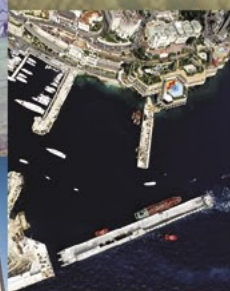


Annual Report 2006

33 federations

in 27 countries

F I E C



European
Construction Industry
Federation

FIEC

Created in 1905

Legal personality of French law

27 countries (21 EU, Switzerland, Norway, Bulgaria, Croatia, Romania 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



Recognised by the European Commission as "sectoral social partner" in the European Social Dialogue, [COM(98)322 – 20/5/1998]



The European founding member of CICA (Confederation of International Contractors' Associations)



Associate member of CEN the European Standardisation Committee



Member of ECCREDI the European Council for Construction Research, Development and Innovation



Associate member Euro-Info-Centre network of the European Commission, DG Enterprise



Close cooperation with EIC (European International Contractors)



Participant in the ECF (European Construction Forum)



Member of ESF (European Services Forum)

The Sector

Total construction in 2005 (EU 21):
1.065 billion €

10,2% of GDP, 53,1% of Gross Fixed Capital Formation

2,3 million enterprises (EU 21), of which 97% are SMEs with fewer than 20 and 93% with fewer than 10 operatives

13,4 million operatives:

- 7,3% of Europe's total employment
- biggest industrial employer in Europe (31,1% 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: Wilhelm Küchler

I am glad to present to you the new FIEC Annual Report in which, at the conclusion of my term of office as President of FIEC, the activities of FIEC are presented from the time of the General Assembly of 2005 in Brussels to the General Assembly of 2006 in Paris. In this connection, the activity of FIEC has, as always, focussed on the interests of the European construction industry, i.e. the small, medium-sized and large construction firms affiliated to our member federations.

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

I should like to emphasize here a few points in particular in my message.

Construction activity

The economic environment did not develop positively everywhere for the construction sector during the past year. Nevertheless, it can be recorded that all in all there have been signs of positive developments and, ultimately, also in Germany where for nearly 10 years the construction industry has been suffering the consequences of a recession on an unprecedented scale. Individually, these developments have been very different in the various countries and sectors involved, as our Annual Statistical Report No. 49 shows.

The proposal for a Services Directive

This project also kept us very busy last year, especially as there was a danger that the Directive on the posting of workers would have been virtually inapplicable as a result of the introduction of the proposed Services Directive. FIEC and its member federations worked on this proposal for a Directive in both the area of social policy and in the areas of the economy and law. It is important to emphasize here the close cooperation based on trust with our social partner EFBWW, with whom we contributed to a considerable extent to the adoption of the Directive on the posting of workers by the Council of Ministers in 1996.

To make something very clear:

For us it is not a question of market partition or of rejection of the internal market in the construction industry as is sometimes alleged. It is rather a question of ensuring that compliance with the applicable law can be monitored by the authorities of the host state in order to avoid a situation in which law-abiding contractors suffer competitive disadvantages (which may to some extent threaten their existence) and which opens the door wide to illegal practices. This is particularly important in a sector which is distinguished in practical terms from all other production sectors by the fact that it produces, by means of mobile production factors, immobile and stationary products. In construction activity, the workers move to the construction site, not the products to the customer.

As a result, particular challenges arise for the workers and companies involved.

To that extent we are pleased with the results of the first reading by the European Parliament and with the political agreement which the Austrian Council Presidency has achieved. We shall attentively follow further developments and will defend the legitimate interests of the construction industry.

Further information as well as and FIEC's statements of its positions will be found on the following pages of this Annual Report.

Reduced VAT rate: a success for common sense

Continuation of the reduced VAT rate is a big success for customers, employees, as well as companies in the construction industry and, not least, also for the countries which are conducting this experiment. Our thanks are due to the Austrian Council Presidency in the person of Minister for Finance Grasser and to the EU Commission in the person of Commissioner Kovacz both of whom, with great dedication and much skill, succeeded in bringing about the required unanimity of the 25 EU members.

Special mention in this respect should also be made of a discussion which took place in January with State Secretary for Economic Affairs Finz, for which a FIEC delegation, with major participation by FFB President Baffy, came to Vienna.

This positive result for the next few years is, however, also due to the success of the efficient network which was formed by the European Construction Industry Federation (FIEC), its 33 member federations in 27 countries and thousands of building contractors.

Reliable analyses and convincing arguments were the basis of a competent, coordinated representation of interests at European and national levels. During the critical phase after the ECOFIN meeting, when it was particularly important to convince the three remaining governments, this network also showed its full capability. Especially to be emphasized in this connection are the determined efforts made by our Austrian members who were already aware that in no event would they benefit from this measure.

Studies carried out by FIEC and its member federations clearly show, on the one hand, the positive effects which the reduced VAT rate has had especially in the construction area and, on the other hand, the disastrous consequences which its abolition would have had for jobs and the fight against undeclared work.

However, despite all our joy we should not forget that this success represents the continuation of an experiment of limited duration. The Commission and Member States will carefully examine the actual results in the form of studies. At the same time, we as construction federations are called on to ensure that the inaccuracies which appeared in

the national reports and their European summary are not repeated. As during the first phase, I therefore appeal to all building contractors, to continue to pass on fully to their customers the advantages of the reduced VAT rate. Only in this manner will it be possible to confirm the positive effects produced in the construction sector in particular such that the option of a reduced VAT rate actually becomes a permanent solution.

Financing of transport infrastructure – PPPs

For many years, these two topics have been a priority in FIEC's work and I am glad that we can once again report on a few positive developments, even if they have not been as positive as we would wish. All in all, these projects which are so essential for the economic and social development of Europe do not enjoy at national level the priority which should really be attached to them.

Other topics

in the areas of the economy, law, social affairs, technology and international affairs will be found in the following pages. Look at them! It is worth the effort!

Move on Avenue Louise: from 66 to 225

After 17 years of activity in an office on Avenue Louise 66 originally rented as an interim

solution, in September 2006 FIEC will move into newer, bigger and more attractive offices on Avenue Louise 225. I am very glad that I succeeded in bringing about the required decisions by the FIEC bodies. Special thanks are also due to the understanding landlord, "Les Assurances Fédérales".

My thanks

go to all who, last year and during my entire four-year term of office, made a contribution to our work actively and in an advisory capacity: to my colleagues on the Steering Committee, the Chairmen and members of the Commissions and Subcommissions, the employees of our member federations and, not least, our own staff under the management of our Director General, Ulrich Paetzold. Naturally we also thank all interlocutors in the European institutions and in the federations with whom we have cooperated on a basis of trust in regard to many topics.

In conclusion, I recommend to readers of this Report that they pay attention to the activities presented. Any ensuing suggestions will be welcomed.



Wilhelm Küchler,
President of FIEC



Wilhelm Küchler, D

President



Johannes Lahofer, A

Treasurer



Daniel Tardy, F

Vice-President
(ECO)



Peter Andrews, UK

Vice-President
(SOC)



Zdenek Klos, CZ

Vice-President
(TEC)



Elco Brinkman, NL

Vice-President
(Communication
and Image)



Helmut Hubert, D

Vice-President
(SME)



Vassilios
Karampampas, GR

Vice-President
(ECF)



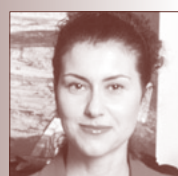
Juan Lazcano, E

Vice-President
(MEDA)



Per Nielsen, S

Vice-President



Luisa Todini, I

Vice-President
(CEEC)



Gian Alfonso Borromeo, I

Vice-President
(EIC)



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



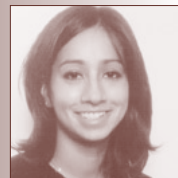
Joëlle Caucheteur

Secretariat



Maxime Wotquenne

Documentalist/Web



Yasmina Koeune

Secretariat



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).

A

- BIB – Bundesinnung Bau
- FVBI – Fachverband der Bauindustrie

B

- Confédération Construction
- Confederatie Bouw

BG

- BBCC – Bulgarian Building and Construction Chamber

CH

- SBV – Schweizerischer Baumeisterverband
- SSE – Société Suisse des Entrepreneurs

CZ

- SPS– Svaz Podnikatelů ve Stavebnictví v České Republice

CY

- OSEOK – Federation of the Building Contractors Associations of Cyprus

D

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

DK

- Dansk Byggeri

E

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

EST

- EEEL – Estonian Association of Construction Entrepreneurs

F

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

FIN

- RT – Confederation of Finnish Construction Industries RT

GB

- The CC – The Construction Confederation

GR

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

H

- EVOSZ – National Association of Building Entrepreneurs of Hungary

HR

- UPGH – Udruga Poslodavaca Graditeljstva Hrvatske

I

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

IRL

- CIF – The Construction Industry Federation

L

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

N

- EBA – Entreprenørforeningen – Bygg og Anlegg

NL

- Bouwend Nederland

P

- AECOPS – Associação de Empresas de Construção e Obras Publicas
- AICCOPN – Associação dos Industriais da Construção Civil e Obras Publicas

RO

- ARACO – Asociatia Romania a Antreprenorilor de Constructii

S

- BI – Sveriges Byggindustrier

SLO

- 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



FIEC has its origins in Liège in 1905 or, as Rolf Bollinger, the author of the impressive, informative and entertaining history of FIEC, puts it:

"Thus there took place from 14 to 21 September 1905 in Liège, at the invitation of the Belgian federation and in the context of the world exhibition, the first International Congress of the Building and Civil Engineering Industry (Congrès International de l'Industrie du Bâtiment et des Travaux Publics). The invitation to participate met with a wide response. In addition to representatives of 27 organizations from the host country, delegations from France, the Netherlands, Spain, Germany, Bulgaria, Great Britain, Austria, Denmark, Hungary and Sweden as well as Mexico from outside Europe also participated."

On this occasion several hundred building contractors from across Europe accepted the invitation of our Belgian member federation, the "Construction Confederation" (Confédération Construction/Confederatie Bouw), to hold the anniversary Congress of 2005 again in Belgium, with events in Brussels, Liège and Ghent.

The President, contractors and employees of the Confederation and their member organizations are owed praise and thanks for a programme rich in highlights, the exceptional quality of which formed the basis for the generally recognized success of this anniversary Congress. The working and framework programme were rich in events and happenings which the participants will remember with pleasure for a long time.

Conference : "Towards Sustainability, the next 100 years"

FIEC has clearly provided proof of its own sustainability for over 100 years. The choice of the theme for the conference was therefore a fitting one: "Towards sustainability – the next 100 years". This initiative is all the more important because the construction industry is itself the focus of sustainable development and of its three major components (economic, social and environmental).

Initially, Ms Catherine Day, Director General of the Environment DG of the EU Commission first addressed the theme "Sustainable Development", which was then discussed by the following experts, moderated by FIEC Vice-President Elco Brinkman: Michel Ayrat, Director in the Enterprise DG, Jérôme Vignon, Director in the Employment DG and Alan Smith,

Public Relations Director of the British construction company HBG UK.

The second part, "CSR", was introduced by Ms Martine Reynaers, President of "Business & Society", the Belgian member of "CSR" Europe" and CEO of the Reynaers aluminium firm. Once again moderated by Elco Brinkman, a panel discussion took place among building contractors: Mikael Wahlgren (company lawyer, NCC Construction, Sweden), Helmut Echterhoff (Managing Partner, Echterhoff Bau-Gruppe, Germany) and Bernard Theret (Chairman and Managing Director, Entreprise de Travaux Publics de l'Ouest, ETPO, France).



Opening Ceremony (Théâtre Royal de la Monnaie)



Dirk Cordeel (President, Confédération Construction / Confederatie Bouw)



Didier Reynders (Belgian Deputy Prime Minister and Minister of Finance) and Wilhelm Küchler



Construction in Europe: 100 years of FIEC



1. 1st session: Sustainable Development
2. Keynote Speaker:
Catherine Day, Director General,
DG Environment – European
Commission
3. Moderator: Elco Brinkman,
FIEC Vice-President
4. Michel Ayral, Director,
DG Enterprise, European Commission
5. Jérôme Vignon, Director, DG
Employment, European Commission
6. Alan Smith, Public Relations Director,
HBG UK

As a conclusion to the conference, FIEC unanimously adopted a declaration entitled "The FIEC Principles for Sustainability", which was then signed by all representatives of the member federations.

"These Principles", President Küchler declared, "are intended on the one hand to raise the profile of our industry, whilst also providing guidance to contractors how to make their firms and their construction projects – just like FIEC itself – more sustainable over time".

"Corporate Social Responsibility (CSR)", he continued, "is an issue that concerns all our enterprises, regardless of their size or the nature of their activities. At the same time, Sustainability, as it affects our industry, has, over the last few years, become fundamental in almost everything we do. We are moving into a world in which unsustainable activities are fast becoming unacceptable. Increasingly, in many respects they are also often becoming illegal, particularly in the environmental field. That is why it is absolutely essential that CSR remains voluntary and never becomes mandatory. This is a lesson that must be clearly understood. If our contractors decline, for whatever reason, to adopt and put CSR into practice, there will be a growing risk that CSR may become mandatory. That would be a most unfortunate development".

Concluding the conference, President Küchler personally encouraged all the contractors present to take the FIEC PRINCIPLES, translate them into their own languages and publish them, but most important of all to ensure that contractors really put CSR into practice.

"Sustainability", he added, "is not an issue that will come and go like the latest fashion. It is here to stay, and those that choose to ignore it will be the losers".

All presentations made at the conference as well as the FIEC principles are available in English, French and German and can be downloaded from the FIEC Web site: www.fiec.eu

Visiting Liège, the Belgian city where FIEC was founded in 1905, President Küchler paid homage to the vision of FIEC's founding fathers, recalling as is often the case in history, that it was thanks to the initiative of just one man, the then Secretary General and later President of the Belgian Construction and Public Works Federation, Frans Van Ophem, and his grand idea of bringing together the federations of building contractors to "become acquainted with, and be able to compare the working methods of foreign contractors", that our European Federation had come into existence.



7. 2nd session:
Corporate Social Responsibility (CSR)
8. Keynote Speaker: Martine Reynaers, "Business and Society" President, Belgian Member of "CSR Europe", CEO of Reynaers Aluminium
9. Mikael Wahlgren, Legal Council, NCC Construction, Sweden
10. Helmut Echterhoff, Managing Director, Echterhoff Construction Group, Germany
11. Bernard Theret, President/Director General, Entreprise de Travaux Publics de l'Ouest, ETPO, Frankreich

Gala Dinner (Concert Noble – Brussels)

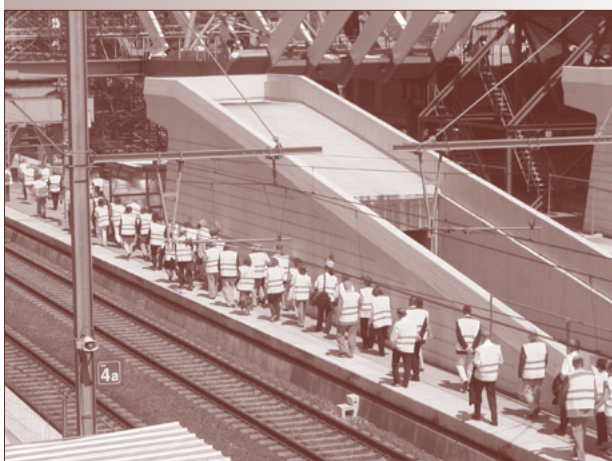


H A P P Y
B I R T H D A Y
F I E C



FIEC Presidents:
Peter Galliford (1990-1992), Ioannis Papaioannou (1996-1998),
Frans Devilder (1979-1982), Jean-Louis Giral (1988-1990),
Wilhelm Küchler (2002-2006), Franco Nobili (2000-2002),
Thomas Rogge (1984-1985 and 1994-1996), Philippe Levaux (1998-2000),
Dirk Cordeel (President, Confédération Construction / Confederatie Bouw),
Niels Frandsen (1992-1994)

Technical Visit: EURO TGV - Liège



City Visit: Ghent



Proposal for a Directive on Services in the internal market

During the past year this topic also greatly occupied not only the European institutions but also FIEC and our social partner EFBWW. In this connection, FIEC focused on the special sectoral aspects such as the posting of workers and liability and guarantees and did not declare its position on general political topics.

It should be recalled that the special commitment of and close cooperation between the two social partners in the European construction industry on the topic of the posting of workers are also based on the fact that to a considerable extent they jointly contributed to the adoption of the Directive on the posting of workers by the Council of Ministers in 1996. In this connection, the basic motive is not, for example, protectionism or market partition – an allegation is sometimes made against the construction industry – but the firm conviction that the applicable law is to be complied with and that for this purpose controls must be possible, above all in the host state in which the construction work is actually executed. To the extent that these control arrangements may be ineffective, illegal practices are correspondingly facilitated.

As far as the topics of liability and guarantees are concerned, it is essential that different legal systems should not be applicable to the same works. In view of the immobile character of construction works, it must be a question of the law of the country in which this work is located. Anything else would not be correct and would lead to legal uncertainties and distortions of competition.

The various opinions of FIEC, some of which were given jointly with our social partner EFBWW, are reproduced below.

All in all, we are not dissatisfied with the results of the first reading by the European Parliament or with the political agreement on the common position which the Austrian Council Presidency has achieved. It has now been made clear that the Directive on the posting of workers will not be adversely affected by the Services Directive. It is regrettable that the law applicable to construction works has not been expressly linked to the State in which the work is located. We shall attentively follow further developments and shall defend the legitimate interests of the construction industry.

The activities as concerns the Directive on the posting of workers which are recorded in the report of Subcommission SOC-3 of the Social Commission should also be mentioned in this connection:

- the Commission Communication of 4/4/2006 (COM (2006) 159) entitled "Guidance on the posting of workers in the framework of the provision of services", in the Introduction of which it is stated: "This Communication tells the Member States how to observe the Community acquis as interpreted by the European Court of Justice with reference to Article 49 of the EC Treaty and how to achieve the results required by the Directive in a more effective manner";
- the initial report of the European Parliament by the Rapporteur MEP Schroedter (D-Greens);
- the database on the rules contained in the statutory and collective-agreement to be complied with in the EU countries within the framework of the Directive on the posting of workers.



Meeting with EU-Commissioner McCreevy on 24/5/2005:
Wilhelm Küchler,
Commissioner Charlie McCreevy,
Arne Johansen (President EFBWW)

Photographic credits: Yvan Glavie

THIRD JOINT STATEMENT of the European Construction Industry's Social Partners on the European Commission's Proposal for a Directive on SERVICES IN THE INTERNAL MARKET COM(2004) 002

19/5/2005

EFBWW and FIEC,

being recognised by the European Commission as the social partners representing the workers and the employers in the European Sectoral Social Dialogue in the Construction Industry, and

being conscious of the health and safety risks on construction sites, and confirming their explicit intention to contribute to the reduction in the number of accidents in the sector, and

referring to their actions, together with the European Occupational Safety and Health Agency, EOSHA, in particular their joint declaration signed in Bilbao (Spain) on 19th November 2004, which provides the construction industry with a health and safety roadmap for 2005 and 2006 and which confirms that: "the only acceptable accident figure is "zero". [...] real progress is necessary, based on good regulations, [...] and that] prevention is better than reaction", and

taking account of the health and safety concerns expressed by the European Senior Labour Inspectors Committee (SLIC) in their remarks on the services directive dated 8th March 2005,

agree, as a complement to their Joint Statements of 2nd April 2004 and 9th November 2004 and their individual position papers, on the following principles:

- The fact that the proposed directive, in **Article 24.1.2.a-d)** and **Article 5**, would forbid checks and controls necessary for the effective application and operation of the posting directive (96/71/EC of 16/12/1996) would also present major risks for ensuring the actual respect of health and safety rules on construction sites. With respect to the sector's accident figures and the numerous actions in favour of improving the situation, such a consequence would not be tolerable.
- According to health and safety experts, also other aspects of the proposed directive would have negative consequences for health and safety on construction sites.

Consequently, EFBWW and FIEC request that the draft directive be modified, in order to properly address this important issue and thus avoid compromising the health and safety of workers on construction sites.

Press release

Services Directive: time for optimism for the European Construction Industry

4/10/2005

"On the basis of the on-going discussions in the Internal Market Committee responsible for the issue in the European Parliament, we can be optimistic about future developments" says Wilhelm K  chler, President of FIEC, the European Construction Industry Federation. "A series of proposals for amendments are a concrete sign that numerous MEPs have understood the specific problems linked to the construction sector and that they are trying to come forward with practical solutions. However, only the results of the voting expected during the course of this week will reveal whether agreement is eventually reached on legal texts regulating cross-border activities in a such a way that effectively allows on the one hand, for the provision of controls ensuring the respect

of national legislation both in the country of origin as well as in the host country, whilst on the other hand counterbalancing protectionist tendencies and simultaneously reducing the administrative burden.

Our expectations are based in particular on the following proposals:

- deletion of articles 24/25 (posting of workers in another country),
- confirmation of the competence of the host country as concerns the application of its law relating to the maintenance of public order, security in the workplace as well as environmental protection,
- definition of the task relating to administrative cooperation between states "

FIEC position paper on the European Parliament's document PE A6-0409/2005 (First Reading) concerning the Commission's proposed directive on "Services in the Internal Market" COM (2004) 002, dated 13.1.2004
7/2/2006

A) Introductory remarks

FIEC welcomes the fact that some of the amendments proposed by the European Parliament improve the initial proposal for a directive, in particular as regards:

- the acknowledgement of the "Posting" directive, 96/71/CE, takes priority over the proposed directive on "Services in the Internal Market", which implies that the "Posting" directive remains applicable to all measures relating to its practical implementation at national level;
- the clarification of the definition of "establishment";
- the acknowledgement of the right of Host Member States to check and control service providers and services on their own territory.

However, FIEC wishes to recall some of the concerns expressed in its previous position papers on the proposal for a Directive on "Services in the Internal Market" and namely:

1. 30/3/2004: FIEC initial position paper on the "Social and Employment issues" of the draft "Services" directive, which requests that the proposal should in no way impede the correct implementation of the "posting" directive;

This position was complemented by 3 joint statements of the European Construction Industry's Social Partners, FIEC and EFBWW:

- 2/4/2004: First joint statement of the European Construction Industry's Social Partners, which puts into question the content of Art. 16, 24, 25 of the initial proposal for a "Services" directive due to the negative impact these articles would have on the practical implementation of the "Posting" directive;
- 9/11/2004: Second joint statement of the European Construction Industry's Social Partners, which fully opposes the interdictions of check and control measures laid down in Art. 24 of the initial proposal for a directive;
- 19/5/2005: Third joint statement of the European Construction Industry's Social Partners, which points out the dangerous consequences of the proposed interdiction of check and control measures on health and safety at the workplace.

2. 7/3/2005: FIEC second position paper on the proposed "Services" directive, which highlights the risks in terms of distortion of competition and legal uncertainty which would be created by the application of the "country of origin" principle in the construction industry.

B) Specific remarks in view of the EP vote in the plenary session

In view of the vote of the EP in the plenary session, which is scheduled to take place on 16.2.2006, FIEC wishes to underline the following aspects:

1. The effects of the full implementation of the "Posting" directive should be preserved, in particular as regards the possibility for a Member State to provide for an advance declaration. In this respect, should Art.24 be deleted, FIEC proposes that the following amendment be added to Art.16.3b:

"However, this prohibition does not affect the declarations relating to activities listed in the annex of directive 96/71/EC, which can be required by the Member State where the service is provided, in order to ensure the supervision of the matters mentioned in Art.17.5, provided that any such declaration can be submitted by electronic means and that it is proportionate."

