

Brenner, Rolf O.

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liberalise world trade. Protectionist circles gaining more and more ground in several countries, as things were, would have found their arguments strengthened and as a result obtained influence.

While the USA were the initiators of the Kennedy Round, the dragging progress of the negotiations soon paralysed the interests of wide circles in the American economy and of American politicians markedly. There-

against, the interest of the EEC in the tariff round rather became greater; the anxiety lest it end in failure grew with the negotiations nearing their end. The in spite of all firm attitude of the EEC and its tactical skill vis-à-vis the USA, who up to the end played for high poker stakes and were periodically even prepared to let the Conference end in failure, yielded, apart from economic successes, a remarkable political gain for the Community.

## EUROPEAN ECONOMIC COMMUNITY

# Common Market—also for the Building Industry?

By Dr Rolf O. Brenner, Frankfurt/Main

**T**he European Economic Community has in the first ten years of its existence grown into the biggest trading power of the world. Since 1957 its foreign trade has doubled, while its internal trade has quadrupled. On July 1, 1968, the projected customs union will become a reality, and with it the first great phase in European economic integration will have been completed.

During this first stage of the EEC the main efforts were directed towards the dismantling of tariff barriers within the Community, the establishment of a common tariff on imports from countries outside and the elimination of quotas and other restrictions. The building trade, being by nature a service industry, was only marginally affected by all this; the movement towards European economic integration has up to now passed it by.

Once the customs union is achieved, however, the higher aim comes into view: economic union. Fundamental problems have yet to be solved before the economic union becomes a reality. No longer will streams of commodities merely have to be directed into new channels by eliminating artificial barriers. It will rather be a question of creating conditions conducive to the merger of the economies of the six member states of the EEC and of harmonising their economic policy and its instruments. Step by step all enterprises within this Common Market must be enabled to compete on equal terms. To achieve this, legal provisions, taxation laws as well as regulations governing trade and industrial activities must be brought into line. It is, after all, only possible to speak of a genuine European common market, if there exists a common policy on trade, taxation and finance as well as a common policy on competition and social affairs.

The Treaty of Rome does not affect the building industry directly. As far as the building industry is concerned, the existence of a customs union is irrelevant, because "building on the other side of

the frontier" is not subject to duty, nor is any duty levied on building imports.

At most could the customs union be of importance to the builder, if he takes his equipment with him to a building site abroad. In view of the fact, however, that all EEC countries allow builders to bring in their machines and equipment under excise bond procedure, the problem of dismantling existing tariff barriers loses nearly all of its importance.

### **Special Features of the Building Market**

A European building market is by its very nature governed by factors different from those that determine a common commodity market. The building market is essentially different from a commodity market. This applies to production as well as to pricing. There is no comparison between erecting a building and manufacturing a commodity. Building activities are not carried out in one and the same place; a factory is stationary, building takes place on ever changing sites. Furthermore, building activities vary from each other and are frequently difficult to compare: the erection of buildings is not the same as the manufacture of goods of the same kind; mass production—apart from a few clearly defined exceptions—is neither possible nor usual. These special features of the building trade also have a bearing on the price structure and give the market their character. Many of the risks inherent in each building contract cannot be precisely determined in advance. General experience in building helps, it is true, but more often than not it is uncertain whether the same conditions will recur in each particular case. The calculations of prices and in consequence the builder's estimate depend on intangibilities which will weigh all the heavier in the scales the less the individual builder tendering for the contract knows about variations in local market conditions.

To this must be added variations in legal standards. Any entrepreneur wishing to build in a country other

than his own has to acquaint himself with strange rules and regulations. Consequently, risks must be assessed at a relatively high figure. Finally, special importance attaches to the rules governing public building contracts. The share of public building contracts in the EEC countries is estimated to average 50-60 % of the total volume. It follows that the state, its regional corporations and other statutory bodies constitute by far the most important source of the builders' contracts. Now, relations between public bodies as clients and building firms are subject to specific legal regulations. Special importance attaches therefore to these regulations governing the allocation of orders and terms of contract, and to a higher degree still, their interpretation and execution by the party who gives the building order. Detailed knowledge of the rules which public bodies apply in allocating their work is conducive to a good and at times gratifyingly close cooperation between client and contractor, and to a relationship of mutual dependence—conditions which are particularly characteristic for the building industry.

