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President



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Director

### Organisation

European International Contractors (EIC) was founded in 1970 and has been 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 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 the European Commission, the European Investment Bank (EIB), the Organisation of Economic Co-operation and Development (OECD) and the World Bank. According to the 2011 EIC International Contracts Statistics, the total volume of international turnover carried out by EIC member companies in 2010 amounted to more than 141 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 the market share of European international contractors in relation to the international construction market amounted to 56%.

In 2011, the Members of the EIC Board were the following:

Michel Démarre	(Colas)	France	President
George Demetriou	(J&P Avax)	Greece	Vice-President
Uwe Krenz	(Bilfinger Berger)	Germany	Treasurer
Duccio Astaldi	(Condotte d'Acqua)	Italy	
Svend Erik Clemmensen	(E.Pihl & Søn)	Denmark	
Juha Höyhtiä	(Lemminkäinen Corp. Intern.)	Finland	
Jules Janssen	(Besix)	Belgium	
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	
Emin Sazak	(Yüksel Holding)	Turkey	
Karl-Heinz Strauss	(Porr)	Austria	

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 especially the European donor agencies, to allocate more funds to the infrastructure sector, in particular to transport infrastructure, and by promoting the concept of Public-Private 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 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 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 topics have been identified as priority issues for EIC's activities in 2011:

### **I. EIC reviews and comments on FIDIC 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. Since many decades, 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 contract forms through its various drafting stages.

In April 2011, EIC published the **EIC Contractor's Guide to the FIDIC 2010 MDB Harmonised Construction Contract** (the so-called FIDIC 2010 "Pink Book"), based on the drafting work of the EIC Working Group "Contract Conditions", and thus completed its set of commentaries to the major FIDIC standard forms of contract. EIC was pleased to note that several comments made earlier by EIC, in relation to the FIDIC 1999 "Red Book" and with regard to previous versions, were rectified in the FIDIC 2010 MDB Harmonised Construction Contract. For instance, the FIDIC 2010 "Pink Book" stipulates that obtaining the building permit is an explicit responsibility of the Employer, that the Engineer has to observe a time limit of 28 days to render a Determination, that the commencement of Works is now subject to conditions precedent and that the Dispute Adjudication Board can be activated even if the Engineer fails to respond within the given deadline.

Conversely, EIC also expressed grave concerns that the alterations with respect to the Engineer's authority, the replacement of the Engineer, the Performance Security and also regarding Corrupt or Fraudulent Practices may represent an opportunity for abusive behaviour towards the contractor since the employer is granted discretionary rights to alter the fundamental balance of the contract or to terminate the contract arbitrarily. Given that the FIDIC 2010 "Pink Book" shall be primarily used by the Multilateral Development Banks, EIC would rather have welcomed that the express policy of the World Bank and the other Regional Development Banks to combat corruption also appears in their standard form of contract to the extent that every window of opportunity for corrupt behaviour is closed rather than to introduce indirect opportunities for undue intervention.

Within a few months after its publication the **EIC Contractor's Guide to the MDB Harmonised Construction Contract** was published in the renowned construction magazine "The International Construction Law Review" where the EIC document was described as follows: *"In the past we have been privileged to be able to reproduce some of the first class Guides and Commentaries that European International Contractors (EIC) have produced about FIDIC Conditions. They are valuable as they are the product of a responsible and reputable international organisation. They also throw light on the approaches to be adopted in drafting all international construction contract. As in the past, EIC's comments are balanced. They indicate what it regards as improvements and what it believes to be retrogressions"*.

Lately, **EIC has resumed the dialogue with FIDIC with respect to an update of the FIDIC 1999 "Yellow Book"**. A meeting between the EIC Working Group "Contract Conditions" and the FIDIC Updates Task Group is underway and EIC pursues the goal of convincing FIDIC to incorporate the improvements made in the "Pink Book" also in the 2<sup>nd</sup> edition of the "Yellow Book".

## II. EIC submits new concept for EU-financed infrastructure projects in Africa

With 53 billion € of development aid in 2011, the European Union and its 27 Member States remained the world's most generous donor, providing more than half of the global official aid. Given that global poverty cannot be eradicated by Official Development Assistance alone, EIC tries to convince European donors that a modern and effective development policy is aligned first and foremost with the political objective of Wealth Creation rather than with Poverty Reduction.

