EIC Position Paper on the 2<sup>nd</sup> Edition of the FIDIC "New Red Book"* which led FIDIC in April to the decision to abstain from publishing a 2<sup>nd</sup> Edition of the "New Red Book".

FIDIC continued, however, collaborating with the World Bank on producing a harmonised version of the "New Red Book". The initial MDB Harmonised Edition was then published in the year 2005 as part of the World Bank's and the Asian Development Bank's new Standard Bidding Documents for Works. Subsequently, EIC submitted its critical comments under the umbrella of the global construction confederation, CICA, directly to the World Bank's Procurement Department and, in December 2005, many of the comments of both EIC and CICA were accepted by the Bank's management staff. A revised "MDB Harmonised Edition of the FIDIC New Red Book" was published in March 2006 which, as a matter of fact, takes into account several comments from the "EIC Contractor's Guides", but which still falls short of an acceptable industry standard when it comes to the independence of the Engineer or the use of the Security – a criticism which is notably shared also by FIDIC itself! EIC awaits the final negotiations on this important document between the World Bank and FIDIC to be held in May 2007 and will then publish its respective Contractor's Guide in the course of the year.

#### IV. Market Access Barriers in international construction

**EIC assists the European Commission in identifying crucial market access barriers for the European construction industry in key international markets. A particular focus has been placed on the discriminatory qualification system in the Chinese construction market which de facto closes the door to foreign competition.**

EIC and FIEC are both members of the European Services Forum (ESF), a network of leading European service providers and European associations in the trade services sector, which has been set up in 1998 to support the European Commission in the negotiations on the General Agreement on Trade in Services (GATS). Whilst EIC concentrates on the "export interests" of the European construction industry, FIEC, for its part, looks after the aspects linked to the "import" of construction services into Europe from other regions and countries.

Since the failure of the 5<sup>th</sup> Ministerial Conference in Cancún on 14 September 2003, EIC has shifted its focus of attention on the commitments of the PR China subsequent to its WTO accession in 2001. China had then agreed to open its domestic market to trade and services, which gave cause for high expectations, also in the construction sector. However, with the issuance of new regulations by China's Ministries of Construction and of Commerce in September 2002, international contractors were faced with new obstacles, preventing their access to the Chinese construction market. Whilst the granting of the possibility for foreign construction companies to establish wholly foreign-owned enterprises (WFOE) in China posed a step in the right direction, a number of provisions of the new qualification system imposed constraints that are excessive and not in line with China's GATS obligations (e.g. residency requirements, limitations on the number of foreign engineers, capital requirements). The new Chinese "grading" system, introduced for both WFOEs and Sino-foreign Joint Ventures, is *de facto* closing the market to most foreign contractors, since it excludes experience, assets and qualification gathered outside the Chinese market. Most importantly, the new regulations eliminate the "foreign contractor" status that had been in place for many years, and under which licenses to foreign companies were awarded on a project basis. As a consequence, the share of foreign participation in the Chinese construction market, which amounted to 6% before WTO accession, has fallen to below 1% today. A recent study commissioned by the European

Commission estimates that, assuming that pre-WTO conditions were still in place, the value of European construction companies' market share would be 5.2 billion US\$ higher than it is under current conditions!

Despite the permanent criticism of EIC and other trade representations in China as well as the many policy interventions of European trade missions to China, the legal situation of foreign contractors in China has not significantly improved over the past five years. In the "**EIC Position Paper on Market Access Barriers in the Construction Sector in China**", prepared for a high-level EU Trade Conference on China on 07 July 2006 in Brussels, EIC has asked the European Commission to negotiate with the Chinese Government that the actual restrictions for foreign contractors should be reduced through the following measures:

- A resumption of the former Decree No. 32 or, alternatively, an extension of types of work allowed for international contractors;
- The implementation of licenses for project management, construction management and other construction-related services;
- More flexibility in the application of the capital and asset requirements and the approval of internationally well-established banking instruments, such as bank guarantees, insurance bonds, Letters of Credit, etc.;
- The mandatory acknowledgement of international references and the grading of Sino-foreign consortia and Joint Ventures according to the upper qualification grades of the two entities;
- In case of an acquisition of a local construction company by or a merger with a foreign company, the Chinese authorities may not be entitled to re-assess the skill qualification of that local company, as this would retroactively threaten the value of the transaction.