The requirement of an advance declaration is one of the essential features of the position of the European construction sector, presented in the FIEC position paper from April 30th 2004 and is fully in line with the recent decision of the European Court of Justice, case C-244/04.

An advance declaration allows the Member State concerned, as soon as the works begin, to physically carry out checks whether the service provision is in compliance with the 96/71 Directive, particularly in the field of health and safety. Making the declaration in advance is the only way of ensuring that an effective check on the construction site is possible.

In conclusion, it remains imperative for our sector:

- that the host State can continue to require an advance declaration relating to posted workers;

ANNEX

- *that this declaration can be made prior to the provision of services, also by electronic means.*

To this regard, FIEC is in favour of developing a standard declaration at European level.

- 2. The application of the country of origin principle on rules relating to the design and erection of construction works is quite inappropriate to the specific nature of such activities. This is particularly relevant as regards liabilities, guarantees and insurances applicable to works contracts and contractors, which remain too heterogeneous from one country to another.**

The application of the country of origin principle, envisaged by the proposal for a "Services" directive, would have the effect, in the case of the same construction project, of multiplying the legal regimes governing the various tenders, according to the country of origin of the tenderers. In practice, different parts of the same construction projects could be subject to different guarantees, because they would have been executed by service providers established in different countries.

Such a situation would involve:

- *a distortion of competition;*
- *legal uncertainty for providers as well as for recipients of construction works and services, but also for the States responsible for the control of the activities of providers subject to different regulations;*
- *the difficulties, for companies coming from different countries, of forming temporary joint ventures.*

FIEC adopted on 7.3.2005, a position paper relating to the consequences of the application of the country of origin principle in the construction industry.

As a consequence, rules governing such services, particularly in the area of liabilities, guarantees and insurances, must comply with the regulations proper to the country or the area in which the works are carried out.

On 24th November 2005, the Vice-President of the EU Commission, Günter Verheugen, attended the FIEC Council meeting in order to discuss with the President and the managers of the FIEC member federations, as well as with the members of the Steering Committee, the new Commission proposals relating, on the one hand, to implementation of the Lisbon strategy on "better regulation" and, on the other, to the policy for promoting small and medium-sized enterprises, while taking account of their special importance for the construction industry.

In this Annual Report we limit ourselves to a few extracts from the introductory speech by Mr Verheugen. The full text is available on the FIEC Web site ("for members", in the three FIEC languages).

"First of all, I am fully aware of the importance of the construction industry for Europe's economic strength. It is the largest industrial employer within the European Union and contributes around 10% of gross domestic product. It is also a well known early indicator of economic development in Europe. If the construction industry is doing well, it can be expected that we shall all soon be doing well. And I therefore have particularly great interest in seeing to it that your branch of industry does well."

[...]

The Barroso Commission is a Commission which sees itself as the one which will leave its mark in the history of European Integration as the "growth and employment" Commission. It is our major aim to stabilize the economic basis in Europe and, so to speak, to make it weather-resistant to the challenges – I could also say the storms – of globalisation which confront us. In this connection we assume that the priority task is to improve European competitiveness.

[...]

"This Commission does not believe in State control. Neither does this Commission believe in interventionism or protectionism. This Commission also does not believe that it is the task of politics to intervene in corporate decisions or to influence corporate structures, and this Commission believes that the task of politics consists, in a dialogue with the business world, of ascertaining which political, legislative and social structural conditions are used in order to permit the business world to do what it should do: invest, grow, make good profits and as a result maintain and create jobs.

Against this background we have identified a number of challenges which confront the European economy or which already exist. I can name only two of them, and these are the two most important ones which you all know: The first challenge is globalisation. This also concerns the construction industry, not everywhere but increasingly. Globalisation is not something which has to be lamented but is what the Western industrial states have wanted. It is a result of the policy pursued by the Western industrial states." [...]

Globalisation means that new markets arise and that is our opportunity. New competitors also arise and that is the challenge facing us. What surprises many is the fact that the new competitors are appearing not only in traditional and not so technologically demanding areas but that we increasingly have to do with competitors who deliver top-quality and who master high-technology.

"The second challenge which I would like to name is the demographic one which is notoriously underestimated in most member countries and also the country which I know best, Germany. The demographic trend is leading to a situation which in a relatively short time will put our social systems in Europe under so much pressure that, if nothing happens, they will be incapable of being financed.

[...]

It is clear today that this "Lisbon Goal", as it is called, to be the best by 2010 will not be achieved. In 2010, we shall not be the strongest economic region in the world. What we can, however, achieve by 2010 is a reversal of the trend and this reversal must be lasting. That is what is important here, and that is what we wish to achieve. [...]



Commissioner Günter Verheugen,
Ulrich Paetzold, Wilhelm Küchler

We have focused our strategy on the three major policy fields involved, namely:

1. Completing and strengthening the internal market, and therefore strengthening the economic integration of Europe
2. Improving investments and location conditions in Europe
3. Improving the educational policy, research policy and scientific basis and therefore improving our innovation capability."

[...]

"The second part, the second major change, which we have undertaken, relates to the way this strategy is implemented."

The original Lisbon strategy suffered not only from the fact that it set no real priorities. It also suffered from the fact that there was no clear division of labour at all between the European level and the Member States. For the first time we have managed, on the basis of a common analysis of common principles and guidelines, to have a Community action plan accompanied by 25 national reform plans so that we are also likewise for the first time in a position to pursue a coordinated European economic policy which covers not only the Community level but also all the member countries."

[...]

"In addition to this basic policy change, there are specific measures which come within my special responsibility as Commissioner for industry and enterprise. Some of them are of special importance for you and I shall also quickly name them.

There is firstly the project, "Better legislation and less red tape".

I started it as a kind of flagship project for the Commission at the very beginning of this year and therefore before Europe found itself in a crisis, not so much as an answer to the crisis of confidence between citizens on the one hand and EU institutions on the other, but as an answer to persistent, widespread and well-justified criticism by the business world that we have too many unnecessary regulations and too many restrictive regulations, that in many areas are over-regulated and that growth and employment are thereby hindered."

[...]

More meaningfully, modernization of European law is being carried out sector by sector. Most of these rules in fact relate to the internal market and to the three sectors which we are examining initially: the car industry, the construction industry (and therefore **you**) and the waste management industry. These are three areas in which over-regulation can be presumed due to the large number of regulations. The principles according to which we proceed in this connection are always the same. They include, for example, examining the question whether it is really necessary that a provision relating to a large enterprise should be the same as for a very small enterprise. Is it not possible to make life easier for small and medium-sized enterprises? This also includes the question of a comprehensive economic "impact assessment", and this now brings me to the next point.

A further important part of the project, "Better legislation and less red tape", is the rules governing future legislation which likewise already apply. I am therefore not now announcing something new, since it is already applicable. In the meantime the rule applies that the Commission will no longer put forward legislative proposals without a comprehensive economic analysis and a

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comprehensive "impact assessment" which relates not only just to macro-economic questions or social or environmental questions, but also to business management questions. In the case of each legislative proposal, we want to know what costs would thereby arise for the economic areas affected, what administration costs could be imposed and what consequences it would have for the production process and therefore in essence for competitiveness. I call this the competitiveness test. "

[...]

"The second point which I should like to make to you regarding implementation of our new strategy relates to our new European "industrial policy".

That is already in itself a psychologically very interesting process. When I took up my new office a year ago, the word "industrial policy" was almost scorned, being almost a rude word, and the prevailing opinion in Brussels here was: industry is something from the past which in Europe will no longer exist in the future, as we are already in the post-industrial age. I consider this to be the greatest nonsense of all times and I resolved to introduce a renaissance of industrial policy in Europe as without a strong and efficient industry we cannot maintain our position in the world economy at all. "

[...]

"The third point which I would like to mention here is a new policy for the promotion of small and medium-sized enterprises. That is really of major importance for your area because, like nearly all industrial areas in Europe, the construction industry is also naturally very strongly characterized by small and medium-sized enterprises and is not dominated by large firms. That is the typically European corporate landscape.

[...]

The reserve is therefore in new jobs which we must use in the area of small and medium-sized enterprises. Every analysis shows that a great potential exists there if we succeed in using to the full the innovation and growth potential of small and medium-sized enterprises. In this respect we are today even worse than the Americans among whom, for example, the productivity of small and medium-sized enterprises is clearly greater than in Europe. We also know the reasons and we know the causes for the difficulties of SMEs in Europe: lack of access to venture capital, over-regulation, excessively high standards in certain areas, a lack of innovative strength and a lack of marketing ability. All these problems are well-known and the questions and possible solutions were addressed in a communication on the Commission's industrial policy aimed at improving the structural conditions for small and medium-sized enterprises."

I believe, however, that this crisis has to do not only with this constitution but that it has deeper-seated reasons which, above all, are related to the fact that the citizens of Europe have greater doubts than previously whether European integration is really useful for them. I think that it is now very important to demonstrate that the European Union can do more than guaranteeing peace and political stability in Europe. All that is the decisive foundation, the reason why integration exists.



That has, however, been consumed, so to speak, and is regarded as a matter of course, and scarcely anybody any longer believes that there could be wars or violence against other peoples within the European Union. Above all, the younger generation therefore needs an additional justification for the European idea. I believe the right answer, particularly for young people, is that, through an efficient European integration policy, the future opportunities of our societies and of each individual society can be improved because the nation states in Europe are no longer in a position alone to hold their own, politically and economically, or to represent their interests on a world-wide basis."

[...]

"In conclusion I would like to say the following:

The Barroso Commission does not see itself as a kind of authority over Europe or as a schoolmaster or disciplinarian but sees itself as a partner. We see ourselves as a partner for the member countries, and we also see ourselves as a partner for the business world in Europe. Our task is not to make rules for you but to seek ways jointly with you as to how we can remain efficient and competitive together. We have therefore expanded our partnership concept to our cooperation with economic associations and that is one of the reasons why I would like to propose to you that a functioning partnership of this nature be created. This includes on our part a readiness to listen to you, to accept suggestions from you and also to discuss these suggestions seriously."

On 8 June 2006 members of the FIEC Steering Committee and of our Austrian member federations met the President of the European Council, the Austrian Chancellor Wolfgang Schüssel for an exchange of ideas concerning some current construction-related European topics. In the lively discussion which ensued mention was made especially – apart from overall construction activity and the Trans-European Networks – of the reduced VAT rate and the Services Directive as well as of the Directive on the posting of workers and of social policy subjects such as health and safety protection and the Directive on working time.

(Details of these themes will be found in the thematic chapters of this Annual Report).



Chancellor Wolfgang Schüssel,
Wilhelm Küchler



Chancellor Wolfgang Schüssel,
Johannes Lahofer



Chancellor Wolfgang Schüssel,
Daniel Tardy



Chancellor Wolfgang Schüssel,
Peter Andrews



Zdenek Klos,
Chancellor Wolfgang Schüssel



Chancellor Wolfgang Schüssel,
Johannes Lahofer, Helmut Hubert,
Jean-Jacques Massip, Juan Lazcano



Vassilios Karampampas,
Chancellor Wolfgang Schüssel





President:
Daniel Tardy, F

Rapporteur:
Domenico Campogrande, FIEC

Temporary Working Groups:

"Accounting Rules
and Financing"



Chairman:
Jean-Jacques Massip, F

"EMAT" (Economically Most
Advantageous Tender)



Chairman:
Michel Cambournac, F

"Late payments"



Chairman:
Chris Harnan, EFFC

"Services"



Chairman:
Jacques Lair, F

"Remedies"



Chairman:
Wolfgang Bayer, D

1. Construction activity: a recovery is expected in 2006

In its macroeconomic forecasts of Autumn 2005, the European Commission indicated that:

- Following the signs of recovery recorded in 2004 (+2.4% in respect of GDP of the EU25), the European economy experienced a slowdown in 2005 (+1.5% in respect of GDP of the EU25) mainly due to the increase in the price of petroleum;
- domestic demand and investment have nevertheless increased, which should entail growth of +2.1% in the GDP of the EU25 in 2006 and of +2.4% in 2007;
- in 2006, 5 countries of the Euro zone are expected to record deficits higher than the "3%" threshold dictated by the "Stability and Growth Pact", and this could subsequently curb public investment.

In this context, it is extremely important to find additional financing sources, notably through public-private partnerships (PPPs), to meet in particular the infrastructure needs of the new Member States.

The main developments relating to construction activity in the Union, which were detailed in Statistical Report No. 49, can be summarized as follows:

1. **Total construction activity:** after signs of recovery in 2004 (+1.7%), a slowdown was recorded in 2005 (in Report No. 48 we anticipated growth of +1.9% but we had to revise this figure downwards: +0.8%) with a slight acceleration during the second half of the year, which gives grounds for hoping for moderate growth of +1.9% in 2006.
2. **New housing:** after a very good year in 2004 (+7.3%), a slowdown was observed in 2005 (+3.2%) and this trend should continue also in 2006 (+2.6%).
3. **Renovation and maintenance:** this is a sector which is generally less sensitive to economic cycles (+1.6% in 2004, +0.2% in 2005; +1.4% in 2006) and which was sustained in several countries during the past few years by the reduced VAT rate.
4. **Non-residential construction:** since 2002 private non-residential construction has been particularly affected by the economic slowdown but should regain positive growth (+1.3%) in 2006 due to the expected upturn in the European economy. During the same period, public non-residential construction counterbalanced the fall in private non-residential construction without succeeding

completely due to budget difficulties encountered in several Member States.

5. **Civil engineering:** this sector of activity also experienced difficulties linked to the fall in public investment. A recovery is nevertheless expected in 2006 (+3.1%) supported mainly by investment which will be made in the new Member States. Despite the limited possibilities of public financing, the sector will benefit from major Community financing and from the development of PPP financial arrangements.

2. Extension of the reduced VAT rate: a success for everybody

The European Directive on a reduced VAT rate (Directive 1999/85/EC) dated October 1999 aimed at enabling Member States to apply a reduced VAT rate to a certain number of labour-intensive services, including renovation and maintenance works. The initial objectives of this measure were on the one hand to stimulate employment, and on the other to support the struggle against undeclared work. A further aspect is the promotion this measure can play in the framework of stimulating improved energy efficiency in buildings. (Please refer to the report of the Technical Commission). After two successive extensions, there was a risk that this system would expire on 31/12/2005.

Indeed, despite the European Commission proposals of July 2003 providing for overall simplification and rationalization of the reduced rates regime and 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.

By way of a reminder it can be noted that – apart from the United Kingdom, which decided to apply the Directive on reduced VAT rates only to the Isle of Man – six other Member State applied it to "renovation and maintenance works": Belgium, France, Italy, Netherlands (only painting and ceiling works), Portugal and Spain (only masonry).

According to a study carried out by FIEC in 2005, in the light of experience observed in the countries concerned, namely, Belgium, France, Italy, Portugal and Spain, the reduced VAT rates contributed to the creation of almost 170,000 additional permanent jobs between 1999 and 2004.

Moreover, again according to the study, 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.

The aim of our many lobbying activities vis-a-vis the European institutions and competent national authorities was:

1. to maintain the provisions of the 1999 Directive on a reduced VAT rate until a permanent VAT regime is adopted at European level;
2. to extend the possibility of applying a reduced rate to all Member States which so desired (and more particularly to the new Member States which did not have the opportunity of doing this before accession), in accordance with the principle of equal treatment.

The Austrian Presidency increased its efforts and contacts with a view to unblocking a situation which appeared compromised due to the hesitations displayed by several Member States.

FIEC also stepped up its interventions and in particular, on the initiative of the Austrian federations, met with a representative of the Austrian government responsible for tax questions several days before the decisive meeting of the ECOFIN Council of 24 January 2006.

The 25 Member States finally found common ground in a text which in particular provides for:

1. extension of the validity of the list of labour-intensive services which may benefit from the reduced VAT rate (Annex K) until 31/12/2010;
2. the possibility (without obligation) open to all Member States which so wish to apply the reduced VAT rate to these services;
3. the carrying out of a study on the effectiveness of the measure, the conclusions of which will be presented by the Commission to the Council and the European Parliament in June 2007.

Even if it would have been preferable to obtain a definitive decision on the application of the reduced VAT rate, in accordance with the proposals presented by the Commission in 2003, this agreement can really be considered to be a success for everybody.

This success which is the fruit of the many activities carried out in a coordinated way vis-à-vis the European institutions and the competent national authorities is a concrete example of the results which can be achieved through close collaboration between FIEC and its member federations.

3. Blue Book 2005 (12th edition): construction works to a value of EUR 72.3 billion are still outstanding

In June 2005, FIEC published the results of its 12th annual survey of the status of the priority projects of the trans-European transport network (TEN-T)

For the first time, the study took into account the provisions introduced by Decision 884/2004/EC of the Council and European Parliament which established a new list of 30 priority projects.

Little information is still available regarding the 16 new projects selected, although FIEC nevertheless succeeded in presenting a complete view of the situation on 31 December 2004, and this will be gradually refined during the next few editions.

From this survey it emerges that:

1. The total estimated cost of these 13 "priority projects" is around € 297 billion;
2. On average, 42.5% of the global financing is ensured, which is the equivalent of € 117.8 billion (with € 159.2 billion remaining to be covered). A major difference is, of course, to be seen between the 14 "Essen" projects and the "new projects", in respect of which most of the financing remains to be found. As regards the "Essen" projects, in respect of which information is complete, 5 are entirely financed and only 2 have a financial coverage of less than 50%.
3. On average, 35.2% of all works have been executed at a total cost of around € 105 billion. A major difference can also be seen here between the "Essen" projects and the "new projects", the initial works of which still have to begin. Only 3 of the "Essen" projects have an implementation percentage of less than 50%.
4. Works with a value of € 192.3 billion still have to be executed by 2020 in order to finalize all the priority projects.

This last mentioned figure should be related to the amount planned for the TEN-T in the context of the financial perspective for the period 2007-2013.

The inter-institutional agreement between the Parliament and the Council allocates to the TEN-T for the whole period around € 7.2 billion which is, proportionately, considerably less than the amount for the 2000-2006 period which was € 4.6 billion, although only for 14 priority projects while the list in question is now 30.

FIEC has condemned this situation which precludes ensuring Community co-financing of 20% and, exceptionally, 30% as provided for in the EU regulation. This amount cannot produce a real leverage effect which would actually speed up implementation of the priority projects.

It is therefore essential to develop new approaches as regards the development of infrastructure and financing. The consideration given to the matter and the options developed within FIEC have been promoted in contacts with the institutions concerned.

4. Mid-term review of the "Transport" White Paper: FIEC presents its proposals

The White Paper devoted by the Commission in 2001 to "European transport policy for 2010: Time for decision" [COM (2001) 370] had recorded the difficulties relating to the absence of a coherent common policy in this area:

- unequal growth as between the different modes of transport, relating in particular to inadequately taking into account all external costs in the overall cost of transport;
- the phenomena of congestion on some major road and rail routes and also within cities;
- environmental pollution or the health of citizens, without over-looking the heavy toll arising due to the lack of road safety.

By way of example, it has been shown that the external costs of congestion due to road traffic alone account for around 0.5% of GDP. The forecasts of traffic growth indicate that, if nothing is done, the costs due to congestion will increase by 142% between 2000 and 2010 and are expected to reach € 80 billion annually or approximately 1% of the Community GDP.

The White Paper published in 2001 proposed a whole series of corrective measures and actions to be undertaken.

The Commission planned on drawing up a mid-term review with a view to assessing the actions already undertaken in order to remedy these difficulties and if necessary to review some guidelines and to determine the initiatives which remained to be taken to achieve the objectives of the White Paper.

Before embarking on this possible exercise of revising the strategy of the White Paper, the Commission carried out a major consultation at the end of 2005.

As it is did in 2001, FIEC wished to take part in this consultation. In its contribution to this consultation, FIEC first wished to welcome the major advances already achieved and in particular:

- revision of the guidelines of the trans-European network (TEN-T) which led to the adoption of a new list of 30 "priority projects";
- the proposal to increase from 10% to 30%, and in some exceptional cases to 50%, the share of Community co-financing of the total cost of the projects, in conjunction with a major increase in the budget allocated to the TEN-T;
- the initiatives taken in the various Directorates General of the Commission with a view to facilitating the mobilization of private capital for the financing of infrastructure projects;
- the progress achieved in the context of the revision of the "Eurovignette" Directive, while deploring the fact that the obligation on Member States to reinvest the amounts levied on infrastructures was not finally retained in the definitive text.

FIEC also emphasized the changes which had taken place in the general economic context since 2001:

- the evolution of costs relating to the various modes of transport, taking into consideration the fact that the initial guidelines of the White Paper were based on a price of \$12- \$15 for a barrel of oil, whereas it is now more than \$70;
- the enlargement of the Union by ten new countries, with a consequent extension of infrastructure priority projects;
- economic trends which proved to be lower than the forecasts made when the White Paper was being drafted.

In view of these trends, FIEC made four recommendations to the Commission.

(1) Improve coordination of projects at Community level:

- by strengthening the role of the Coordinators of the priority projects;

In particular, FIEC proposed that the tasks entrusted to the Coordinators should also include coordination of the various Community interventions in favour of the projects concerned and independently of the budget heading involved;

- by quickly establishing the Executive Agency for the TEN-T, which would make it possible to introduce flexibility and adaptation to the operational aspects of the coordination and management of each project;

- by creating a fund devoted to each project and by centralizing management of all these funds by means of an ad hoc European structure;

This decentralization would make it possible to bypass one of the major difficulties linked to the procedures and rules of financial planning applicable to the Community budget in the financing of major infrastructure projects, the implementation and life of which are spread over several tens of years.

(2) Ensure concentration of public resources:

- by allocating and investing Community resources in projects which offer real socio-economic added value;

In regard to this point, the recommendations of the High-Level Group on the extension of the European transport network to third countries (De Palacio Group), which were published in December 2005, contain methodological elements which are useful in identifying suitable projects. Indeed, the relative development of the various modes of transport which has been observed since 2001 clearly shows that indicators based solely on traffic forecasts are quite insufficient;

- by combining the various Community resources relating to priority projects (TEN budget heading, Structural Funds, Cohesion Fund etc.);
- by releasing available European funds according to the actual commitments of each country involved on the one hand and the degree of project maturity on the other.

(3) Encourage the use of Public-Private Partnerships (PPPs) for targeted projects

In order to develop a coherent and pragmatic approach, FIEC:

- favours the creation of a "centre of excellence" which would bring together the national representatives with responsibility for PPPs;
- requests that a Community non-legislative instrument be drawn up, such as the "Guidelines" for PPPs, which would clarify their status as regards the various Community pieces of legislation and policies (internal market, competition rules, transport, cohesion policy etc.).

(4) Find new resources:

- by re-examining the conditions governing intervention by the EIB (European Investment Bank);

In this context, a revision of the statutes of the EIB should be considered with a view to permitting it to intervene directly, without an intermediary, in the financing of major infrastructure projects;

- by reconsidering the option of a major European loan;

In its observations on the initial version of the White Paper in 2001, FIEC had previously recommended recourse to a major European loan or a series of successive loans, in accordance with a timetable compatible with implementation of the projects and with release of the construction and operational profits with a view to ensuring their reimbursement;

Concrete expression was never given to this option while today the cumulative financing possibilities of the public (national and European) and private sectors rarely exceed 50% of the total cost of a project;

The difference could be covered by a loan, subject to a guarantee and long-term source of revenue to permit reimbursement.

