

Eurobrief January 2009

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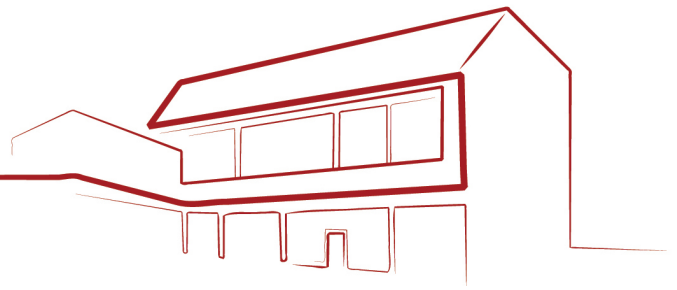
EDITORIAL

ETS - The best achievable compromise: a formidable challenge ahead

January 2009 - The Political Agreement reached in December 2008 on the energy and climate change package, all in first reading, was a real "tour de force" of the French Presidency. Regarding the ETS, much of the credit must also be given to Avril Doyle's work as Rapporteur (EPP-IRL) in the European Parliament on this part of the package.

For CEMBUREAU, the agreement is the best achievable compromise. Certainty was obtained on key points, nevertheless a lot of uncertainty remains on key issues to be resolved by comitology with scrutiny.

The cement industry should have no problem qualifying as an energy intensive industry



vulnerable to carbon leakage. It no doubt meets the quantitative criterion set out in the agreement: an increase of production cost, directly and indirectly induced by the ETS, of at least 30% of Gross Value Added (GVA). With such a precise quantitative test in the Directive, there should be no room left to interpretation. CEMBUREAU, however, will have to pay attention to the calculation that will be required.

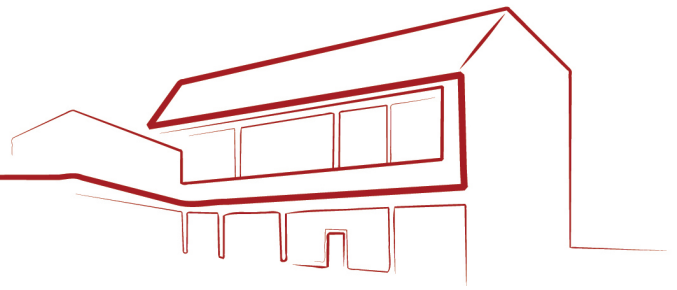
From this essential recognition, flow a number of consequences of high relevance to the cement industry: free allocation of allowances via a benchmark reflecting the average of the top 10% most efficient installations in the EU and the possibility to seek an international level playing field by including EU importers in the ETS for as long as no international agreement brings about equal treatment.

CEMBUREAU also welcomes the inclusion in the text of some key requirements to be used by the international agreement: it must lead "to mandatory reductions of GHG emissions exceeding 20% compared to 1990 levels, as reflected in the 30% commitment endorsed by the Spring 2007 European Council" [Art. 28.1]. In spite of these numerous improvements, compared to the initial European Commission's proposal, a lot of uncertainty still prevails regarding the amount of allowances to be received free of charge. One thing is certain: it will not be 100% of the industry's needs. The volume of allowances will be reduced by the cap and various adjustments and corrections foreseen by the Directive. A precise calculation is impossible for the time being as some parameters will be based on future data. If the market grows, as it is expected to in the period 2013-2020, it will be impossible for EU producers to meet demand by domestic production. That is why the inclusion of importers in the scheme is so important. Such inclusion would be equitable and would contribute to strengthen the environmental efficiency of the ETS. Whether this can be practically achieved in full compliance with WTO rules, as an environmental - not a tax - measure, is a task that CEMBUREAU will now have to address as the European Commission will have to make up its mind by June 2010.