EIC and FIEC jointly presented these and other requests at a Round Table on Construction Services in connection with the above-mentioned EU Trade Conference. Moreover, both federations called on the European Commission to eventually suspend its amicable negotiations with the Chinese Government on better market access for European international contractors in favour of starting formal proceedings under the WTO umbrella.

## **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 aggravate the competitiveness of European international contractors vis-à-vis its competitors from non-OECD countries.**

Over the past years, EIC has observed that the OECD Export Credit Group has introduced and tightened framework regulation on environmental, social and ethical aspects of export finance and export credits which puts a serious disadvantage on the OECD industry vis-à-vis its Non-OECD competitors. In 2001 and 2003, the OECD Committee adopted and revised the so-called "*OECD Common Approaches on Environment*" which stipulate that export finance or insurance may only be granted if the applicant can prove that the project in question observes relevant international standards. At the same time, the export credit agencies are asked to disclose to the public confidential information for environmentally sensitive projects. A renewed tightening of the rules is anticipated for the year 2007 when, for the first time, the "Common Approaches" shall make a reference to the "*International Finance Corporation's (IFC) Performance Standards*" and thus to the core labour standards of the International Labour Organisation (ILO).

In May 2006, the export credit agencies (ECAs) of the OECD agreed, by adopting a new "*OECD Action Statement on Bribery*", on stricter measures aimed at export contracts that are tainted by bribery. The new agreement replaces and in many areas strengthens the existing OECD document adopted in the year 2000. It provides for much greater disclosure by exporters and applicants, who are required to inform the ECA if they are the subject of charges or past convictions in a national court (or an equivalent administrative measure) in a five-year period preceding the application for bribing a foreign public official. They are also required to disclose information on agents' identities, as well as the size and purpose of agents' fees and commissions "upon demand". The agreement also significantly increases the obligations of ECAs, which must now routinely check whether an exporter or applicant appears on any of the publicly available debarment lists of the international financial institutions (IFIs), such as the World Bank. In the event that it is listed, or has disclosed violations of national anti-bribery laws, then the ECA must undertake "enhanced due diligence"

before proceeding with its application. If before credit is approved there is "credible evidence" of bribery, under the new measures, ECAs are required to suspend approval of the application while carrying out further investigations. Credible evidence is defined as "evidence of a quality which, after critical analysis, a court would find to be reasonable and sufficient grounds upon which to base a decision on the issue if no contrary evidence were submitted".

Whilst being itself in favour of high a standard of competition in the international construction business, EIC is nevertheless concerned about this race to ever increasing international standards insofar as it creates an unlevel playing-field in certain market segments. The administrative impact flowing from international "soft law" such as the latest *"IFC Performance Standards and Disclosure Policy"*, the *"OECD Common Approaches on the Environment"* and *"OECD Action Statement on Bribery"* – as justified as these agreements may be – only reinforce the distortion of competition between competitors from OECD and non-OECD signatories without committing the client or the host government. As a **Member of the OECD's Business and Industry Advisory Committee (BIAC)**, EIC was able to ensure during the consultation on the *"OECD Action Statement on Bribery"* that corrective action, such as denial of payment, indemnification, or refund of sums, shall only be possible if bribery has in fact been proven (and not on the basis of mere assumptions) and that the attribution of activities of the exporter's "subsidiaries" or "affiliated entities" are not relevant in the exporter's consultation with his ECA.

For the future, EIC sees now an obligation on the OECD and its Member States to focus any future standard-setting policy on applying the same standards to non-OECD exporters. By doing so, EIC forms an important counterweight to other non-business stakeholders within the regular OECD Consultations on export credit insurance.