- by exploring the new possibilities offered by PPPs;

Increased participation by the private sector is possible in the context of a PPP which would permit the public authorities making the investment to spread the payments over a long period;

- by exploring the new possibilities offered by PPPs, in particular by taking into account the conditions laid down in the Eurostat decision of 11 February 2004 which, subject to certain conditions, authorizes public authorities not to show as debt some payments deferred over time;
- by quickly adopting the Community guarantee instrument for TEN projects.

FIEC will continue to promote these proposals vis-à-vis the institutions concerned.

5. Financial perspective for 2007-2013 and implementation of the Trans-European Transport Network (TEN-T)

(1) The TEN-T budget heading

In accordance with the decision of the Heads of State and Government of December 2005, which was endorsed in the inter-institutional agreement of 4 April 2006 concerning the financial perspective for the period 2007-2013, the amount which will be finally available for the TEN-T budget heading will be considerably less than what the Commission had proposed.

The Commission estimated that an appropriation of least € 20.4 billion would be required for the period 2007-2013 in order to produce a real leverage effect in implementation of the priority projects. It will finally have had at its disposal only € 8 billion which will be mainly devoted to the 30 priority projects and, even more probably, to a limited number of these.

The contribution of the European Union to the transport TEN in respect of 2007-2013 will therefore amount to around 6% of actual financing needs for this period which have been estimated at € 120 billion.

A decision on the distribution of this financing is expected in October 2006.

It will be recalled that, during the period 2000-2006, the TEN budget heading had € 4.6 billion to finance the 14 "old" priority projects.

(2) Financing available by way of regional policy

With € 308 billion, cohesion policy will be the primary expenditure item in the EU budget for the period 2007-2013

The "new" Member States will be virtually the sole beneficiaries of the "Convergence" objective (80% of financing, without a mandatory cost-sharing formula according to type of activity or project) and the Cohesion Fund (alongside Greece and Portugal).

In the financial agreement of December 2005, the European Council planned that 75% of budgets received under the "regional competitiveness and employment" objective (which accounts for 17% of financing) must be reserved for the Lisbon strategy in the "old" Member States of the Union.

The Commission Directorate General responsible for regional policy has drawn up, on its sole responsibility, a corresponding list of activities which could contribute to implementation of the Lisbon strategy. It is a list which excludes transport infrastructure, with the exception of urban transport infrastructure.

Following arbitration between the various Commissioners concerned, the Member States were finally informed, by means of a Commission declaration that this list was to be considered to be an indicative one. It is now accepted that each Member State may, in consultation with the European Commission, supplement this list in accordance with its own priorities as regards competitiveness and job creation.

Some national federations which are members of FIEC have referred the matter to their governments in order to influence the decisions which will actually be taken pursuant to this "flexibility margin".

6. The new Public Procurement Directives: the implementation phase

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 had to be transposed into national legislation by no later than 31 January 2006.

During the past few months, FIEC has actively encouraged an exchange of information between its member federations regarding transposition and, more particularly, certain new procedures such as the "competitive dialogue", "reverse auctions" and "dynamic purchasing systems" which Member States are free to apply on a discretionary basis.

At the beginning of 2006, the DG MARKT published on its Internet site, with a two-year delay, four "explanatory notes" regarding certain specific aspects of the new Directives. 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”. This note also contains some ambiguities as regards the text of the Directives as far as the importance of possible adaptations in the final phase of discussion is concerned, which should in practice be limited to a simple finalization of the contract.

At the ECO-PLN meeting of 9 March 2006, it was decided to intervene vis-a-vis Commissioner McCreevy, who is responsible for the Internal Market, and vis-a-vis the competent departments of the DG MARKT in order to draw their attention to the anomalies which had been found and to obtain a rectification of the “explanatory notes” involved.

7. The international accounting standards (IAS) for concession contracts: companies are still awaiting information

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 nor is there any information from the IFRIC (International Financial Reporting Interpretations Committee) concerning the accounting treatment of concession contracts in the context of existing regulations.

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. Despite these efforts, the situation in April 2006 is still very unsatisfactory. Pending a specific accounting standard, the draft interpretations of the IFRIC, which would have provided useful information to companies, have not yet been finalized.

These draft IFRIC interpretations proposed the simultaneous 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 or by the users.

The first method, in the case of a payment by the party granting the concession, consists of recording a financial debt in the accounts (financial assets model), whereas the second method, in the case of payment by users, consists of recording an intangible asset in the accounts (intangible assets model).

Apart from the fact that it is difficult to decide on which of the applicability of these two methods should be used, their application to almost similar, they would entail for activities, risks and performances which are almost similar would produce very different figures in terms of turnover and financial results outcome and would furthermore be prejudicial to the transparency of the accounts.

The second method (intangible assets model) includes major disadvantages which were condemned very recently by FIEC. The results would be very negative during the first part of the operation and would artificially penalize companies, with consequences which could be easily anticipated by the financial markets.

FIEC has always considered that the application of these two methods could lead only to major distortions in the presentation of accounts, and this would be prejudicial from the standpoint of both aspects of competition and the development of concessions. Only the financial assets model should apply to concession contracts.

During recent contacts with the IFRIC, the latter nevertheless recognized the need to base the separation between the two models on the very nature of each contract and not on their form, and FIEC considers this evolution to be a favourable development in the approach envisaged by the IFRIC.

Another source of optimism which appeared during recent discussions concerns the possibility for a company to take into account the profits shown during the construction phase, this being a possibility to which the IASB was initially opposed.

Waiting for approval of these interpretations by the IFRIC is clearly not satisfactory for construction companies which are active in concession projects which must meet the expectations of their shareholders and of the financial markets without having clear accounting information.

In this context, FIEC wishes to recall to the competent bodies and, in particular to the IASB and IFRIC, the need and urgency to confirm the interpretations announced by the IFRIC in order to draw up a specific accounting standard for concession contracts, if it is really the wish to promote their development within the Union.

8. Directive on late payment: no effect in the construction sector

Directives 2000/35/EC on the fight against late payment in commercial transactions entered into force after transposition on 8/8/2002. It provided that the Commission should present a study on its effectiveness two years after that date.

Without awaiting the results of the Commission assessment, which is still not available, FIEC decided to carry out its own survey in order to see what was the impact of this Directive has been on the construction sector.

This Directive had been propose by the Commission in March 1998 following a finding made in the context of an analysis of the causes of bankruptcy in the EU: one bankruptcy in four was said to be due to late payment. The Commission estimated at 450,000 the number of jobs affected in the EU because of this problem which, without sparing large firms, affects SMEs more particularly.

Even if the situation varies greatly from one country to another, a 1996 study showed that, in seven countries of the EU15, 40% of invoices were still unpaid after 60 days. This rate was higher than 60% in Greece, Italy and Spain, while on the other hand it was only around 5% in Finland and even less in Denmark and Sweden.

The aim of this Directive was therefore to combat late payment in commercial transactions, in particular by introducing an automatic right to penal interest which would permit compensating creditors for the losses caused by this delay.

The results of the survey, which was carried out by FIEC among its member federations and which was finalized in December 2005, showed that in the construction sector the Directive was not an effective instrument in combating late payment: since transposition of the Directive no significant reduction in late payment was observed in the countries concerned by this problem. This is explained, inter alia, by the fact that the Directive does not take into account sufficiently the specific characteristics of our sector and by the fact that contractors continue, despite everything, to avoid initiating lawsuits against their clients, in particular their public clients, notably by accepting contractual payment clauses which are more disadvantageous than the provisions provided for in the Directive.

The solutions to this problem would appear to lie more at national level where the experience of several countries – which adopted specific measures which were better suited to national practices and which were sometimes more restrictive than those provided for in the Directive – has proved to be more effective.

What is in any event necessary is greater discipline as regards compliance with payment commitments on the part of clients – whether they be private or public – and which should be passed on from the main contractor to its subcontractors.

Annexes:

1. Reduced VAT rate:
 - Declaration of the Council of Presidents – 24/11/2005
 - Press release – 7/12/2005
 - Press release – 19/1/2006
 - Press release – 25/1/2006
2. FIEC contribution to the consultation on “Mid-term review of the White Paper on European transport policy” (December 2005);
3. FIEC response to the consultation on “Extension of the major trans-European transport routes to neighbouring countries and regions” (March 2006);
4. FIEC contribution to the consultation on “Strategic guidelines for cohesion policy 2007-2013” (September 2005);
5. FIEC’s observations on the draft interpretations of the IFRIC (International Financial Reporting Interpretations Committee) concerning service concessions (May 2005);
6. FIEC survey on the application of the Directive on late payment (2005/35/EC) in the construction sector (December 2005).

DECLARATION of the FIEC Council of Presidents
The reduced VAT: a major stake for employment in the construction sector in Europe
 24/11/2005

In March 2005, the European Council, meeting in Brussels, decided that it was necessary to re-launch the Lisbon Strategy and to **re-focus the priorities of the European Union on growth and employment**. In order to achieve these objectives it concluded that *"the Union must mobilise all appropriate national and Community resources"*.

This willingness to stimulate employment motivated already the adoption of directive 99/85/EC dated 22nd October 1999, allowing the application of reduced VAT rates to so-called *"labour intensive"* services. The specific experience of the five countries that, to a significant extent, have implemented this measure for activities relating to the renovation and repairing of private dwellings (Belgium, Spain, France, Italy and Portugal), clearly demonstrates that the objective has been achieved: **almost 170,000 permanent additional jobs have been created in the sector**.

Despite this, this instrument is however threatened. The directive authorising the application of reduced VAT rates **will come to an end on 31/12/2005**.

On the basis of a recent FIEC study¹, it is estimated that the **non-renewal of this measure would threaten close to 250,000 jobs with effect from 2006**. The abolition of these reduced VAT rates **would mainly affect SMEs**, which are its principal beneficiaries.

FIEC also wishes to stress that construction is an activity which concerns immobile property and therefore **the application of different VAT levels in the various Member States does not hinder the development of the Internal Market and does not create any distortion of competition**.

For these reasons, one month before the deadline of 31/12/2005, **the FIEC Council of Presidents very much regrets the failure of the discussions on this matter during the ECOFIN Council of Ministers meeting**, which took place on 8th November, and asks:

1. **the British Presidency to intensify its efforts at all levels, and in particular towards the most reluctant Member States, in order to reach an agreement on a definitive regime regarding the reduced VAT rates during the next ECOFIN meeting on 6th December;**

or, failing this, that:

2. **the provisions of the current directive 99/85/EC be maintained until the adoption of a definitive regime regarding the reduced VAT rates at the European level and that**
3. **this possibility be extended to all those Member States that would like to apply it, according to the principles of equality of treatment and of non-discrimination.**

¹ FIEC study, March 2005 (available on the FIEC website: www.fiec.eu)

Press Release**Reduced VAT rates: FIEC launches an appeal to the Heads of State and Government**

7/12/2005

FIEC strongly regrets the Council's failure to reach an agreement regarding the proposal tabled by the UK Presidency on the reduced VAT rates during the ECOFIN meeting on 6/12/2005.

"Discussions on this matter have been going on since 2003 and once again regrettably our Ministers of Finance decided...not to decide" declared FIEC President, Wilhelm Küchler.

On the basis of a FIEC study, it is estimated that **the non-renewal of this measure would threaten close to 250.000 jobs with effect from 2006**. The abolition of these reduced VAT rates would mainly affect SMEs, which are its principal beneficiaries.

Through its President Wilhelm Küchler, FIEC makes the following appeal to the Heads of State and Government meeting on 15-16 December in Brussels:

"This continuing uncertain situation is detrimental for our companies, our employees and our customers, as well as undermining citizens' confidence in the EU itself. An agreement must be reached, otherwise the Heads of State and Government will have to bear the political responsibility for the hundreds of thousands jobs lost that are even now under threat".

Press Release

19/1/2006

Just a few days before the decisive ECOFIN Council meeting on 24/1/2006, a FIEC delegation led by Johannes Lahofer, FIEC Vice-President and President of the Austrian Contractors' Association (Bundesinnung Baugewerbe), presented FIEC's case to the Austrian EU-Presidency in Vienna. Christian Baffy, President of the Fédération Française du Bâtiment

(FFB), especially emphasised the very positive experience in France to Austrian Minister of State for Finance, Alfred Finz. Welcoming this presentation, Minister of State Finz explained that the Austrian Presidency now has the difficult task, after having contacted the other governments, of putting forward an acceptable compromise to the ECOFIN Council.

Press Release**Reduced VAT: one last effort**

25/1/2006

FIEC welcomes the agreement reached on 24th January by the Ministers of Finance of 22 Member States regarding the reduced VAT rate.

"I am glad to see that many years of joint efforts by FIEC and its member associations, based on serious studies, as well as a responsible attitude and targeted lobbying activities have finally led

to the approval by a vast majority of the Member States of the proposals put forward by the Austrian Presidency" said Wilhelm Küchler, FIEC President.

"These proposals are perfectly in line with the requests put forward by FIEC and they avoid any form of discrimination against the new Member States" he added.

**FIEC contribution to the consultation on the
"Mid-term review of the White Paper on the European transport policy"**
21/12/2005

FIEC proposes the following recommendations, in order to ensure the effective realisation of TEN-T:

1) To improve the coordination of the projects at Community level:

- by means of re-inforcing the role of the coordinators for priority projects

FIEC proposes that the tasks of the Coordinators should also involve the coordination of Community interventions in the projects concerned, whatever budgetary lines are used to support them.

- by quickly setting-up the Executive Agency

2) Ensure a concentration of public resources

- Allocate and invest community resources in those projects that offer a real socio-economic return
- Combine community resources on the priority projects

FIEC considers that it is absolutely essential to provide for a combined recourse to the various community resources: TEN-T budget line, structural and cohesion funds for similar operations and for the same section of a priority project.

- Making funds available in relation to the commitments by the States concerned and the degree of maturity of the projects

3) Promote the use of PPPs for targeted projects

In order to put forward a coherent and pragmatic approach, FIEC:

- supports the creation of a "centre of excellence" bringing together national representatives responsible for PPPs in liaison with the European Investment Bank (EIB), in order to support the realisation of major infrastructure projects such as the TENs-T;
- recommends a mobilisation of all the DGs concerned through the development of PPPs in the form of a "Task Force" ;
- calls for the elaboration of a non-legislative EU instrument, such as community "Guidelines" on PPPs, which would clarify their status with regards

to various fields of community law and policies (internal market and competition rules, transport and regional policies, ...);

- calls for the elaboration by the IASB (International Accounting Standards Board) of a specific accounting standard for PPPs, which would avoid having two different accounting methods for similar types of projects, as is currently envisaged, and which is leading to a lack of clarity in the balance sheets.

4) Make new resources available

- Re-examine the conditions for EIB intervention

A revision of the Bank's statutes should be envisaged in order to allow direct support for important infrastructure projects, without public intermediation.

- Reconsider the option of a large European loan

In the observations on the initial version of the White Paper, FIEC had already recommended recourse to a large European loan or to a series of successive loans, according to a schedule compatible with the progress of the construction of networks and the availability of the benefits linked to the construction and exploitation, in such manner as to ensure their reimbursement.

- Exploring new possibilities offered by PPP

As an alternative, the balance of the financing needs could be secured by the private partner in the framework of a PPP, which would allow the staggering of payments over a long-term period by the States making the investment.

Recourse to this option should be made in conditions that respond to the terms of the Eurostat decision of 11th February 2004, which foresees that under certain conditions the commitments to future payments by States or local authorities do not need to be accounted for in the public debt.

- EU loan guarantee instrument for TEN-T projects

Finally, FIEC calls for the rapid conclusion and adoption of the proposal presented by the Commission in March 2005 relating to the guarantee instrument of loans made available for the realisation of priority TENs projects.

FIEC answers to the consultation on the "Extension of the major trans-European transport axes to the neighbouring countries and regions"

14/3/2006

Many of the earlier proposals concerning the realisation of large transport projects are still not much further forward in terms of achieving an integrated strategic network and many additional efforts are needed in view of extending these planned networks into the extremities of a wider geographical European Union. However, this extension should not be carried out to the detriment of the completion of the basic network within the European Union.

FIEC recognises the importance of a well functioning integrated transport system connecting the European Union and the neighbouring countries, but would like to stress that the first priority should be the realisation of the TENs priority projects.

Financing large infrastructure projects has always been a major obstacle to their realisation and given the historical evidence of lack of achievement, it is difficult to envisage any real progress on major international strategic routes without utilising external funding and the private sector.

Public-Private Partnerships (PPPs) are certainly one of the possible answers to the financing problems and their development should therefore be facilitated and encouraged both at the European and at the national levels.

In order facilitate such a development, some support is necessary at 4 levels:

1. a coordinated and consistent approach within the European Commission on the definition and contractual procedures applicable to PPPs;
2. at national level, a clear and transparent public procurement legislation;
3. the elaboration of clear PPP schemes in those countries where they have not been developed yet, in order to provide sufficient securities to the financiers and therefore to make the projects attractive; in this respect, regional workshops are useful, but the appointment of experts to national administrations responsible for assessing the adequacy of the legal frameworks is also advisable;
4. a political will to promote PPPs at national level.

However, experience with the TENs has shown that the EU participation in the financing of these large projects plays a crucial leverage role, both politically and economically, and therefore the EU's involvement must absolutely be confirmed.

In this respect for example, legal and financial instruments should be developed in order to allow the Commission to assume financing commitments for a longer duration than the 7-year period currently applicable in accordance with the existing European budgetary rules. Such a solution could be very helpful in enhancing the competitiveness of the entire European economy.

**FIEC contribution to the
Consultation regarding the strategic guidelines for cohesion policy 2007-2013
23/9/2005**

FIEC welcomes the general objective of the Commission which is to strengthen the synergies between the actions funded by the Structural Funds on the one hand and, on the other hand, the other Community policies, in order to contribute effectively to the implementation of the Göteborg and Lisbon objectives.

1.1.1. Concentration and convergence

In accordance with the proposals presented by the Commission for the 2007-2013 financial framework, the new Member States of the Union will, in practice, be the main beneficiaries of the proposed financing means.

FIEC shares the objective of targeting financial assistance on those countries and regions whose development is lagging behind, in accordance with the principle of financial solidarity which is one of the founding principles of the Union.

Moreover FIEC supports the transitional measures proposed by the Commission and defended by the European Parliament (EP) aimed at limiting the impact of an abrupt abolition of Community co-financing in the areas which would no longer be beneficiaries of co-financing by the EU pursuant to these new eligibility criteria ("phasing-out").

1.1.2. "Regional competitiveness and employment" objective

FIEC underlines the importance of making Europe and its regions more attractive places for investments and also for workers and therefore welcomes the explicit recognition of the crucial role played by transport infrastructures as factors determining the improvement of the competitiveness, the attractiveness and the cohesion of the various European regions.

1.2.4. Governance

FIEC supports the Commission's observations concerning the issue of governance in its various dimensions:

- As regards measuring the performance of public investment, the national and European federations representing the construction sector can provide a useful contribution with their expertise, on the basis of objective indicators of the consequences of investment in infrastructure (for example, as regards a comparison of the respective costs of road and rail freight).
- FIEC welcomes the reference made by the Commission to the application of transparency and quality rules as regards treatment for access to public contracts and to the ongoing initiatives relating to the improvement of Community regulations and to the simplification of administrative constraints which weigh on firms.

FIEC also welcomes the indications given by the Commission in the consultative document which tally globally with the observations presented in the framework of the above-mentioned Green Paper on PPPs. In this respect, FIEC would like to recall its reservations regarding any legally binding Community instrument concerning PPPs at this stage.

Various Member States have to deal with chronic deficits of their budgets and they therefore experience difficulties in providing the adequate level of public investment for their territorial integration and development. FIEC therefore supports the Commission's remarks concerning the need for coordination of the investment programmes, whether they be co-financed by Community, national or local funds.

In this respect, FIEC welcomes the appointment, on 20 July 2005, of 6 coordinators to facilitate the implementation of some TEN-T priority projects. FIEC suggests that the task allotted to them be extended to the coordination of Community actions in regard to the projects concerned, irrespective of the budget heading called on to contribute to them. Furthermore for the sake of coherence of the actions, the task of the coordinators should be extended to the national network links with the networks identified as priority ones crossing them.

Finally, FIEC calls for the finalisation and the fast adoption of the proposal for a loan guarantee to help financing and implementing the priority TEN-T projects to the extent that the Commission suggests the possibility of combined use of cohesion policy financing and of the planned guarantee instrument.

2.2. Improvement of knowledge and competitiveness

As regards the support for R&D, FIEC considers that the content and technological impact of the construction sector, including the area of eco-innovations, continue to be widely misjudged as is testified by the quite marginal treatment of the sector in the 6th R&D Framework Programme.

In the context of a better coordination of the actions of the various Community instruments which could support growth, competitiveness and employment within the EU, FIEC welcomes the setting up of the European Construction Technology Platform which takes over the work of national platforms in the sector for the definition of a research agenda to be taken into account in the preparation of the 7th R&D Framework Programme.

2.3. Promoting the information society for all

FIEC considers this objective to be quite commendable and would like to draw the attention of the Commission on its inadequacy as regards the access to Information Technologies (IT) for SMEs, particularly for the very small ones, which constitute the major share of the construction sector.

2.4. More and better jobs

With more than 14 million employees in the EU (7,2% of total employment), the construction sector is the largest industrial employer in Europe and therefore employment matters figure amongst FIEC's highest priorities.

FIEC and its national member associations are already heavily involved in the training of young people while seeking to improve the image and therefore the attractiveness of the sector (improvement of working conditions, good career prospects etc.). FIEC therefore fully subscribes to this strategic guideline defined by the Commission and more particularly:

- an offer likely to meet the real needs of the labour market in the sector through the development of education and training;
- greater flexibility of the labour market;
- labour costs and wage adaptation mechanisms favouring hiring.

As regards the role played by education and training, in particular vocational training, in the achievement of this objective, FIEC would like to highlight the relevance to of the Commission's proposal aimed at using where relevant "common references and principles" within the EU, despite the many difficulties that will be encountered in drawing up common references and principles, due to the differences in national legislations, regulations and practices affecting the construction sector.

FIEC would also like to draw the attention of the European Commission to the specific features of the construction sector (mainly work on external construction sites) and would like, more particularly, these to be taken into account in the drawing up of provisions relating to health and safety on worksites.

IFRIC Draft interpretations on Service Concessions Arrangements

31/5/2005

Introduction

FIEC very much appreciated the efforts devoted by IFRIC to the “concession project”. IFRIC has undertaken significant efforts in order to understand the main features of the business and to provide a practical solution fitting with these features as well as with the current IASB standards and framework.

In this sense, FIEC considers the qualification of the asset as an intangible rather than a tangible one a consistent approach with the substance of the business and with the current IASB rules, taking in mind that the operator doesn't control the physical asset. FIEC also welcomes, as something consistent with the substance of the business, the separation made in terms of profit and loss account, between construction and operation activities.

Notwithstanding the above, FIEC has some concerns regarding the final interpretations and their impact in particular during initial years of the business. The complexity of the accounting issues involved with concession arrangements and the absence of IFRS/IAS literature on these types of arrangements certainly explain the difficulties encountered by IFRIC in addressing this matter. Furthermore, with hindsight, it would presumably have been better for the IASB Board to develop a comprehensive standard on recognition, measurement and disclosures of concession arrangements.

In this sense, as the current draft interpretations are not completely satisfactory, FIEC believes that the development of a new standard should be the final objective. FIEC also believes that from a technical point of view it is possible to blend the present draft proposed interpretations into a specific standard.

