



Since the publication of our Annual Report 2012, the importance of international issues having a direct impact on the EU Internal Market has continued to increase. Considering that the international interests of FIEC

Member Federations and their contractor members are defended by FIEC's sister organisation "European International Contractors" (EIC), it is self-evident that combining forces, expertise and efforts of both federations is the most efficient way forward.

For this reason, we present our joint work in this particular chapter, in addition to the specific EIC report commencing on page 64.

Third country state-owned enterprises on the EU Internal Market

The access of third country state owned enterprises to EU public procurement markets continues to be an on-going issue. It is essential not to lose interest in this issue, just because there have not been many new cases observed over the last 12 months. The economic crisis and the related budgetary problems of many Member States are likely to tempt contracting authorities to take combined financing and construction contracts offered by third country state-owned enterprises seriously into consideration. This can be seen in neighbouring countries outside the EU and first indications show that such developments are currently under consideration also in some EU Member States.

In order to avoid any misunderstanding, FIEC and EIC would like to reiterate that they are firmly opposed to any forms of protectionism and are in favour of fair competition on symmetrically open markets. Competition, provided it is fair and healthy, contributes to progress and innovation, whereas unfair and unhealthy competition, based on the lowest price only, endangers the EU economy and society.

Also the joint FIEC and EIC appeals from June 2011 remain valid:

- *Genuinely reciprocal/ symmetric market access opportunities and corresponding incentive*

measures (i.e. trade defence instruments) at EU level, if international negotiations do not achieve tangible progress.

- *EU public procurement legislation should therefore be amended, in order to ensure an effective level playing field for all potential EU and third-country tenderers, avoiding, in particular, unfair forms of competition between private and state owned companies.*
- *Prices including state aid which would be illegal in the EU and/or the non-respect of social and environmental requirements present unacceptable unfair competition which must be avoided by mandatory rules on Abnormally Low Tenders (ALTs) instead of the currently available optional possibilities, in order to prevent EU Member States from abusing the unprotected openness of the Internal Market.*

The EU legislators' response

The Commission proposed to tackle this problem in two ways, namely by specific rules on abnormally low tenders ("ALT", Art. 69 of the proposed classical procurement directive)¹ and by the "Market Access" Regulation². Both proposals are currently being addressed by the European Parliament and the Council as co-legislators in so-called informal trilogue negotiations which are aimed at coming to an agreement without going through further official readings.

Art. 69 of the "Classical" Public Procurement Directive

On the one hand, the Commission's proposal was considered an improvement compared to the current directive (2004/18), but on the other it was considered insufficient in relation to the challenges ahead. In fact, the proposed rules would leave contracting authorities with a wide margin for accepting ALT, and the industry without any specific remedy against such decisions on ALT.

FIEC's specific proposals for amendments aimed at strengthening the rules and reducing the possibilities to award public procurement contracts to ALT did, however, not find much support in EP or Council. The ALT rules currently negotiated between Parliament and Council fail to provide for

- *more realistic and alternative conditions regarding the contracting authority's obligation to ask for explanation of the prices*

¹ Document Com(2011)896.

² Document Com(2012)124.

- mandatory rejection of tenders suspected of containing state-aid, if the tenderer does not prove that the aid in question is compatible with EU competition law
- the assumption that state-owned or state-supervised and –managed enterprises are deemed to receive or have received state aid, combined with the obligation to the contracting authority to award the corresponding contract only if the tenderer has proven the invalidity of this assumption

The main difference of the two positions in a situation "when a tender appears to be abnormally low" is that the EP obliges ("shall") the contracting authority to ask the tenderer for explanations, while the Council simply allows ("may") asking. Obviously, both these approaches enable contracting authorities to exclude ALT, but they also leave the door wide open for any contracting authority seeking "value for money", even if experience shows that awarding a contract on an ALT tends to be very expensive in the long run.

"Market Access" Regulation

From the beginning, FIEC and EIC applauded this initiative as a good first step in the right direction, as reciprocity, fairness and a level playing field between EU and non-EU companies clearly need to be enhanced. At the same time, they saw considerable room for improvement and called for it to be made less timid and more efficient, considering that decades of international negotiations aimed at opening markets had not achieved much progress for international contractors wishing to work on certain third country markets (see also the EIC comments on the "third revised offer" presented by China in December 2012).

