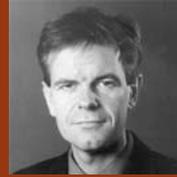




Michel Démarre, FR

President



Frank Kehlenbach, EIC

Director

Organisation

European International Contractors (EIC) is 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.

In accordance with a protocol signed between both federations in 1984, and reaffirmed in 2002, EIC and FIEC carry out complementary tasks. Whilst FIEC represents the European construction industry in the context of European Union integration and harmonisation, the work of EIC aims primarily at improving operating conditions for the European construction industry at international level. For this purpose, EIC 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 2008 EIC "International Contracts Statistics", the total volume of international turnover carried out by EIC member companies in 2007 amounted to around €121 billion. This excellent result was confirmed by the latest survey on the "Top 225 International Contractors", published in the *Engineering News Record* magazine, which illustrated that EIC member companies accounted for about 60% of new international contracts.

In 2008, the Members of the EIC Board were the following:

Michel Démarre	(Colas)	France	President
Gerrit Witzel	(Heijmans)	The Netherlands	Vice-President
Uwe Krenz	(Bilfinger Berger)	Germany	Treasurer
Duccio Astaldi	(Condotte d'Acqua)	Italy	
Håkan Broman	(NCC)	Sweden	
Jon Dale	(Whessoe)	U.K.	
Werner Dekkers	(Besix)	Belgium	
George Demetriou	(J&P Avax)	Greece	
Enrique Fuentes	(Group Ferrovial)	Spain	
Juha Kostianen	(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 in connection with international 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 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 during the years 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 thoroughly 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" (European Court of Auditors' Special Report 2/2005) and exacerbates the already unlevel playing-field between European international contractors and their overseas competitors in Africa.

Infrastructure needs are huge on a global scale and EIC observes funding difficulties for new construction, rehabilitation and maintenance world-wide, but in particular in the developing world. Whilst the World Bank responded to the increased client demand for infrastructure lending with its "Infrastructure Action Plan", the European Union launched in October 2007 the "EU-Africa Partnership on Infrastructure" which aims at creating the infrastructure networks that will secure the interconnectivity of the African continent and its different regions in order to promote interregional integration. The Infrastructure Partnership is a key element in the overall framework co-operation between Europe and Africa and is defined further in the Joint EU-Africa Strategy which was adopted in December 2007 at the EU-Africa Summit in Lisbon.

EIC was invited by the European Commission to attend the **launch of the "EU-Africa Partnership on Infrastructure" in Addis Ababa as an observer** and was also a **co-organiser of the EU-Africa Business Summit on 7 December 2007 in Lisbon**. The Business Summit brought together African and European business leaders and renewed the private sector's commitment to work with the African and the European Union to strengthen Africa's economic development, with a special focus on infrastructure. On EIC's proposal, the following passages were recorded in the Final Statement of the EU-Africa Business Summit.

The private sector considers itself as a vital partner [...] and we would suggest the following concrete actions:

- *Prioritise infrastructure projects according to their impact on regional integration and development potential for the entire continent ("Trans-African Networks");*
- *Ensure that foreign contractors use local man power and local private sector in the whole project cycle and ensure project sustainability over the project's lifecycle;*
- *Progress could be achieved by:*
 - *Facilitating access to credit facilities for African contractors which would allow them to develop their operation skills;*
 - *Integrating the operation and maintenance phase into the project (Design-Build-Operate type of contracts) to fight against an early depreciation of the investment done;*
 - *Fostering joint ventures between European and African infrastructure providers with real and concrete technological transfer;*
 - *Establishing coherence between global development policy objectives, such as ownership, accountability and environmental, social and ethical standards and the donor-financed procurement process;*
 - *Implementing an in-depth dialogue between the Forum and the European Commission on procurement policy for infrastructure works.*
- *Define appropriate financing arrangements depending on the project's commercial viability and its potential to attract private finance. To attract foreign direct investment in connection*

with Private Public Partnerships (PPPs), African states have to assure adequate legislation for PPPs.

