



**A Meeting of the EFFC Contracts WG held on Wednesday 9th June 2021 from 10:00-13:00 (CET) via Cisco WebEx.**

**Present**

Dejan Lukic	Switzerland
Jindrich Ricica	Czech Republic
Thomas Schröder	Germany
Federico Trevisani (WG Chair)	Italy
Eelco van der Velde	Netherlands
Peter Vroom	Netherlands

**In Attendance**

Ciaran Jennings	EFFC Secretary
Isabel Jennings	EFFC Secretariat

<b>Action List</b>		
<b>Owner</b>	<b>Action</b>	<b>Date</b>
<b>CW-D TG</b>	Start to pull together webinar material, including guest speaker options.	<b>Next meeting</b>
<b>C Jennings</b>	Speak with FIEC about their cash retentions policy and add legal disclaimer to the cash retentions document.	<b>Next meeting</b>
<b>C Jennings</b>	Make the discussed changes to the GCC TG document and add legal disclaimers.	<b>Next meeting</b>
<b>F Trevisani C Jennings</b>	Speak with the Sustainability WG to see what support they need from the CWG regards upcoming sustainability legislation (e.g. Taxonomy). This will then be relayed back to the CWG and included in the EFFC 5-year Strategy document.	<b>ASAP</b>
<b>P Vroom</b>	Send the NVAF media communications guidance to Isabel/Ciaran for circulation.	<b>ASAP</b>
<b>F Trevisani C Jennings</b>	Revise CWG section of EFFC 5-year strategy document based on in-meeting discussions.	<b>Next meeting</b>

<b>C Jennings</b>	Speak with Sue Arundale about the progress of Construction 2.0 (FIEC WG).	<b>Next meeting</b>
<b>Ciaran Jennings Dejan Lukic</b>	Revise Dejan's C-19 presentation in preparation for presenting to the EFFC Executive.	<b>Next meeting</b>
<b>I Jennings</b>	Circulate Dejan's C-19 presentation and add to the next agenda for further discussion.	<b>Next meeting</b>
<b>F Trevisani C Jennings</b>	Create the first draft of a document detailing the best ways to collaborate in a public health emergency.	<b>Next meeting</b>
<b>D Lukic</b>	Confirm with Building Smart International about the inclusion of deep and special foundations in their WGs. If accepted, to send to Ciaran to get an EFFC representative on the Technical WG.	<b>ASAP</b>
<b>CW-D TG</b>	Discuss the options regards the protection of data.	<b>Next meeting</b>

<b>Minutes</b>		
1.	<p><b>Apologies</b></p> <p>Apologies sent by Jose Luis Criado and Andy West.</p>	
2.	<p><b>Approval of the Minutes of the meeting held on Thursday 18<sup>th</sup> February 2021</b></p> <p>The minutes of the previous meeting were approved.</p>	
3.	<p><b>Task Group Updates</b></p> <p style="padding-left: 40px;">a) Collaborative Working and Digitalisation (CW-D TG)</p> <p>Have not met since the last CWG meeting. A previous survey shows that members don't really understand the importance of digitalisation. It was decided at the last CWG meeting to run a webinar and write a guidance document to educate EFFC members.</p> <p>It was noted that the group are not necessarily experts on this topic so will need to do a lot of work or invite guest speakers. It was agreed the CW-D TG would discuss this further at their next TG meeting.</p> <p style="padding-left: 40px;">b) Cash Retentions (CR TG)</p> <p>Ciaran explained that the group has drafted the initial position paper and that Andy had been planning to make some changes to this. Ciaran noted that he has not heard back from Andy but he feels the statement is probably ready to be shared with the Executive.</p>	CW-D TG