In their joint position paper of 27/7/2012 (annexed to this chapter), FIEC and EIC

- disagree with the Commission's statement that the EU public procurement markets are in principle fully open, because there is no legal basis for such a statement in primary or secondary law
- ask to fully implement derogations and exemptions negotiated in the GPA
- criticise certain aspects of the proposal
- ask for the introduction of a remedies procedure
- propose specific amendments aimed at improving the text

As complements to the Regulation, FIEC and EIC

- ask for the extension of anti-dumping rules to services
- ask for the application of EU rules on subsidies and state aid to all bidders wishing to work in the EU, including those coming from third countries

The current discussions in the European Parliament (INTA Committee) and the Council working group suffer from fundamental differences of view between those who believe in unconditional opening of markets and those who favour a more realistic approach based on reciprocity principles.

Considering this situation and the possible negative consequences for contractors in several countries, FIEC and EIC wondered whether it would not be preferable to continue with the situation as it is, i.e. without this proposed market access instrument. Ultimately, it was decided to continue lobbying for the FIEC/ EIC proposals. At the same time, rumours came up that some lawyers working for EU institutions have considerable doubts that the proposed Regulation corresponds to the necessary requirements, from a purely legal point of view. The outcome of this politically and legally complex situation is uncertain.

Fair contract conditions, in particular in case of EU financed projects

Following the problems with modified FIDIC "Red Book" and "Yellow Book" contract conditions explained in last year's report, FIEC and EIC this year concentrated on two items: a specific joint working group "Poland" and the legislative procedure on the rules for the "Connecting Europe Facility" (see also the ECO report on page 24).

WG "Poland"

This WG is exclusively composed of contractors and consulting engineers active on the Polish public procurement market, so that it benefits from firsthand experience. Impressed by the outspoken criticism, FIEC and EIC published a joint press release dated 22/11/2012 (attached to this report). Together with the Polish engineers' association ZPBUI, the collection of information on unfair contract conditions and practical cases commenced, in order to build up a data base allowing a more systematic approach to finding a solution, for example by proposing fair contract clauses.

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FIEC and EIC further promoted the WG's positions, in particular in

- The Polish Infrastructure Conference, organised by PZPB and The Executive Club in Warsaw on 23/1/2013 (speaker: Ulrich Paetzold, FIEC)
- a recorded interview, on 13/2/2013, of Ulrich Paetzold, FIEC, and Frank Kehlenbach, EIC, which can be seen on http://www.youtube.com/watch?v=s5CD5iC_gyA
- the international conference "Good Practice in Procurement and Execution of Contracts in Road Projects", organised by the Polish Road Congress in Warsaw on 20/2/2013 (speaker: Frank Kehlenbach, EIC)

Direct contacts with GDDKiA, the Polish General Directorate of National Roads and Motorways, showed that they do not share the views expressed by contractors and engineers, considering that they have solved their management problems and simply expect contractors and engineers to do likewise in their area of responsibility. GDDKiA has also commenced discussions on contract conditions with Polish stakeholders. The FIEC/ EIC WG will continue working on better knowledge and more transparency, hoping to be able to contribute to a solution which can be considered satisfactory by all parties concerned.

Connecting Europe Facility ("CEF")

On 17/9/2012, FIEC and EIC published a joint position paper on "Use of Fair Contract Conditions for Infrastructure Projects (incl. TEN) co-financed by CSF and CEF funds" with a series of specific amendments for both proposed Regulations. Rather soon, it became evident that the work had to focus on the proposed CEF Regulation. In this legislative procedure, the EP TRAN and ITRE Committees adopted some recitals calling for fair and balanced contract conditions, whilst the corresponding articles were not adopted (equal number of votes for and against). The file is now in the informal trilogue negotiations and FIEC/ EIC and their national Member Federations continue to look for allies in favour of the idea to include also the articles which correspond to the recitals already adopted by the EP Committees. For the time being, it is not clear whether these efforts will be successful.

