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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 trade, 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 2009 EIC International Contracts Statistics, the total volume of international turnover carried out by EIC member companies in 2008 amounted to some € 150 billion. This excellent result was confirmed by the latest survey on the "Top 225 International Contractors", published in the *Engineering News Record* magazine, which illustrates that EIC member companies account for about 60% of new international contracts.

In 2009, 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
Duccio Astaldi	(Condotte d'Acqua)	Italy	
Håkan Broman	(NCC)	Sweden	
Jon Dale	(Whessoe)	U.K.	
Nico Dirkwager	(BAM International)	The Netherlands	
George Demetriou	(J&P Avax)	Greece	
Enrique Fuentes	(Group Ferrovial)	Spain	
Sakari Toikkanen	(YIT Corporation)	Finland	

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 and concerning social and corporate standards; and

- 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 trade.

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**

Following the severe cutback of multilateral, European and bilateral development lending for infrastructure from 1996 to 2003, EIC welcomes the renewed commitment of the European Union and other multilateral donors in developing the infrastructure sector in developing countries, and in particular in Africa. At the same time, EIC strongly opposes the tendency in the international donor community to shift donor funds for the infrastructure sector from the classic "Project Approach", i.e. external assistance through project grants and loans, to "(Sector) Budget Aid", i.e. the disbursement of external assistance into the partner country's budget, as this aid modality remains exposed to a significant risk of misuse and exacerbates the already unlevel playing-field between European international contractors and their overseas competitors in Africa.

On 26 March 2009, EIC and the European Commission met in Brussels for an "EC-EIC Round Table on Infrastructure in ACP Countries" in order to analyse jointly the legal, economic and technical framework conditions for infrastructure projects financed by the European Development Fund (EDF). More than fifty participants from the European Commission and from EIC as well as from the European and the global consulting industry federations, EFCA and FIDIC, and from bilateral donor agencies came together for a full-day conference in order to exchange experience, concerns and expectations with respect to the execution of EU-financed infrastructure works in ACP Countries, and in particular in Sub-Saharan Africa. The conference was jointly opened by the Deputy Director-General of the EuropeAid Co-operation Office, Mr. Richard Weber, and the EIC President, Mr. Michel Démarre.

In the following three working sessions, which were co-chaired by the Director for ACP Countries in EuropeAid, Mr. Gary Quince, and by the Chairman of the EIC Working Group "Africa", Mr. Yannick Moulin, participants discussed the basic parameters regulating the programming, the procurement and the execution of infrastructure works financed by the EDF. Whilst controversial issues, such as the increasing use of (Sectoral) Budget Support and Country Procurement Systems, were not avoided during the talks, agreement was reached that the current regulatory EDF system should be engineered towards allowing a the highest level of quality and sustainability. In this context, participants considered the continuous improvement of the feasibility and design studies and the securing of sufficient respective funding, as one of the priorities.

In the afternoon workshop, EIC presented to the Commission its view on the most important bottlenecks which currently prevent a large number of major European international contractors from participating in EDF infrastructure tenders. Problematic areas, such as poor payment conditions, the inadequate pre-/post-qualification procedure and the lowest bidder rule or the insecurity associated with taxes and duties, pose a heavy risk for a positive cash-flow of the project and thus constitute an in-built deterrent for potential bidders. Subsequent to the event, EIC received a letter in which the European Commission declared its commitment to enter into a **Technical Dialogue with EIC on three topics: The EDF Conditions of Contract, Quality Assurance and Performance-Based Procurement.**

In September 2009 EIC participated for the **third time after November 2006 and July 2007 in the organisation of an EU-Africa Business Forum** which was held this time in Nairobi (Kenya). These business fora are an integral part of the EU Strategy for Africa, adopted in December 2005, and the Joint EU-Africa Strategy, adopted in December 2007. The two-day event brought together more than 250 African and European business leaders representing multi-nationals, large corporations, small and medium-sized enterprises and confederations, multilateral and regional institutions and provided a good opportunity for networking between the public and the private sector. EIC was represented in the forum by Mr. Yannick Moulin, chairman of the EIC Working Group "Africa", who, together with the representative of the African Development Bank, co-chaired a working session on infrastructure.

EIC's proposals for more sustainable infrastructure projects, involving the local construction sector, found its way into the final document which reads: *"The Development Policy objectives for Infrastructure should be changed from "Poverty Reduction" to "Wealth Creation", including the development of local SME's. To facilitate this, the use of project contract procurement structures should be encouraged which focus on the project's life-cycle from design over construction to operation and maintenance. That would provide opportunities for local SMEs to develop and participate in infrastructure projects as sub-contractors to the foreign main contractor and would also assist in improving the level playing field and governance of the infrastructure procurement process.*

## 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 strengthen national procurement systems and 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. However, shortly before the meeting, a "Supplemental Note" was circulated within the World Bank in which the main EIC concerns were acknowledged and addressed, e.g. through the establishment of an "International Technical Advisory Group" (ITAG).