EU EMISSIONS TRADING SCHEME

Climate and energy package adopted

The European Parliament formally approved six new climate and energy laws in December, fulfilling the French Presidency's stated objective of achieving some form of agreement before the end of the year. The adoption of the new climate and energy package completed a busy environmental legislative year. Over 550 MEPs backed the package, which includes the Directive to revise rules for the EU Emission Trading System (ETS) for its third trading period from 2013 to 2020. The climate and energy package also includes an "effort-sharing" decision setting national binding greenhouse gas reduction targets for non-ETS sectors in each Member State, to be met by 2020 from a 2005 baseline; a Directive promoting carbon capture and storage (CCS); a



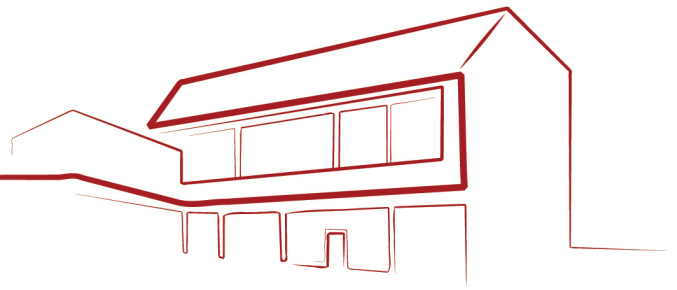
Directive to ensure renewable energy makes up at least 20% of the EU's total energy consumption by 2020; a Regulation setting binding greenhouse gas emission limits for new passenger cars, to be phased in from 2012 to 2015 and a Directive revising existing fuel quality rules and introducing a binding target for greenhouse gas emission cuts from road fuels by 2020. After formal approval from the Council of Ministers, following, of course, the decision of the European Council on 12 December 2008, the laws will be published in the EU's Official Journal.

EU EMISSIONS TRADING SCHEME

Implications of Emissions Trading Scheme revision

The most significant aspect of the adopted climate change package is Parliament's endorsement of the heads of governments' final compromise on revising the EU ETS, reached on 12 December. According to the compromise, industrial sectors considered at significant risk of carbon leakage based on criteria agreed by EU leaders will be able to receive up to 100% of allowances free from 2013. Free allowances will be allocated on the basis of best-in-class technology benchmarks. According to the Commission, more than 90% of manufacturing emissions would qualify. Sectors exposed to carbon leakage will be identified by the end of 2009 by the Commission, six months earlier than it first proposed. The Commission and Parliament, however, are opposed to identifying such sectors before international negotiations in Copenhagen in December 2009. However, the Political Agreement requires the list of sectors vulnerable to carbon leakage to be finalised on 31 December 2009 at the latest as this will be decided through comitology subject to scrutiny by the European Parliament, the decision must in fact be made by the European Commission and submitted to the European Parliament on 1 September 2009 at the latest. A tough assignment.

Some 88% of allowances to be auctioned each year will be distributed to Member States according to their EU ETS sector's emissions in 2005 or the average of 2005-7, whichever is higher. Some 10% will be distributed to poorer Member States for "solidarity and growth", as proposed by the Commission. 2% will be given to countries whose greenhouse gas emissions in 2005 were at least 20% below their Kyoto base year emissions. Half of all auctioning revenues should be used to finance climate mitigation and adaptation measures in Europe and the developing world, but without a binding commitment. This is a greater proportion than the Commission proposed, but less than Parliament demanded. The scope of the EU ETS will be expanded to bring in new sectors and gases as proposed by the Commission. The threshold for excluding smaller industrial installations has been raised from 10,000 tonnes of CO₂ emissions per year to 25,000.