"International Competitiveness"

This issue is addressed in the Thematic Group 5 of the High Level Forum created by the European Commission for the implementation and follow-up of the Communication on the sustainable competitiveness of the construction sector, COM(2012)433 of 31/7/2013. (see specific chapter commencing page 12)

Commission Vice-President Tajani's "growth missions"

At the end of 2011, Commission Vice-President Tajani decided to organise such missions, which are not "trade missions", because they do not address questions of trade policy or barriers to trade. "Growth missions" have the purpose, among others, "to strengthen cooperation between EU and other countries and regions of the world by combining political meetings with a business dimension (door-opening/prepare steps to match-finding) on enterprise and industry policy issues" and "to facilitate the internationalisation of European enterprises, in particular SMEs". For more details, please refer to DG ENTR's dedicated website http://ec.europa.eu/enterprise/initiatives/mission-growth/missions-for-growth/index_en.htm. The construction industry was chosen as one of the key sectors, considering the huge markets for construction services in other continents. In the meantime, the growth missions of Vice-President Tajani are complemented by follow up by missions of DG ENTR Director General Daniel Calleja. FIEC and EIC were represented by high ranking contractors on the following growth missions:

25-28/11/2012, Morocco and Tunisia

Francisco Paños Ingeniería y Técnica del Transporte TRIA (Spain)
Luisa Todini Salini S.p.A. (Italy)
Leonardo Blanda Salini S.p.A. (Italy)
Isnardo Carta Carta Isnardo S.p.A. (Italy)

23-26/1/2013, Peru and Chile

Rui Guimarães, Mota Engil (Portugal/ Peru)

15-19/4/2013, Colombia and Mexico

Gabriel Gonzalez Anton, Ferrovial (Spain/ Colombia)

Currently, the growth mission to Russia (Moscow), scheduled for 17-18/6/2013 is being prepared. Future growth missions are likely to go to China and India.

FIEC / EIC joint position on the European Commission's « Market Access » draft Regulation (COM(2012)124)

27/7/2012 (The following are extracts. The full version can be found on the FIEC web site : www.fiec.eu)

1. FIEC and EIC welcome the Commission's proposal for a draft Regulation, as it represents a good first step in the right direction. Indeed, reciprocity and fairness/ level playing field between EU and non-EU companies clearly need to be enhanced. In order to meet its objectives, the draft Regulation however needs **further improvements**.

2. Openness of EU public procurement market:

- a) FIEC and EIC disagree with the Commission's statement that the EU public procurement markets are in principle fully open, because there is no legal basis for such a statement in primary or secondary law. Namely, the reference to article 58 of Directive 2004/17/EC is too weak in this respect. Moreover, this article only refers to "supply contracts" and hence, does not apply to service or works contracts.
- b) If the EU public procurement markets were in principle fully open (which FIEC and EIC contest), then there is no legal basis for procedures giving the Commission the exclusive right to decide in an almost discretionary manner and without any recourse system if, when and under which specific conditions certain parts of this market can be closed.
- c) FIEC and EIC regret that the legal opinion used by the Commission (orally mentioned on several occasions) as a basis for this aspect of their proposal has not been made publicly available, because it is very difficult to assess the validity of an unknown opinion. Consequently, FIEC and EIC consider that no case has been made for applying the EU Common Commercial Policy to public procurement matters, for which GPA provides an exception to the general WTO policies, as well as a special regime.
- d) Finally, FIEC and EIC do not understand why the Internal Market should be fully open below the 5 million Euro threshold, **even in cases in which GPA reservations exist!**

3. Scope: FIEC and EIC understand the Commission's objective to avoid too much administrative burden for both contracting authorities and EU companies by setting a 5 million Euros threshold, but regrets that the scope is so narrow. Only 7% of contracts (in number) and 61% of contracts (in value) will be concerned, which means that about 40% of contracts (in value) are left "for free" to third-country companies!... **Even when GPA reservations exist.**

First, **it should be clearly stated that GPA derogations and exceptions are "non-covered"**. Second, the 5 million Euros threshold should be deleted in order not to expose in particular SMEs to unfair competition from third country enterprises and to the consequences of unbalanced reciprocity.

