



Michel Démarre, FR

President



Frank Kehlenbach, EIC

Director

Organisation

European International Contractors (EIC) was founded in 1970 and since 1984 has been registered as a legally independent association under German law in Berlin, Germany. EIC has as its members construction industry federations from 15 European countries which are directly or indirectly affiliated to the European Construction Industry Federation (FIEC) in Brussels. The association maintains close relations with all international and other organisations whose policy is of relevance for the international construction business, for instance with various European Commission Directorates General (DGs), (Trade, Development and EuropeAid) the European Bank for Reconstruction and Development (EBRD), the Organisation of Economic Co-operation and Development (OECD) and the World Bank.

According to the latest EIC International Contracts Statistics, the total volume of international turnover carried out by EIC member companies in 2009 amounted to some 140 billion €. This excellent result was confirmed by the latest survey on the "Top 225 International Contractors" survey, as published in the *Engineering-News Record* magazine, which illustrates that EIC member companies hold an international construction market share of around 56%.

In 2010, the Members of the EIC Board were the following:

Michel Démarre	(Colas)	France	President
Werner Dekkers	(Besix)	Belgium	Vice-President
Uwe Krenz	(Bilfinger Berger)	Germany	Treasurer
Svend Erik Clemmensen	(Pihl & Son)	Denmark	
George Demetriou	(J&P Avax)	Greece	
Peter De Ridder	(van Oord)	The Netherlands	
Johannes Dotter	(Porr)	Austria	
Enrique Fuentes	(Gruppo Ferrovial)	Spain	
Juha Höyhtiä	(Lemminkäinen)	Finland	
António Mota	(Mota-Engil)	Portugal	
Per Nielsen	(NCC)	Sweden	
Emin Sazak	(Yüksel İnşaat)	Turkey	

President Michel Démarre represented EIC as Vice-President on the FIEC Steering Committee.

Tasks and Objectives

The three main objectives of EIC are the following:

1. To lobby for a **bigger market**, e.g. by persuading the international financing institutions, and in particular the European donor agencies, to allocate more funds to the infrastructure sector and by promoting the concept of Public-Private Partnerships;
2. To lobby for a **better market**, e.g. by advocating fair and innovative forms of procurement and contracts and by calling for a level playing-field for European

contractors internationally, in particular concerning environmental, social and corporate standards; and

3. To provide for **better networking**, e.g. by offering 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 EIC's activities:

I. EU-financed infrastructure Projects in Africa

The European Union and its Member States are the world's leading donor. The Lisbon Treaty has placed development policy at the heart of the EU's objectives, Article 208 specifying that "Union development cooperation policy shall have as its primary objective the reduction, and, in the long term, the eradication of poverty". Given that global poverty verifiably cannot be eradicated by Official Development Assistance alone, EIC tries to convince the European donors that a modern and effective development policy is aligned first and foremost with the political objective of "wealth creation" rather than "poverty reduction". EIC has therefore recommended to the European Commission that the European development policy be geared towards attaining inclusive economic growth in partner countries as the basis for fighting inequality and improving social outcomes.

Since the year 2007, EIC represents the European construction industry inside the Steering Committee of the "EU-Africa Partnership on Infrastructure" as well as in the EU-Africa Business Fora which convene business leaders, senior officials from the EU, the African Union and other multilateral and regional institutions and African and European business associations. On the occasion of the 4th EU-Africa Business Forum, which was held on 26-27 November 2010 as a side event to the 3rd Africa EU (Political) Summit in Tripoli, EIC organised two Workshops on Capacity-Building and Private Investment in Africa's infrastructure sector. Both sessions were chaired by high-level international officials, namely by Gary Quince, Director ACP Countries in DG ADICO, and Hachim Koumaré, Chairman of the World Bank's Sub-Saharan Africa Transport Policy Program. The EIC recommendations

formulated during the two Workshops were incorporated in the Forum's Final Declaration and forwarded to a CEO Round Table with EU Development Commissioner *Andris Piebalgs*. The EIC observations underline the readiness of European international contractors to collaborate with African partners in the construction of the trans-African Networks and also to invest into infrastructure projects provided that the political and financial risks can be properly mitigated. The specific EIC recommendations call on the EU and other donors to:

- Develop human capacity training programmes and include in tender documents requirements for know-how transfer to local contractors;
- Promote long-term construction contract partnerships between African and European companies with a high level of local participation (Joint Ventures, subcontractors and workforce);
- Develop sound investment policies and create an Infrastructure Investment Fund that boosts local private sector participation in infrastructure delivery;
- Enhance EIB's and other European Development Finance Institutions' role to act as lenders and investors for infrastructure projects in Africa;
- Provide Technical Assistance and financial support to African Governments to prepare the legal framework for PPPs and to select bankable projects;
- Participate in risk sharing with local banks to enable financing denominated in local currency and provide foreign exchange coverage;
- Provide separate Political Risk Guarantees (which should not be necessarily linked to a loan or grant) for infrastructure projects.