EU EMISSIONS TRADING SCHEME

CEMBUREAU highlights issue of carbon leakage

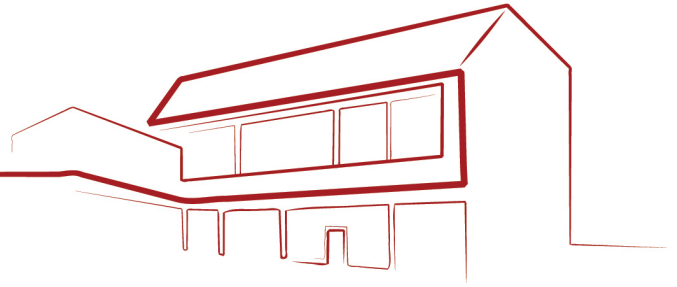
The issue of carbon leakage - and the vulnerability of industries such as the cement industry - was highlighted during a CEMBUREAU press conference in December. A study by the Boston Consulting Group (BCG) concluded that 'clinker and cement production in the EU would be seriously affected by carbon leakage' and that, as a consequence, the relocation of clinker production to countries with no carbon constraints would accelerate from 2013. "The European cement industry is highly vulnerable to carbon leakage" stressed Dr Jean-Marie Chandelle, Chief Executive of CEMBUREAU. "This is a fact that should be urgently recognised by the European Union. With full auctioning in 2020 and at CO₂ prices of €35 per tonne, all integrated clinker - cement production in the EU would be wiped out of the EU leading to a loss of approximately 40,000 direct jobs and € 4.2 billion gross value added (GVA) per year." Dr Chandelle added that the replacement of domestic production by imports would also result in increased global CO₂ emissions as the European cement industry is the best world performer in lowering net CO₂ emissions. CEMBUREAU is happy that this call has been heeded and that clear precise quantitative criteria have been set in the Directive (see editorial).

EU EMISSIONS TRADING SCHEME

EEA publishes review of first EU ETS trading period

The European Environment Agency has published a comprehensive report on the implementation of the EU ETS by Member States, following the termination of the first trading period (2005-2007). The report presents the experiences of Member States on implementing the trading system, covering specific information on the trading year 2007 as well as some findings from the whole first trading period. The report also contains a short discussion about the risk of carbon leakage. The EEA says that the first trading period from 1 January 2005 to 31 December 2007 can be seen as an exploratory phase, taking into account that the EU ETS is the first multinational emissions trading scheme of this magnitude. It says that a number of lessons have been learned, and that there is still room for further alignments. The EEA report is available [here](#)

EU EMISSIONS TRADING SCHEME



Carbon capture and storage technology will not be mandatory

Carbon capture and storage technology (CCS) will not be mandatory for fossil fuel power plants in the EU. It will, however, be promoted by treating stored emissions as though they were "not emitted" in the ETS. CCS plant operators will, therefore, avoid the cost of buying carbon allowances. Furthermore, a series of planned demonstration plants will be funded through the revenue collected from 300 million ETS allowances, and new combustion plants with a capacity of at least 300 megawatts will have to include enough space for the installation of carbon capture equipment.

It should also be stressed that "safe capture and geological storage of CO₂, in particular from solid fossil power stations and a range of industrial sectors and sub-sectors" has been included in the measures to which 50% of the revenues of auctioning shall be applied.

EU EMISSIONS TRADING SCHEME

Aviation EU ETS Directive published

The Directive to include aviation in the EU Emission Trading Scheme (ETS) has been published in the EU's Official Journal, and will enter into force on 2 February 2009. The Directive stipulates that all flights into and out of European airports will be included in the scheme as of 2012. Airline emissions will be capped at 97% of their 2004-6 levels in 2012 and at 95% after that. In addition, airlines will have to pay for 15% of their allowance allocation. Member States have one year to transpose the Directive into national law. CEMBUREAU was opposed to the inclusion of aviation in the EU ETS, and also questions the logic of setting a different cap for aviation than for other sectors.