Over the year 2011, the EIC Working Groups "Africa" and "Finance/PPP" have jointly developed an EIC Proposal for a new "European Infrastructure Blending Instrument for Sub-Saharan Africa" (EIBISSA) which would be useful in facilitating infrastructure projects carried out by the European construction industry in this region. Such a new financing instrument would help to facilitate long-term partnerships between European and local construction companies and thus enable project-related know-how transfer and training of the local workforce.

EIC holds the view that EIBISSA would ensure, from a financier's perspective, a high leverage-effect on limited development resources as it complements grant funds with a blend of debt finance from a number of financial institutions so that the overall equivalent cost-of-capital of debt finance would meet the project finance needs of specific projects. In turn, the availability of affordable debt finance could help project developers attract the necessary equity finance that underpins the overall finance package. In conclusion, "EIBISSA" could re-open the door for a substantial involvement of European contractors and infrastructure providers on the Sub-Saharan Africa infrastructure market.

In February 2012, EIC officially presented the EIBISSA concept in the context of the EC-EIC-EFCA Roundtable on Development Financing for Infrastructure. The forum was jointly opened by EIC President Michel Démarre and the Director for Sustainable Growth and Development in DG DEVCO, Kristian Schmidt, and was attended by more than 70 representatives from DG DEVCO, EIB, EIC, EFCA and other European Development Finance Institutions.

## III. EIC acts as private sector representative in global debate on Development Policy

Modern principles and structures relating to the international development policy grew out of three High-Level Fora on Aid Effectiveness organised by the OECD in Rome, Paris and Accra in 2003, 2005 and 2008, respectively. The fora in Paris and Accra concluded with the adoption of five core principles that have gained support across the development community. It is now the norm for aid recipients to forge their own national development strategies with their parliaments and electorates (ownership); for donors to support these strategies (alignment) and work to streamline their efforts in-country (harmonisation); for development policies to be directed to achieving clear goals and for progress towards these goals to be monitored (results); and for donors and recipients alike to be jointly responsible for achieving these goals (mutual accountability).

Whilst the private sector had been more or less shut out completely at the first three events, EIC was invited to participate in the 4<sup>th</sup> High-Level Forum on Aid Effectiveness held in November 2011 in Busan, Korea. The three-day forum was attended by more than 3,000 participants from 160 countries, 70 international organisations and 300 civil society groups and included as key-note speakers the President of the Republic of Korea, the U.N. Secretary-General and the U.S. Secretary of State. EIC President Démarre was invited to take the seat of the private sector in the Final Plenary where he confirmed the readiness of EIC to share its experience on implementing Infrastructure PPPs in developing countries. He further called upon donors to promote greater transparency in public procurement and he urged emerging market donors to untie their development aid to the same extent as OECD donors.

In the run-up phase to the Busan conference, EIC was also involved in the preparation of the Joint Statement on "Expanding and Enhancing Public and Private Co-operation for broad-based, inclusive and sustainable growth" which has been endorsed by 43 countries and organisations. This declaration calls for an engagement of private sector participants and it stresses that financing into countries and sectors where private capital is scarce should be encouraged, e.g. through the effective, transparent blending of

aid and concessional lending with non-concessional resources. Official agencies and Development Finance Institutions are requested to upgrade their instruments to improve risk management and catalyse the resources and talents from the private sector.

The Busan conference culminated with the adoption of the "Busan Partnership for Effective Development Co-operation" which, for the first time, includes – besides traditional OECD donors, developing countries and civil society – also the new donors and the private sector. Paragraph 32 of the final document recognises *"the central role of the private sector in advancing innovation, creating wealth, income and jobs, mobilising domestic resources and in turn contributing to poverty reduction"* and calls on all partners to *"further develop innovative financial mechanisms to mobilise the private sector"*.

#### **IV. EIC participates in World Bank consultation on Procurement Policy**

The international donor community decided in the context of the "Paris Declaration" 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. As a consequence, the World Bank adopted in April 2008 a "Piloting Programme for the Use of Country Procurement Systems in Bank-Supported Operations". Upon EIC's request, a "Supplemental Note" was adopted in which an "International Technical Advisory Group" (ITAG) was created to monitor the process.