Such standard would avoid the problems explained hereafter in our comments and would guarantee that the accounting issues of the businesses are treated in a more realistic manner, in particular during the initial periods of the business, and would avoid the application of different accounting methods for concession contracts that are economically very similar.

Conclusions

Although IFRIC has progressed significantly on some important issues, FIEC is of the opinion that the above mentioned concerns call into question whether the draft interpretations effectively address the problems relating to the accounting for service concession arrangements in a practicable manner.

FIEC's main concerns are that the current draft interpretations are likely to lead to inaccurate representations of the economic of transport infrastructure concessions, as similar concession contracts (in terms of the distribution of risks and rewards) could be accounted for under two different models that give radically different outcomes, which would show many concessions incurring, even in the case of overall profitable projects, in significant losses in the early years of the concession contract. This would not only fail to represent faithfully the economics underlying the concession contracts, but could also result in lower solvency and profitability of the companies involved in transport infrastructure concessions, therefore reducing companies' ability and interest in undertaking infrastructure projects.

Application of the directive on late payments (2000/35/EC) in the construction sector

Survey carried out by FIEC

12/12/2005

1. Introduction

The issue of late payments remains one of the most crucial problems in construction activity, because it affects both the relationship between the main contractors and their clients, in particular the public ones, but also the relationship between the main contractors and their partners sub-contractors.

For this reason FIEC, actively participated in the discussions that lead to the adoption of directive 2000/35/EC for combating "late payments" in commercial transactions and decided to carry out this survey, in order to examine whether such directive represented an adequate and efficient solution to the problem in the construction sector.

2. Analysis of the answers received

With the exception of the Nordic Countries, where efficient specific provisions were already in place before the adoption of this EU directive, it can be said that in the other countries **the directive has not been an efficient instrument for combating late payments in the construction sector**: no significant reduction of the payment periods was observed following the introduction of the directive. The limited implementation of the directive partly explains its inefficiency. Another reason which might explain this weak efficiency is linked to **the specificities of the construction sector** where for example there is rarely an agreed monthly invoice value.

One of the main reasons behind this is that contractors are still reluctant to enter into litigation with a client, despite the fact that **the principle of "automatic payment of interests on late payments"** foreseen by the directive is in practice not applied.

The directive seems to have had little impact also as regards sub-contracts in the construction sector: in most of those countries where there is no specific provision, the sub-contractor(s) get paid when the main contractor is paid by the client.

3. Conclusions

As general conclusions it appears clearly from the answers to this survey that **the directive has had very little effect on the problem of late payments in the construction sector**, partly because the directive fails to take adequately into account the specificities of our sector, but also because **contractors avoid entering into litigation with their clients, in particular the public ones**, for fear of not being invited to tenders for future works.

Despite this fact, **the only request for modification of the current directive concerns the deletion of Art.3 §2**, which allows the possibility of prolongation of the payment period from 30 to 60 days, which FIEC considers to be unacceptable. With this exception, there are no other specific requests for modification of the current directive, mainly because of a **fear of "EU over-regulation"**.

The experience of several countries which have adopted specific national provisions, seems to be a better track to follow. In this respect, **the exchange of "best practices" could be extremely useful**.



SOC



President:
Peter Andrews, GB

Rapporteur:
Laetitia Passot, FIEC

SOC



Executive President:
John Stanion, GB

Sub-commission SOC-1

"Vocational Training"



Chairman: Alfonso Perri, I

Rapporteur:
Rossella Martino, I

Sub-commission SOC-2

"Health and Safety"



Chairman: José Gascon y Marin, E

Rapporteur:
Ricardo Cortes, E

Sub-commission SOC-3

"Economic and Social
Aspects of Employment"



Chairman: André Clappier, F

Rapporteur:
Jean-Charles Savignac, F

Foreword

The UK federation has been delighted to have led the Social Commission for a fourth year, and can report an active and industrious 12 months for the FIEC sub-commissions and Social Dialogue in the areas of training, health and safety and the economic and social aspects of employment.

The Social Commission's activity programme remained keenly focussed upon issues of most importance to the FIEC membership, and included dealing with some of the biggest political issues being addressed by the EU Institutions, namely the Working Time Directive Review and the proposed Services Directive. Input from the membership had been vital in ensuring that FIEC's position papers on these issues remained robust, sending clear messages to legislators of our collective industry concerns – the vast majority of which led to positive amendments in the draft legal texts by both the European Parliament and Council of Ministers. Another success highly worthy of note was contained within FIEC's work on the Optical Radiation Directive.

On the issue of the Services Directive, the Social Commission's lobbying work also produced a number of joint positions being agreed with our trade union Social Partner EFBWW. Such agreements and joint papers importantly show external parties the successful nature of the Social Dialogue in the construction sector between our two organisations – employers and employees finding common ground upon which to make stronger representations on issues affecting the business.

The Social Partners successfully secured European Commission funding for the creation of a database relating to the Posting of Workers Directive's national rules, and the further translation of the best practice health and safety guide into an additional five languages. Both organisations also agreed to be project partners in a Leonardo da Vinci project towards setting up a European network for education and training in occupational health and safety.

There has been no let-up in the challenges facing the Social Commission during the year, and the foreseeable future shows no signs of respite. For continuing to ensure the best results for the FIEC membership, I would especially like to thank our Executive President John Stanion and the Chairmen of the sub-commissions for their sterling work: Messrs. Alfonso Perri, José Gascon y Marin and André Clappier. Finally, I would like to express my gratitude to the FIEC staff and all the national federation members for their involvement and dedication in the Social Commission's work.

SOC-1

The vocational training sub-commission's objectives 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 business. The following topics and projects have been given high priority in 2005-2006:

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 by the way the potential mobility of workers, FIEC and EFBWW took the decision to work on a "transparency" document which would clearly show the qualifications acquired 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 2006. 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 Commission proposed in 2005 to adopt an EU level qualifications system for Lifelong Learning (EQF) to be used on a voluntary basis, in order to facilitate the transfer and recognition of national qualifications of workers within Europe.

The proposed EQF is not intended to replace or modify existing national systems but should introduce an eight-level reference system corresponding to the different levels of learning outcomes within Europe. This intends to enable the qualification systems at

the national and sectoral levels in all EU countries to relate to each other.

Once implemented, the sectors would be invited, in parallel with national authorities, to link sectoral qualifications to the EQF. The system will also facilitate the link between national and sectoral qualifications.

In order to ensure the EQF be fully relevant to the needs of construction firms, FIEC and EFBWW were invited by the European Commission (together with other sectors) to comment on the content of the proposed eight level structure. They were also proposed to test with a pilot project the definitive EQF system before it is implemented. During their Social Dialogue plenary meeting held on 10 January 2006, FIEC and EFBWW decided to accept the proposal of the European Commission and to test the EQF system on the recognition of mason's skills in Europe. The testing should be organised with the financial support of a Leonardo da Vinci funding.

3. Improving Health and Safety Training

The improvement of Health and Safety Training had been identified by FIEC and the EFBWW as one of the ways to improve Health and Safety culture on construction sites.

In view of achieving progress in this field, FIEC and EFBWW made a commitment in November 2004 (FIEC-EBFVVW Bilbao Declaration, see document in annex) 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.

In parallel, FIEC and EFBWW agreed to be project partners in a Leonardo da Vinci project aimed at establishing a European network related to education and training in occupational safety and health. The project should produce a website detailing good practices and providing innovative approaches and tool-boxes for teachers and trainers in this area. The first steering group meeting of the project took place in March 2006 in Dresden (Germany). During the meeting, progress on the editorial concept of the website was made and a collection of good practices already available online was presented.

The ENETOSCH project should be completed by the end of 2007. FIEC and EFBWW will then disseminate the good practices collected, together with tool boxes developed, with the aim of improving the inclusion of health and safety into the sector's training and education systems.

The other health and safety aspects are being dealt with in Sub-Commission SOC-2.

SOC-2

The role of SOC- 2 is to improve Health and Safety in the construction sector through the development of adequate policies and schemes 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 2005-2006:

1. Exposure of workers to sunlight

In Spring 2005, the European Parliament discussed the European Commission proposal for a Directive concerning the exposure of workers to optical radiation (also known as the "Sunlight Directive"). The proposal for a Directive on Optical Radiation addressed exposure to artificial as well as natural sources of radiation that may cause damage to the eyes and skin.

FIEC took a robust position in April 2005 against the draft proposal, lobbying Members of the European Parliament Employment and Social Affairs Committee ahead of its Report preparations. Its position, which found much common ground with UNICE (Union of European Industries), recommended that the proposal for a directive addresses only exposure to artificial sources of radiation, and excludes "sunlight" from being legislated for at the EU level (see document in annex).

During its plenary session in September 2005, the European Parliament confirmed the vote of the Employment and Social Affairs Committee, which had proposed to remove from the proposal for a Directive all the rules concerning the exposure of operatives to 'natural sources of radiation'. Indeed, susceptibility to natural sources of optical radiation differs not only from Member State to Member State, but also from individual to individual. The European Parliament proposed that the removal of natural radiation from the directive leaves the Member States responsible for the initiative to compel employers to assess health risks for workers from natural radiation exposure.

This was a great lobbying success for FIEC. Construction firms, in particular small and medium sized firms, welcomed this victory of reason over bureaucracy.

After the vote in the European Parliament, the European Commissioner for Social Affairs, Vladimir Spidla backed the decision of the Parliament by announcing that the exposure to the sun's rays

should be withdrawn from the proposed directive. He claimed that there are some very good reasons to make workers aware of the dangers of exposure to the sun, but that Europe needs "better regulation", which means less over-regulation. This position was confirmed in September 2005 when the European Commission published a list of proposals for Directive it intended to withdraw or modify within the European Commission's "Better legislation" initiative. The Council finally agreed with the European Parliament and the Commission to exclude from the text of the proposal any reference to natural optical radiation. In February 2006, the European Parliament voted in a third reading on the proposal of the European Parliament and Council 's Conciliation Committee and approved the text.

2. 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 by 2010 to demonstrate that they hold basic skills in this area. Similar cards 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 and possibly to work together on a European recognition system of those cards.

A joint SOC-1/SOC-2 meeting will be planned before the end of 2006 to study the cards in more detail and to discuss how a European recognition system of those cards could be developed. Steps which need to be taken to operate the system include who manages and runs the system, how training schools and accredited examiners operate and how controls on sites are implemented...

Social Dialogue

3. Prevention of accidents resulting from co-activity

Many accidents occur at the interface between different trades on construction projects. FIEC and EFBWW developed in 2002 a guide of best practice on the coordination of H&S at work, which proposes a series of strategies for effectively coordinating safety in construction. To be easily consulted on site, especially by SMEs, it is based on texts, photos and diagrams. The Guide was initially published in six languages (DE, DK, EN, ES, FR and IT).

In 2005, FIEC and EFBWW translated and printed the guide into five additional EU languages in order to disseminate it in Portugal, Hungary, Slovakia, Slovenia and Turkey. This was carried out in parallel to a campaign organised by the European Commission in these countries to raise H&S standards in the construction sector. The translations

and printing were subsidised by the European Commission. The additional versions of the guide were welcomed by both FIEC and EFBWW member federations, which disseminated the guide to their affiliates.

The guide is also to be translated by mid 2006 into Rumanian, Bulgarian and Croatian, with the financial support of the European Agency for Health and Safety at Work. Producing tools to help workers change their attitude is crucial if the industry wants to create a real H&S culture on construction sites and prevent accidents.

4. Prevention of falls from heights

In December 2004, FIEC and EFBWW agreed jointly to support a Leonardo da Vinci project called 'Euro-scaffolder', aimed at developing European qualification/training modules for scaffolding, in accordance with the European Directive 2001/45/EC on "Working at Heights". Some "Train-the-Trainer" courses and a concept for a European examination order should also be developed in the project, together with a CD-ROM to present "best-practice" examples illustrating the dangers of working high above the ground and showing measures of prevention to avoid falling from height. The project should be completed by March 2007.

5. Prevention of accidents among young workers (OSHA 'Safe Start' campaign)

Many accidents on site involve young people, who tend to be less aware of accident risks on sites. According to European statistics, the incidence rate of accidents at work is at least about 50% higher among those aged 18-24 years than in any other age category (as regards non-fatal accidents at work).

Taking into account this situation, FIEC and EFBWW adopted in March 2005, a joint statement aimed at formalising their support in favour of the European Youth Pact (adopted by the Heads of State and Governments in Spring 2005), which proposed solutions to improve the education, training and vocational integration of young Europeans. Through their joint statement, the Social Partners agreed to provide adequate information to young people about the specificities of the construction sector, in particular regarding H&S risks in the sector.

The social partners decided to support also the 2006 European campaign of the European Agency for Health and Safety at Work, focused on young people ("Safe Start" campaign). The aim of the campaign is to ensure that risk awareness and risk prevention are promoted in enterprises, schools and colleges and that young people have a safe and healthy start to their working lives. The campaign will be officially launched in June 2006 and will mainly consist of awareness raising activities and in the dissemination

of effective preventive measures. A number of activities will be organised in particular during the "European Week" scheduled this year from 23rd to 27th October 2006.

FIEC member federations have been invited accordingly to review their health and safety policies and risk assessment towards young people, to organise appropriate health and safety events for young workers in the sector, to participate in the awareness raising activities organised by the Agency and to disseminate information and good practices on the issue.

6. Preventive action against stress at work

During the plenary meeting of their European Social Dialogue committee in January 2006, FIEC and EFBWW adopted a joint "Recommendation" on the prevention of occupational stress in the construction sector (see document in annex).

The initial basis for the Recommendation was the result of the joint FIEC-EBFWW research project and seminar on work-related stress held in 2004. The statistics provided in the study showed that a majority of workers in the sector were not suffering from stress. However, when arising, stress can be a concern for both employers and workers in the industry. Taking into account that the problem of stress is becoming increasingly important, especially as regards insurance claims, FIEC and EFBWW developed a joint recommendation for their members on the prevention of occupational stress in the construction sector.

The recommendation focused on the specificities of the construction industry and underlined that tackling stress at work can lead to greater work efficiency and improved occupational health and safety. It also recommended to FIEC and EFBWW member federations at national level to jointly formulate a positive policy to prevent, reduce and combat work-related stress, for example by promoting sectoral schemes against work-related stress. This recommendation is in line with the framework-agreement on work-related stress signed by UNICE/UAPME, ETUC and CEEP at the cross-sectoral level in October 2004.

7. 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 at 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 22nd 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), the 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" are preparing a Follow-Up-Summit to present the joint actions they have undertaken since November 2004 to improve safety and health on construction sites. This Follow-Up Summit should consist in a one day conference during which each signatory party should report on its implementation activities. A joint statement presenting all the achievements of the signatory parties should be issued for the event.

FIEC and EFBWW decided to set up a Social Dialogue Summit in parallel to the OSHA follow up summit, in order to evaluate the implementation of their joint declaration. During this meeting on 28 June 2006, FIEC and EFBWW presented 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.

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 2005-2006:

1. Working time directive

In October 2004, the EU Commission issued a proposal for a revision of the Directive. A FIEC position paper on the Commission's proposal was circulated to MEPs in April 2005, prior to the vote of the Employment and Social Affairs Committee on the text. In its position, FIEC expressed its support for the "opt out" clause, as long as its use be rationalised. It also asked for the permanent extension to one year of the reference period for the calculation of the maximum working time of 48 hours, in order to allow enough flexibility to construction firms which have to operate within a tight time-schedule.

In May 2005, the European Commission revised its proposal to take into account a number of amendments of the European Parliament. FIEC adopted a new common position in May 2006, in order to react to compromises proposed by the European Commission and to convey the views of the sector to the EU Council which is now examining the text.

In its revised position (see document in annex), FIEC confirmed that it was opposed to a removal of the "opt out" mechanism but that it recommended that it be used in an appropriate manner. It also opposed the reduction of the maximum working week to 55 hours proposed by the European Commission. However, FIEC confirmed that:

- it was in favour of the removal of the period "not exceeding 72 hours" prior to granting a compensatory rest period to workers in the event of derogations to the daily and weekly rest periods.
- it was also in favour of the Commission's proposal not to consider the "inactive part of on-call time" in principle as working time, unless the national legislation and/or collective agreement provides otherwise.

The FIEC secretariat circulated this revised position paper directly to the EU 25 Permanent Representatives here in Brussels and asked FIEC Member Federations to give their express support to the FIEC position by contacting their national Ministers responsible for the issue before the Employment and Social Affairs Council scheduled on 1st June 2006 and urging them to give the corresponding guidance to their Brussels Permanent Representatives.

However, given the differences in labour market situations in the Member States and the character of the new provisions, no agreement was reached during the Employment Council held on 1-2 June 2006. The key issues still to be resolved relate to the "opt-out" provision and the maximum weekly working time.

2. Corporate Social Responsibility (CSR)

Some FIEC principles for sustainable development were adopted in June 2005 during the FIEC annual Congress. One year after their adoption, FIEC member federations were invited to report on the CSR initiatives they had undertaken to implement these principles or to encourage their affiliates to grow more sustainable. Often, enterprises are not aware to act for CSR although some of their actions can be considered as CSR. Some good practice initiatives were collected during the SOC-3 meeting in 26th April 2006 and it was decided to realise a brochure to present and promote these achievements towards all FIEC members.

Social Dialogue

3. Posting Directive

Since construction is an activity in which the workers are particularly mobile, FIEC has been particularly involved in lobbying the Council to reach agreement on the current version of the posting directive, which regulates the movement of posted workers from EU country to another. FIEC is now keen to see it properly implemented.

- **FIEC-EFBWW Posting Database**
With the support of Ius Laboris, a network of specialised Law firms across Europe, FIEC and EFBWW agreed in 2005 to produce a database aimed at gathering together the national legal and conventional provisions which have to be respected during the posting of workers. This database is not intended to be exhaustive, but would facilitate the process of finding out about the broad parameters involved when posting a worker to another EU country. It will allow them, in particular, to identify the persons or organisations from whom they could obtain detailed information. The database, which should be as practical as possible in order to be easily accessed and understood, should be completed by October 2006.
- **Communication of the European Commission**
Following a first evaluation report in 2003, the European Commission launched in December 2005 a consultation on the current implementation of the posting Directive. In their responses to this consultation, FIEC members opposed the idea of a revision of the Directive but pointed out several practical difficulties in its implementation. Members suggested that these difficulties should be resolved in particular through better access to information, greater administrative cooperation between EU Member States and the implementation of advance declarations (see FIEC answer dated 20/2/2006 in annex). After consideration of the responses received to its consultation, the European Commission published in April 2006, a Communication providing guidance to implement the Directive at national level.

Referring to rulings of the European Court of Justice, the Communication indicated in particular which declarations and authorisations should be prohibited (or allowed) when posting a worker to another EU country.. and stated that prior declarations would be authorised so long as they are purely informative and that no systematic control is undertaken before the work begins. The Commission announced that it will produce a roadmap of short-term measures to be taken by Member States to improve the implementation of the Directive: including a proposal for standardised declaration forms and increased cooperation between EU labour inspectorates. The Commission

also announced that it intends to evaluate the impact of these Guidelines in one year's time and decide on the basis of its findings whether full Directive revision may be required. FIEC will continue lobbying that the sector is opposed to a revision.

- Initiative report of the European Parliament
The European Parliament has also undertaken work on the Directive. From January to March 2006, several hearings were organised on this issue by the Employment and Social Affairs Committee. The objectives pursued with those hearings were to examine the current implementation and decide whether the Directive needed re-writing or not.

On the basis of the difficulties identified during the hearings, a report was written by Mrs Schroedter MEP (D, Greens), to be adopted by the EP Employment and Social Affairs Committee before summer 2006. During their plenary social dialogue meeting held on 1st June 2006, FIEC and EFBWW adopted a joint position paper on the draft report to promote the views of the sector to the Rapporteur and to the Members of the Employment and Social Affairs Committee (see document in annex). A majority of MEPs agree with FIEC that problems encountered should be dealt with at the national level in the countries concerned and not through a revision of the Directive, and that an enhanced cooperation between Member States, as well as a better access to information.

4. 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 combating the black economy.

The FIEC ad-hoc working group set up to look into the issue of undeclared work agreed to draw up a guide of best practices, in order to disseminate relevant initiatives to combat undeclared work among FIEC members. The idea of the guide was not to generalise national practices, which do not necessarily suit all countries as well as creating new obligations for enterprises, but rather to encourage the FIEC member federations, enterprises and public authorities to take actions against undeclared work.

In April 2006, SOC-3 members adopted a guide composed of two parts:

- a first introductory part containing general recommendations of measures which could be adopted to combat undeclared labour at national

level (including reinforcement of penalties and checks especially in the evening and at weekends, preventive action towards workers),

- a second part consisting of national best practices or action plans implemented in some EU countries by FIEC member federations.

The guide is available on the FIEC website at www.fiec.eu under "publications".

In parallel, and in view of preparing the discussions to be held on the issue within their European Social dialogue Committee, FIEC and EFBWW in 2005 applied for, and obtained, the European Commission's financing to develop a joint research project on "undeclared work".

This project is aiming at evaluating the practical implementation and impact of the initiatives undertaken at national and European level to combat undeclared labour in the construction industry. It is managed by a FIEC-EFBWW steering committee, responsible for the supervision and evaluation of the project, and is subcontracted to Construction Labour Research (CLR), a Dutch research institute specialized in construction research. The survey should be available at the end of 2006.

5. Supplementary pensions fund

The European Commission launched a two phase consultation on the portability of pension rights in 2002 and 2003. FIEC's response to this consultation stated that an EU initiative in this field should not in any way interfere with the organisation of supplementary pensions arrangements in the Member States, but could consist of an exchange of best practices and information on the experiences developed by Member States through creating links between different supplementary pension schemes at the national level.

The European Commission issued a proposal for a Directive on supplementary pension rights in October 2005. This proposal is designed to reduce the obstacles to mobility within and between Member States caused by present supplementary pension schemes provisions. The 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. The proposal also seeks to improve the information given to workers on how mobility may affect supplementary pension rights.

In order to ensure a better understanding of the impact of the proposed Directive on the sector's supplementary pension schemes, FIEC and EFBWW

decided to launch a research survey and applied for EU financial support, which was granted in May 2006. Such a study would complement the impact assessment produced by the Commission and provide FIEC and EFBWW members with a description of the current functioning of portability of supplementary pensions in the sector. It will also help both organisations to outline the difficulties raised by the Commission's proposal and to convey accordingly the views of the sector to the European Institutions.

6. Sectoral Social Dialogue Conference

In March 2006, the European Commission organised for the first time a Sectoral Social Dialogue Conference, bringing together trade unions and employer representatives from 31 European social dialogue committees. Vladimír Špidla, European Commissioner for Employment, Social Affairs and Equal opportunities was the President of this meeting, chaired by Mr. van der Pas, Director General of DG Employment.

The aim of this meeting was to discuss the social partners' role in tackling the challenges facing the EU, such as restructuring, skills gaps and changing population trends. Several sectors, among which the construction sector, were invited to report on their activities in these fields. FIEC Vice-President Peter Andrews spoke during the panel session dealing with lifelong learning issues and changing population trends to report on FIEC activities on tutorship and health and safety training.

Commissioner Špidla highlighted the importance and responsibilities of the social partners in addressing these issues, by contributing to better working conditions and vocational training, issues which are central to the EU Lisbon Growth and Jobs strategy.

7. Rules of procedures for FIEC & EFBWW Social Dialogue Committee

For many years, FIEC and EFBWW have organised their Social Dialogue without any formal rules of procedure, but the EU-Commission was now urging FIEC-EBFWW to submit such rules.