All these special conditions obtaining in the building industry result in not inconsiderable regional ties even within a single country. But they become even much more important in an enlarged common market, in which nearly all essential legal and practical prerequisites for the execution of a building contract vary from country to country. The building industry will therefore sensibly fit into the general process of integration only to the extent to which the customs union develops in the direction of genuine economic union. All the above mentioned differences in the prevailing legal standards and all the relations of interdependence between client and contractor which result from their application tend to preserve the existing state of affairs and to retard changes. To penetrate into these interlocking relations is decidedly difficult. For these reasons it would be unwise to expect too much of a future common EEC building market. Such a market will certainly not develop over a wide area.

#### **First Liberalisation Attempts in the Federal Republic of Germany**

The strength of the retarding and conservative factors is evident wherever an attempt is made to make free competition possible by means of legal and economic measures. In 1960 the government of the Federal Republic of Germany, prompted by political and economic reasons, made a conscious effort to attract competitors to the German building market. The so-called "three-ministers' ordinance" was at the time designed to increase the number of bidders for building contracts on the home market. By this means the government intended to impose a check on rising building prices—a trend which it considered undesirable. True, the economic purpose of the measure, which was to stem the rising trend of prices, was not fulfilled, but in introducing it the German Federal Government made a considerable advance contribution

to the creation of a common building market for the EEC. The complete liberalisation of the German building market, making it possible for any foreign competitor to participate, has in fact led in the course of years to a not inconsiderable activity on the part of foreign building firms, particularly in German border areas. On the other hand, the German builder, who in view of the shrinking German demand for new buildings is particularly worried by foreign competition, shows little appreciation for the one-sided opening up of the Federal German market. No equalisation exists in the form of increased export possibilities. Whereas every foreign building firm is in a position to tender freely for German contracts, German building enterprises enjoy no such advantages in the foreign countries belonging to the EEC or in most of the other industrial states in Europe. Legal and material obstacles exist which make this largely impossible.

#### **Liberalisation also in the Common Market**

We have noted that the building industry is to a great extent tied to a special location. The question therefore arises whether a genuine, wide and general European competition is at all possible in the building industry. These fundamental doubts notwithstanding, the EEC commission has in the course of the last few years worked out two lines of policy which are designed to help in the establishment of a common building market. They concern two essential, closely interrelated complexes:

- liberalisation of the EEC building market;
- coordination of the terms for the allocation of public building contracts.

The intention is to liberalise the EEC building market. In other words: each builder is to be given absolutely free access to the market within that area. All existing legal and material restrictions on freedom of movement and on the free execution of contracts in the field of public building are to be abolished (liberalisation directive).

The terms on which contracts are to be allocated within the area of the EEC are to be brought into line, and in this connexion one has borne in mind that liberalisation by itself does not actually preclude discrimination. The EEC Commission has therefore worked out projects designed to bring the various contract terms into line with each other. With a directive to this effect (coordination directive) a start has been made with a formulation of a European contract allocation form.

Work on the coordination directive (directive for unified conditions for the placing of building contracts) has brought to light the great difficulties standing in the way of such unification; it has at the same time called many critics into the arena. The objections made concern in particular the complicated "dirigiste" nature of the directive.

The individual state regulations governing the placing of building contracts are admittedly to retain their validity in principle. In many respects, however, the EEC directive envisages nevertheless new unified provisions for the invitations to tender and for the placing of public building contracts. This applies to the following subdivisions:

- Different procedures for the placing of contracts;
- Obligation to publish the invitations to tenders;
- Manner and content of the announcements;
- Time limit for the handing in of tenders;
- Regulations for the description of technical features;
- Determination of the cases in which building contracts may be placed freely;
- Standards of suitability of which the competitors for public building contracts must give proof;
- Criteria for the awarding of contracts which must be taken into account in the assessment of tenders.