Moreover, EIC participated in three consultations on the future of the EU Development Policy which shall pave the way for a new EC Communication on Modernising European Development Policy which is expected to be published in the second half of 2011. In its reply to the Commission EIC observed that the infrastructure sector should be excluded from budgetary support as African partner governments may not yet possess the necessary capacity skills to effectively manage the complex procurement and contracting process. EIC feels its position being supported by the Special Report No. 11/2010 of the European Court of Auditors in which the Commission was asked to "strengthen its risk management to give EU funds better protection against leakage, waste and inefficiency". In addition, EIC argued towards the Commission that the European development policy should be geared towards attaining inclusive economic

growth in partner countries as the basis for fighting inequality and improving social outcomes. This in turn requires partner countries to look beyond the trading of natural resources and instead to build up an adequate infrastructure stock as well as productive industrial capacities as a prerequisite for sustainable development.

II. Consultation with the World Bank on Country Procurement Systems

The international donor community decided in the context of the "Paris Declaration on Aid Effectiveness" to progressively rely on partner country systems for procurement when the country has implemented mutually agreed standards and processes. The "Piloting Programme for the Use of Country Procurement Systems in Bank-Supported Operations" was adopted on 24 April 2008. By request of EIC and other private sector representatives, however, the World Bank agreed to establish an "International Technical Advisory Group" (ITAG) which advises the Bank in the implementation of the programme. Since the year 2009, EIC delegates the spokesperson of this important advisory committee.

After more than two years into operation and despite the best efforts of the World Bank, by the time of early January 2011 only three pilot countries – namely Rwanda, Senegal and the State of São Paulo for Brazil – had completed the first two assessment levels, i.e. the country-level assessment using the OECD-DAC Methodology for Assessment of Procurement Systems as well as the assessment of the equivalence of country's rules and procedures with the Bank's procurement policy and of the consistency of the country's bidding documents with the harmonised Master Procurement Documents of the multilateral development banks. Further candidate countries were at different stages of progress but not yet ready to be cleared by the relevant unit. Thus the World Bank concluded in its 2nd Progress Report in January 2011 that it was unlikely that the third assessment level would be reached by any of the pilot countries and that hardly any project that uses country procurement systems would be approved by the end of the pilot period in June 2011. As a consequence, the World Bank's management concluded that "the program had not been a success" and that it did "not intend to continue the pilot program in its current form after June 2011". At the same time, it was proposed that countries that have completed Stages I and II and

wish to use country procurement systems in individual projects in accordance with the conditions of the program, may do so, even if the approval of the pilot projects takes place after June 2011.

Such proposed policy was not exactly in accordance with the roadmap adopted by the Bank at the outset of the pilot program and, therefore, EIC and ITAG contacted the European World Bank Executive Directors as well as national Ministries of selected EU Member States suggesting that the Bank's Independent Evaluation Group (IEG) be commissioned to investigate the potential flaws in the programming and the implementation of the Pilot Program. As for the future process, EIC and ITAG strongly advised against relinquishing the idea of "equivalence" of national country procurement systems with Bank rules and standard documents and also against proceeding without any involvement of the stakeholders represented in ITAG.

These interventions were, at least partially, successful. Recently, the World Bank's Vice President and Head of Network for Operations Policy and Country Services reassured ITAG that the Bank intended to create another advisory group, to which all ITAG members are invited to participate, in order to debate a wider range of procurement activities and issues. In addition, the recommendation to involve the World Bank's "Independent Evaluation Group" (IEG) was honoured by the World Bank. Whilst the IEG may not have the mandate to analyse the specific reasons for the failure of the Pilot Program, it will receive a broader mandate to review the whole range of the Bank's procurement operations.

III. International Standard Bidding Documents and Contract Forms

In the area of international procurement and contract documents, EIC analyses since many years the latest World Bank Procurement Guidelines and Standard Bidding Documents. Furthermore, EIC is a "friendly reviewer" of the new or updated FIDIC standard forms of contract, providing feedback to FIDIC throughout the various drafting stages of these standard forms.