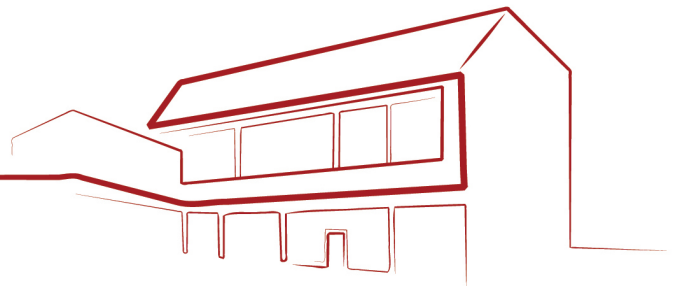
The Directive is available [here](#)

EU EMISSIONS TRADING SCHEME

ArcelorMittal legal action fails

ArcelorMittal has failed in its challenge against the legality of the Emission Trading Directive (ETD). The steel giant argued that legislation underpinning the EU's ETD gave aluminium and plastic industries an uncompetitive advantage over steel.

The European Court of Justice (ECJ), however, found in December that the Directive did not violate the principle of equality by exempting certain sectors from being required to participate. "The Directive establishing a community scheme for greenhouse gas emissions allowance trading



does not breach the principle of equal treatment," the court said. "The difference in treatment caused by the exclusion of the chemical and non-ferrous metal sectors from the scope of the directive may be regarded as justified." The case was brought by Arcelor's French subsidiaries in 2005 against the French government, for 2003 rules which enact the Emissions Trading Directive into French law. France's highest administrative court then sent the case to the ECJ. Non-binding legal advice was given in May 2008 against ArcelorMittal.

CEMBUREAU pointed out back in March 2008 that, if ArcelorMittal was successful in its pursuit of the EU for "discriminatory" air-pollution rules that unfairly target steelmakers, then the entire EU ETD could be declared inapplicable. ArcelorMittal has filed a separate case at the Court of First Instance, directly against the Directive. This was suspended pending the ECJ's final ruling in this case.

ENVIRONMENT

MEPs vote on IPPC recast proposal

Following the adoption in Parliament's Environment Committee of 63 compromise amendments on the proposal for a Directive on Industrial Emissions (recast) earlier this month, the Czech Presidency has published suggestions for modifications to the Commission's proposal.

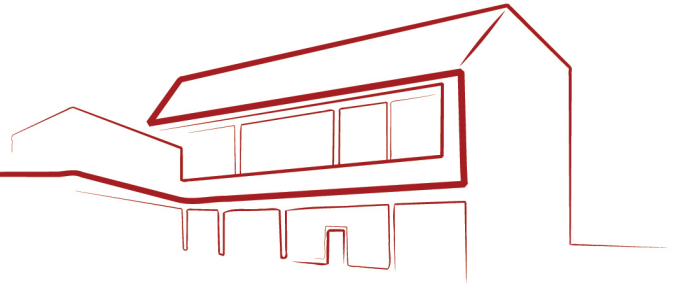
CEMBUREAU will continue to insist that the provisions in the current Incineration of Waste Directive on CO, NOx and waste oils be maintained.

The Czech Presidency of the EU is envisaging a debate during the Environment Council on 2 March.

ENVIRONMENT

Environmental criminal law comes into force

Directive 2008/99/EC of 19 November 2008 on Protection of the Environment through Criminal Law has been published in the EU's Official Journal (OJ). The law gives the EU's 27 Member States two years to come up with "effective, proportionate and dissuasive criminal penalties" against people Directive 2008/99/EC of 19 November 2008 on Protection of the Environment through Criminal Law has been published in the EU's Official Journal (OJ). The law gives the EU's 27 Member States two years to come up with "effective, proportionate and dissuasive criminal penalties" against people responsible for pollution that causes death, serious injury or major damage to the environment". Furthermore, companies will be held liable for acts committed by staff. It will be up to Member States to decide and impose sanctions. Environmental crimes



include discharging emissions or radiation into air, soil or water, disposal and shipment of toxic waste, killing or trading in protected plants and animals, and destroying EU nature reserves.