As a follow-up to the Lisbon Summit, EIC intensified the dialogue with the European Commission's EuropeAid Co-operation Office and with DG Development on EU-financed infrastructure projects in Africa. In this context, however, European business and policy-makers must acknowledge that over the past decade China has become an important and influential player in Africa and is increasingly a source of political and financial support for African governments, particularly in countries with economies that are resource-endowed. Considering the massive increase of Chinese "tied aid" soft loans and the systematic subsidisation of Chinese state-owned construction companies over the past years, EIC perceives a severe distortion of competition on the African infrastructure market.

Against that background, **EIC actively participated in the European Commission's public consultation on the subject of "The EU, Africa and China: Towards trilateral dialogue and co-operation on Africa's peace, stability and sustainable development"**. Whilst the Commission's DG Development took due note of EIC concerns with respect to a trilateral dialogue, it obviously attached greater value to the arguments of the political campaigners in favour of a trilateral dialogue. Hence, the official Final Report published by the European Commission on 14 July 2008 included the following findings:

- *Most of the replies indicated a clear competitive advantage for China in the infrastructure sector because of the Chinese pragmatic and business oriented approach in building infrastructure without conditionality and without setting pre-conditions ... The readiness to take risks was estimated to be higher than with Western actors.*
- *2 out of 15 respondents of African nationality see some European countries as the source of evil in Africa which they are now remedying. One African opts clearly for a division of labour: China could focus on the infrastructure part and the EU on good governance and training/capacity building.*
- *Infrastructure, notably management and know-how is also a sector where EU competencies are widely recognized. Taking into account that the*

main Chinese competitive advantage lies in the construction of infrastructure, there seems to be a clear potential for trilateral co-operation in this sector. To the extent possible, trilateral co-operation should take into account the African wish for a division of labour between China and the EU in Africa.

The European Council concluded on 10 November 2008 – based on the respective Communication by the European Commission – to "co-ordinate the EU and China's efforts more closely around priorities which reflect Africa's needs". The Council avoided, however, making any specific commitment with respect to the infrastructure sector and stressed that such trilateral dialogue should be developed progressively in the existing fora and within the framework of the structures established in the bilateral partnerships in order to promote democratisation, political and regional integration, good governance and respect for human rights. Thus, the EIC concerns have been acknowledged by the leading European policy-makers and we shall closely monitor future political developments in this area.

II. Policy Dialogue with the OECD

Under the auspices of the Organisation for Economic Co-operation and Development (OECD) more than 100 Ministers, Heads of Agencies and other Senior Officials endorsed on 2 March 2005 the so-called "Paris Declaration on Aid Effectiveness" and committed their countries and organisations to increase their efforts in harmonising development aid procedures. In December of the same year, the three European institutions adopted the "European Consensus on Development" which reflects the EU's willingness to comply with the principles agreed in the "Paris Declaration". Since the adoption of the "Paris Declaration", EIC has been fiercely advocating against the over-ambitious donor reliance on partner countries' financial and procurement systems and has voiced repeatedly its concern that the use of sub-standard Country Procurement Systems might jeopardise the well-established international procurement standards.

On account of its lobbying activities, EIC was invited in September 2008 by the OECD and the European Commission as the only private sector representative to attend the 3rd High-Level Forum on Aid Effectiveness in Accra, which gathered

more than 1,200 delegates from over 100 donor and developing countries, from multilateral and bilateral funding agencies and from some 60 NGOs. Delegates in Accra adopted a new Declaration, the so-called "Accra Agenda for Action" that clearly reflects the spirit of the "Paris Declaration", as it spells out that "donors agree to use country systems as the first option for aid programmes".

The Chairman of the Working Group "Africa", Mr Yannick Moulin, addressed the conference in the roundtable on "Alignment" and stated on behalf of EIC that European contractors were not opposed to the principles of the "Paris Declaration" provided that it guaranteed fair competition. However, European contractors have experienced that international competition for donor-financed infrastructure projects is actually distorted in favour of state-owned companies from outside the OECD region which are not subject to the same legal, economic, social and corporate minimum criteria as companies from inside the OECD. EIC in addition identified inconsistencies between the development policies of the OECD-DAC and those of the new donors. For instance:

- Whilst the OECD is recommending more *untied aid*, new donors were practicing *tied aid*;
- Whilst the OECD is promoting *budget aid*, the new donors are promoting *barter trade*, (the so-called "Angola mode");
- Whilst the OECD is promoting *international standards* in many aspects, the new donors are satisfied with applying *local standards*.