4. Rules of origin (art. 3): FIEC and EIC believe that common EU guidelines would be needed for the proper implementation of these provisions (also see below: "Need for clarifications").

5. Decentralised procedure (art. 6):

- For the time being, the rules how contracting authorities will run their procedures under this article seem quite impractical.
- There is, for instance, no mention of the contracting authority actually requesting exclusion, but only information and notification.
- On the other hand, the Commission can only decide on the basis of a request, but not on the notification to submit a request.
- In general, it would result in uncertainty regarding the procedure itself – as the decisions regarding selection and award might have to be provisional, pending the Commission's decision – the number of tenders and have a knock-on impact on the credibility of the process, as well as on the market interest in the process, including the interest of potential funders. Clarification and simplification of this procedure is therefore highly needed.

- **No legal neutrality:** FIEC and EIC notice that there is an imbalance regarding the Commission's neutrality on contracting authorities' choices. While the Commission considers that it has "nothing to say" when a contracting authority wants to accept cheap products/services from a third-country company, it has to agree when the same contracting authority wants to close this possibility.
- In order to oblige the Commission to get mobilised, if the Commission does not react within the given time period to the contracting authority/entity's notification, the decision to reject the tender should be deemed to be "validated".

6. ALTs (art. 7): FIEC and EIC consider that this provision is highly insufficient and believes that it would be better to have a general transversal strengthened rule for this purpose (in the public procurement directives).

7. Centralised procedure (art. 8 to 10): FIEC and EIC consider that this centralised procedure is very interesting and might represent a useful and efficient leverage instrument, provided that the conditions to trigger the procedure, that is, to undertake an investigation and implement restrictive measures are strengthened. The Commission should not be left too much room for manoeuvre in this respect but be "forced" to become active if and when necessary.

8. Need for clarifications: The wording used is sometimes too vague and needs to be clarified in common EU guidelines (e.g. "substantial reciprocity", "substantive business operations"...).

9. Shortening delays: The time frame of the two procedures needs to be shortened somewhat in order to ensure efficiency and leverage effect.

10. Need for remedies procedure: This Regulation needs to be covered by a procedure of remedy regarding the decisions taken by contracting authorities and the European Commission in the course of the centralised and decentralised procedures.

11. Complementary instruments to be taken into account:

- Anti-dumping rules => to be extended to services!
- Anti-subsidies rules => to be applied to EU and non-EU companies working in the EU, including control and reciprocity for direct investment.
- EU rules related to State aid (for the tender or for its financing), to social and environmental legislation, to investment and to intellectual property rights must apply to all bidders (including those from third-countries bidding in the EU).

The burden of proof for compliance with these rules should be on the companies, and if they do not or cannot provide such proof, there should be an obligation to exclude them from accessing the European Internal Market.



Press release

22/11/2012

Contractors worried about public procurement practice in Poland

"We have never ever heard such outspoken criticism about procurement practice and contracting authorities in a single country by so many contractors from so many different enterprises and countries" says Ulrich Paetzold, Director General of FIEC, the European Construction Industry Federation coming out of a meeting organized in Brussels on 21/11/2012. "And all of these companies have decades of worldwide experience with public procurement and FIDIC standard forms of contract," adds Frank Kehlenbach, Director of EIC, the European International Contractors, on the same occasion, "but this experience does not help them in Poland, given the reluctance of public clients to perform their part of the job."

Contractors active in public works contracts in Poland are profoundly worried about the severe deterioration of public procurement rules and practice over the last years. In fact, for some time already, various changes of both the Public Procurement Law and the internationally recognised FIDIC contract conditions have led to a situation which is being considered as grossly unfair, counter-productive and unacceptable by the contractors.

The combination of poorly prepared tenders, a generally unfair attitude towards contractors and the non-respect of contractual obligations by public clients not only raises the question of professionalism on the demand side but also leads to a number of concerns regarding Internal Market issues, such as lack of transparency and proportionality, as well as discrimination and freedom to provide services. If this development cannot be stopped and reversed, then there is real danger that this inefficiency in spending European funds, will lead the EU to reviewing its funding and lending policies which have provided Poland with almost 68 billion € in the current period and which are in legislative procedures at this very moment.