FIEC and EFBWW adopted during their Social Dialogue plenary meeting held on 1st June 2006 in Brussels some rules of procedures, which were agreed on both by the FIEC Steering Committee and Council and the EFBWW Executive Committee later in June 2006. The EU-Commission can now put those rules into its files, noting that all formalities of the FIEC-EBFWW Social Dialogue Committee are respected.

The FIEC-EBFWW rules of procedures are available on the FIEC website at www.fiec.eu under "publications".

**Joint Declaration of the European Construction Industry's Social Partners
on the occasion of the European Health & Safety Summit 2004 in Bilbao**
22/11/2004

EFBWW and FIEC,
recognised by the European Commission as the
Social Partners representing the workers and the
employers in the European Sectoral Social Dialogue
in the Construction Industry,

- **confirming** their Joint Statement issued in Dublin on 30th April 2004 and
- **considering** that the safety of workers at the workplace
 - constitutes their principal concern with respect to the conditions of employment
 - contributes both to the productivity of workers and to the competitiveness of the sector,
- 1. **re-confirm** their long-standing and on-going determination to contribute to a continuous real improvement of the sector's health and safety records,
- 2. **agree** on the following points:
 - **the only acceptable accident figure is "zero"**. Although, realistically seen, this is an unlikely figure to be achieved, it remains a general vision, carried by a "zero tolerance" approach,
 - **real progress** is necessary, based on good regulations,
 - **prevention is better than reaction**: design, planning, preparation and execution, all have to take H&S into consideration
 - changing the attitude of everyone concerned and creating a genuine H&S culture, requires the **integration of H&S into all education and training systems**, as well as regular information campaigns, in order to **increase risk consciousness and awareness**,
 - **specific programmes for youngsters** are necessary,
 - finally, **real progress** on construction site depends on the **committed collaboration of everyone involved**, everyone in his sphere of influence, from the client to architects, engineers and contractors to the workers most directly/ personally concerned.

3. **and, on the basis of their joint working programme, take a firm commitment**

- to undertake all necessary action at the European level, in their Social Dialogue,
- to urge their member organisations to take corresponding action at the national level and
- to use their entire communication network for disseminating H&S information

Therefore, the European Social Partners of the construction sector agreed to implement the programme laid down in the annex.

FIEC position paper on the draft recommendations dated 13th May 2005 and 1st June 2005 for second reading of the European Parliament's Committee on Employment and Social Affairs on the Council Common Position for adopting a directive on risks arising from optical radiations 1992/0449B (COD)

7/7/2005

“ [...] ”

I. General Observations

The proposal for a directive addresses exposure to artificial as well as natural sources of optical radiation that may cause damage to the eyes and skin. FIEC would prefer that it addresses only artificial sources of radiation.

1. The climate varies considerably according to the EU country concerned. FIEC considers that it would be better to allow national authorities to determine specific preventative measures according to their national climatic conditions. It would allow natural optical radiation to be more adequately treated. This would also avoid unnecessary checks and the associated bureaucracy in companies in the North of Europe and appropriate measures to be taken in countries with a very sunny climate.
2. FIEC would like to point out that the exposure to solar radiations is not limited to the workplace, so that it would be difficult to determine whether the origin of a worker's health problem is occupational or not. In addition to the antecedent of previous sunburns, skin cancers may also result from many individual factors, such as the colour of the skin and the sensitivity to sun burn. For this reason, it is impossible to link health problems exclusively to the professional situation of workers.
3. Consequently, FIEC considers that natural optical radiation should be excluded from the scope of the directive.

[...]

II. Specific Comments

[...]

1. Amendment 1: Recital 4a (new) and amendment 3: Recital 13a (new)

By deeming inappropriate the application of exposure limit values and engineering controls in the case of exposure to natural sources of optical

radiation, the Council recognized the difficulty of measuring natural optical radiation on work sites. For the same reason, FIEC considers the assessment of risk and the adoption of prevention measures taking into account this risk as being impracticable.

FIEC welcomes the Committee on Employment and Social Affairs' proposal to draw up a practical guide aiming at helping employers to better understand the technical provisions of this directive. However, considering our previous observations, such a guide should be limited to the risks arising from artificial radiation.

2. Amendment 4: Article 4 §2

FIEC refuses any evaluation of risk based on the weather forecasts, since such forecasts always contain a considerable level of uncertainty. Climate conditions on construction sites are extremely variable, which makes it also extremely difficult to evaluate the level and the duration of exposure to natural radiation and consequently, impossible to assess risks.

3. Amendment 6: Article 5 §3

The requirements detailed in this article, such as action plans comprising technical and/or organisational measures would be extremely costly for the companies, and would have the effect of delaying or holding up work on sites, which would ultimately be counter-productive. FIEC considers it is the responsibility of the workers to wear adequate clothes to protect themselves against solar radiation. FIEC is also of the opinion that such measures would be disproportionate in the countries of Northern Europe, which are practically not concerned by such problems. Article 5 §3 should be deleted.

In addition, FIEC fully supports the remarks contained in the relevant UNICE position paper issued on 25 October 2004."

Joint Statement of the European Construction Industry's Social Partners on the prevention of Occupational Stress in the construction sector

11/4/2006

“Considering,

- the joint declarations of the European Construction Industry Social Partners issued on the occasion of the European Health and Safety Summit 2004 in Bilbao (Spain) on 22 November 2004;
- the framework agreement on work-related stress adopted by the cross-sectoral European social partners on 8 October 2004, in which stress is defined as “a state, which is accompanied by physical, psychological or social complaints or dysfunctions and which results from individuals feeling unable to bridge a gap with the requirements or expectations placed on them.”

Considering the specificities of the construction sector which differs from other sectors due to:

- a high risk of occupational accidents;
- a complex production process, often consisting of a chain of subcontractors and secondary contractors working more or less simultaneously;
- the influence on the production process of external factors such as weather conditions;
- a relatively high mobility of workers, in some cases, and consequently the existence of long journeys to and from work;
- the strong pressure on the production process to complete the work within in adequately short time limits.

FIEC and EFBWW, the European Construction Industry's Social Partners, on the basis of article 7 § 9 of the framework agreement on stress of the cross-sectoral European social partners:

- **agree** that, even if not all work places and workers are necessarily concerned and even if not all manifestations of stress at work can be considered as work-related stress, nevertheless work-related stress can affect some of them. Consequently, tackling stress at work can lead to greater work efficiency and improved occupational health and safety,
- **declare** that a positive policy should be developed in the construction sector to prevent, reduce and combat stress-related problems if and when they occur, once the reasons of the work-related stress and the way they affect different people involved, have been investigated and determined.
- **recommend** to their member federations at national level to jointly formulate a positive policy to prevent, reduce and combat work-related stress, once again when the result of the previous reasons may be known.

FIEC and EFBWW, the European social partners in the construction sector will examine the progress achieved in the framework of this joint statement, two years after its signature, within their European Social Dialogue.

FIEC position on the Commission's modified proposal for a Directive amending Directive 2003/88/EC concerning certain aspects of the organisation of working time (COM(2005)246 – 31/5/2005)
23/5/2006

[...]

The following text details FIEC comments on both the amendments proposed by the European Parliament and on the Commission's modified proposal.

Opt-out

1. In its revised proposal, the European Commission meets the European Parliament's demand to remove the possibility to derogate from the maximum weekly working time of 48 hours (known as the "opt out"), by proposing that it be phased-out after a period of three years from the date of implementation of the revised Directive. FIEC members are opposed to any such removal. The "opt-out", used in an appropriate manner, is an invaluable tool allowing more flexible working time management, which is particularly vital for the construction sector. Construction has to deal with challenges not faced by other sectors, in respect to climate and time-scheduling constraints, for example regarding essential work in schools, power stations and hospitals. The opt out should be retained as an option for all Member States, but a majority of FIEC members are convinced that its use should be meanwhile rationalized in order to ensure better health and safety conditions for workers.

Furthermore, FIEC members welcome the Commission's proposal to have the opt-out implemented not only by collective negotiation or a social dialogue agreement but also by law. However, some FIEC members consider that the individual written consent of the worker should not be necessary when such a law, collective or social agreement exists.

Absolute maximum weekly working time

2. In its revised proposal, the Commission proposes to change the limitation of the absolute maximum weekly working time – initially proposed to be fixed at 65 hours by the European Commission (unless a collective agreement provides otherwise) – to 55 hours. FIEC members are in their majority opposed to any such reduction to the maximum working week.

Reference period for calculating weekly working time

3. As concerns the 4 months reference period for the calculation of the maximum working time of 48 hours, the Commission confirms that the Member States are allowed to set a reference period of up to a maximum of 12 months by collective agreement or by law. However, the Commission meets the request of the European Parliament by making this possibility subject to tighter conditions in order to better protect workers' health and safety. FIEC members are in favour of extending this 4 months period up to 12 months, although they would prefer that the annual reference period be established as a general rule to allow maximum flexibility.

On-call time

4. FIEC members are in favour of the Commission's proposal not to consider the "inactive part of on-call time" in principle as working time, unless the national legislation and/or collective agreement provides otherwise. The authority of the Member States is therefore preserved as concerns the interpretation of the "inactive part of on-call time".

Considering this, FIEC members believe that it is confusing to state that the "inactive part of on-call time" can not be taken into consideration for the calculation of the daily and weekly rest periods. The inactive part is not working time, nor can it be considered as rest time. FIEC requests the Commission to provide further explanations on this point.

Compensatory rest

5. FIEC is in favour of the removal of the period "not exceeding 72 hours" prior to granting a compensatory rest period to workers, in the event of derogations to the daily and/or weekly rest periods. In fact such a time limit was too short and undermined flexible working arrangements and enterprise's obligations in terms of organisation. The European Parliament and the European Commission are proposing instead that the compensatory rest period be granted within a reasonable period of time to be determined by national legislation or a collective agreement. FIEC member federations welcome this amendment, which will allow adaptation to national situations and sector specificities.

FIEC Position on the Commission's services report (15/11/2005) on the implementation of Directive 96/71/EC concerning the posting of workers in the framework of the provision of services¹

20/2/2006

Introductory remarks

1. FIEC welcomes the document drawn up by the Commission, which provides useful explanations and practical help for the efficient implementation of Directive 96/71/EC.

2. [...]

Specific comments**Access to information**

3. FIEC agrees with the Commission on the need to have easy access to information on the terms and conditions of employment in the EU, in order for the Directive to be applied properly. Access to information is currently insufficient and FIEC supports all the initiatives currently being undertaken by the Commission to improve the situation, in particular the recently created website on the portal http://ec.europa.eu/employment_social/labour Law/postingofworkers_en.htm devoted exclusively to the posting of workers. FIEC welcomes the Commission's production of practical fact sheets containing a concise description of the main rules to be observed in each Member State and to make them available on the European Commission website. However, FIEC contends that to make best use of the fact sheets, these must be translated into the official EU languages.

4. To address the specificities of the construction sector, FIEC and EFBWW, the European Construction Industry's Social Partners, are currently producing a database aimed at collecting together the national legal and conventional provisions which have to be respected when a construction worker is posted. To address the specificities of the construction sector, FIEC and EFBWW, the European Construction Industry's Social Partners, are currently producing a database aimed at collecting together the national legal and conventional provisions which have to be respected when a construction worker is posted

[...]

Administrative cooperation

5. Administrative cooperation between the EU Member States needs to be stepped up in order to improve the provision of information to firms and workers. As the result of the CLR-study and the subsequent seminar in Scheveningen (15-16/10/2004) have shown, there is an obvious and urgent need for additional and better organised human resources to be devoted to this task

Adequate measures to be taken at national level

6. FIEC member federations underline the need for adequate measures to be taken at national level in order to achieve the correct implementation of the posting directive. The joint and several liability of contractors and sub-contractors is presented in the EC document as a tool which may assist the effective implementation by the subcontractors of the rules related to posting. Indeed, the liability involves the contractor in the control of its subcontractors as regards the respect of labour law (among which Directive 96/71), fiscal rules, and so forth. However, it is questionable if those responsible are effectively in a position to control all risks. Consequently, FIEC believes that the usefulness of this tool should not be over-estimated.

7. FIEC considers that the Commission's document does not stress enough the interest of the advance declaration procedure for ensuring that the Directive's rules are effectively respected. The EC document points towards minimising the use of advance declarations.

8. In the construction sector, the advance declaration is of particular importance since it represents an essential source of information to put in place controls, especially as regards the respect of minimum wages, and to combat undeclared work.

9. Contrary to what is written in the Commission's report, difficulties arising when a worker is being posted to another Member State are not the same as when a worker moves around in his own country. Providers of services established in

¹ Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services, OJ L 18, 21.1.1997, p. 1-6.

another EU country are not in the same situation as the national providers of such services. Foreign service providers are usually unknown to the administration of the host country since they are not obliged to make declarations and registrations in the same way as national service providers.

10. To be able to exercise effective checks on all firms, the host country needs to be informed in advance of the presence of posted workers on its territory, where applicable. The notification of the provision of services through the advance declaration is therefore a useful instrument leading to the "efficient" and effective control by the host country of the labour conditions under which the posted worker is engaged.
11. However, the formalities of the advance declaration need to be made sufficiently straightforward in order that they do not prejudice the free provision of services and the free movement of workers in the European Union.
12. The document presents the advance declaration as a formality which is not properly respected and draws the conclusion that the benefit of this formality for the workers remains extremely limited. FIEC believes, however, that the fact it is not respected does not mean that it is of no use or interest and considers that it is the responsibility of the authorities to look for solutions so that this formality is respected.
13. Following from this, FIEC considers that a standard declaration form – to be filled in by the employer of the posted worker prior to the beginning of his work, if necessary by electronic means – could be developed at the European level. The interest of such a standard form could, for example, be carefully studied by the National Expert Group set up by the European Commission to discuss posting issues.
14. Measures aimed at excluding the operation of "mailbox firms" in the marketplace should also be examined by the National Expert Group.

Effective execution of sanctions

15. There is a need to ensure the transnational enforcement of fines in the event of non-compliance with the Directive. FIEC recognises that the adoption and transposition of the Council Framework Decision 2005/214/JHA on the application of the principle of mutual recognition to financial penalties is a positive step in the right direction.

Factual errors in the Commission services' report

FIEC would like to draw the Commission's attention to some factual errors included in the report regarding the situation in France.

16. Contrary to what is indicated in the report, the implementation of the joint and several liability of the client does lead to financial penalties in France (cf Art L. 324-13-1 et L.324-14 of the French Labour Code)
17. France should also be included in the list of countries which have introduced a mandatory advance declaration (cf Art D 341 – 5 – 7 of the French Labour Code).

**JOINT POSITION of the European Construction Industry's Social Partners
on the Communication COM(2006)159 Regarding the "Guidance on the posting
of workers within the framework of the provision of services"**
1/6/2006

[...]

FIEC and EFBWW, the European Construction Industry's Social Partners:

- Reconfirm that the Posting of Workers Directive does not need to be revised. The Directive is a well balanced and workable instrument for achieving the objectives of articles 49 and 50 of the EC Treaty, including fair competition and social protection;
- Declare that it is the joint responsibility of the European Commission and the Member States to make the Posting of Workers Directive effective through improving the cooperation mechanisms between their administrations and by encouraging better access to information;
- Regret that the European Commission is interpreting European case law in a way which considerably limits the possibilities of control by the member states' authorities and which reintroduces the deleted articles 24 and 25 of the draft Services Directive;
- Declare that prior declarations are not synonymous with prior controls but that they are formalities which are necessary, adequate and proportionate and which allow the host countries to be properly informed of the existence of posted workers on their territories. They allow the authorities of the host country to organize controls, if necessary on the day when the work begins on the construction site, which would have been impossible to organize without a prior information;
- Declare that the obligation to have a permanent representative in the country of posting of the company which posts workers should not be limited to the foreman of the posted team if this person is not adequately mandated to receive or sign official documents and writs according to the host country laws;
- Declare that administrative papers to be kept at the place of work should provide the host country's authorities with the possibility, without delay, to verify that social and labour law regulations are being respected (among which the respect of the minimum wage);
- Recommend that the European Commission adopts a pro-active attitude aimed at stimulating and facilitating transnational cooperation between Member States and labour inspectorates;
- Recommend that the European Commission introduces at the EU level a model of a "prior declaration form".

FIEC and the EFBWW, invite the European Commission to recognize the role of the social partners in this field and start a dialogue with the European social partners in the construction sector.



TEC

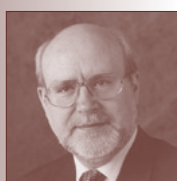


President:
Zdenek Klos, CZ

Rapporteur:
John Goodall, FIEC

Sub-commission TEC-1

"Directives, Standards
and Quality Assurance"



Chairman: Rob Lenaers, B

Rapporteur:
Eric Winnepenninckx, B

Sub-commission TEC-2

"Innovation and Processes"



Chairman:
Bernard Raspaud, F

Rapporteur:
André Colson, F

Sub-commission TEC-3

"Environment "



Chairman:
Jan Wardenaar, NL

Rapporteur:
Niels Ruyter, NL

Sub-commission TEC-4

"Plant and Equipment"



Chairman:
Juan A. Muro, E

Rapporteur:
Ricardo Cortes, E

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;
- "Sustainable construction" and environmental issues affecting the construction sector; 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.

This year has seen the creation of a new FIEC sub-commission known as TEC-4 "Constructional Plant and Equipment" under the chairmanship of Sr. Juan A. Muro, Director of Plant & Equipment in FCC Construcción, S.A. Sr. Ricardo Cortes (SEOPAN) has kindly agreed to act as rapporteur.

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 April 2006, a total of 338 product standards had either been formally approved, or had reached the formal vote stage, of which 252 had been cited in the Official Journal. A further 86 had either passed – or had reached – the CEN enquiry stage, whilst a further 33 were under preparation for CEN Enquiry.

These figures indicate that 17 years after the enactment of the directive, progress is reaching the point where approximately half of the product standards envisaged as being necessary are now publicly available and the CE Marking of a considerable number of construction products should be possible.

The very slow implementation of this directive has not escaped the attention of the politicians. In its

Communication¹ "Implementing the Community Lisbon programme: A strategy for the simplification of the regulatory environment", the Commission outlines its 3 year action programme for simplifying and updating the existing law. In the first instance this initiative will focus on the most regulated sectors; namely the motor, construction and waste industries. It specifically cites the simplification, clarification and reduction of administrative costs and burdens, in particular for small and medium-sized enterprises, through more flexibility in the formulation and use of technical specifications, lighter certification rules, and elimination of the implementation obstacles that so far have hampered the creation of a full internal market for construction products.

It is against this background that the Commission has now begun in earnest to look at revising the CPD beginning 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 recognizing that the Directive only partially eliminates barriers to trade and does not establish optimal conditions allowing the free circulation and use of construction products. At the time of drafting this annual report, FIEC was in the process of drafting its response to the Commission's enquiry.

The 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 is due for completion in March 2007.

3. Revision of the "New Approach"

FIEC has been closely following developments as concerns the revision of the "New Approach". The issues at stake in terms of their influence on the Construction Products Directive (CPD) are more far-reaching than is immediately evident.

On 24th June 2005, FIEC wrote a letter to Mr. Jacques McMillan (Head of Unit, DG Enterprise)

¹ COM(2005)535 dated 25/10/2005

pointing out the difficulties arising with the definitions (or interpretations) of the words *"placing on the market"*, *"putting into service"* and *"manufacturer"*. Then on 8th September 2005, the Commission Services issued a new document entitled: *"Draft CERTIF 2005-9: Common understanding of basic notions in technical harmonisation"*. This document specifically addresses the matters raised in FIEC's letter. Moreover, at first sight it appears that some of the solutions put forward are likely to be acceptable to FIEC. As concerns the term *"placing on the market"*, the option proposed on pages 3 and 4 of the document, namely *"making available on the market"* as opposed to simply *"making available"* should also be acceptable. The retention of the word *"market"* is however important in order to avoid for instance, a general contractor *"providing site-mixed concrete to a sub-contractor for use on the same site"* being deemed *"placed on the market"*. Clearly FIEC wishes to avoid the retention or introduction of any legislation requiring contractors to carry out CE Marking activities on their own construction sites.

Most importantly the text of this document states that *"the criterion of the physical handover or the transfer of ownership will still be decisive to determine the question whether a product has been made available on the market"*. FIEC believes that this criterion is fundamental and must be maintained.

According to the Blue Guide² *"putting into service"* takes place *"at the moment of first use within the Community by the end user"*. This definition would suggest that *"putting into service"*, from a contractor's point of view, only occurs at the moment of handover of the completed works to the end user; i.e. the client. However, Article 8.7 of the Machinery Directive – *"Conformity Assessment Procedures"* – implies that any contractor supplying and fixing an electrically driven door or gate that involves the assembly of different components, (albeit CE Marked), from different manufacturers, or the modification of a complete standard assembly, must CE Mark the whole installation on completion of its being put into service. Since no barriers to trade are involved, one might reasonably expect that this activity should be covered by national technical regulations concerning safety, but under the present rules such appears not to be the case.

As concerns the term *"manufacturer"* no alternative definition has yet been proposed. It may be appropriate therefore to re-examine this in the light of the forthcoming revision of the CPD provided that the review of the New Approach itself does not ultimately lead to a proposal.

With the availability of European Standards (and European technical approvals) at last turning from a trickle to a fountain, another concern has been the progressive substitution of CE Marking (denoting product conformity to a harmonised European specification such as an European Standard) in place of the hitherto familiar and widely trusted national marks (U-Zeichen, NF Mark; BSI Kitemark, etc.). Since the CE Marking only denotes conformity to the *harmonised* part of a standard (as set out in Annex ZA of each hEN), contractors may well ask what mark denotes conformity to the remainder of the text of the standard, that is, the so-called *voluntary* part? Not surprisingly, some stakeholders are asking whether the CE Marking is of any concern to consumers at all, inferring that is no more than a *"regulator's mark"* confirming that the product can legally circulate on the *Internal Market* without restriction while conferring no guarantee as concerns quality.

Another concern is the relationship between CE Marking and so-called *"voluntary"* marks, such as the CEN Keymark, denoting conformity to European Standards, whether harmonised or not, usually based on a higher level of attestation of conformity than required for CE Marking and hence guaranteeing a given level of quality. Manufacturers are permitted to add voluntary marks provided that they cannot be confused with the meaning of the CE Marking itself. Most confusing of all however, is when national marks (U-Zeichen, NF Mark; BSI Kitemark, etc.) formerly denoting conformity to a national standard, appear alongside the CE Marking. Since the national standard will have been cancelled, the national mark is intended to denote conformity to the new European standard covering both its *"harmonised"* and *"voluntary"* parts. This would appear to be satisfactory in principle, but is potentially confusing to anyone who does not understand the purpose of adding a national mark alongside the CE Marking, when both denote conformity to the same standard.

Another significant aspect for instilling confidence in CE Marking is ensuring that notified bodies are effectively monitored and supervised by the member states in which they are located. The New Approach directives foresee – and rely upon – effective systems of market surveillance. For the most part however, these do not exist, rendering the system open to question and leaving contractors faced with performances covered by CE Marking which may be unreliable. FIEC is aware that the European Commission intends giving more weight to accreditation, which is in principle a very good idea, but the basic difficulty still remains. It must be possible to have effective systems of market

² Guide of the European Commission to the *"Implementation of directives based on the New Approach and the Global Approach"* (September 1999)

surveillance, failing which they should be replaced by something more reliable. This raises the question, that if Member States have hitherto been unable to properly monitor their notified bodies before the review of the New Approach, then what chances are there that accreditation bodies managed by Member States will in future have sufficient human and other resources to provide an adequate and reliable service?