	<p>Federico asked for the group to add an anti-competition statement and brand it before sending for approval. It was agreed Ciaran would do this and also contact FIEC to see what their position is on cash retentions.</p> <p>It was agreed that, after this is published, the TG should change topic and look to produce other guidance.</p> <p>c) General Contract Conditions (GCC TG)</p> <p>The group had previously been asked to make a final review of this document before publication. Federico sent in some comments. Peter Vroom explained that the NVAF also made some comments on clause numbers 8.1 and 12.1 but that these are the same as Federico's.</p> <p>The group then quickly reviewed Federico's comments:</p> <p>Clause 3 – agreed that prices should be referred to as an “offer” and then an “agreement”.</p> <p>Clause 4.3 – Federico commented that this is used to strengthen contract management. Federico explained that the contract between the sub-contractor and the contractor is separate from the relationship between the contractor and client. As a sub-contractor, if you receive direction from the client, you need to confirm this with your contracting partner. It was noted that the English in this clause is slightly confusing and should be reviewed.</p> <p>Clause 6.4 and 6.1 – Federico commented that these clauses are similar and suggested one of them is removed. Ciaran commented that 6.4 is more explicit about remediation and is particularly relevant for working platforms or moving a service. Ciaran suggested that there is no harm in keeping both clauses. Federico suggested 6.1 could be altered slightly to state that the client has responsibility before the work and then 6.4 can then be during the work. It was agreed to keep both clauses.</p> <p>Clause 7.7 – Federico clarified that force majeure events are outside of the control or responsibility of both the contractor and the client. If it is only out of control of one, then it is a contract breach. Federico explained he changed the wording to make sure that this is clear. It was agreed to keep this rewording.</p> <p>Clause 11.1 – Federico commented that this clause is dependent on national laws. Peter noted that this refers to the materials that are</p>	<p>C Jennings</p>
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	<p>delivered but not used. It was agreed to keep the clause in with a note to the reader explaining the difference of national laws.</p> <p>Clause 12 – The group agreed to keep this clause more open so that it can be applied widely.</p> <p>It was agreed that Ciaran would make the changes and add the legal disclaimers. This will then be provided to the Executive.</p> <p>Federico noted that this frees up the TG to take on a new topic.</p>	C Jennings
4.	<p><b>Round Table Discussion</b></p> <p>a) EFFC 5-year Strategy document - <a href="#">here</a>.</p> <p>Ciaran explained that the Executive is reviewing and updating the EFFC’s 5-year strategy document. This revised document will need to consider covid-19, digitalisation, and sustainability as key industry drivers going forward.</p> <p>The group reviewed slide 27 – the Contracts WG slide.</p> <p>Ciaran noted that the CWG sits under the ‘Quality’ section of the drivers. It was noted the group needs to finalise the CWG aims by the AGM later in the year. Ciaran asked the group whether they are happy with the priorities already listed and whether there is anything which should be added or changed.</p> <p>Federico commented that these priorities are good, especially as collaboration and digitalisation are both long-term European level projects. Federico also agreed about the point on position papers.</p> <p>Federico noted that he is not sure how the CWG can help sustainability in Europe. Ciaran commented that this will likely come through the EU taxonomy regulations – e.g., the disclosures which will need to be made for projects. The group agreed that the CWG should reach out to the SWG to see what support they need.</p> <p>Eelco commented that in the Netherlands they are increasingly focused on environmental cost indicators. Eelco added that another common focus of the NVAF CWG is ensuring the use of suitable insurances and contracting models.</p> <p>Peter commented that the NVAF have recently published guidance outlining procedures when there has been an accident – e.g., communication procedure with the media. Eelco noted that communication is especially important when trying to share lessons</p>	F Trevisani C Jennings

