

# EUROPEAN INTERNATIONAL CONTRACTORS (EIC)



EUROPEAN  
INTERNATIONAL  
CONTRACTORS



**Philippe Dessoy, BE**  
President



**Frank Kehlenbach, EIC**  
Director

European International Contractors (EIC) represents the international interests of the European construction industry vis-à-vis European policy makers and international financial institutions. Its full members are construction federations from 15 European countries which are directly or indirectly affiliated to FIEC and have internationally active member firms.

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## A) Organisation

EIC was founded in 1970 and has been registered since 1984 as a legally independent business association under German law in Berlin. Its mandate is to promote the interests of the European construction industry in relation to its international business activities. To this end, EIC maintains close relations with all European, international and other important organisations with policies relevant for the international construction business, including the European Commission (EC), the European Investment Bank (EIB), the European Bank for Reconstruction and Development (EBRD), the OECD, the World Bank as well as other relevant non-governmental organisations, such as FIDIC or CoST, the Construction Industry Transparency Initiative.

At the end of 2016, the composition of the EIC Board was as follows:

- President: Philippe Dessoy (Besix, Belgium)
- Vice President: Wouter Remmelts (BAM International, Netherlands)
- Treasurer: Per Nielsen (NCC, Sweden)
- Jesper Arkil (Arkil Holding, Denmark)
- Duccio Astaldi (Condotte d'Acqua, Italy)
- Selim Bora (Summa, Turkey)
- George Demetriou (J&P Avax, Greece)
- Juha Kostianen (YIT, Finland)
- Pedro Maristany (Dragados, Spain)
- António Mota (Mota-Engil, Portugal)
- Christophe Pélissié du Rausas (VINCI Concessions, France)
- Karl-Heinz Strauss (PORR, Austria)
- Jörg Wellmeyer (Strabag International, Germany)

President Philippe Dessoy also represents EIC as a Vice-President on the FIEC Steering Committee.

## B) Mission & Priorities

EIC advocates fair international competition based on balanced contract conditions, quality-based procurement and innovative project delivery schemes as well as sustainable construction methods.

EIC fosters new business opportunities for European contractors by promoting a closer collaboration between development and commercial financiers and by promoting Public-Private Partnerships internationally.

EIC provides a unique forum for networking and sharing experience regarding all matters relating to the international construction business.

Within the broad range of operating conditions influencing the work of European international contractors, the following topics had the highest priority for EIC in 2016:

### I. FIDIC Standard Forms of Contract

For more than 40 years, EIC's Working Group Contract Conditions has been reviewing and commenting on the FIDIC standard forms of contract. The work of the group has been condensed into several high-quality publications known as the "EIC Contractor's Guides", which do not only provide its membership with a quick overview on the potential risks and pitfalls of the FIDIC forms but also influence the general debate on fair and balanced contract conditions. Currently, the Working Group's focus is on the 2017 update of the FIDIC suite of contracts, on the proposed new FIDIC standard form for Underground Works and on preventing the uninhibited misuse of the FIDIC standard by the use of unfair Particular Conditions.

From the beginning of its "friendly review" of the 2017 updates, EIC has called upon FIDIC to keep up the tradition of publishing its standard forms of contract as "manual of good engineering practice prepared by engineers for practical use" and thus to refrain from introducing a high degree of contractual micro-management. Based on the wording of the special pre-released version of the FIDIC "Yellow Book", released in December 2016, EIC concluded, however, that FIDIC was probably not reaching the objective of incorporating current best contractual practice in its planned updates. Therefore, in a joint effort with its counterparts from Japan (OCAJI) and Korea (ICAK) and with the global construction umbrella federation (CICA), EIC suggested that FIDIC enter into a more intensive dialogue with

the world's leading international contractors' federations before finalising its updates. The four federations were particularly concerned in their joint letter that the 2017 updates will comprise a major additional risk shift towards contractors.

The Working Group Contract Conditions is also discussing with the respective FIDIC/ITA Task Group the draft of the planned new standard form of contract for Underground Works. EIC considers the current conceptual approach as balanced given that ground-related risks are assigned to the employer, as the party who will most benefit from the completed project and can best control such risk. EIC particularly welcomes that the subsurface conditions anticipated under the contractually agreed design and methodology as well as the respective allocation of risks shall be laid down in a detailed and contractually binding Geotechnical Baseline Report.

EIC also replied to FIDIC's invitation to analyse the proposed new concept of "Golden Principles". Responding to EIC's critique regarding the frequent misuse of the FIDIC documents, FIDIC is now considering a change of its licensing policy to the extent that, in future, FIDIC would be more inclined to license bespoke contracts that comply with a set of "Golden Principles" rather than sell its standard forms. Whereas EIC generally welcomes this proposed policy shift, we have pointed out that it would be prudent for FIDIC to closely coordinate its new concept with Multilateral Development Banks and with the EU in order for them to become an integral part of the strategy given their leverage on the procurement practice of their borrowers. As financiers, the MDBs and the EU would have both the political influence and the legal authority to intervene should one of their clients use a "non-compliant" FIDIC contract.