FIEC and EIC, with its partners in Poland, would like to contribute constructively to avoiding a further deterioration of the situation which would have dramatic consequences not only for Polish contractors, but also for Poland as such, a country whose achievements in the European Union so far have to be applauded.

It is also interesting to note that currently at least 2 billion € are "blocked" by litigation in front of Polish courts and that this amount is rapidly increasing.

FIEC – the European Construction Industry Federation – represents via its 33 national Member Federations in 29 countries the European interests of construction enterprises of all sizes, i.e. craftsmen, SMEs and "global players", performing all kinds of building and civil engineering activities

EIC – associated with FIEC – represents the international interests of contractors' associations from Austria, Belgium, Denmark, Finland, France, Germany, Greece, Iceland, Italy, Netherlands, Norway, Portugal, Spain, Sweden, Switzerland, Turkey and United Kingdom

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President



Frank Kehlenbach, EIC

Director

Organisation

European International Contractors (EIC) was founded in 1970 and is registered since 1984 as a legally independent business association under German law in Berlin, Germany. EIC has as its members construction industry federations from 15 countries which are directly or indirectly affiliated to FIEC.

EIC's mandate is to represent the international interests of the European construction industry and thus the federation maintains close relations with all international and other important organisations whose policies are of relevance for the international construction business, for instance with the European Commission, the European Investment Bank (EIB), the Organisation of Economic Co-Operation and Development (OECD) and the World Bank.

EIC's International Contracts Statistics records for the year 2011 a total international turnover of 156 billion €, the best result since records started. This excellent result was confirmed by the latest survey on the "Top 225 International Contractors", as published in the magazine Engineering News-Record, which illustrates that the market share of European contractors on the international construction market amounted to more than 50%.

In 2012, the Members of the EIC Board were the following:

Duccio Astaldi	(Condotte d'Acqua)	Italy	President
George Demetriou	(J&P Avax)	Greece	Vice-President
Jules Janssen	(Besix)	Belgium	Treasurer
Svend Erik Clemmensen	(E.Pihl & Søn)	Denmark	
Juha Höyhtiä	(Lemminkäinen)	Finland	
Colin Loughran	(Lagan Construction)	United Kingdom	
António Mota	(Mota-Engil)	Portugal	
Per Nielsen	(NCC)	Sweden	
Peter de Ridder	(van Oord)	The Netherlands	
Juan Antonio Santos de Paz	(Acciona Concesiones)	Spain	
Stefan Roth	(Bilfinger)	Germany	
Emin Sazak	(Yüksel Holding)	Turkey	
Karl-Heinz Strauss	(Porr)	Austria	

President Duccio Astaldi 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 convincing the international financing institutions and especially European donor agencies to allocate more funds to the infrastructure sector, in particular to transport infrastructure, and by promoting the concept of Private-Public-Partnerships (PPP) on a global level.

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 worldwide with respect to international environmental, ethical, social and corporate standards.
3. To provide for **better networking**, e.g. by offering European contractors a unique forum to exchange experiences on 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 topics had the highest priority in EIC's activities in 2012:

I. EIC reviews FIDIC standard forms of contract

For many decades, FIDIC consults EIC as “a friendly reviewer” for its newly published or updated standard forms of contract. Both contractors and clients agree that the FIDIC forms are a good starting point to facilitate the tendering and negotiation of international construction contracts. Over the past years, EIC has published five Contractor's Guides to the FIDIC standard forms.

Following the publication of the EIC Contractor's Guide to the FIDIC 2010 MDB Harmonised Construction Contract (“*Pink Book*”) in 2011, the focus in 2012 was on the envisaged updates of the FIDIC 1999 suite of contracts, especially on the new edition of the FIDIC 1999 Conditions of Contract for Plant and Design-Build (“*Yellow Book*”).