Besides its contacts with the OECD Development Assistance Committee (DAC), EIC also liaised with the OECD's Trade and Agriculture Directorate which launched a project that aims at quantifying barriers to trade and services by developing "**Services Trade Restrictiveness Indices**". The construction sector has been chosen as one of three pilot sectors.

On 11 December 2008, the OECD hosted an Experts Meeting on Construction Services in Paris of which the key purpose is to provide the expert judgement needed for the weights and scores for the "Construction Services Trade Restrictiveness Index". The meeting brought together experts from the business sector, regulators, policy makers and analysts in order to identify and rank the most important barriers to trade in construction services. **EIC President Démarre represented both EIC and**

FIEC in the event and reminded the OECD that it was sending confusing messages to the European construction industry: Whilst the trade unit was promoting more liberalised construction markets inside and outside the OECD, the OECD-DAC through its development policy was actually closing the door for European contractors in the developing world. As a result of the experts meeting, the OECD presented a ranking of the most burdensome regulatory measures in connection with Construction Services.

III. 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". Shortly afterwards the World Bank adopted a strategy on "Expanding the Use of Country Systems in Bank-Supported Operations" which in the year 2008 entered a decisive stage. EIC responded to the World Bank's policy proposal with several critical Position Papers on Country Procurement Systems and expressed its concern that further decentralisation in Bank-financed tenders would bring less harmonisation and efficiency in aid-funded infrastructure project delivery.

From the very beginning, EIC has been adamant in warning the donors in general and the World Bank in particular that this new policy might eventually lead to a "watering down" of international standards, to a decrease in control of donor funds and eventually to a higher risk of corruption. The arguments forwarded by EIC provoked the World Bank to launch in autumn 2007 an "e-Forum on the use of Country Systems for Procurement" in order to promote a constructive dialogue with a wide range of stakeholders.

In February 2008, EIC reminded the Bank in a further Position Paper on the Bank's Revised Proposal for a Piloting Program (dated March 20, 2008) that the latest Bank document still contained some serious shortcomings, such as:

- *The OECD/DAC procurement benchmarking tool does not reflect the "generally accepted international practice", as incorporated in the harmonised master bidding documents.*

It is descriptive in character and cluttered with ambiguous terms such as "adequately", "appropriate", "sufficient", "reasonable", etc. which cannot provide sufficient guidance for evaluation;

- *The Draft Proposal allows "a deviation from a strict interpretation of the provisions of the Bank's Guidelines". For contracts that "might attract foreign competition", it merely requires the existence of national sample bidding documents (NSBDs);*
- *Whilst it is true that Multilateral Development Banks retain certain flexibility with respect to ICB thresholds, it is common World Bank practice to define a certain monetary range. For instance, in construction works, the normal range applies from 5 - 20 million US\$ above which ICB procedures apply. The Draft Proposal omits to define any monetary threshold and dodges to woolly language, such as "complex and non-standardised procurement". EIC submits that any project with a contract value above 20 million US\$ is complex and non-standardised.*

EIC urged the World Bank's Executive Board to instruct the Bank's management to convene a Technical Working Group (including industry experts) in order to draft a more effective proposal for a piloting programme and warned that, if the current proposal proceeded unamended, small and medium-sized companies (SMEs) would be particularly affected, since they simply do not have the capacity to adapt to numerous national procurement systems.

The Piloting Programme for the Use of Country Procurement Systems in Bank-Supported Operations was finally 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** in a credible manner. In effect, the supplement:

- *Proposes the exclusion of complex projects from the piloting programme;*
- *Limits any changes to the Bank's Procurement guidelines strictly to the pilot countries and for an initial 2-year period.*

- *Confirms and outlines how the complaints system would function in any pilot;*
- *Expands the proposal for a Technical Advisory Group to also include industry representatives.*

Thus one of the key demands of EIC was taken up by the World Bank. On 7 August 2008, the World Bank published the Terms of Reference for an "International Technical Advisory Group" (ITAG) which was given the mandate to "advise on the countries/sectors/projects that would be appropriate for inclusion in the piloting programme". The ITAG is composed of seven private sector representatives (from all world regions) and seven public sector representatives (3 from donor organisations, 2 from civil society and 2 independent experts from academia). **EIC was successful in nominating two representatives – for the EU and the OECD regions – to the ITAG.** The kick-off meeting of the group took place on 9 December 2008 in Washington D.C.