The Directive is available [here](#)

ENVIRONMENT

Commission names new DG Environment Director General

The European Commission has named Karl-Friedrich Falkenberg as the new Director General of DG Environment. Mr. Falkenberg, formerly the Deputy Director General of DG Trade, assumed his new responsibilities on 1 January. His appointment is part of Commission policy to shift senior officials around after a maximum seven years to prevent individuals building up too much power.

BUILDINGS & BUILDING MATERIALS

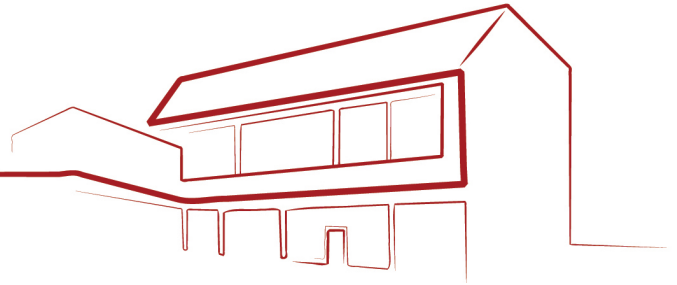
Construction Products Directive revised and turned into a Regulation

MEPs met in January to discuss amendments on Articles 4 and 7 of Catherine Neris' (Party of the European Socialists, France) Report on the proposed replacement of the Construction Products Directive 89/106/EEC by a Regulation ahead of the vote in the Internal Market Committee on 22/1/09. CEMBUREAU generally welcomes the proposal. It is key, however, that all products covered by a harmonised technical specification (harmonised standard or ETA) should bear the CE mark. The vote during the European Parliament's plenary session is expected for March/April 2009.

BUILDINGS & BUILDING MATERIALS

Energy Performance of Buildings Directive

This proposal was discussed in ITRE Committee earlier this month. Rapporteur Silvia Ticau (Party of European Socialists, Romania) called for greater fiscal incentives, including national programmes of public works needed in addition to credits, loans, tax breaks and VAT cuts. She urged the Council to give this Directive greater priority. Jãjn Hudackã½ (European People's Party - European Democrats, Slovenia) spoke about the need to reduce gas dependency, and offered support for the Rapporteur's aim of achieving a first reading agreement by April. Den Dover (European People's Party - European Democrats, UK), agreed that structural funding should be included, particularly for large residential blocks in new Member States. CEMBUREAU supports the Commission's proposal to scrap a 1,000 square metre threshold under which buildings are not



subject to the present Energy Performance of Buildings Directive (EPBD) 2002/91/EC. This will help contribute to meeting ambitious EU targets for CO2 savings.

BUILDINGS & BUILDING MATERIALS

New ISO standard for building sector

The new International Standard ISO 23045:2008 is designed to help the building sector achieve energy savings by providing it with specific design guidelines. The standard will assist designers and construction workers by specifying what data is required at different stages of the design process, and by specifying how building design objectives can be fulfilled. ISO 23045:2008 applies to new buildings and is also applicable to systems for heating, cooling, lighting, domestic hot water, service water heating, ventilation and related controls. ISO 23045:2008, Building environment design - Guidelines to assess energy efficiency of new buildings, was developed by ISO technical committee ISO/TC 205, Building environment design. It is available from ISO national member institutes.