In 2012, EIC's Working Group “Contract Conditions” met twice with the FIDIC Updates Task Group and advocated that the improvements inserted in the “*Pink Book*” should also be incorporated in the second edition of the “*Yellow Book*”. Other topics discussed were the Fitness for Purpose obligation, possibilities to develop the Programme into an effective management tool, the introduction of an early warning clause and the possibilities to distinguish more clearly between the claims and the dispute provisions. As regards the Fitness for Purpose obligation, EIC and FIDIC came to the common understanding that the scope of the Works should be described as precisely as possible in the Employer's Requirements and that the Employer should not

benefit from its own negligence when omitting certain information.

Apart from the informal discussions with FIDIC, EIC speakers presented the EIC Contractor's Guides at public FIDIC conferences. Past President Michel Démarre emphasised at the FIDIC MDB Harmonised Construction Contract Conference in June 2012 the importance of four key issues: The independence of the Engineer, the proper functioning of Dispute Boards, the need for effective international arbitration and a balanced anti-corruption clause. He also called upon the European Commission to apply the FIDIC MDB Harmonised Edition in the context of the European Development Fund.

In December, EIC presented its views at the FIDIC International Contract Users' Conference in London which gathered some 200 engineering and construction law professionals from more than 30 countries. At the conference, Ian Nightingale, the World Bank's lead procurement expert, acknowledged the EIC Contractor's Guides as balanced commentaries which provided a good overview on the most important contractual issues to users.

II. EIC proposes modifications for EU-financed construction contracts in Africa

More than 70 representatives from EIC, the Federation of Engineering Consultancy Associations (EFCA) as well as from the European Commission's Directorate-General for Development and Co-Operation (DG DEVCO) met in February 2012 for a second Roundtable to discuss the execution and financing of infrastructure works in developing countries. Further participants came from the European Investment Bank (EIB) and from EU bilateral financing institutions. In his opening address, Kristian Schmidt, Director for Sustainable Growth and Development at DG DEVCO, expressed the Commission's wish to advance the partnership with EIC from the traditional focus on contractual rules to developing new ways of engaging with the private sector.

In June 2012, EIC participated in DG DEVCO's public consultation on a revision of the “Practical Guide to contract procedures for EU external actions” (PRAG). The PRAG explains the contracting procedures applicable to all EU external aid contracts financed

from the EU general budget and the European Development Fund. Following the submission of its comments in the consultation, EIC was invited by DG DEVCO's legal unit in July 2012 to an exclusive discussion on the General Contract Conditions for EDF-financed works contracts. The publication of the revised PRAG in January 2013 confirmed that several of the EIC recommendations, e.g. the ones on conditions precedent in relation to commencement order and the contractor's entitlement to suspend and/ or reduce the rate of the works in case of delayed payments by the client – had been accepted and integrated in the General Contract Conditions.

The Working Group "Africa" also continued its conceptual work to elaborate a concept for an EU Blending Facility for infrastructure works in Africa. In its "Agenda for Change of EU Development Policy" adopted in October 2011 the European Commission had stated its readiness to develop *"new ways of engaging with the private sector, notably with a view to catalyse public-private partnerships and private investment"*. To follow-up on this policy, the European Commission would be prepared to deploy *"a higher share of EU development resources... through existing or new financial instruments, such as blending grants and loans and other risk-sharing mechanisms, in order to leverage further resources"*. In response, EIC proposes modifying the EU-Africa Infrastructure Trust Fund (ITF) to allow for mixing development and commercial finance by blending EU Official Development Assistance (ODA) with ECA-covered commercial finance for transport infrastructure projects carried out in Africa by the European construction industry. Such an instrument would have two advantages: Firstly, it would present a possibility to multiply or leverage EU Development Aid for the infrastructure sector; secondly, it would be implicitly tied to OECD bidders because only these export credit agencies comply with the high standards relating to EU funds. The Working Group "Africa" was invited by DG DEVCO for an informal workshop on 6 February 2013 to Brussels where it received a very positive feedback.

III. EIC represents the European construction industry in the global debate on the future of Development Policy

In 2013, a UN special event will follow-up on the efforts made in the past decade towards achieving the Millennium Development Goals (MDG) and will raise the issue of what might follow after the target year of 2015. In 2012, the European Commission prepared the EU's initial contribution for the forthcoming international discussions and launched a public consultation which ran from June to September. EIC was among the stakeholders that submitted their comments.