	<p>learnt and that the EFFC should investigate creating something like this.</p> <p>Thomas questioned whether this is an issue which the EFFC should advise on, noting that no-one is obliged to make a media statement. Peter noted that this is simply a tool utilised by the NVAF and should be used as such at EFFC level. The group agreed a lot of small companies could find this tool useful. It was agreed that Peter would circulate to the group to consider.</p> <p>Thomas agreed that digitalisation and BIM should be the key strategic topics for the CWG. Thomas stated that BIM is incredibly important for larger projects, so contractors need to understand how to use it. Thomas cautioned that, in smaller excavations, the value of BIM is limited.</p> <p>Thomas also noted that the industry needs to be cautious when it comes to the commercial impacts of sustainability – e.g., the impact of reusing foundations. Ciaran noted that digitalised records is likely to result in a reconsideration of the industry’s business model. For example, some companies in the UK are talking about leasing foundations.</p> <p>It was agreed that Ciaran add another point stating that the CWG will advise on contractual requirements stemming from new sustainability policy. Ciaran agreed to speak to the SWG about this before adding.</p> <p>Jindrich commented that, from the Czech Republic’s point of view, the creation of guidance and position papers is the most valuable action done by the EFFC. Jindrich explained that digitalisation and BIM will be important in the future but is not an urgent issue in the Czech Republic. Jindrich also added that collaborative working is a special occurrence in the Czech Republic and not an urgent issue.</p> <p>Ciaran agreed to update the slide based on this conversation and submit to the Executive in October.</p> <p style="padding-left: 40px;">b) FIEC participation</p> <p style="padding-left: 80px;">a. Public Procurement</p> <p>Federico noted that the latest meeting focused on foreign subsidies and the anti-competition issues arising with non-European companies. Federico explained that this issue has been considered by a European Commission TG who have now released a finalised regulation on foreign subsidies.</p>	<p>P Vroom</p> <p>C Jennings</p> <p>C Jennings</p>
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	<p>Federico explained that the intention of this regulation is to provide a baseline for European countries. The first half aims to regulate the pre-screening of companies in the procurement process. Whilst the second compares the impacts of foreign subsidies and performs a balance check to mitigate the risk of unfair competition.</p> <p>Federico concluded by saying it is a good sign that Europe is looking to keep the market open but is putting in steps to create fair rules for everyone.</p> <p style="text-align: center;">b. Construction 4.0</p> <p>Ciaran commented that he will ask for an update from Sue Arundale.</p> <p style="text-align: center;">c) COVID-19</p> <p style="text-align: center;">a. Outline of Swiss framework</p> <p>Federico reminded the group that Dejan circulated the Swiss framework on addressing covid-19 and how to fairly share risk and cost. Dejan explained that this framework was made with the biggest public clients in Switzerland. Dejan continued to present on this document – <a href="#">presentation slides available here</a>.</p> <p>Dejan started by explaining this framework is a response to the covid-19 crisis. It was created to find a simple solution which adheres to all relevant regulations as well as being suitable to both clients and contractors.</p> <p>Dejan explained the initial cost calculations included primary costs (including materials, machinery etc.) and then additional costs split into 4 different categories (including site shutdowns, standstills etc.).</p> <p>Dejan noted that the framework has a comprehensive breakdown of costs which cover issues such as all ordered material, machinery, safety precautions, and supervision of work in difficult conditions. Dejan explained that clients were not willing to pay full worker salaries as there are state insurances for this. Nonetheless, clients agreed to pay the difference between the state subsidies and what was offered in their tender.</p> <p>Dejan explained that the decision tree (on slide 18) is a nice and simple way of understanding the assumptions of cost.</p> <p>Federico thanked Dejan for his presentation. Isabel agreed to share the presentation for comment at the next meeting. These comments can then form inform the corresponding guidance paper to share with</p>	<p>C Jennings</p> <p>I Jennings</p>
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	<p>f) Data</p> <p>Ciaran commented that, on the UK HS2 project, Arup has asked for a lot of data which is not directly related to the construction of the piles. For example, fuel consumption, GPS locations of rigs etc.</p> <p>Ciaran explained that Bob Thompson is suspicious that Arup are looking to monetise this data. It was noted that Optimise warned of this at the AGM in Vienna and suggested putting a wall around our data. This would allow for any money/revenue made off the data would go back to the piling contractor. Ciaran proposed that the group draft a policy for members so they can stay in possession of their data.</p> <p>Dejan explained that in Switzerland this has been an issue for a while. Dejan noted that there is always risk when sharing data with others. Especially as this creates more risk and responsibilities but less money. Dejan noted that a more transparent world is coming due to BIM but that a line should be drawn at some point by contractors.</p> <p>Federico commented that this should be a topic raised and the CW-D will deal with this topic and deal with the best steps.</p>	CW-D TG
5.	<p><b>Contracts WG webinar</b></p> <p>It was agreed to that digitalisation would be the groups initial webinar.</p>	CW-D TG
6.	<p><b>AOB</b></p> <p>All the working groups agreed to share their final documents for comment. Any feedback needs to be returned by the end of September so the documents can be approved at the AGM.</p> <p>[Post meeting note – the AGM has been postponed until the end of November. All documents to be finalised by mid-Nov]</p>	
7.	<p><b>Date of the Next Meeting:</b></p> <p>TBC</p>	