IV. Standard Bidding Documents and International Standard Forms of Contract

International contractors and clients in general agree that the FIDIC standard forms of contract have been and still are important for facilitating the tendering and negotiating 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 consult EIC as a "friendly reviewer" for its new or updated standard forms of contract. Following this tradition, EIC closely monitors the development of new FIDIC standard forms of contract through its various drafting stages.

In September 2007, FIDIC released for comment and review a pre-press version of the newest addition to its suite of standard contract forms, the "Conditions of Contract for Design, Build and Operate Projects" (the "Gold Book"). As a friendly reviewer, EIC responded within a short period of time with an **EIC Comment on the pre-press version of the FIDIC "Gold Book"** in which critical comments were raised with respect to the role of the Employer's Representative, the scope of the Performance Security, the interrelation between the liabilities under the Design-Build and the Operation phases, the Claims and Disputes procedure.

FIDIC took on board several of EIC's proposals for amendment and published the First Edition of the FIDIC Conditions of Contract for Design, Build and Operate Projects in September 2008. During the launch seminar, the **EIC President was given the floor to present the EIC view on the new FIDIC document**. President Démarre voiced his appreciation that FIDIC had taken the lead in drafting such an innovative form of construction contract which opened the door for a competition based on quality and lowest life-cycle cost rather than the "lowest evaluated construction cost". It was EIC's hope for large and complex infrastructure projects, the FIDIC DBO Contract may become the preferred tool of clients and financiers to build more quality, integrity and sustainability into their projects.

At the same time, Mr. Démarre informed the expert audience on some of the critical items which EIC had discussed with the FIDIC drafting committee over the past two years. For instance, EIC would have expected that the risk of interference by the Employer or his Representative would have been minimised, as it was the case in the FIDIC EPC Turnkey Contract ("*Silver Book*"). Furthermore, whereas the standard form implied that the Performance Security shall partly be valid for the operation phase, EIC was doubtful whether a security for such a long period of time will be issued at all by a bank or a surety. In addition, EIC questioned the necessity of extending the validity of the Performance Security into the Operation Service Period in the light of the existence of an Asset Replacement Fund and a Maintenance Retention Fund. Last but not least, EIC had discovered some very practical drafting ambiguities, e.g. in relation to the Commissioning Certificate. Mr. Démarre announced that **EIC would publish in due course an EIC Contractor's Guide to the FIDIC DBO Contract** in order to provide users with a tool to understand the contractor's viewpoint when negotiating such complex contract agreements.

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 16th May 2008, the Italian Member Federations hosted an EIC Conference in Milan with a Workshop titled "**What Future for the International Business of European Contractors?**". During the workshop, participants discussed the strategies that could be implemented to maintain European leadership in international construction activities. The subsequent roundtables highlighted the three issues "International Success Strategies: Be local or be specialised – any other option?", "Diversification: Traditional Construction, Services, Concessions – what is the future optimal blend?" and "International Business: stock market and family-ownership – which advantages?"
- The EIC Conference on 3rd October 2008 was hosted by the Dutch Member Federation in Santpoort near Amsterdam. The Workshop focused on "**Sustainable Construction in Delta Areas**" and dealt with the challenges that arise from climate change. Participants discussed how urban delta areas could be protected from rising sea levels and tried to identify innovative solutions for enhancing the sustainable development of the built environment in delta areas.
- The 2009 EIC General Assemblies took place on 28th April 2009 in Stockholm, Sweden, where the topic was "**The Impact of the Global Financial Crisis on the International Construction Business**".
- A further assembly is planned for 9th October 2009 in Antwerp, where the issue of will be the theme of "**Green Building: Trends and Challenges**".

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



• Publications des EIC



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 Conditions of Contract for Design, Build and Operate Projects, 2009

For FIEC publications, please refer to p. 79