EIC has called upon the EU and the international development community to complement the existing MDG Goals with clear and achievable targets and indicators related to the transport infrastructure sector. EIC also brought forward its view that a modern and effective development policy is aligned first and foremost with the political objective of "Wealth Creation" rather than "Poverty Reduction". This in turn leads to the conclusion that private capital for development must be mobilised and the private sector welcomed as a development actor. In this context, EIC also proposes to recognise guarantees provided by donors (Development Guarantees) as ODA in order to help leverage private financing and mitigate risks.

In the international context, EIC contributed actively to the Development Task Force established by the Business and Industry Advisory Committee to the OECD (BIAC). In February 2013, BIAC submitted its "Preliminary Perspectives for the Post-2015 Development Agenda" through the private sector representative in the UN High Level Panel of Eminent Persons. BIAC accepted the EIC proposals to address the topics Transport Infrastructure and Development Finance: Goal 3 now calls for a strengthening of development financing given that Official Development Assistance (ODA) cannot deliver long-term development alone and, therefore, the mobilisation of private financing is essential in order to realise growth and development. BIAC proposes to recognise guarantees provided by donors (Development Guarantees) as ODA in order to help leverage private financing and mitigate against risks. Under Goal 8, BIAC points out the importance of improving transport infrastructure as "adequate and efficient transport infrastructure is key to achieving all the MDGs".

IV. EIC takes part in World Bank Consultation on Procurement Policy Review

2012 marks the year in which the World Bank launched the most comprehensive review of its procurement policies and procedures in its history. In a respective policy paper the Bank acknowledged that its own business and the global market place have changed dramatically over the years. Those procurement policies that were designed for infrastructure investments have become less well tuned to the Bank's involvement in all sectors and to new ways of doing business such as Public-Private Partnerships (PPPs) and sector-wide approaches (SWAPs).

The purpose of the review is to lay the ground for changing the overall framework regarding policies and procedures on procurement. The review is conducted in two phases and to be concluded at the end of 2014. The first phase – completed at the end of 2012 – comprised consultation meetings in 85 countries with more than 1.900 stakeholders from governments, the private sector, academia and civil society. Additionally, a series of studies and benchmarking exercises were launched in regard to capacity building, professionalization, innovation, international comparisons, country systems, sustainability/green procurement and PPP among other things.

The second phase will comprise the drafting of the revised statement of policies and procedures. The World Bank has set up an International Advisory Group on Procurement (IAGP) to undertake additional analyses on trends in public procurement and benchmarking of the Bank's processes. Data on incidences of fraud and corruption and domestic preferences are also to be examined. EIC is represented in IAGP, which held its first meeting in June 2012, through its former Treasurer Uwe Krenz. The Group received summaries of all issues raised in the consultations and in 2013 will review drafts of the new framework and give its proposals to the World Bank Board of Executive Directors.

EIC has set up a new Working Group "World Bank Procurement Review" which prepared the federation's position on a number of questions raised by the Bank. The EIC comments were submitted in September and included a broad range of recommendations, such as quick and effective dispute settlement and mandatory international

arbitration, award on the basis of the most economically advantageous tender (MEAT) instead of the lowest price, the possibility to reject abnormally low bids, a more rigid pre-qualification procedure including sustainability criteria and, last but not least, an anti-corruption policy that is applied also towards or against the Borrower.

V. EIC calls for expansion of WTO Government Procurement Agreement (GPA)

The Agreement on Government Procurement (GPA) is the only legally binding agreement within the WTO with a focus on government procurement. It is a plurilateral treaty under which member countries have a number of obligations and rights including the right to bid for public contracts in each other's markets.

On 30 March 2012, parties to the GPA formally adopted the results of the renegotiation. The revised GPA text is based on the same principles as the existing Agreement but has been extensively streamlined and re-written to make it easier to implement. It now takes into account the widespread use by GPA Parties and other WTO Members of electronic procurement tools.