### II. EU Design Build and Operate Schemes

In a study, which was broadly discussed between the European Commission and EIC, the Commission eventually established the potential advantages of Design-Build and Design-Build and DBO (DBO) contracts, when compared to the conventional design-bid-build approach. Consequently, at the beginning of 2017 DG DEVCO modified the EU's Practical Guide to Contract Procedures for EU External Actions (PRAG) by adding a specific tender dossier on Design-Build projects.

EIC submitted its comments at various stages of the process and concurred with the EU

Commission about the importance of a balanced risk allocation under DBO schemes as well. Whilst the EU Commission assured EIC initially that it did not intend to deviate from the conventional risk allocation, as laid down in the present version of the General Conditions for Works Contracts financed by the EDF, EIC expressed its reservations with regard to the final version of the standard form for Design-Build. EIC has detected a number of articles in the General Contract Conditions with an excessive risk transfer to the Contractor and thus submitted its critical position to the EU Commission. DG DEVCO announced that it would analyse EIC's comments in depth, as they raised important questions that needed to be dealt with from an operational and a legal perspective.

In addition, EIC stressed that any reference in the EU PRAG to internationally recognised environmental and social standards and policies, such as ISO 14001, OSHAS 18001 and the ILO core labour standards was missing, although such provisions were necessary in order to establish coherence between the PRAG and the EU's general development principles and values in the context of sustainable development and protection of human rights. Whereas the French and German bilateral financing agencies, AFD and KfW, have already incorporated sustainability criteria into their procurement procedures for civil works projects, the PRAG is still lacking respective provisions.

### III. EU Blending 2.0

EIC continues to promote its "Blending 2.0" concept which suggests that eligible development finance institutions syndicate a certain tranche of their loans amongst commercial banks to the extent that such funds can be guaranteed by comprehensive insurance cover from export credit agencies (ECAs). Such a financing model could catalyse additional private sector finance for typical public sector infrastructure projects that do not generate sufficient direct project income but are critical for the social and economic development of the country.

EIC was invited by the European Commission's DG GROW to present its respective propositions at the meeting of the Thematic Group "International Competitiveness" on 24 November 2016, which took place in the context of the Commission's Strategy for the sustainable competitiveness of the construction sector and its enterprises [COM(2012) 433]. On that occasion, the European Commission informed stakeholders about the New Partnership Framework with third countries under the European

Agenda on Migration [COM (2016) 385] and outlined the parameters for its proposed new EU External Investment Plan (EIP) to encourage more private investment in Africa and in the EU Neighbourhood. With the EIP the Commission intends to mobilise additional private sector investment by combining the existing investment facilities with new first-loss guarantees within a new European Fund for Sustainable Development.

Whereas EIC generally supports the goals set out in the New Partnership Framework and specifically the EIP, there are doubts that the advocated "portfolio approach" will also be appropriate for transport infrastructure projects which typically require middle and long-term financing on a single transaction basis. Furthermore, we observe that the EIP initially will target only "bankable" projects which generate at least a partial income, e.g. small-scale projects in the energy or agricultural sectors, whereas an extension to large-scale infrastructure projects will be considered only at a later stage. Therefore, at the meeting EIC repeated its "Blending 2.0" proposal to strengthen the links between European Development Finance Institutions and Export Credit Agencies for "non-commercially viable" infrastructure projects.

### IV. World Bank Procurement Framework and Environmental and Social Framework

In March 2016, EIC co-hosted with the German World Bank Office a Procurement Seminar in Berlin to familiarise European contractors and consultants with the details of the New Procurement Policy Framework. In May 2016, EIC met in Washington D.C. with the World Bank's European, Japanese and Canadian Executive Directors' representatives to discuss the Bank's New Procurement Framework. We seized the opportunity to explain the EIC perspective on the use of Alternative Procurement Arrangements, the Value-for-Money principle and on Sustainable Procurement.

EIC participated also in the third phase of consultations on the proposed new World Bank Environmental and Social Framework. The review aims at bringing the current eight individual safeguard policies under the umbrella of one coherent Environmental and Social Framework (ESF) based on ten standards. This new World Bank standard prohibits child labour and forced labour, promotes fair treatment and non-discrimination, requires a grievance mechanism for workers and asks borrowers to comply with national law on the



Memorandum of Understanding between EIC and ICAK (International Contractors' Association of Korea) signed in Brussels on 6/10/2016  
From left to right: Philippe Dessoy, EIC President and Kee-Poong Park, ICAK Chairman

freedom of association and the right to collective bargaining. The World Bank Board approved the final draft in August 2016 and the new framework will apply to Investment Project Financing as of 2018.

## V. OECD Local Costs rule in relation to Construction Services

With the aim of improving the competitiveness of European international contractors in direct export activities, EIC drafted a position in which it calls on OECD members to review the local cost regime under the so-called "OECD Consensus". EIC argues that the current OECD approach regarding the coverage of local costs, which allows for no more than 30% to be insured by export credit agencies (ECAs), is no longer appropriate in relation to construction services. Contrary to the manufacturing industries, the nature of the construction industry for the most part requires local production as any construction project needs to be erected in the buyer's country. Hence, the respective amount of local costs involved is evidently higher than in the case of export of goods or other services.