The various questions arising, taken together with the manifest uncertainties in the market place as concerns the reliability of CE Marked construction products are a matter of growing concern. The Commission expects to adopt definitive proposals for the review of the New Approach no later than the end of 2006. The outcome may be expected to have considerable consequences for the review of the CPD following in its wake. FIEC expects not simply to follow developments, but to profoundly influence them for the benefit of its members.

4. Essential Requirement No. 3 and dangerous substances under the CPD

Essential Requirement No. 3 (ER 3) of the CPD addresses the issues of "Hygiene, Health and the Environment". The European Commission in collaboration with the Standing Committee on Construction, has for many years discussed how best to address these requirements in terms of including them in standardisation mandates addressed to CEN and EOTA, but hitherto have been unable to agree upon a workable solution. Consequently, harmonised specifications published to date do not take aspects relating to ER3 into account.

Annex 1 of the CPD states that the construction works must be designed and built in such a way that they will not be a threat to the hygiene or health of the occupants or neighbours, in particular as a result of any of the following:

- The giving-off of toxic gas,
- The presence of dangerous particles or gases in the air,
- The emission of dangerous radiation,
- Pollution or poisoning of the water or soil
- Faulty elimination of waste water, smoke, solid or liquid wastes
- the presence of damp in parts of the works or on surfaces within the works

Furthermore, ER 3 includes the important issue of "durability".

The European Commission has recently handed down a standardisation mandate to CEN on the topic of "Dangerous Substances" which is now being addressed in CEN/TC 351 specifically set up for the purpose. It still remains largely unclear exactly how these issues will ultimately be addressed in terms of their inclusion in standardisation mandates. FIEC will continue monitoring developments.

5. The Environmental Performance of Buildings

As reported last year, on 29 March 2004 the European Commission handed to CEN a standardisation mandate for the drafting of a suite of standards for the *"Development of horizontal standardised methods for the assessment of the integrated environmental performance of buildings"*. At first sight, given that all European Standards are voluntary instruments, such an initiative may seem innocuous. However, in view of the growing trend among construction clients to specify construction works on the basis of their performance, and that a standard for the "environmental performance of buildings" once in existence will define how these performances can be achieved in practice, one begins to realise that contractors may suddenly find themselves in "unfamiliar territory".

Furthermore, similar initiatives are currently underway in ISO for international standards entitled *"Building Construction – Service Life Planning"* and *"Building Construction – Sustainability in Building Construction"*³, although under the terms of the Vienna Agreement between CEN and ISO there will be no duplication of work. Moreover, in the seemingly remorseless drive towards increased sustainability, some member states are reported to have been contemplating the introduction of legislative instruments aimed at achieving similar objectives to these proposed standards, and hence the introduction of a voluntary instrument in the form of a European Standard is intended to serve as an alternative. Never-the-less, any standard once called up in contract documents, has the same effect from the standpoint of a contractor as does legislation; it becomes part of the construction contract.

On the basis of a study commissioned by DG Enterprise and the outcome of several workshops,

³ ISO/TC59/SC14 and SC17 respectively

two routes towards standardisation were identified as most promising:

- The development of a standard for the environmental performance of buildings; and
- The development of a horizontal standard for environmental product declarations.

The European Commission finally decided to combine these two routes and the scope of the proposed standards therefore embraces both concepts. They will be generally applicable for the assessment of the integrated performance of a building over its life cycle. Furthermore, the standards will describe a harmonised methodology for the assessment of the environmental performance of buildings and their life cycle cost performance as well as the quantifiable performance aspects of health and comfort in buildings.

The idea behind this concept considers a building in its entirety, with the required performances and functions to fulfil. A building during its life cycle, from the supply of raw materials for building products, through various processes, ending with the final disposal of the building's components, has both environmental and economic impacts in addition to impacting the health and comfort of the occupiers.

In a first stage, the standards will provide a methodology for the aggregation of environmental information on building products. The ultimate aim of this first set of standards, is the delivery of information suitable for modelling the environmental impact of entire buildings.

The two most important work items of interest are:

- **the description of the building life cycle**, which encompasses construction, operation and service life issues, and end-of-life processes;
- **assessment of the environmental performance of buildings**, which provides rules for calculation and therefore directly influences the daily practice of contractors. These calculations will have numerous practical implications in the already complex construction process.

Although member states are represented in the CEN/TC, many of them choose to appoint a consultant to represent their interests. These consultants should normally promote the ideas not just of member states, but the opinions of national mirror committees. Their influence in this process can be quite significant, but in practice these are often aligned with interests other than those of contractors. Nevertheless, one cannot discount the possibility that these academic approaches will lead to discussions on the scope of the work and a

tendency to develop sophisticated standards, which is not always in the interest of the various parties concerned. The already complex ideas underlying life cycle analysis techniques, which are omnipresent in these dossiers, makes FIEC wonder – given the usual strict planning and construction deadlines – how contractors will ever be able to apply these standards in practice. These reasons largely explain why FIEC will continue to follow-up developments in this CEN Technical Committee.

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

On 6th April 2005, the European Commission adopted its proposals⁴ for the forthcoming Seventh Framework Programme for Research and Technological Development (2006-2013). In line with the Commission's usual policy, this document makes relatively few references to industrial sectors, and in this respect, construction is no exception. In January this year FIEC decided to draw up a position paper addressed to the members of the the European Parliament (ITRE Commission) proposing a number of amendments to the commission's text. At the same time, FIEC also welcomed the substantive draft report drawn up by the EP Rapporteur Jerzy BUZEK (PPE, Poland).

FIEC's proposed amendments are linked to the Strategic Research Agenda of the European Technology Platform for Construction (ECTP). They focus on various themes in the Specific Programme "Cooperation" and in particular: Health (Theme 1), Information and Communication Technologies – ICT (Theme 3), Nano-technologies (Theme 4), Energy (Theme 5), Environment (Theme 6) and Transport (Theme 7).

In the field of "health" FIEC would like to see trans-national research carried out on occupational diseases and industrial accidents through generating and analysing relevant data prior to developing strategies for their prevention, diagnosis and treatment. Furthermore, FIEC is in favour of research into the long term impact on the health of users or nearby residents of public transport systems. FIEC is calling for the design and development of crisis situation simulators for studying crises arising from natural or man-made disasters (tsunamis, terrorism...) affecting public infrastructure and services. FIEC is also suggesting that research into

⁴ COM 2005(119)

improving forecasting techniques for natural hazards should be widened to include landslides.

In the environmental field, FIEC is proposing research initiatives for the better protection of Europe's cultural heritage, storage underground of captured CO₂ emissions; and the better taking into account of the life cycle of buildings in raising energy efficiency.

As concerns the launch of "Joint Technology Initiatives" (JTIs), FIEC believes that at least one of these should include the construction of physical networks which ties in with the ambitions set out for the industry by the ECTP. Furthermore, FIEC is calling for research into more innovative surface infrastructure as well as for additional research in the field of rail transport and tunnel design.

The observations contained in the draft report of the ITRE Committee as concerns the participation of SMEs in JTIs and support for national exploratory awards are especially welcome. The same applies to the need to increasingly involve SMEs in research activities through combining financing methods in particular as concerns the Structural Funds.

By March 2006, no less than 1274 draft amendments had been tabled by MEPs for decision in the ITRE Committee, and the Rapporteur Jerzy BUZEK was endeavouring to consolidate all these into just 100 draft amendments, which even after the elimination of duplicated amendments, represented a challenging task. FIEC, with the assistance of FOCOPE (Forum in the European Parliament for Construction) endeavoured to ensure that FIEC's proposed amendments were neither diluted nor lost in this process.

The final step concerns the budget provisions for FP7, which have yet to be agreed and may well be reduced. Considerable vigilance will be required to ensure that the construction industry is not disadvantaged by any cuts, as happened so dramatically when the budget for the 6th FP was agreed in 2002. This led initially to disastrous results which largely came about as a result of massive over subscription to a theme of the programme that, following dis-proportionate cuts, had been dramatically under funded. For the construction sector, the losses in terms of wasted efforts gave rise to a crisis of confidence amongst the research community from which it has still to fully recover.

7. The revision of the Waste Framework Directive

On 21st December 2005, the European Commission simultaneously adopted both its "Thematic Strategy⁵ on the prevention and recycling of waste", and its proposal⁶ for a "Revision of the Waste Framework Directive⁷". 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.

Action now passes to the European Parliament and an initial discussion was held in the Parliament on 3rd May 2006 with the participation of about 30 MEPs including MEPs Hans Blokland and Caroline Jackson, respectively the rapporteurs for these two Commission documents. The main points arising from this discussion of immediate concern to FIEC may be summarised as follows:

- A number of definitions were perceived as being unclear and vague and hitherto the critical cause of various cases referred to the Court. MEP Jackson stated that even some of the Court's judgements were in conflict with one another mentioning in particular that she would add in better definitions for "recovery" and "disposal";
- The proposed use of the Comitology⁸ procedure is expected to be widely opposed by a large majority of MEPs, particularly where Article 11, the determination of "End of Waste" criteria is concerned and Article 21 dealing with "permits";
- The integration of the Hazardous Waste Directive into the Waste Framework Directive is likely to meet some resistance;
- MEP Blokland proposed that there should be separate waste directives for certain waste streams, including in particular construction and demolition waste.

A particular concern for FIEC is "soil" which FIEC would like taken out of the Directive altogether, with the ultimate suggestion that it be included in an up-coming proposal for a directive on the same topic. Evidently FIEC will now need to take a specific initiative towards the Parliament if this is to become a reality.

MEP Jackson is expected to table her draft report on 20th June followed by a discussion in the Environment Committee on 12/13th July and a vote on 10th October, 2006. The vote in Plenary is expected in mid-November and the deadline for tabling amendments is 5th September 2006.

⁵ COM(2005) 666 final

⁶ COM(2005) 667 final

⁷ 75/442/EEC

⁸ Comitology is often used as a procedure for the completion of technical annexes in directives through the setting up of technical committees in which representatives of member states and the Commission sit alone.

8. Energy Efficiency

On 22nd June 2005, the European Commission (DG Energy) launched a wide-ranging consultation on its Green Paper on Energy Efficiency "Doing more with Less". On 31st March 2006, FIEC submitted a response to the Commission's questionnaire covering energy efficiency aspects of the built environment as well as infrastructure. Extracts from these responses are included in the annexes to this annual report.

At the beginning of January 2006, the deadline passed for implementing the Energy Performance of Buildings Directive, three years after it was adopted by the European Parliament and the Council. Its implementation in the Member States is now becoming a matter of urgency and in order to ensure that the Directive actually leads to substantial energy savings and increased use of renewable energies, the European Commission launched the EPBD Buildings Platform in the frame of the intelligent Energy Europe, 2003-2006 programme. The EPBD Buildings Platform is an information resource for the implementation of the Directive. The service will be useful for practitioners and consultants, who have international interests, experts in energy agencies, interest groups and national policy makers.

The objective of the EPBD Buildings Platform is to support the full and continued implementation of the EPBD in the 25 Member States and Bulgaria and Romania by:

- Setting up mechanisms for the transfer of information between all stakeholders;
- Helping implement the Directive by specific actions and co-ordinate the activities of the various stakeholders (including Concerted Action and IEEA-SAVE projects);
- Providing input and/or tools to support the Commission and Member States in the follow up and evaluation of the impact of the Directive in light of early experience.

The envisaged information services of the project include:

- A dynamic Website including a helpdesk that will host all relevant information for different purposes and users (Commission, Member States, stakeholders)
- A monthly electronic EPBD Newsletter ("Webzine") based on the latest information from the website and disseminated by e-mail. Newsletters will be

filtered to reach specific target groups with tailored information.

- Short and concise EPBD Information Papers giving an overview of the status of standardization, SAVE projects, EPBD implementation by country, synthesis reports of major conferences and reports on specific topics. The papers will be translated to several languages.

The platform will give active support to the 25 Member States and Bulgaria and Romania, and stakeholders through the web-based helpdesk and targeted actions. The EPBD Buildings Platform will collaborate with key Community initiatives like ManagEnergy, Sustainable Energy Europe Campaign and other European actions and leading European conferences. Website operational from mid March 2006 at: www.buildingsplatform.org

9. Revision of chemicals legislation (REACH)

On 17th November 2005, the European Parliament expressed its opinion in first Reading on the Commission's draft Regulation⁹ widely known as "REACH" (Registration, Evaluation, Authorisation and Restriction of Chemicals). On 13th December 2005 a unanimous Political Agreement was reached in Council on a compromise text. A Common Position is now expected to be agreed during May with the second Reading in Parliament some 4 months later, very probably in September 2006.

Contractors being downstream users of chemicals and products containing chemicals, FIEC has two principal concerns:

- The consequences for human health and the potential liability from chemicals adversely affecting the indoor climate of buildings and the environment at large;
- The health and safety of workers exposed to chemicals.

Underlying these concerns is the increased proliferation of chemicals in the environment at large and the as yet unknown long-term consequences for human health. Already, in recent years there has been a significant widespread increase in the incidence of human allergic reactions, while the carcinogenic consequences of certain substances remains unknown.

⁹ COM(2003) 644 final dated 29.10.2003

An important consideration concerns the allocation of the burden of proof. As matters stand, the buyer is responsible for "assessing and evaluating" but where the burden of proof lies remains far from clear. It raises the question of which party has the best knowledge of any given construction product containing various substances, to which the answer is not necessarily the seller or even the manufacturer. Unsurprisingly, in these circumstances ultimate liability might lie almost anywhere.

It is for these reasons that FIEC believes that downstream users must be granted access to:

- Information based on the current state of scientific knowledge at the time that articles and products are placed on the market; and
- Relevant information concerning the contents of hazardous substances placed on the market.

Furthermore, FIEC would like to see "substances of very high concern" progressively eliminated from chemical products or articles; and the same legislative requirements applying to imported articles as to those produced in the European Union.

In an attempt to influence the outcome of the vote in first Reading, FIEC together with Eurocommerce and the Foreign Trade Association as representatives of downstream users of chemicals, circulated a joint paper for the attention of MEPs. This paper, which is appended to this annual report, urged MEPs to vote in such manner as to ensure that Article 6 of the proposed Regulation "General obligation to register substances in articles" provides a workable solution. FIEC now needs to address how and in which manner it is necessary to influence the second Reading in the Parliament in order to ensure that these concerns are better addressed.

10. Constructional plant and equipment

It is an undeniable fact that the three essential ingredients of any construction project are labour, materials and plant. Federations representing contractors' interests tend to concentrate on the economic, legal and social policy issues in order to contribute the contractors' experiences to the legislative process at their level. Furthermore, they tend to look into technical issues such as research and development and innovation in order to ensure that their interests are being taken into consideration. The theme which is seldom followed

up with the same intensity is issues relating to constructional plant and equipment.

In order to address this shortcoming, FIEC has just set up a new Technical Sub-Commission tasked with examining matters relating to "constructional plant and equipment". Initially under Spanish chairmanship, the new sub-commission met for the first time in January to agree a business plan and then met again in April in Paris on the occasion of INTERMAT.

11. EUROLISTE¹⁰

A first priority for the new FIEC Sub-Commission will be the revision of the "EUROLISTE" (List of Construction Equipment) in time for the next major European event in the construction equipment industry's calendar, namely BAUMA 2007. The revised edition of the EUROLISTE will be set up in a harmonised European format with an extensive and very detailed priced list of constructional plant and equipment costs which will be made available for use by contractors. The EUROLISTE currently exists in the German language (also available in French and partially in English) and contains a wealth of information necessary for the accurate costing of constructional plant and equipment, such as useful operating lifetime, replacement costs, amortisation and interest calculations, maintenance and overhaul costs, and the like, based on the data contained in the "Baugeräteliste – BGL".

This information can serve various purposes such as a:

- Basis of assessment of plant costs (amortisation; overheads; etc) to be shared between different departments of the same organisation or for the allocation of costs to a specific project, or between partners in a joint venture;
- Basis for the financial organisation and management of contractor owned plant and equipment;
- A tool for analysing the various costs of plant and equipment, especially when comparing the relative costs of different combinations of equipment;
- Guide for estimating values for insurance purposes or for settling disputes in the event of legal proceedings.

The EUROLISTE / BGL is divided into a classification of 24 different classes of equipment, and makes no references to any particular make or manufacturer. It is presented in such manner as to facilitate its

¹⁰ The name EUROLISTE is copyright

use with appropriate software and is also available on CD-ROM. The revised data to be included in the EUROLISTE, with provision where appropriate for possible national specifications and extensions, will be made available on the internet, and possibly also eventually in the form of a common service to contractors provided by FIEC through its member federations.

The decision to compile and publish the EUROLISTE was originally decided by the technical equipment committees of various FIEC member federations, most notably the Hauptverband der Deutschen Bauindustrie (HDB – Germany) and the Fédération Nationale des Travaux Publics (FNTP – France) in 1993. The first edition was completed and published in 1998. Subsequently, using the structure of the EUROLISTE as a basis, the HDB went on to draw up the “Baugeräteliste – BGL 2001” completed and published in July 2001. Likewise, the “Commission du Matériel” of the FNTP introduced the French “Méthode” on internet (www.tpmateriel.com), again using the EUROLISTE as a basis.

Since then the BGL 2001 – has been translated into English, French, Dutch and Japanese and has been introduced for use in Austria, Belgium and the Netherlands.

In many respects the EUROLISTE remains a partially finished project in terms of its limited use across Europe. Clearly, even keeping this kind of information up-to-date, is a major undertaking.

12. A new business plan for TEC-4

FIEC's new Sub-Commission will also be looking into various other plant and equipment issues, such as:

- Training and qualification of machine operators and possible standardisation of certificates;
- Carrying out an investigation through the FIEC member federations in order to discover whether they are involved in activities aimed at preventing and recovering stolen construction equipment and in particular whether their members make use of the services provided at:
<http://www.eced-association.org/stolen.php>
- Examining and considering whether some new form of marking system with some kind of non-binding guarantee could be developed for used (second hand) equipment;
- Addressing difficulties arising with national and local regulations when plant and equipment is

transported across EU borders to be used in other member states;

- Arranging to exchange information between the national member federations as concerns the administrative procedures and standards regulating, and/or applicable to tower cranes (including operators' lifts); batching plants for concrete and asphalt mixing plants; scaffolding; site lifts for personnel, equipment and materials, etc.

13. Le Palmarès de l'Innovation

Another FIEC activity, which is far less known, has been the provision every three years, through the FIEC member federations, of experts from various EU member states, to assess and adjudicate submissions received from construction plant and equipment manufacturers, competing for the INTERMAT Awards, known as the “Palmarès de l'Innovation”. The purpose of the awards is to promote and reward innovation in the construction equipment industry. Participation is limited to exhibitors at INTERMAT and trophies are awarded in the form of three sets of gold, silver and bronze medals in three categories. These are, “machines”, “equipment” and “services”.

This year 19 adjudicators drawn from 6 European countries assembled 3 times in Paris to assess some 65 proposals. The results were announced and the trophies awarded at INTERMAT on 24th April 2006.

Annexes

1. FIEC letter to Jacques McMillan dated 24/6/2005
2. Position paper 7th FP (extracts) dated 3/2/2006
3. FIEC Letter to Commissioner Piebalgs dated 2/8/2005
4. Reply from Commissioner Piebalgs dated 22/9/2005
5. FIEC – Eurocommerce – FTA joint paper on REACH dated 9/11/2005

Mr Jacques Mc Millan
Head of Unit
Regulatory Policy
Legal Aspects of the Internal Market
European Commission
1049 Brussels

Brussels, 24th June 2005

Subject: Consultation of interested parties in the review of the New Approach

Dear Mr Mc Millan,

We write in reply to your letter dated 25th April 2005 concerning the above-captioned topic and would respond as follows to document "Draft Certif. DOC 2004-1" dated 26th October 2004, addressing the aspect of "Technical regulations for the safety and free marketing of industrial products".

FIEC cannot accept two of the proposed "Common definitions" set out in article 3:

- a) Placing on the market
- b) Manufacturer

FIEC proposes that these definitions be amended to read as follows:

a) Placing on the market	The first making available on the Community market of an individual product intended for end use, with a view to distribution and/or use, whether in return of payment or free of charge .
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Justification

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) Manufacturer	The natural or legal person who <ul style="list-style-type: none"> • designs and/or manufactures a product covered by this Directive or who has such a product designed and/or manufactured, with a view to its placing on the market or for his own professional or private use, under his own name or trademark; or who • places a product covered by this Directive on the market and/or puts it into service, under his own name or trademark.
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Justification

As for a) above.

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

Yours sincerely.
John Goodall
Director Technical Affairs

FIEC Position Paper Proposed amendments to the 7th FPRTD and to the Specific Programme "Cooperation"

3/2/2006

1) General observations

1.1) The text as drafted by the Commission departments, the proposed 7th FPRTD does not improve the overall treatment of the construction sector as compared with the 6th FPRTD. The disappointment of the sector in this regard should be emphasized.

1.2) The substantive draft report of the Rapporteur, Jerzy BUZEK (PPE, Poland), contains positive advances regarding the contribution of the technology platforms in the preparation and implementation of the 7th FPRTD.

Thus to conduct an action with effective influence, it is important henceforth to define the essential priorities of the sector within the European platform and national platforms.

1.3) The construction sector in Europe is particularly concerned by the 7th FPRTD and on the Specific Programme "Cooperation" and in this context, by the following activities and research themes: Health (Theme 1), Information and Communication Technologies – ICT (Theme 3), Nanotechnologies (Theme 4), Energy (Theme 5), Environment (Theme 6) and Transport (Theme 7).

Moreover, the construction sector in Europe as a matter of principle supports the Specific Programme "Capacities" – which will underwrite the dissemination of research among SMEs on the initiative of the "Knowledge Regions" – and to the Specific "People" Programme promoting industry-academia pathways and partnerships.

The budget breakdown should be checked later.

FIEC Letter to Commissioner PiebalgsBrussels, 2nd August 2005

Dear Commissioner,
Dear Mr Piebalgs,

RE: EURACTIV Conference on "Sustainable Energy in Central Europe" 30th June 2005

I trust you will recollect, despite the lapse in time, my personal intervention following the delivery of your speech at the above conference and your suggestion that I write to you about the point raised in more detail.

The point I was trying to make concerns the over-riding importance of energy efficiency in general and preventing the waste of energy that can be cost-effectively saved. You will immediately understand that this is nothing new.

My over-riding impression of the conference was – as with many other conferences dedicated to similar themes – that Europe will find its salvation in renewable forms of energy. In time that may well be true, but whatever the outcome, none of the solutions are likely to provide abundant quantities of cheap energy. Hence, regardless of the long-term outcome, saving energy now and in the future is, and will remain, of paramount importance.

As is well known, buildings in Europe account, directly or indirectly, for some 40% or more of all greenhouse gas emissions. Various well-researched studies have demonstrated that as much as half these emissions (460 million tonnes (EU-25) creating 350 000 new jobs) could be saved and that the most cost-effective opportunities for saving energy in buildings arise when they undergo major renovations.