In the year 2010, EIC responded to the Proposed Revisions to the World Bank Procurement Guidelines of Goods, Works and Non-Consulting Services and welcomed in this context that the revision finally acknowledge a long-standing EIC demand, namely

to generally *require* – instead of *recommend* – “international commercial arbitration in a neutral venue” as the ultimate stage of dispute settlement. In the view of EIC, this small but important modification will reassure European bidders that the final stage of dispute settlement will proceed in a fair and equitable manner.

In the field of FIDIC standard forms of contract, **EIC analysed the new MDB Harmonised Construction Contract which was launched by FIDIC in June 2010**. This document shall be mandated or at least recommended by most of the Multilateral Banks in their Standard Bidding Documents for the major construction works for which they provide finance. EIC was pleased to note that several of its earlier comments had been incorporated in the 2010 edition, for instance with regard to obtaining the building permit, the time limit for an Engineer’s determination, the conditions precedent for the commencement of the works and the activation of the Dispute Board. At the same time, EIC remains concerned about an increase in the risk for the contractor following from the diminished authority of the Engineer, the unbalanced anti-corruption clause and the confusing wording on international arbitration.

EIC presented its position on the MDB edition in a FIDIC Contract Seminar in January 2011 in Brussels which was attended by several Heads of Procurement from the MDBs and by the Presidents of FIDIC, CICA and EIC. We were pleased to note that a large part of the audience endorsed the EIC critique with regard to the bad habits of certain employers which are revising the risk allocation in the Particular Conditions or arbitrarily delete the provisions referring to the Dispute Board. **In April 2011 EIC published the EIC Contractor’s Guide to the FIDIC 2010 MDB Harmonised Construction Contract.**

Just recently, there have been reports that FIDIC conditions are increasingly used also in the EU, notably in Central and Eastern European Countries for public procurement projects including EU financing, where the FIDIC standard texts are considerably changed to the detriment of contractors. EIC has already underlined in its “Blue Book on Sustainable Procurement” that the Particular Conditions should only be employed by the Contracting Authority to regulate the project and the country specifics and should not be used to re-allocate the risks, which is apparently the case in some CEEC countries. Hence,

EIC will contribute its specific experience with FIDIC conditions to the joint action of FIEC, EIC and EFCA.

IV. Third country state-owned and state-aided enterprises in EU public procurement markets

Considering that this issue also concerns “symmetric access” for European international contractors to the home markets of such third countries, FIEC and EIC address both external trade and internal market aspects in close cooperation (see specific chapter in this Annual Report).

EIC General Assemblies

Every six months, EIC holds its General Assembly on the invitation of one of its fifteen member federations in a different European country. In connection with these conferences, Business Workshops are organised on issues related to the international construction business.

- At the **spring 2010 General Assembly on 30th April in Berlin**, the Workshop examined the **relationship between international contractors and international consultants** and explored whether there are common concerns that could lead the international contracting and consulting associations to join forces on specific issues.
- At the **autumn 2010 General Assembly on 8th October 2010 in Athens**, EIC discussed in the Workshop the question of **“Infrastructure Finance in stressful times: What Future for PPP and PFI?”** In the presence of the Greek Minister for Transport, Demetrios Reppas, participants discussed the current global challenge in raising finance for PPP and PFI schemes.

More information on EIC can be downloaded from our website at: <http://www.eicontractors.de>



• EIC Publications



EIC Turnkey Contract, 1994



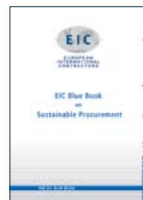
EIC Contractor's Guide to the FIDIC Conditions of Contract for EPC Turnkey Projects, 2003



EIC Contractor's Guide to the MDB Harmonised Edition of the FIDIC Conditions of Contract for Construction (June 2010), "The Pink Book Guide", 2011



EIC Contractor's Guide to the FIDIC Conditions of Contract for Construction, 2002



EIC Blue Book on Sustainable Procurement, 2004



EIC White Book on BOT/PPP, 2003



EIC/FIEC Memorandum on Frequently Asked Questions on Public-Private Partnerships (PPP), 2006



EIC Contractor's Guide to the FIDIC Conditions of Contract for Plant and Design-Build, 2003



EIC Contractor's Guide to the FIDIC Conditions of Contract for Design, Build and Operate Projects, 2009

For FIEC publications, please refer to p. 64