## **VI. Dialogue with the World Bank and the OECD on Procurement Policy**

**Apart from the technical review of the World Bank's Standard Bidding Documents, EIC has entered into a political discussion with both the World Bank and the OECD Development Assistance Committee on the benefits and risks of an increased use of Country Systems in Procurement. EIC is very much concerned 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 a watering down of international standards.**

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". This principal policy decision has led within the Europe Union to the so-called *"European Consensus on Development"*, jointly agreed in December 2005 by the European Commission, the Council and the Parliament, according to which the European Commission intends "to progressively increase the budget support aid modality, as a means of strengthening ownership".

On 17 May 2005, EIC President Borromeo met in Berlin with the World Bank's Director of Procurement Operations Policy, Mr. Armando R. Araujo, for a discussion on the Bank's pending proposal entitled *"Increasing the Use of Country Systems in Procurement"*. The World Bank then clarified its belief that if certain key clients can be convinced to use domestic procurement rules equivalent to those prescribed by the World Bank, this might be a good incentive for other countries of the region to follow-up. Since the beginning of this initiative, EIC is very much concerned 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 a limitation of international competition. EIC, therefore, submitted in July 2005 its respective **Position Paper on "Country Procurement Systems"** not only to the World Bank senior management, but also to all European Executive Directors in the Bank in order to sensitise them for its perspective.

In order to create the necessary preconditions in the partner countries with respect to procurement capacity, the World Bank and the OECD Development Assistance Committee (OECD-DAC) subsequently set up a "Joint Venture for Procurement" (JV), which has the task to produce a methodology on benchmarking, monitoring and evaluating development capacity in this area. At present, 22 pilot countries – 6 in Francophone Africa, 7 in Anglophone Africa, 1 in Latin America and 8 in Asia – have volunteered and have been selected as JV pilot countries. Whilst in the past, apparently, the only private sector contact point for the JV was FIDIC, there now seems to be a willingness of the World Bank and the OECD-DAC to involve the OECD industry in the further monitoring process. Following a formal **Consultation between the OECD's Business and Industry Advisory Committee (BIAC) with leading World Bank and OECD representatives** on 03 April 2007 in Paris, World Bank and OECD-DAC have agreed to share future research analysis concerning the Country Procurement System of the pilot countries with BIAC and thus with EIC.

## VII. EIC General Assemblies

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In the General Assembly held on 28 April 2006 in Zurich, Switzerland, EIC organised a **Workshop on "Risk Mitigation in the International Construction Market"**. With a record attendance of more than 100 participants, the meeting witnessed an informative exchange of opinions between representatives of the private insurance industry, European international contractors and the FIDIC President. The Presidents of both EIC and FIDIC called jointly on the international donor institutions, such as the World Bank, EuropeAid and the EBRD, to implement a more sustainable framework for the procurement of infrastructure works and to proceed to a truly quality-orientated selection process for both consultants and contractors. FIDIC President Padilla considered the prevalent lowest evaluated cost approach as inappropriate, since it inevitably leads to selecting the "*lowest cost designer, lowest cost supervision and lowest cost contractor, using lowest cost materials and lowest cost workmanship*". EIC President Borromeo added that if the donor institutions really wished to achieve the sustainable development of infrastructure networks in developing countries, then they first have to develop a more sustainable procurement process.

The 2006 autumn General Assembly took place on 29 September 2006 in Valencia, Spain, and examined market opportunities in the **Workshop on "The Future of Public-Private Partnerships"**. Again, almost 100 participants discussed with the experts from the private sector as well as from the EBRD and World Bank's Multilateral Investment Guarantee Agency (MIGA) the recent trends in structuring and tendering PPP projects as well as some failure and success stories of PPP projects. EIC also launched in the framework of this Conference its new "EIC Memorandum on Frequently Asked Questions on PPP".

The 2007 General Assemblies are scheduled to take place on 20 April 2007 in London, United Kingdom, and on 12 October 2007 in Cascais, Portugal. In London, the Workshop will deal with "**The British Perspective on the Market Opportunities for European Contractors**", in Cascais, the Workshop will centre on the "**Opportunities for European Contractors in the field of Renewable Energies**".