As concerns the "Energy Performance of Buildings Directive" (2002/91/EC dated 04/01/2003), it contains nothing that obliges any building owner to physically carry out works that would raise the energy performance of any building. Moreover, and most significantly, many building owners and householders – despite higher prices for energy – prefer to pay larger heating bills rather than invest in energy saving measures. In other words the market in energy efficiency is largely dysfunctional. On the other hand, the eventual introduction of additional regulations obliging building owners to carry out works is, for all practical purposes, politically impossible. It is for this reason that it is only sensible to remove any dis-incentives to energy saving and

wherever possible provide fiscal incentives, if not subsidies aimed at inducing building owners to take action.

One of the greatest dis-incentives is the level of VAT levied by some member States on renovation works. On the one hand the EU and its member states have committed to complying with the emission reduction requirements of the KYOTO Protocol, while on the other, they levy what are often, punitive rates of tax on the very measures that can cost-effectively facilitate their attempts to meet their KYOTO commitments! This is utterly incoherent!!

If this were not bad enough, unless a decision to the contrary is taken by the ECOFIN Council, the "Reduced VAT on Labour Intensive Services" Directive (99/85/CE), allowing Member States wishing to do so to apply reduced rates of VAT on labour intensive activities, is scheduled to come to an end on 31/12/2005, threatening as many as 250 000 jobs currently engaged in the renovation of Europe's existing building stock. This state of affairs is not just incoherent, but entirely ludicrous!!! Small wonder that many citizens are losing their confidence in Europe's institutions. In this regard they are absolutely right!

Please find enclosed therefore:

1. An Explanatory Memorandum which explains this issue in detail and the initiative currently being prepared by various members of the European Parliament.
2. A FIEC Press Release dated 19/4/2005 on the Reduced VAT Directive due to expire on 31/12/2005.

FIEC will return to these issues its response to the Commission's Green Paper on Energy Efficiency later in the year. In the meantime, we urge you to take whatever measures you consider appropriate for the Commission to convince the ECOFIN Council to either extend this directive or better still agree a permanent VAT regime that takes these aspects into account. Potentially, this could do more to reduce greenhouse gas emissions and conserve energy than any other single measure available, including most particularly the Energy Performance of Buildings Directive itself.

Reply from Commissioner Piebalgs dated 22/09/2005

ANDRIS PIEBALGS
MEMBER OF THE EUROPEAN COMMISSION

RECEIVED
22-09-2005
CAB/SS/avw/D(05) 310

Brussels, 22-09-2005
CAB/SS/avw/D(05) 310

Dear Mr Goodall,

Thank you for your interesting letter of 2 August on the subject of the Energy Performance of Buildings Directive.


I agree with most of what you state in this letter. Indeed the price signals in the energy market are distorted by, among others, the split incentive problem, by the absence of adequate internalisation of external costs and by a lack of adequate information and incentives for consumers.

Exactly for these reasons, I have launched the Green Paper on Energy Efficiency to try to tackle these obstacles and find some common ground on how best to address them.

I see your point in the difficulty of the VAT reduction for labour intensive services running out and its implications for renovations in buildings. I will take this up with my colleague in the Commission responsible for this file.

Thank you again for your important letter, and I look forward to your contribution in the Green Paper debate.

Yours sincerely,



Andris Piebalgs

Mr J. Goodall
Director Technical and
Environmental Affairs
FIEC
Av. Louise, 66
B- 1050 Brussels

FIEC – Eurocommerce – FTA joint paper on REACH
A pragmatic approach for substances in articles and a framework for information in the supply chain of articles is needed
 9/11/2005

The European Construction Industry, the European Commerce and the Foreign Trade Association want to outline their common approach for achieving workable solutions for article 6 of the Commission's draft resolution (COM(2003)644 – 29/10/2003) and the communication flow for substances in articles.

Our sectors are users, producers and/or importers of articles and REACH will therefore have an impact on the way we do business, handle our goods and communicate with our customers. We believe that chemicals are vital to the production of high quality value for money articles and we are continuing to increase our efforts to manage substances in a sustainable and responsible way. We however need Article 6 to be workable to ensure business certainty for our member companies and to ensure European competitiveness.

EuroCommerce, FIEC and FTA generally support the compromise package and additional amendments adopted by the Environment Committee on substances in articles and see it as a step in the right direction. It provides a legal framework, which maintains a registration procedure for dangerous substances "intended to be released". Furthermore, it replaces the unworkable definition of "likely to be released" with a notification procedure for authorisable substances to be introduced at an earlier stage, facilitated by guidance documents and subject to review.

Communication must flow up and down the supply chain of articles if all actors in the value chain are to perform their duty of care. We welcome a provision ensuring that actors down the supply chain can request appropriate information on chemicals of concern present in the articles they use or distribute. The issue of information flow in articles is not yet properly dealt with and will need further attention if REACH is to deliver a pragmatic solution for our sectors and our customers.



Chairman: Luisa Todini (I)

Rapporteurs: Hasso von Pogrell (EIC), Giulio Guarracino (I)

May 1st 2004 marked a milestone in the history of the European Union. 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 four enlargement processes:

- 1973 Denmark, Great Britain and Ireland
- 1981 Greece
- 1986 Portugal and Spain
- 1995 Austria, Finland and Sweden.

With the accession of the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Slovakia and Slovenia from the Central and Eastern Europe as well as Cyprus and Malta on 01 May 2004, the former EU 15 became the EU 25, with a 34% increase in area, and population growing by 105 million consumers.

With the accession of these countries, however, the enlargement process is far from being completed. Currently, four other countries are waiting in line to enter the European Union in a 6th, 7th and, presumably, 8th round of enlargement. Bulgaria and Romania, Croatia and Turkey.

As to Bulgaria and Romania, the EU Commission will present its next monitoring reports on the preparedness of both countries for accession to Parliament and Council on 24th September 2006. In accordance to the recommendation of the Commission, the Council of Ministers has decided, in the context of this report, to postpone the accession of either country from 2007 to 2008, in accordance with the relevant accession treaty provisions.

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 03 October 2005, Zagreb received a green light for the accession talks to commence.

03 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. 03 October signaled 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. This process will be concluded sometime in 2006 and mark the opening of negotiations on the individual "chapters". 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 should be the new European Constitution signed on 29 October 2004 by all 25 Member States in Rome. Its aim is to shape a more democratic, transparent and efficient enlarged European Union. However, before coming into effect on 1 November 2006, the new Constitution will have to be ratified by all member states. The ratification will be carried out in each Member State according to the regulations of the respective constitutions, either through parliamentary procedure or referendum. Due to the rejection by France and the Netherlands, this project has now entered in a latency period. We now expect that the German presidency which will take place in the first half-year of 2007, would try to relaunch this theme.

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 Structural Policies for Pre-Accession) after 1st May 2004, the four Structural Funds – the European Regional Development Fund (ERDF) for infrastructure and investments, the European Social Fund (ESF) for training, social integration and employment, the European Agricultural Guidance

25 EU members

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 were examined by the FIEC Ad Hoc Group "CEEC". After all, the structural funds absorb approximately one-third of the EU budget with the allocation for the 2000 – 2006 period being 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 receives 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") foreseen to replace the present objectives 1, 2 and 3, the "convergence" objective (ERDF, ESF, Cohesion Fund) is of priority interest to European contractors. Close to the present 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. The total amount of 264 billion Euro allocated to the convergence objective – or 78.54% of the contribution by the funds compared with the present 75% – will be distributed as follows:

- 67.34% for regions whose per capita GDP is below 75% of the average,
- 8.38% for regions concern by the "statistical effect",
- 23.86% for countries benefiting from the cohesion fund,
- 0.42% for the outermost regions.

For further information: http://europa.eu.int/comm/regional_policy/debate/forum_en.htm.

With construction-relevant funds of that magnitude at stake, not only did the meeting on 9th December 2006 in Brussels focus on the EU Regional Policy but also the following one on 6th April 2005 in Bratislava, Slovakia, on the occasion of the 26th International Buildings Fair CONECO at the Exhibition and Convention Centre Incheba. It was supplemented by the topic of lobbying at European level, in the context of which members were presented with the EU decision making procedures and were informed about the role of the new national federations and of FIEC's role in this process.

The latest meeting of the FIEC ad-hoc Group "CEEC" took place on 10th November 2005 in form of a joint ECO-CEEC meeting in Brussels. The subject covered was "The development of PPPs in the European Union" consisting of presentations from Italian, British, French and German contractors, providing up-to-date information on the state of the art of implementing PPPs in the respective countries. They were rounded off by contributions from the EU-Commission, DG Market, on "PPPs and Community Law on Public Contracts and Concessions" and an EIC-overview on "The Development of PPPs in CEEC Region". The presentations can be downloaded from the members' corner of the FIEC website.

A survey among the "CEEC" members identified, among others, as priority issues for the next meetings, the elaboration of specific advice on how to lobby as a national federation national governments and the EU institutions, in order to participate at an early planning stage of potential projects whilst enhancing the possibility of directing EU financial means towards projects beneficial to 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 experience among the FIEC member federations coming from the "old" and the "new" EU countries.



Chairman: Helmut Hubert (D)
Rapporteurs: Elmar Esser (D)
 Ulrich Paetzold (FIEC)

The structure of the European construction industry is characterized by small and medium-sized enterprises (SMEs). More than 97% 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. The task of the SME Coordination Group is to ensure that the special interests of the construction SMEs are 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 special fields of building and civil engineering in 25 European countries. An extraordinarily high degree of 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 Subcommissions, the Coordination Group deals with a number of projects which concern the specific situation of construction SMEs.

“Think Small First”- Communication of the European Commission on a new SME policy

In mid-November 2005, the European Commission presented its new policy for small and medium-sized enterprises under the title “Implementing the Community Lisbon programme – A modern SME policy for growth and employment”.

In future the Commission intends to comply with the principle of “Think Small First” and will do what it can to simplify legislation and administrative provisions in order to create SME-friendly conditions. The Commission sees its communication as a “new start for a more pragmatic, comprehensive and inclusive EU policy in favour of SMEs”. For this purpose it proposes specific measures in five areas as follows.

1. Promoting entrepreneurship and skills

Enterprises are to be involved in the development and setting of training courses and methodologies. Member States are to review their educational and training policies and make them more responsive to anticipated changes in the labour market.

2. Improving SMEs' access to markets

Small and medium-sized enterprises are to be put in a position to better use the public procurement markets. In addition, the participation of SMEs in standardization work is to be improved. Only in this way can the interests of SMEs be appropriately taken into account in the standardization process. Tax-compliant costs which arise in another Member State with the setting-up of a branch or subsidiary are also to be reduced.

3. Cutting red tape

The principle of “Think Small First” is to apply to all EU policy measures. Thus, for example, the rules on state aid as well as the participation of SMEs in EU programmes are to be simplified. The Commission intends to ensure that legislation and administrative regulations are simplified in such a way that the needs of SMEs are properly taken into account; this applies above all to the preparation of forthcoming legislation.

97% of SMEs with fewer than 20 operatives

4. Improving SMEs' growth potential

The Commission intends to remove regulations which restrict access by SMEs to financial resources, research and innovation and also to information and communication technologies, thereby hindering their growth potential. Thus, for example, the participation of SMEs in the 7th Framework Research Programme of the EU is to be promoted by means of specific simplifications.

5. Strengthening dialogue and consultation with SME stakeholders

The Commission intends to inform SMEs better in future concerning the activities of the EU. For this purpose the dialogue is to be put on a more regular and more structured basis. The Commission is committed in particular to consult small and medium-sized enterprises extensively by the appointment of an SME Envoy in order to ensure that their concerns are taken into account in the policy-making process. In addition it also plans to introduce a fast and user-friendly consultation mechanism (the "SME panel") via the Euro Info Centres network in order in this way to learn the views of SMEs with regard to specific policy areas. In addition there is to be better networking with Member States as regards SME-relevant subjects.

The SME Coordination Group of FIEC will attentively monitor implementation of the new policy of the European Commission and will urge that specific results are hereby involved for enterprises. The goal of a policy which particularly takes into account the concerns of SMEs must be to organize the structural conditions governing economic activity in such a way that as a result better revenues can be obtained. Only better revenues of enterprises will enable them to increase their equity capital ratio in order to safeguard their continued existence and thereby jobs on a long-term basis. Policy must also take care of the problem that SMEs are, to an increasing extent, finding themselves facing competition from so-called one-man firms. In this area there are considerable distortions of competition as SMEs have to comply with tax and social security law obligations to which one-man firms are not subject.

Award rules and practice below the EU threshold values

Cross-border activity is of increasing importance for SME building contractors. The continuing development of the European internal market is leading to a situation in which small and medium-sized construction firms are interested in foreign activity mostly in areas geographically close to national borders. Unfortunately they often encounter

problems for which they cannot prepare themselves properly, for example, award procedures or legal protection practices which, although complying with the basic principles of the EU Treaty, do not, however, comply with the much more detailed EU Directives. This problem arises in particular for construction SMEs as the value of most of the contracts which are of interest to them is below the threshold values of the EU Directives.

Against this background, the SME Coordination Group of FIEC is continuing, by questioning member federations, to gather information on award rules and award legal protection below the threshold values in order to be able to make it available to interested construction firms in the form of a database.

Enterprises

In some cases SMEs hesitate to participate in tendering for larger projects as on their own they do not have the required capacity. In this way they often find themselves in the role of a subcontractor to larger enterprises which have been awarded the main contract. This form of cooperation has been successfully practised for a long time in the construction industry.

Nevertheless there is also an interest among SMEs in working with the client by way of a direct contract. This can happen in particular as a result of the project-related cooperation of several SMEs, the know-how and capacities of which complement one another in such a way that all the requirements of a larger project are fulfilled. The Coordination Group will examine whether the creation of such forms of cooperation can be facilitated with the aid of a databank or a federation network.

In the area of construction SMEs, owner-workers or assisting family members are often encountered who manage the enterprise, frequently by way of succession to several generations. As the traditionally customary, quasi-automatic transfer of an enterprise to the next generation nowadays takes place only to a decreasing extent, the question increasingly arises of how to arrange the transfer of the firm or of the succession to another contractor. It is urgently necessary to organize in particular the legal and taxation structural conditions for this on a uniform basis across Europe so that succession issues are not burdened with excessive fiscal charges.

The SME Coordination Group of FIEC will also examine whether in such situations contractors can be given additional help with the aid of a databank or a federation network.

President:**Gian Alfonso Borromeo, I****Director:****Frank Kehlenbach,
EIC**

Organisation

European International Contractors (EIC) is registered as a legally independent association under German law in Berlin, Germany, and has as its members construction industry federations from 16 European countries, which are directly or indirectly affiliated to the European Construction Industry Federation, FIEC.

According to 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 area 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.

In 2005, the Members of the EIC Board were the following:

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

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).

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. International financing of infrastructure projects

EIC continuously emphasises in its contacts with the European and multilateral donor agencies the interaction between infrastructure investments and economic and social development. By promoting the PPP concept world-wide, EIC offers an alternative solution to conventional international financing and helps to build institutional capacity on a global scale.

Infrastructure needs are huge on a global scale and we observe funding difficulties world-wide for new construction, rehabilitation and maintenance. Whilst construction demand exceeds available funds in much of the industrialised world and in many emerging markets, governments in the developing world face a particular challenge in providing its people with access to quality infrastructure services. Current estimates of the World Bank point to financing needs of about 7% of GDP for all developing countries and as much as 9% of low-income countries' GDP. In Central and Eastern Europe, this figure on average is estimated at around 5%. By comparing the past actual investment and maintenance rates to the projected global requirements of some 465 billion US\$ over the years 2005-2010, the vast financing gap and thus the need to potentially double or triple actual financing for infrastructure becomes obvious.

Eventually, official development assistance (ODA) has been rising sharply over the last two years. Between 2003 and 2005, ODA rose by 50% from 70 billion to 106 billion US\$. However, still less than 20% of the aid funds are disbursed for economic infrastructure. Whilst part of the explanation for the sharp increase remains with extraordinary efforts in the fields of debt relief (e.g. Iraq and Nigeria) and tsunami emergency aid for South East Asia, EIC notes with great satisfaction that the International Financing Institutions (IFIs), in particular the World Bank and the European Commission, are finally revamping their infrastructure business again. EIC may well claim to have been one of the unceasing voices to call for an "Infrastructure Action Plan" long before this new World Bank initiative was adopted and implemented.

On the European level, the World Bank's initiative is seconded by the European Commission which is currently developing a comprehensive EU strategy towards accelerating Africa's development. Since the Commission has realised that infrastructure is a key element for sustainable development, economic growth and poverty reduction, the new programme shall also comprise a "Europe-Africa Partnership on Infrastructure". In support of this new strategy, 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. EIC and its Member Federations are supporting the approach of the Commission and are also lobbying with the EU Member States to channel additional amounts within their recent commitments to increase aid into this ambitious project.

However, the gap between the infrastructure needs and the conventional financial resources

from international aid funds and national budgets remains a fact and thus 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, e.g. in the form of Public-Private Partnerships (PPP), 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 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 Multilateral Development Banks (MDBs) and IFIs 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. We have 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.

In 2004, EIC contributed from the international perspective to the European Commission's DG Internal Market major public consultation on the "**EU Green Paper on Public-Private Partnerships**". Concerning the procurement aspect, EIC highlighted that PPPs cannot be regulated in exactly the same way as conventional construction projects. Whilst EIC generally supports the idea that the European Commission has a certain role to play in further improving the legal framework for PPPs in the Union, we advised that this role of the Commission should be "catalytic" rather than that of a European regulator. Against this background, EIC was pleased when the Commission announced in November 2005 that, after due evaluation of the response to its consultation, it does not intend, at this stage, to introduce specific PPP legislation at EC level or to start initiatives on the contractual framework or sub-contracting.

On the international level, EIC contributed its expertise in PPP to the new "**OECD Policy Framework on Investment**" (PFI) which is currently

being drafted by the OECD's Investment Committee and which also comprises a chapter on infrastructure services. In September 2005, EIC presented the key recommendations of the "EIC White Book" at the "10th International Business Forum" in New York which brought together some 150 business people from all over the world with government representatives, development practitioners and spokespeople of civil society groups in order to discuss business-driven solutions for Sustainable Development. This Forum was attended by high-level executives, as it was a pre-conference running up to the 2005 U.N. World Summit at the headquarters in New York.

Notwithstanding the progress made in Europe and world-wide on advocating Public-Private Partnerships, EIC still observes some misconceptions against the PPP concept which have to be refuted. Whilst the "EIC White Book" covers the technical aspects of PPP, we are currently drafting a supplement which shall provide the political response to the most **"Frequently Asked Questions in PPP"**. The purpose of this paper is to explain to politicians and public officials as well as to the MDBs and IFIs that PPPs can in fact provide significant added value over the results that can be obtained from conventional forms of procurement. EIC thereby endeavours to respond to certain fears and doubts of the general public, but also of some specific pressure groups.

II. International tender procedures and standard forms of contract

EIC constantly monitors the latest developments in International Competitive Bidding and Conditions of Contract in order comment on these standard bidding documents from the international contractor's point of view and to ensure that the respective sample documents provide for a level playing-field.

Since the publications of the FIDIC "New Red, Yellow and Silver 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 so-called 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 distributed via the EIC and FIDIC websites.

In 2003, FIDIC was approached by the MDBs which, under the leadership of the World Bank, are in the process of elaborating Master Procurement Documents to be used for issuing harmonised

bidding documents for construction projects for which they are providing finance. At the request of the World Bank, FIDIC gave its permission under a licensing agreement to incorporate a modified version of the 1999 FIDIC "New Red Book" as the standard form of contract of these harmonised procurement documents.

Upon scrutinising the "MDB Harmonised Edition" in January 2005, EIC was initially surprised that none of its comments in the EIC Contractor's Guides had been considered by the draftsmen. Conversely, the new version increased on balance the risk to contractors even further than the 1999 Edition. From an international contractor's perspective, the "amended" clauses dealing with the definition of "Unforeseeable", the Engineer's Authorities, the Performance Security and the Evaluation all represented a move in the wrong direction. Last but not least, EIC was concerned about the increased usage of subjective terms which in practice would lead to frictions between the parties and thus eventually to more disputes. Within a very short period of time, EIC drafted an **EIC Position Paper on the "2nd Edition of the FIDIC New Red Book"** (since, originally, the "MDB Harmonised Version" should have become the official Second Edition of the FIDIC "New Red Book") which led FIDIC in April to the decision to abstain from publishing a 2nd Edition. However, FIDIC continued the collaboration with the World Bank on a harmonised version and subsequently, the "MDB Harmonised Edition" was published as part of the World Bank's and the Asian Development Bank's new Standard Bidding Documents for Works in May and in August 2005.

EIC continued its lobbying against both contents and procedure and submitted its critical comments under the umbrella of the global construction confederation, CICA, directly to the World Bank's Procurement Department. In the CICA/World Bank Meeting of December 2005, many of the comments of EIC and CICA were accepted by the Bank's management staff and, after internal discussions between the MDBs and FIDIC, a modified "MDB Harmonised Edition of the FIDIC New Red Book" was published in March 2006. Happily, the revised version now takes into account many comments either from the "EIC Contractor's Guides" or from the January 2005 EIC Position Paper. For instance, the sub-clauses with regard to unforeseeability, confidentiality and claims procedures for Employer and Contractor have been modified in accordance with the EIC remarks. Hence, seven years of dedicated work have now partially materialised in one of the most important standard contract documents of the MDBs!

Notwithstanding this lobbying success vis-à-vis the World Bank, it has to be recognised that, as a matter of fact, European international contractors have almost ceased from bidding for infrastructure projects financed by international donor agencies, which is mainly due to the weaknesses in the procurement practice. Bearing in mind the rather critical findings of the European Court of Auditors in its Special Report No. 8/2003 concerning the execution of infrastructure work financed by the European Development Fund (EDF), EIC published in November 2004 a publication entitled **"EIC Blue Book on Sustainable Procurement"**. This document points to the major shortcomings existing under the traditional procurement system, as applied by the international donors, and concludes that "Sustainable Procurement" of infrastructure assets should not be based solely on the lowest construction cost, but must take into consideration the operation and maintenance costs over the project's entire life cycle. In EIC's opinion, the quality criterion, which is already a factor in the selection of consultants and services, needs to be adapted also to civil works by way of introduction of a holistic and quality-orientated project management process which is supervised by the MDBs and the European Commission over the projects entire value chain.

Following the publication of the "Blue Book", EIC was invited in June 2005 by Mr. Louis Michel, the EU Commissioner for Development and Humanitarian Aid, to enter into an in-depth dialogue with EuropeAid regarding the procurement of civil works in ACP countries under the EDF. On 13 October 2005, an EIC delegation met in Brussels with the Head of Infrastructures and Legal Affairs Units of EuropeAid in order to define an agenda for the bilateral talks. On 24 November 2005, EIC President Borromeo met with the Director-General of DG DEVELOPMENT for a discussion on the possibilities for EIC to contribute its experience with respect to the implementation of the new EU Strategy for Africa. In the coming months, EIC will enumerate concrete proposals as to what changes have to be made in the EU legislation in order to allow for a more sustainable procurement of infrastructure assets in connection with development aid.

III. International Arbitration and Alternative Dispute Resolution mechanisms

EIC promotes the application of ADR mechanisms and International Arbitration as the preferred way of solving disputes in international construction contracts.

Another main priority for EIC in connection with tender and contract conditions is the promotion of International Arbitration and Alternative Dispute Resolution (ADR) mechanisms, such as Dispute Review and Adjudication Boards (DRB and DAB). For a number of years, internationally, there were two satisfactory standard dispute settlement mechanisms available, since 1995 in connection with World Bank projects, and since 1999 in relation to projects governed by the FIDIC "New Books".

