By E-mail

EUROPEAN INTERNATIONAL CONTRACTORS

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BELGIUM

Berlin, 3rd May 2018

Correcting the unlevel playing field between European and Chinese international contractors
Kb / Ha

Dear Mr. Lange,

I'm writing you as Director of European International Contractors e.V. (EIC), a European industry federation, which has as its members construction industry trade associations from fifteen European countries and represents the interests of the European construction industry in all questions related to its *international* construction activities. In 2016, the internationally active construction companies associated with EIC's member federations recorded a total international construction turnover of more than €170 billion.

EIC would like to thank you for your commitment and leadership as Chair of the INTA Committee of the European Parliament to level the playing field between European and Chinese international contractors. We appreciate in particular your recent talks with China's new EU Ambassador and your call for reciprocity in mutual market access. As you may know, the Chinese construction market is closed for foreign companies since China's accession to the WTO in the year 2002!

European international contractors are also suffering since many years from a distortion of competition with Chinese state-owned companies in Africa, Asia and other parts of the developing world. Therefore, we have submitted to DG GROW in March at the Meeting of the Thematic Group on "International Competitiveness" – operating in the context of the European Commission's "Strategy for the sustainable competitiveness of the construction sector" – a Memo on *"Correcting the unlevel playing field between European and Chinese international contractors"* (cf. Enclosure). In this Memo, EIC has summarised the key areas in which European Institutions should improve the framework conditions for the internationally active European construction industry. We would be delighted to explain our views and experience further in a personal meeting with you in Brussels.

Kind regards

Frank Kehlenbach
EIC Director

Enclosure

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EIC Memo

Correcting the unlevel playing field between European and Chinese international contractors

(March 2018)

EIC calls upon European policy-makers to recalibrate the competitive framework for European international contractors

Introductory Remarks

European International Contractors (EIC) has as its members construction industry trade associations from fifteen European countries and represents the interests of the European construction industry in all questions related to its international construction activities particularly with respect to the political, legal, economic and financial framework conditions for the international business. European international contractors are operating for more than a century in all corners of the world. In 2016, the **international turnover** of companies associated with EIC's Member Federations amounted to more than **€170 billion** and an **international market share of 50%**. This is why EIC has always been a **promoter of open construction markets and free trade** based, however, on the **principle of reciprocity**. EIC regrets that some of the largest construction markets in the world – e.g. China, India and Brazil – remain outside the rules of the WTO's Agreement on Government Procurement (GPA).

Executive Summary

EIC calls upon European policy-makers to realise that China, more than other trade partners, takes advantage of the existing imbalance in the international trade law and that the resulting **asymmetric obligations for European and Chinese international contractors**, and notably the European and Chinese development and export finance institutions, is **distorting the international level playing**. The **leading Chinese international contractors are large state-owned conglomerates** which are nurtured by Chinese state development banks providing **tied aid and loans disbursed directly to Chinese construction enterprises**. A study published by the European Parliament concludes that **China exporters have gained unfair advantages in Africa** due to the fact that China it is **not bound by OECD agreements** and Chinese policy banks may disregard these international rules that limit tied aid, impose maximum repayment terms, prescribe country risk classification and minimum interest rates, require the exchange of information on export finance, and impose social, environmental and governance standards. This unlevel playing-field has enabled Chinese contractors to **triple their international market share over the past ten years from 7% to 21% globally** and **doubled in Africa from 28% to 56%** at the expense of European international contractors.

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EIC Recommendations

Economically as well as politically, **need for action is overdue** and EIC calls EU policy-makers to **improve the international competitiveness of the European construction industry** through the following measures:

A. Establish a level playing field in the area of Export & Development Finance

- The EU and its Member States should create a **strong European financial institution** that can provide **long-term credits to the European private sector for international projects**. Unlike the U.S., China, Japan, Korea and Turkey, the EU does not have a strong "EU Exim Bank" which can support and improve the international competitiveness of the European industry, in particular in the field of infrastructure.
- The EU should **achieve a level-playing field with China as regards all OECD regulation in connection with officially supported export credits** and urge China to sign up to all related OECD Agreements and Arrangements, including **debt sustainability**, and to also comply with the minimum concessionality levels stipulated in the "OECD Consensus" with respect to **tied aid and loans** (currently Chinese loans have lower concessionality levels).
- Given the tied aid and loans practices of China and that the EU does not have its own Exim-Bank, the **new EU External Investment Plan** (EIP) should incorporate the **Rules on Nationality and Origin of the EU PRAG** insofar as EFSD guarantees originate from the European Development Fund or the EU Budget.
- The EU should develop **trade-related defence instruments tackling trade distortions in the services sector**. This is due to the fact that the WTO Agreements on Anti-Dumping and on Subsidies and Countervailing Measures only apply to goods but not to services. To make matters worse, EU competition law itself does not provide any protection against a distortion of competition by state-owned companies from third countries, as the **ban on distortive public subsidies set out in Article 107 et seq. of the EU Treaty only applies to EU companies** but not to those from third countries. This is a paradox and current EU law is incoherent and disadvantageous to the European construction industry.

B. Establish a level playing field in the area of Market Access

- The **EU should negotiate a better market access for European contractors on the Chinese construction market** by prompting China to **withdraw the limitations of operation of "Wholly foreign Owned Construction Companies"** and by prompting China to become a **member of the Government Procurement Agreement (GPA)**.
- The EU should **strictly apply the principle of reciprocity** until China has either become a GPA member or otherwise opened its national construction market to foreign contractors to the same degree as the EU construction market has been opened to GPA members.

C. Establish a level playing field in the area of Procurement

- Based on the World Bank's procurement policy on Environmental, Social and Health and Safety aspects, the **EU should promote coherence amongst all Member States' and the EU's Development Finance Institutions** to integrate **sustainability aspects** into the tenders for External Action, including the **award to the Most Economically Advantageous Tender (MEAT)** and **life-cycle costing**.
- The EU and its financial institutions should **apply the policy of the World Bank on Abnormally Low Tenders (ALT)** to all tenders financed with EU funds.