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



President:

Barry Brown, CAN



Director General:

Jean-Pierre Migeon



During 2006, CICA continued its activities according to the criteria set during 2005.

Developments with CICA's main interlocutors have been as follows:

### 1. World Bank

- a. Regarding the amendments to the standard bidding documents, CICA has pursued its efforts and another meeting is scheduled in May 2007. Nevertheless, the pace of progress expected is relatively slow and some kind of breakthrough needs to be achieved in cooperation with other stakeholders prior to persuading the WB and the Multilateral Development Banks to change their view on the relationship between employers and contractors.
- b. Efforts made to participate in the determination of a new policy regarding corruption have clearly failed. The World Bank insists on sticking to a coercive-punitive policy aimed mainly at players in the private sector instead of trying an approach of "How to help the Contractor" promoted by CICA.
- c. During the IFI-CICA meeting held in Dubai CICA presented a paper prepared at the WB's request on the Quality Assurance in the Construction Industry. In this paper, CICA advocated a holistic approach embracing all the stakeholders whether acting directly as parties to the construction contract or simply as parties involved at certain stages of the execution of a construction contract. CICA defined the "Turnkey Site" as a quality objective. For CICA this concept, implies the preparation of the contract and bidding documents such that as soon the contract is awarded, the contractor can immediately start the works without having to look for data, authorizations or materials that could have been best dealt with by the Owner and his Engineer during the project preparation phase. The WB found some interesting ideas in this report. Practical implementation measures should be discussed later.

### 2. FIDIC

- a. Subsequent to the contacts established in 2005, FIDIC and CICA met three times during the year in order to define a common approach to the "ethics" issue. The basic concern is that the voice of the private sector is not heard in the public debates on corruption where the voices of scholars and public servants too often prevail leading to ineffectual and even sometimes counter productive measures lacking any credibility.
- b. The objective is the issuance in 2007 of a joint FIDIC-CICA statement on the private sector approach.

### 3. TI-Transparency International

- a. CICA was invited by TI to participate in a forum on Transparency in the infrastructure industry;
- b. CICA instead proposed the issuance of a CICA-TI joint statement on these issues.
- c. The basis for such an agreement was discussed and almost achieved but at the last moment TI stepped out preferring the organization of a forum.

### 4. Social issues

- a. CICA continued its dialogue with the ILO within the framework of the Construction Action Plan focussing on 5 non-European countries.
- b. BWI the union representing the workers of the global building industry on November 28 signed a joint statement with CICA calling for more consistency in the contractual approach to construction works: Owners and Engineers must participate in the preparation and in the funding of the measures that guarantee occupational health and safety as well as the welfare of construction labour in order to avoid contracts being systematically awarded to the lowest bidder without any regard for the social conditions of the workers. This statement is in line with the position presented to the WB in May 2005 and aims at mitigating the effects of what is understood by the term "social dumping".



## 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
FETBB	Fédération Européenne des Travailleurs du Bâtiment et du Bois
FIEC	Fédération de l'Industrie Européenne de la Construction
UEPC	Union Européenne des Promoteurs-Constructeurs

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

## Policy Paper

(29/1/1998)

### The construction sector

- construction = building, civil engineering and all related activities
- construction = biggest 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 who 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 will 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.

Key players in the sector

### **Relationship with other sectoral coordination bodies**

- ECF participants will remain in close contact and collaborate with sector specific coordination bodies, such as:
  - the Construction Contact Point (European Commission DG ENT)
  - and the CRANE Intergroup (European Parliament), "The forum in the European Parliament for construction, the environment and land management".
  - 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 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)
- EU enlargement

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

[www.fiec.eu](http://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.

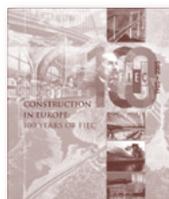
- **Annual Report**  
(1/year)



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



**The FIEC Principles for Sustainability**



**Construction in Europe: 100 years of FIEC**

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

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