EIC proposes drafting a new Sector Understanding for Construction Services allowing for a higher share of local costs to be covered by the ECAs. EIC's position, as transformed into a BIAC Position, was discussed at the OECD Consultation on Export Credits in November 2016 in Paris, where some OECD members were open for discussions on increasing support for local costs and whether a new Sector Understanding might be needed.

## VI. Corporate Responsibility (CR)

Since 2011, EIC has officially endorsed the Construction Sector Transparency Initiative (CoST) which aims at increasing the transparency and accountability of publicly financed infrastructure worldwide. In 2016, EIC participated in the

strategic review process of the Construction Sector Transparency Initiative (CoST) which explores how the initiative can increase its impact to support communities worldwide.

As a result of the autumn 2015 EIC Workshop in Rotterdam on "Connecting Partners - Supply Chain Responsibility in International Construction Projects", EIC launched in 2016 a new Working Group on "Corporate Responsibility" in order to highlight the performance of European companies in applying CR standards in their international operations. The group considers as the most important CR aspects, on which EIC should have a position, health & safety, transfer of know-how, supply chain management, engaging with stakeholders, greening of operations, climate change or business ethics. The new EIC publication will target a broad range of stakeholders, including international clients, with the aim of providing technical advice to help incorporate CR aspects into tender documents.

## C) EIC Statistics

In October 2016, EIC released its annual International Contracts Statistics in which Member Federations from 13 European countries reported consolidated figures for their internationally active contractors. In 2015, the international turnover of European contractors affiliated to EIC's Member Federations reached a new peak, rising to almost € 180 billion, up 9% compared with 2014.

In addition, EIC comprised an analysis of the development policies of the European countries represented in the EIC network which shows that most EU countries are far from reaching the international agreement to raise their ODA to 0.7% of the donors' national income. On the basis of the latest available OECD data on ODA for the year 2014, the majority of EIC Member countries distributed more than 50% of their ODA

bilaterally, with Italy and Spain being the exception and allocated more than 50% of their ODA to multilateral organisations. According to the analysis, most European countries invest less than one fifth of their bilateral ODA in infrastructure, with France, Germany and the Netherlands being the exceptions.

## D) EIC Conferences

Twice a year, in spring and autumn, representatives of all Member Federations are invited to gather for the EIC General Assemblies which are followed by customised Workshops analysing a topical theme from the international contracting industry. On these occasions, expertise is brought into the discussion from outside the industry by engaging high-level speakers from various institutions to contribute to the discussion. The conferences are traditionally attended by senior international managers from leading European contractors as well as related industries.

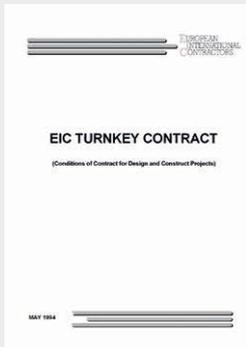
On 21-22 April 2016, the German Member Federation hosted the EIC conference in Berlin with a workshop on New Digital Technologies for Construction and their Impact on Contractual Relationships. The autumn conference on 6-7 October 2016 was hosted by EIC's Belgian Member Federation, Construction Confederation in Brussels with a workshop on Smart Cities - International Opportunities for European Contractors.

For joint FIEC/EIC activities please refer to chapter on page 20.

**To sign up for the monthly EIC Newsletter and further information on EIC activities, conferences and members, visit the EIC website: [eic-federation.eu](http://eic-federation.eu)**



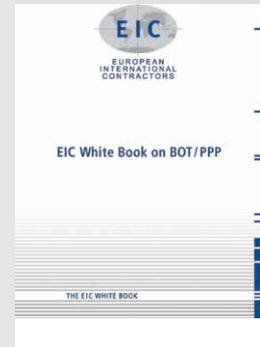
## EIC publications



EIC Turnkey Contract, 1994



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



EIC White Book on BOT/PPP, 2003



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



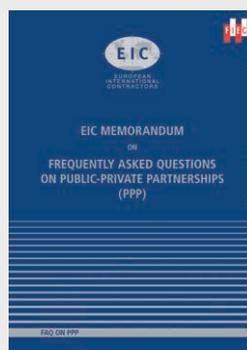
EIC Contractor's Guide to the FIDIC Conditions of Contract for EPC Turnkey Projects, 2003



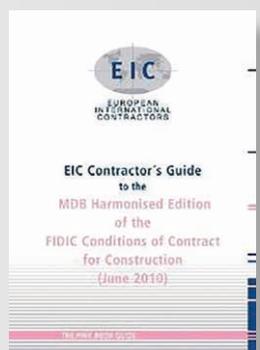
EIC Blue Book on Sustainable Procurement, 2004



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



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



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

For FIEC publications, please refer to p. 70