EIC follows the evolution of the GPA very closely and upholds its call for an expansion of the agreement to include the largest public procurement markets in emerging economies such as China, India and Brazil. In this context, EIC criticised China's third revised offer for entry to the GPA, presented in December 2012, five years after negotiations were launched in 2007. Although containing minor improvements, notably the inclusion of additional provinces and lower threshold levels, the latest offer remains unacceptable in EIC's view.

The main points of criticism concern the threshold values for inviting foreign competition, which continue to be a multiple of the EU thresholds, in particular with respect to the construction sector. Furthermore, China still excludes those construction segments that are of largest interest for foreign contractors, such as civil engineering works. This comprises highways and streets, railways and airfield runways, bridges and tunnels, waterways and harbours, dams, pipelines, communication and power lines, mining and manufacturing plants, and stadia and sports grounds.

China's continuing refusal to present a serious offer to open its procurement market for international competition is also the reason for EIC and FIEC to request that the EU step up its legislation on the reciprocity principle in the field of public procurement.

EIC General Assemblies

Every six months, EIC holds its General Assembly on invitation of one of its member federations in a different European country. In connection with these conferences, business workshops are organised on issues related to the international construction business which are traditionally attended by senior international managers from the leading European contractors as well as related industries.

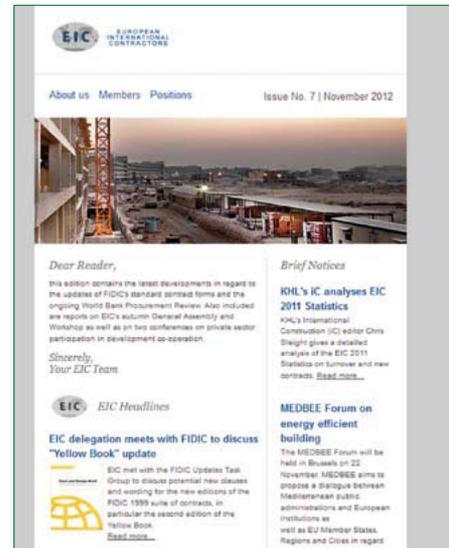
On 27 April 2012, the Turkish member federation hosted an EIC conference in Istanbul with a workshop on "Emerging market opportunities in the aftermath of the Arab spring". Speakers analysed the effects from different angles, presenting legal developments, effects on banking and financing as well as possible scenarios for future economic development in the region.

The EIC conference on 19 October 2012 was hosted by the Austrian member federation in Vienna. The workshop was entitled "Challenging construction markets in Central and South Eastern Europe: Can we do better and what does it take?". High-ranking speakers from the Romanian government, the EU Commission and the EIB pointed out opportunities and risks for contractors in the region and outlined possible key drivers for infrastructure investments in the coming years.

International issues on the EU Internal Market

are jointly addressed by EIC and FIEC (see page 18).

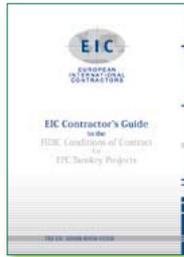
More information is available on the EIC website:
<http://www.eic-dederation.eu>



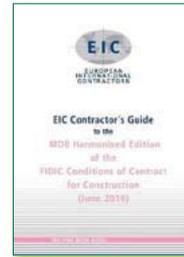
• EIC Publications



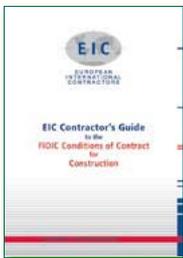
EIC Turnkey Contract, 1994



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



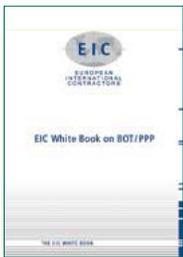
EIC Contractor's Guide to the MDB Harmonised Edition of the FIDIC Conditions of Contract for Construction (June 2010), "The Pink Book Guide", 2011



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



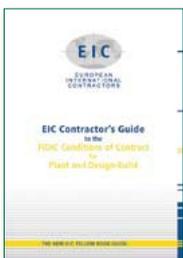
EIC Blue Book on Sustainable Procurement, 2004



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. 77