By the end of 2009, the World Bank had not found any candidate country which would qualify for participating in its pilot programme on "Country Procurement Systems". Therefore, the bank's management proposed to the board to lower the benchmark and to allow potential candidates to participate in the piloting programme even if they do not meet the minimum criteria. In response, ITAG, in which two EIC representatives are active, expressed its concern to the World Bank executive directors that the bank's management had recommended *"to move countries forward even if they do not meet all the required standards, as long as an agreed plan for addressing the gaps is in place"*. ITAG advocated that no country should be qualified until procurement performances, as strengthened by the capacity building initiatives yet to come, were put

in place and then regularly assessed. In order to help the bank to achieve its objectives connected with the pilot programme on Country Procurement Systems, ITAG requested the World Bank to share and discuss "decision memoranda" which detail (i) the procurement policy agreed upon by the country and the bank, including the type of legal instrument binding the pilot country, (ii) the performance objectives the country will have to achieve as stated in the legal instrument, and (iii) the intermediate measures to be implemented during the transition period. In addition, ITAG insisted that adequate external resources as well as an implementation schedule for capacity building actions should be provided by the bank for each country.

## III. International Standard Forms of Contract

International contractors and clients agree in general that the FIDIC standard forms of contract have been and still are important for facilitating the tendering and negotiation of international construction contracts. For almost 40 years, starting with the Third Edition of the old FIDIC "Red Book" back in the 1970s, it has been a well-established tradition that FIDIC consults EIC as a "friendly reviewer" for its new or updated standard forms of contract. Following this tradition, EIC closely follows the development of new FIDIC standard forms of contract through its various drafting stages.

In September 2008, FIDIC published the first edition of the "FIDIC Conditions of Contract for Design, Build and Operate Projects in September 2008". Only seven months later EIC published an **EIC Contractor's Guide to the FIDIC "Gold Book"** in which EIC welcomed, in principle, FIDIC's enlargement of its suite of standard forms of contract with an innovative contract form which is destined to allow construction and engineering industries to compete on quality, efficiency and life-cycle costing. However, EIC did not conceal a certain degree of uneasiness in that the FIDIC DBO contract assigns to the contractor a strict responsibility for the quality, or any loss or damage to the asset, or loss of production of the facility for a period of 20 years or more. By doing so, the contract virtually puts the contractor in the role of a concessionaire, however, exposes him to a much higher degree of financial liability, which might be unacceptable for contractors. EIC, therefore, would have preferred that FIDIC distinguish more clearly between the

Design-Build period and the Operation Service period. Having said this, EIC respects the attempt of the drafting committee to combine the Design-Build period and Operation Service period in one comprehensive contract with on-going responsibilities and obligations for both parties but noted that there are important sector specifics and even sub-sector peculiarities which potential users of this form will have to consider. For instance, in the transport sector the “contractor” referred to in the FIDIC DBO contract may be one or more companies of the same industry, whilst in the energy and water sectors the “contractor” will necessarily be a joint venture composed of members drawn from different industries. Hence, EIC questioned whether a “one size fits all approach” would do justice to such differences and also whether the insurance/surety industry would be ready to offer the corresponding products.

### EIC General Assemblies

Every six months, EIC holds its General Assembly on the invitation of one of its 15 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.

- On 28<sup>th</sup> April 2009, the Swedish member federation hosted an EIC conference in Stockholm with a workshop entitled “**The Impact of the Global Financial Crisis on the International Construction Business**”. On the occasion of the Assembly in Stockholm, the EIC Board met with the executive vice-president and CEO of the International Finance Corporation (IFC), Mr Lars Thunell. During the 45-minute discussion, Mr Thunell informed EIC about the various initiatives of the World Bank Group to ensure a timely and adequate response to the global financial crisis.
- The EIC conference on 8<sup>th</sup> October 2009 was hosted by the Belgian member federation in Antwerp. The workshop was entitled “**Green Construction Trends & Challenges**” and dealt with the challenges that arise from climate change for the construction sector.
- At the spring 2010 General Assembly on 30<sup>th</sup> April in Berlin, **EIC celebrated its**

**40<sup>th</sup> anniversary.** The workshop in Berlin examined the relationship between **international contractors and international consultants** and explored whether there are common concerns, but different strategies.

More information can be downloaded from the EIC 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 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  
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Projects, 2009**

For FIEC publications, please refer to p. 61