The year 2011 marked the end of the 3-year mandate of the International Technical Advisory Group (ITAG) which advised the World Bank's management in the implementation of the Bank's Pilot Programme on Country Procurement Systems (UCS programme). After three years of operation only a few candidate countries had qualified for using their own procurement systems for World Bank-financed projects and in spring 2011 the Bank's management concluded that the UCS programme had not met its objectives and would come to an end.

Later in the year, the World Bank launched a new policy initiative titled "Program-for-Results" (PforR) which would allow the Bank to focus its financial

support directly on government development programs. Whilst the advocates of the PforR instrument – amongst which are the World Bank itself as well as many European and developing nations' governments – were constantly emphasising the compatibility of this new financing tool with the principles adopted in the "Paris Declaration", EIC remained concerned about its impact. Against that background, **EIC President Démarre wrote in December 2011 a critical letter to all European Executive Directors at the World Bank** in which he questioned the actual need for another programmatic lending instrument.

Whilst the new lending instrument was eventually approved by the World Bank Board in January 2012, **the concerns raised by EIC and other private sector voices were acknowledged insofar as PforR commitments shall be limited to 5% of the Bank's total commitments for the first two years. Furthermore, large-scale infrastructure projects shall be generally excluded from this instrument and the process shall be monitored by a new International Advisory Group on Procurement (IAGP) in which EIC shall participate.**

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

The Agreement on Government Procurement (GPA) is to date the only legally binding agreement in the WTO focussing on the subject of government procurement. It is a plurilateral treaty which includes the WTO Members that are Parties to the GPA, and thus have rights and obligations under the Agreement. Its present version was negotiated in parallel with the Uruguay Round in 1994, and entered into force on 1 January 1996. **On 15 December 2011, negotiators reached an agreement on the re-negotiation of the GPA.**

EIC follows the evolution of the GPA very closely and maintains its call for an expansion of the geographic scope towards the largest public procurement markets in the emerging economies, such as China, India and Brazil. In this context, EIC has criticised that the second revised offer of the PR China concerning its accession to the GPA submitted in November 2011 is still insufficient due to the fact that the threshold values for inviting foreign competition remain extremely high, in particular with respect to the construction sector, and that China still

excludes those construction segments that are most interesting for foreign contractors, most notably the civil engineering sector as well as foundation work and water well drilling and industrial, educational and health buildings.

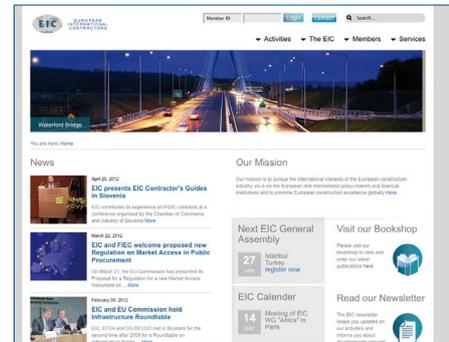
### EIC General Assemblies

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 8<sup>th</sup> April 2011, the Danish member federation hosted an EIC conference in Copenhagen with a workshop entitled **“Prerequisites for success when constructing large infrastructure projects”**. The workshop concluded with a number of recommendations towards Contracting Authorities of which the three most relevant were: Ensure a clear and reasonable risk sharing, insist that owners take the management role seriously and secure teamwork and sufficient finance.
- The EIC conference on 28<sup>th</sup> October 2011 was hosted by the French member federation in Paris. The workshop was entitled **“High Quality and Fair Competition for Africa’s Infrastructure Market”** and dealt with the prospects for European international contractors in Africa in light of the strong competition from non-OECD companies. Speakers included high-level representatives from the European Commission and from the African Development Bank
- At the spring 2012 General Assembly on 27<sup>th</sup> April in Istanbul, the workshop examines the **“Emerging Market opportunities in the aftermath of the Arab spring”**.

**International issues on the EU Internal Market** are jointly addressed by EIC and FIEC (see specific chapter, page 10).

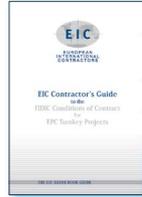
More information is available on the EIC website: <http://www.eicontractors.de>



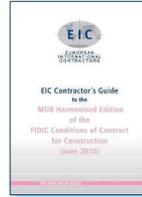
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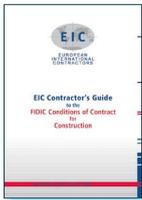
**EIC Turnkey Contract, 1994**



**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. 65