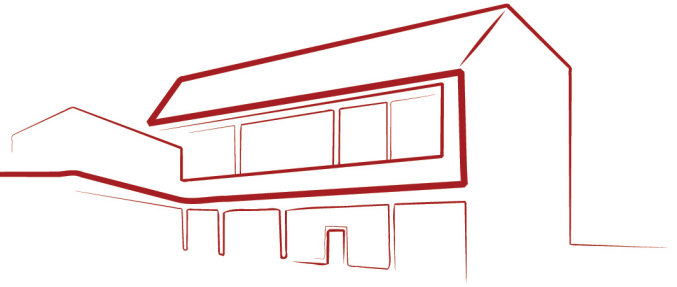
HEALTH AND SAFETY

List of mandatory harmonised classification of dangerous substances updated

Annex I of the Dangerous Substances Directive (DSD - Council Directive 67/548/EEC on the approximation of the laws, regulations and administrative provisions relating to the classification, packaging and labelling of dangerous substances) has been amended for the 31st time (2009/2/EC). Annex I of the DSD contains the harmonised classification and labelling of chemicals which are legally binding within the EU. Over the years, this list was regularly updated through the so-called Adaptations to Technical Progress (ATP) procedure, the most recent 31th ATP. This is the last update under this procedure. Mandatory classification will now be regulated under REACH and the CLP.

Member States must comply with this Directive by 1 June 2009 at the latest.

HEALTH AND SAFETY



Classification, labelling and packaging legislation published - GHS

Regulation 1272/2008 on the classification, labelling and packaging of substances and mixtures, amending and repealing Directives 67/548/EEC and 1999/45/EC, and amending Regulation (EC) No 1907/2006, has been published in the EU's Official Journal (OJ). The Regulation entered into force on 20 January 2009.

The new Regulation implements the United Nations Globally Harmonised System of Classification and Labelling of Chemicals (GHS) in EU Member States. The current classification and labelling system will be replaced by a completely new system, with new hazard classes and categories for classification, different pictograms and new hazard and precautionary statements.

The deadline for classifying and labelling substances in accordance with the new system is 1 December 2010 and for mixtures 1 June 2015. Requirements regarding child-resistant fastenings and tactile warning labels do not apply to cement in bags sold to the general public.

The requirements for labelling cement and cement containing preparations in relation to Cr(IV) and Cr(VI) reducing agents are taken over from the current system. Ready mixed cement and concrete in the wet state when supplied to the general public without packaging, must be accompanied by a copy of the labelling elements.

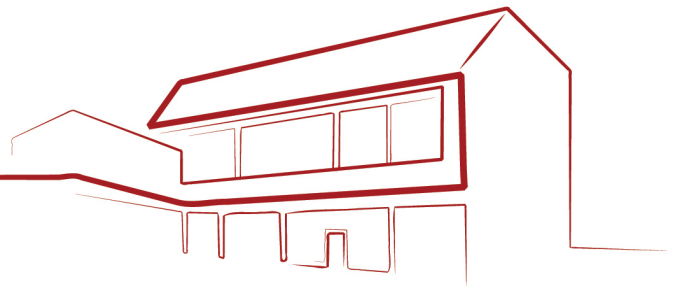
HEALTH AND SAFETY

REACH - ECHA publishes list of pre-registered substances

A list of almost 145,000 substances pre-registered by EU firms between June and December 2008 has now been published by ECHA, the European Chemicals Agency. The number of substances on the list is expected to decrease as a result of an ongoing screening process. ECHA received a total of 2.75 million pre-registrations, far more than initially anticipated. It will remove from the list any entries that are irrelevant as well as those submitted by non-European firms. An updated list will be published at a later stage.

The list's publication triggers the next phase of the REACH process, in which firms making or importing the same chemical will share data in Substance information exchange fora (SIEFs). SIEFs will coordinate many aspects of the full Registration process, which will take several years.

The list of pre-registered substances can be accessed from the [ECHA website](#):



HEALTH AND SAFETY

REACH enforcement: status

Art 126 of REACH requires Member States to notify the European Commission by 1 December 2008 of the provisions for the penalties applicable for REACH infringements. Only the following 14 MS complied with this obligation by the deadline: Bulgaria, Czech Republic, Germany, Denmark, Finland, Hungary, Ireland, Lithuania, Malta, the Netherlands, Romania, Sweden, Slovakia and the UK. Italy notified a preliminary resolution, Cyprus entered a progress report (legislation to be adopted by end of 2008) and Belgium also reported on its progress.