#### **Proof of Suitability in Dispute**

The proposals for an agreed suitability test have been, and still are, the subject of particularly heavy criticism, for they may lead to new kinds of serious discriminations amongst competitors within the EEC. The coordination directive provides that an entrepreneur in handing in his tender for a public building contract has in every case to present a number of documentary proofs as evidence of his suitability from a technical, economic and financial point of view. An exception is, however, to be made in the case of builders from Italy and Belgium, for in those countries there exist so-called "official qualification lists" on which the entrepreneur may get his name entered after passing certain tests. Appearance of his name on the list is then automatically taken as evidence of the entrepreneur's capability to carry out construction work of a certain kind and size.

This system of proving his qualifications makes matters considerably easier for the entrepreneur. At the same time it fulfills the function of an inherent guaranty and as such affords to the public body placing the contract an important protection against the undesirable effects of ruinous competitive price cutting. The state can have no interest in obtaining tenders that do not cover costs.

It is evident that such a provision works to the disadvantage of other entrepreneurs who in submitting their tenders have to present in every case the required detailed documentary evidence. Such a detailed documentation is wasteful in time and money, and it is the time element which weighs particularly heavily in view of the fact that the time allowed for the preparation of estimates and the submission of tenders is in any event rather limited.

The German building associations have repeatedly drawn attention to the discriminating nature of these proposed regulations and have submitted amendments. The "Standing EEC Committee" of the International Federation for Construction and Public Works (Fédération Internationale du Bâtiment et des Travaux

Publics) has proposed that the EEC compile a uniform qualification list. The International Federation has already made much progress in the preparation of such a list. But this genuinely European solution, which moreover enjoys the support of the European Assembly, has apparently not met everywhere with much response on the part of the authorities.

The striving for uniformity in the field of public building contracts is dominated by the central idea to ensure a genuinely free competition throughout the EEC area and to give all entrepreneurs the same starting conditions. Not only is it intended to abolish all formal restrictions on free movement and the unhindered exchange of services but at the same time to coordinate and harmonise the regulations governing the invitation of tenders and the placing of public contracts. It would be incomprehensible therefore if in making these directives new discriminations were created or consciously accepted.

#### **EEC Building Market as from 1969?**

The two directives which have been worked out by the EEC Commission and submitted to the EEC Council of Ministers have passed through the channels provided for in the Treaty of Rome: the Economic and Social Committee of the EEC, the European Assembly and a number of parliamentary committees of the member countries have expressed their opinion. At present the directives are being discussed in detail in the Subcommittee for Economic Questions of the EEC Council of Ministers in Brussels. The Ministerial Council itself will probably take its decisions during the summer or early in autumn of this year. Thereafter the directives must be incorporated in the national law within six months. Hence the EEC building market will be a fact—at least on paper—by the middle of 1968 at the earliest but more probably not before January 1, 1969.

The opinion has lately been voiced that it might possibly be better to postpone complete liberalisation of the EEC building market until conditions for a really free competition have been created. These ideas arise from the conviction that to establish freedom of movement, free traffic in services and co-ordination in contract conditions cannot be enough as long as harmonisation has not been largely achieved in other fields such as taxation, social policy, etc. There is much to be said for such an attitude. On the other hand the question arises whether this would not mean postponing the common building market indefinitely.

#### **Difficulties of Social Harmonisation**

Some questions concerning social harmonisation within the EEC have a direct bearing on the building industry; they are: the mobility of labour and the social security of migrant workers. For example: of the roughly 1.2 million foreign labourers in the Federal Republic about half come from other EEC countries. A good fifth of them

are building workers. For all these employees the EEC Commission has issued regulations, designed to approximate the social and economic conditions of foreign workers to those applying in the host countries. The regulation on free movement lays down the principle of equal treatment for all workers from EEC countries, in other words the internal labour market is no longer to enjoy priority. Regulations III and IV dealing with the social security of migrant workers establish the principles for the calculation of insurance periods and for social insurance claims. Closely connected with this is the realisation of a common professional training policy.