In September 2004, a third set of Dispute Board Rules was published by the International Chamber of Commerce in Paris (ICC). EIC scrutinised the various drafts in detail and voiced in **several EIC Position Papers** concerns about some fundamental provisions of the draft Rules. The most important difference of opinion between EIC and the ICC arose with the new concept of a "Combined Dispute Board", an approach that deviates significantly from the Dispute Board arrangements introduced by the World Bank and FIDIC. In fact, it imposes more risks on both parties in terms of foreseeability of time and cost and of the final outcome, since it introduces an intermediate approach between a binding DAB decision and a non-binding DRB recommendation. The final decision as to which of those alternatives will be used shall rest with the Combined Dispute Board.

From the outset, EIC has warned that such a procedure is not in the best interest of the parties, since it is vital for the conduct of the Dispute Board procedure that the parties know already from the beginning whether they will obtain a non-binding Recommendation or a binding Decision at the end of the dispute resolution process. This is particularly relevant for countries or parties which have only a limited tradition to follow Recommendations of neutral bodies. EIC has reiterated its opposition at various international construction law conferences and most recently in April 2005 at the Joint ICC/FIDIC Conference on "International Construction Contracts and Dispute Resolution" in Cairo and in November 2005 at an International Conference on Arbitration in Dubai. Notwithstanding its critical remarks EIC, at the same time, reaffirms that the

construction industry, especially on the international level, has a special need for such alternative dispute resolution mechanisms in order to resolve construction project disputes quickly, at best promptly on the site.

IV. International standards in Export Credit Insurance and Project Finance

EIC calls for a reasonable structuring and interpretation 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 last few years, the OECD has introduced new regulation on social and environmental aspects of export credit finance and insurance which may have serious impacts on the competitiveness of the OECD industry. In 2001 and 2003, the OECD Export Credit Group adopted the so-called "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 the relevant international standards, as defined by the World Bank Group. Furthermore, the export credit agencies are asked to disclose to the public confidential information for environmentally sensitive projects. In 2005, the respective Committee reviewed the OECD's anti-corruption policy with the aim to enhance the so-called "OECD Action Statement on Bribery" of the year 2000.

Similar discussions were held in the context of project finance transactions within the International Finance Corporation (IFC) and the "Equator Principles Financial Institutions" (EPFI). The EPFIs met in Vienna on 28 February 2006 in order to discuss proposed revisions to the "Equator Principles", which were adopted on a voluntary basis by more than 40 commercial banking institutions. The revisions to the existing principles are being undertaken to reflect implementation learning from the past 21/2 years and to ensure incorporation of, and consistency with, the IFC Performance Standards, as adopted in February 2006. These new standards build upon environmental and social requirements that IFC currently applies to private sector projects it finances in the developing world and were influenced by the earlier discussions on the OECD level. Not unexpectedly, a new policy on disclosure, adopted at the same time, will increase transparency requirements.

EIC is somewhat concerned about this race to ever increasing international social and environmental

standards, initiated by the World Bank, the OECD and some NGOs. There is a real danger that international "soft law", such as the latest "IFC Performance Standards and Disclosure Policy", the OECD "Common Approaches on the Environment" and the "Action Statement on Bribery" – as justified as they may be – eventually reinforce the general imbalance between competitors from OECD and non-OECD signatories. It is the EIC view that the focus of the future OECD policy on export finance and credits should not overburden the OECD industry with too many obligations deriving from environmental, social and anti-corruption regulation, but focus on applying the same standards also to non-OECD exporters. Any other policy focus would distort the competition between OECD-members and non-members further and that cannot be in the interest of the OECD itself.

EIC continues to monitor the development in the OECD as a Member of BIAC, the Business and Advisory Committee to the OECD. In this function, EIC forms an important counterweight to other non-business stakeholders within the regular OECD consultations on export credit insurance.

V. Elimination of market access barriers in international construction

EIC co-operates with the European Commission on the task of identifying and eliminating crucial market access barriers for the European construction industry in key international markets.

The European Commission's Directorate-General for Trade is currently enquiring whether or not to develop a policy tool which would strengthen its position when negotiating improved access to the procurement markets of certain third countries. The background of this initiative is that the Commission has realised that, whilst the European Internal Market is comparably liberalised in terms of procurement, several of the Community's major trading partners do operate with restrictive procurement practices which impede the fair participation of EU businesses in their national procurement markets. Consequently, a so-called "External Procurement Instrument" would present the Community's trading partners operating restrictive procurement practices with a credible choice: either these countries negotiate substantially improved access to their national procurement markets, or they cannot any longer take their participation in calls for tenders in the community for granted.

EIC generally supports this policy approach of the European Commission, since there is sufficient evidence regarding more or less protectionist

legislation and practice in some of its major trading partners. Throughout the last years, EIC has assisted the Commission in identifying major obstacles to entering the public procurement markets in China, Japan and other Asian WTO Members. However, EIC advises the Commission that it carefully considers the possible reactions from the EU's major trading partners before establishing its own "External Procurement Instrument".

VI. Relations with the World Bank

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 Use of Country Systems in Procurement"*. Mr. Araujo clarified that an increased use of country systems in procurement had to be understood as a harmonisation of concepts rather than as a standardisation of wording. The Bank believes that if certain key clients can be convinced to use domestic procurement rules equivalent to those prescribed by the World Bank, that this might be a good incentive for other countries of the region to follow-up. However, the envisaged pilot programme will most probably not involve International Competitive Bidding for major civil works, but will rather be applied in the procurement of goods and services in the social sectors. EIC submitted its respective **Position Paper on "Country Procurement Systems"** not only to the World Bank senior management, but also to the European Executive Directors for information. The greatest concern of EIC is that international standards, such as the FIDIC standard forms of International Arbitration, are watered down under national procurement systems. In the meantime, there seems to be a consensus in the donor community that this initiative should only proceed if it can be established that the national procurement standards are adequate and comparable to those of the World Bank.

The meetings with the World Bank and other MDBs and IFIs under the umbrella of CICA are also a good platform to channel the EIC Positions and concerns to the Multilateral Development Banks. In the most recent meeting on 06 and 07 December 2005 in Washington, the discussion picked up on the topics of the December 2004 Meeting ranging from the harmonisation of the Master Procurement Documents over Performance-based Procurement and Public-Private Partnerships to Ethics Management issues. Whilst the discussions on the General Conditions of Contract were finalised to the satisfaction of EIC (see above), the discussions on late payments were not yet concluded. EIC has made it very clear that for the return of Western contractors, as desired by the World Bank, it is necessary that the multilaterals take action on the issue of late, or rather non-payment of the last instalment. During the meeting, it became clear that upper management of the World Bank was suddenly showing an interest in this issue, but the implications of such an interest are, as yet, unclear.

On the issue of Corruption and Transparency, closely linked with Late Payments, it has been the position of the World Bank for years that – despite of its aggressive public relations campaign – it is, in the perception of the Bank, an issue for the Borrower rather than for the Bank. EIC, however, argues that the Bank must supervise closely the procurement process of individual projects, if Western contractors are to return to World Bank projects, as contractors are unable to fight corruption on their own and corruption is a stifling issue for contractors working in developing countries.

Last but not least, with regard to innovative contract forms, such as design and construct, EPC-Turnkey, DBFMO, etc., the World Bank remains very restrained. The impression is that unfamiliarity with the intricacies of the subjects is the cause of such restraint on the part of the World Bank. It remains a topic CICA and EIC must keep on the agenda of the meetings with the World Bank.

EIC General Assemblies

In the General Assembly held on 22 April 2005 in Paris, France, EIC followed-up on the Copenhagen discussions and organised a Workshop on **"The Global Infrastructure Market – Which Role for European International Contractors?"**. With a record attendance of more than 80 participants, the meeting witnessed an informative exchange of opinions between representatives of the World Bank and the European Commission on the one hand and senior management executives on the other hand about the key drivers for change in the international construction business. It was concluded that with all the technical publications in hand, EIC should continue to act as a political factor in order to shape the international rules for the international construction business of its membership.

The 2005 autumn General Assembly took place on 07 October 2005 in Helsinki, Finland, and examined **"The Future European Development Policy"** as well as the opportunities for European international contractors in **"The Transport Infrastructure Market in Russia"**. High-level representatives from the European Commission and national governments informed EIC member companies on the latest developments in these areas.

The 2006 General Assemblies are scheduled to take place on 28 April 2006 in Zurich, Switzerland, and on 29 September 2006 in Valencia, Spain. In Zurich, the Workshop will deal with **"Risk Mitigation in International Construction Projects"**, in Valencia, the Workshop will centre on the subject of Project Finance and PPP.

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



President:

Dr Ahmed Saif Belhasa



Director General:

Jean-Pierre Migeon



1. The 2005/2006 balance of CICA activity confirmed the progresses already made during the 2004/2005 period: CICA has asserted its authority and representativity by addressing in a straightforward, innovative and proactive way some hot issues the Construction Industry is faced to. These progresses have been triggered by the needs of the dialog with the World Bank but they are much more far reaching and can be of application with any public authority.
 - a. The closer working relationship with the World Bank finally resulted in a modified version of the general conditions of the Master Procurement Documents for Works used as reference by the World Bank as well as by all other MDBs (Multilateral development Banks such as the Inter-American Bank for Development, the Asian Development Bank, the African development Bank, etc.) The modifications proposed by CICA and agreed on by the WB are all aiming at bringing more financial and contractual security to the Contractor..
 - b. CICA has established the basis of a coherent doctrine aiming at suppressing the "Contractual Clauses fostering Irresponsibility" guaranteeing impunity to both Engineers and Employers for the lack of quality of their project, clauses which are also paving the road to corruption. This doctrine contains some interesting breakthroughs which could be used to promote contractual changes in national construction contracts.
 - c. CICA started to disseminate this doctrine through meetings held with World Bank, FIDIC, Transparency International, International Bar Association and the US Senate Foreign Affairs Committee in the last quarter of 2005. The first encouraging results evidenced at time are now confirmed by the most recent developments. There is a real opportunity for changing some rules of the game in a more realistic and less anti-Contractor biased way.
 - d. Prospects are very good for a closer constructive formalized cooperation with FIDIC, Transparency International (TI) and International Bar Association (IBA) that could lead to more balanced contract forms as well as a better perception of the construction industry by the public. CICA is confident to be able to reverse, at least partly, the all too widespread politically correct mindset according to which Contractors are the only culprits for corruption, environment destruction and other social scourges and all damaging consequences such a hostile mindset may entail.
2. Unfortunately, the issue of CICA resources is still a serious matter of concern:
 - a. The enlargement of CICA to China is blocked off by China's refusal to participate to a Federation where Taiwan is represented through the Asian Federation IFAWPCA. Negotiations with Russia are blocked by the existence of two federations that cannot reach an agreement on a common representation in CICA.
 - b. CICA still did not recover from the sharp decrease of its revenues subsequent to the fall of the US\$ vs. the €. So the survival of CICA is always depending of exceptional contributions from its Member Federations, mostly FIEC but also, in a lesser degree, from other Members.
 - c. Any increase of CICA human or financial resources to meet the challenge of its increased involvement in public debate is, at the moment, precluded by Members.
 - d. We hope that the progresses made since some two years shall convince more stakeholders, CICA members first, to be more generous with our organization.



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

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.org ---> 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:

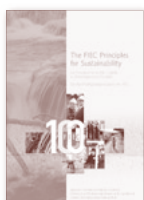
- an essential tool for FIEC members in their work
- a complete shop window for the activities and concerns of the European construction industry aimed at an outside audience.

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.



The FIEC Principles for Sustainability

• Transeuropean Transport Network – Progress update (1/year)



FIEC publishes the results of its survey on the status of the 30 so-called Priority Projects. These projects form part of the Trans-European Transport Networks (TENs), whose role in the long-term development, competitiveness, cohesion and enlargement of the European Union has been highlighted on several occasions, both at the level of the Heads of State and Government summits as well as by the European Parliament and the Commission.

• Construction in Europe – Key Figures (1/year)



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

• Annual Report (1/year)



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



Construction in Europe: 100 years of FIEC

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

A

Bundesinnung Bau – BIB
Schaumburggasse 20/8
A – 1040 Wien
Tel.: (+43.1) 718.37.37.0
Fax: (+43.1) 718.37.37.22
E-mail: office@bau.or.at
http:// www.bau.or.at

Fachverband der Bauindustrie – FVBI
Schaumburggasse 20/8
A – 1040 Wien
Tel.: (+43.1) 718.37.37.0
Fax: (+43.1) 718.37.37.22
E-mail: office@bau.or.at
http:// www.bau.or.at

B

Confédération Construction
34-42 rue du Lombard
B – 1000 Bruxelles
Tel.: (+32.2) 545.56.00
Fax: (+32.2) 545.59.00
E-mail: info@confederationconstruction.be
http:// www.confederationconstruction.be

BG

Bulgarian Building and Construction Chamber – BBCC
Chumerna Str. 23
BG – 1202 Sofia
Tel.: (+359.2) 988.95.85
Fax: (+359.2) 988.68.80
E-mail: office@bbcc-bg.org
http:// www.bbcc-bg.org

CH

Schweizerischer Baumeisterverband – SBV
Société Suisse des Entrepreneurs – SSE
Weinbergstraße 49
CH – 8035 Zürich
Tel.: (+41.1) 258.81.11
Fax: (+41.1) 258.83.35
E-mail: verband@baumeister.ch
http:// www.baumeister.ch

CY

Federation of the Building Contractors
Associations of Cyprus – OSEOK
3A, Androcleous Str.
CY – 1060 Nicosia
Tel.: (+357.22) 75.36.06
Fax: (+357.22) 75.16.64
E-mail: cyoseok@spidernet.com.cy

CZ

Svaz podnikatelů ve stavebnictví v České republice – SPS
Association of Building Entrepreneurs of the Czech Republic
Národní třída 10
CR – 110 00 Prague 1
Tel.: (+420) 224 951 411
Fax: (+420) 224 930 416
E-mail: sps@sps.cz
http:// www.sps.cz

D

Hauptverband der Deutschen
Bauindustrie e.V. – HDB
Kurfürstenstraße 129
D – 10785 Berlin
Tel.: (+49.30) 212.86.0
Fax: (+49.30) 212.86.240
E-mail: bauind@bauindustrie.de
http:// www.bauindustrie.de

Zentralverband des Deutschen
Baugewerbes – ZDB
Kronenstraße 55-58
D – 10117 Berlin
Tel.: (+49.30) 20.31.40
Fax: (+49.30) 20.31.44.19
E-mail: bau@zdb.de
http:// www.zdb.de

DK

Dansk Byggeri
Nørre Voldgade 106
2125 Postboks
DK – 1015 København K
Tel.: (+45) 72 16 00 00
Fax: (+45) 72 16 00 10
E-mail: danskbyggeri@danskbyggeri.dk
http:// www.danskbyggeri.dk

E

SEOPAN
Serrano 174
E – 28002 Madrid
Tel.: (+34.91) 563.05.04
Fax: (+34.91) 562.58.44
E-mail: fiec@seopan.es
http:// www.seopan.es

ANCOP
Serrano 174
E – 28002 Madrid
Tel.: (+34.91) 563.05.04
Fax: (+34.91) 562.58.44
E-mail: ancop@ancop.net
http:// www.ancop.net

EST

Estonian Association
of Construction Entrepreneurs (EACE)
Kiriku 6
EE – 10130 Tallinn
Tel.: (+372) 648.90.05
Fax: (+372) 641.00.71
E-mail: eeel@eeel.ee
http:// www.eeel.ee

F

Fédération Française du Bâtiment – FFB
33 avenue Kléber
F – 75784 Paris Cedex 16
Tel.: (33-1) 40.69.51.00
Fax: (33-1) 45.53.58.77
E-mail: pierrem@national.ffbatiment.fr
http:// www.ffbatiment.fr

Fédération Nationale des Travaux Publics – FNTP
3 rue de Berri
F – 75008 Paris
Tel.: (33-1) 44.13.31.44
Fax: (33-1) 45.61.04.47
E-mail: fnftp@fnftp.fr
http:// www.fnftp.fr

FIN

Confederation of Finnish Construction Industries RT (RT)
Unioninkatu 14
FIN – 00130 Helsinki 13
Tel.: (+358.9) 129.91
Fax: (+358.9) 628.264
E-mail: rt@rakennusteollisuus.fi
http:// www.rakennusteollisuus.fi/

GB

Construction Confederation
Tufton Street 55
Westminster
GB – London SW1P 3QL
Tel.: (+44.207) 227 45 31
Fax: (+44.207) 227 45 71
E-mail: enquiries@theCC.org.uk
http:// www.theCC.org.uk

GR

Association Panhellénique des Ingénieurs
Diplômés Entrepreneurs de Travaux Publics – PEDMEDE
23 rue Asklipiou
GR – 106 80 Athènes
Tel.: (+302.10) 361.49.78
Fax: (+302.10) 364.14.02
E-mail: info@pedmede.gr
http:// www.pedmede.gr

H

National Federation of Hungarian
Contractors – EVOSZ
Döbrentei tér 1.
H – 1013 Budapest
Tel.: (+36.1) 201.03.33
Fax: (+36.1) 201.38.40
E-mail: evosz@mail.datanet.hu
http:// www.evosz.hu

HR

Udruga Poslodavaca Graditeljstva Hrvatske – UPGH
Rendiševa 27
HR – 10 000 Zagreb
Tel.: (+385 1) 2301.103
Fax: (+385 1) 2301.115
E-mail: udruga.poslodavaca.graditeljstva.hrvatske@zg.t-com.hr
http:// www.hup.hr

I

Associazione Imprese Generali – AGI
Via Guattani 20
I – 00161 Roma
Tel.: (+39.06) 441.60.21
Fax: (+39.06) 44.25.23.95
E-mail: agiroma@tin.it

Associazione Nazionale Costruttori Edili – ANCE
Via Guattani 16-18
I – 00161 Roma
Tel.: (+39.06) 84.56.71
Fax: (+39.06) 84 56 75 50
E-mail: info@ance.it
http:// www.ance.it

IRL

The Construction Industry Federation – CIF
Canal Road
Rathmines
IRL – Dublin 6
Tel.: (+353.1) 40.66.000
Fax: (+353.1) 496.69.53
E-mail: cif@cif.ie
http:// www.cif.ie

L

Groupeement des Entrepreneurs du Bâtiment et des Travaux Publics – GEBTP
7 rue Alcide de Gasperi
Plateau de Kirchberg
BP 1034
L – 1013 Luxembourg
Tel.: (+352) 43.53.66/43.53.67
Fax: (+352) 43.23.28
E-mail: group.entrepreneurs@fedil.lu
http:// www.fedil.lu

N

Entreprenørforeningen – Bygg og Anlegg EBA
P.O. Box 5485 Majorstua
N – 0305 Oslo
Tel.: (+47) 23 08 75 00
Fax: (+47) 23 08 75 30
E-mail: firmapost@ebanett.no
http:// www.ebanett.no

NL

Bouwend Nederland
Postbus 340
NL - 2700 AH Zoetermeer
Tel.: (+31-79) 325 22 52
Fax: (+31-79) 325 22 90
E-mail: info@bouwendnederland.nl
http:// www.bouwendnederland.nl

P

Associação de Empresas de Construção e Obras Públicas – AECOPS
Rua Duque de Palmela n° 20
P – 1250 – 098 Lisboa
Tel.: (+351.21) 311 02 00
Fax: (+351.21) 355 48 10
E-mail: aecops@aecops.pt
http:// www.aecops.pt

Associação dos Industriais da Construção Civil e Obras Públicas – AICCOPN
Rue Alvares Cabral 306
P – 4099 Porto Codex
Tel.: (+351.22) 340 22 00
Fax: (+351.22) 340 22 97
E-mail: geral@aiccopn.pt
http:// www.aiccopn.pt

RO

The Romanian Association of Building Contractors – ARACO
Splaiul Independentei Nr. 202 A.
Cod 060022, sector 6
RO – Bucharest
Tel.: (+40.21) 316.78.96
Fax: (+40.21) 312.96.26
E-mail: contact@araco.org
http:// www.araco.org

S

Sveriges Bygginndustrier – BI
Norrländsg. 15 D VII
BOX 7835
S – 103 98 Stockholm
Tel.: (+46.8) 698 58 00
Fax: (+46.8) 698 59 00
E-mail: info@bygg.org
http:// www.bygg.org/

SLO

Construction and Building Materials Association (CBMA)
Dimiceva 13
SI – 1504 Ljubljana
Tel.: (+386.1) 58.98.242
Fax: (+386.1) 58.98.200
E-mail: zgigm@gzm.si
http:// www.gzm.si

SK

Zväz stavebných podnikateľov Slovenska ZSPS
Račianska 71
SK – 832 59 Bratislava 3
Tel.: (+421.2) 492 46 246
Fax: (+421.2) 492 46 372
E-mail: sekretariat.zsps@rainside.sk
http:// www.zsps.sk

TR

Turkish Contractors Association – TCA
Ahmet Mithat Efendi Sok.21
TR – 06550 Cankaya-Ankara
Tel.: (+90.312) 441.44.83
Fax: (+90.312) 440.02.53
E-mail: tmb@tmb.org.tr
http:// www.tmb.org.tr

Associate Member:

EFFC

European Federation of Foundation Contractors
Forum Court
83 Copers Cope Road
Beckenham
GB – Kent BR3 1NR
Tel.: (+44.208) 663.09.48
Fax: (+44.208) 663.09.49
E-mail: effc@effc.org
http:// www.effc.org

Cooperation Agreement with:

ACBI

Association of Contractors and Builders in Israel
18-20 Mikve Israel
IL- 65115 Tel-Aviv
Tel.: (+972.3) 56.04.701
Fax: (+972.3) 56.08.091
E-mail: acb@acb.org.il
http:// www.acb.org.il

Member of:

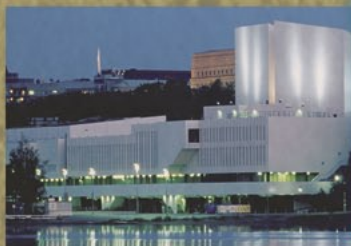
CICA

10, rue Washington
F-75008 Paris
Tel.: (+33) 1 58 56 44 20
Fax: (+33) 1 58 56 44 24
E-mail: cica@cica.net
http:// www.cica.net

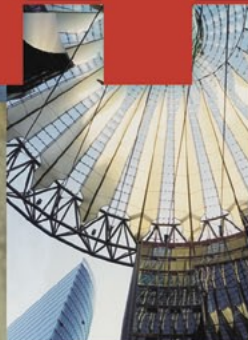
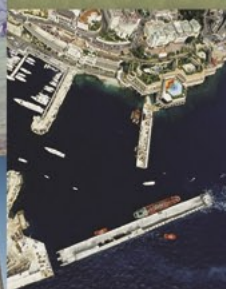
In close Cooperation with:

EIC

Kurfürstenstrasse 129,
D – 10785 Berlin
Postal address: D – 10898 Berlin
Tel.: (+ 49) 30 212 86 244
Fax: (+ 49) 30 212 86 285
E-mail: eicontractors@compuserve.com
http:// www.eicontractors.de



FIEC



as from mid-September 2006:

Avenue Louise 66
B-1050 Bruxelles
Tel: + 32 2 514 55 35
Fax: + 32 2 511 02 76
e-mail: info@fiec.org
internet: www.fiec.org

.....> Avenue Louise **225**

.....> info@fiec.eu

.....> www.fiec.eu

"Registered Association" according
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Préfecture de Police, Paris, N° 69921.P

Registered office:
10 Rue Washington
F-75008 Paris