WASTE

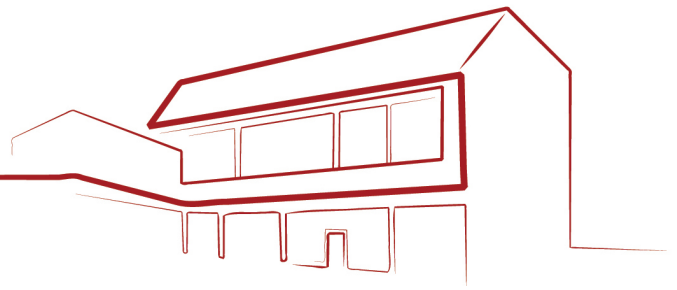
Municipal waste to reduce greenhouse gas emissions

Net greenhouse gas emissions from municipal waste management are expected to drop considerably by 2020 because of increased recycling and incineration with energy recovery, says the European Environment Bureau. It warns, however, that there are limits to the extent that Europe can rely on improved waste management practices to tackle unsustainable consumption and production patterns and waste-related greenhouse gas emissions. The amount of municipal waste per year is expected to grow by 25% within the European Union from 2005 to 2020, with striking differences arising between Member States.

WASTE

Commission in court over shipments of waste Regulation

The European Court of Justice (ECJ) heard the European Commission present its case for the annulment of Regulation (EC) No 1013 on shipments of waste (OJ 2006 L 190, p. 1) this month. The Commission considers that by basing the Regulation solely on Article 175(1) EC and deleting Article 133 EC as its second legal basis, the European Parliament and the Council have acted in infringement of the Treaty. The Commission therefore wants the ECJ to declare that the effects of the annulled Regulation are "definitive pending the replacement of the Regulation within a reasonable period of time by an act adopted by the European Parliament and the Council on the correct legal basis of Articles 175(1) and 133 EC".



CEMBUREAU

CEMBUREAU takes part in Sustainable Energy Week

CEMBUREAU is pleased to announce three events which it will be hosting, on 9 February, within the context of the European Union Sustainable Energy Week. In addition, CEMBUREAU will be launching its brochure on the co-processing of alternative fuels and raw materials in the European cement industry. The first event is a conference on co-processing of alternative fuels and raw materials in the cement industry. The focus of this conference will be the key environmental benefits (including reduced CO2 emissions and fossil fuel consumption) linked to the co-processing of alternative fuels and raw materials in the cement industry. This conference is open to all interested stakeholders, including policy-makers, NGO's and citizens.

Secondly, there will be a cement plant visit to Maastricht, with coach transportation provided. The tour of ENCI's (HeidelbergCement) plant will focus on how alternative fuels are used in the cement industry. Again, the tour is open to all interested stakeholders, including policy-makers, NGOs and citizens. Thirdly, there will be a cocktail at CEMBUREAU's offices to celebrate the launch of a brochure entitled "Co-processing of alternative fuels and raw materials in the cement industry". And finally, the European Concrete Platform, of which CEMBUREAU is a member, will be holding a session on 11 February 2009 on "Energy efficient buildings: the sustainable advantages of concrete structures".

OTHER NEWS

European Environment Committee to debate EMAS

Commission proposals for an eco-management and audit scheme (EMAS) do not go far enough, says Rapporteur Linda McAvan (Party of European Socialists, UK). The MEP has put forward several amendments in order to attract more organisations to the scheme without compromising its "environmental integrity". Her amendments include ensuring that the definitions of EMAS and the international ISO 14001 eco-management standard are aligned. Ms McAvan argues that ISO 14001 is far more popular than the EU scheme, and that it should therefore be made easier for companies to move from ISO to EMAS. The UK MEP is also against the establishment of three-yearly reports on environmental performance in addition to the existing obligatory annual report. MEPs briefly discussed the issue in the Environment Committee earlier this month, and most seemed supportive of the Rapporteur's Draft Report.