Apart from these attempts at harmonisation and the successes already achieved in this field, one has come to realise that differences in social conditions do not stand in the way of a proper functioning of an economic union such as is aimed at by the EEC. National differences in social security arrangements cannot be readily harmonised, for they are the result of historical growth and have developed from different political and socio-political concepts. It is for this reason that the treaty of Rome has in principle maintained the member states' autonomy in the sphere of social policy. This recognition does not, however, preclude the realisation of the need for cooperation between EEC countries in the field of social policy. The more the customs union grows into an economic union, the more will it be necessary for the governments of the member countries to adjust their social and wage policies to the higher requirements of a common economic policy.

In many other sectors, too, the EEC's attempts at harmonisation will have their effects on the building industry. Cases in point are: harmonisation of taxes, coordination of company laws, a common transportation policy but also a common attitude towards competition.

#### **Harmonisation of Taxation and Company Law**

In the field of harmonisation of taxation the Council of Ministers of the EEC issued a directive on February 9, 1967, obliging member states to introduce a common system of turnover tax, the "added value" tax. At the same time a second directive was agreed, laying down in every detail the structure of the common turnover tax and its application.

The company laws of the individual EEC countries show, side by side with certain concurring principles, in part appreciable differences. Harmonisation will in the first instance concentrate on the safeguards which the companies of member states are to provide in the interests of partners, shareholders and any third party. Apart from the work aimed at coordinating company laws, investigations are being actively pursued to see whether a European trading company can be created.

All these general attempts at harmonisation and coordination have their effects on the building industry, too. But these influences are of necessity the weaker the less a particular branch of industry is export-

minded. The building industry is to a large extent tied to a fixed place. Its output cannot be transported. The building site changes with every contract. It follows therefore that even if customs and taxation barriers are eliminated within the EEC, building exports and imports within the Common Market will not assume sizable proportions. Against an intensified competition among European building firms militate too many formal, but, above all, material obstacles, and these obstacles will at best only partly disappear, if at all, after the pertinent legal requirements have been brought into line.

#### **Disequilibrium In the European Development Fund**

The relationship between European building firms is burdened by a fierce and uncompromising competition in the international building markets in the developing countries. This applies, particularly to projects which are being financed from the European Development Fund. This multilateral institution of the EEC for development aid finances to a large extent infra-structural projects in the African states which are now associated with the EEC, but were formerly dependent territories of France, Italy, Belgium and the Netherlands. Competition for building contracts in these territories is fierce, because, on the one hand, Africa is regarded as a continent with great prospects for the future and, on the other, because building firms of the former mother countries which have been resident in these territories since colonial days look upon them as their proper domain. A feature of these building markets are the close ties that exist between the resident firms and the local authorities with the result that any outsider experiences considerable difficulties in gaining access. It is also no easy matter to match the intimate knowledge of local conditions, which has been accumulated during decades of activity. However, the building entrepreneurs who are in fact handicapped in this manner shrink from no risk in their endeavour to gain a foothold in Africa. German firms, which have hitherto been particularly handicapped, have had to experience in the last few years many a bitter disappointment in the associated countries. But their endeavours have resulted in their first gratifying successes; they have obtained contracts in Cameroon, in Senegal, in the Tchad, in Mauretania, Mali, and Dahomey. It emerges from these laboriously achieved successes that the resident firms seem to a certain extent prepared to cooperate.

Common Market—also for the building industry? It is today impossible to answer this question in the positive. However, the next few years will bring the building entrepreneur much that is new. He will be increasingly obliged to come to terms with the problem of the EEC and it will be advisable for him to tackle these problems in good time. He who knows more than his competitor, keeps a few steps ahead of him. Thus the thing to do is to venture into the EEC territory now, before the European law givers have smoothed the way for all and sundry.