

F I E C

European Construction Industry Federation

**A view of the ALT issue
from the contracting industry
(EU aspects)**

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Director General



European Bank
for Reconstruction and Development





www.fiec.eu

1905 1st meeting

29 countries
33 federations

Enterprises
- of all sizes
- active in all fields
of building and
civil engineering



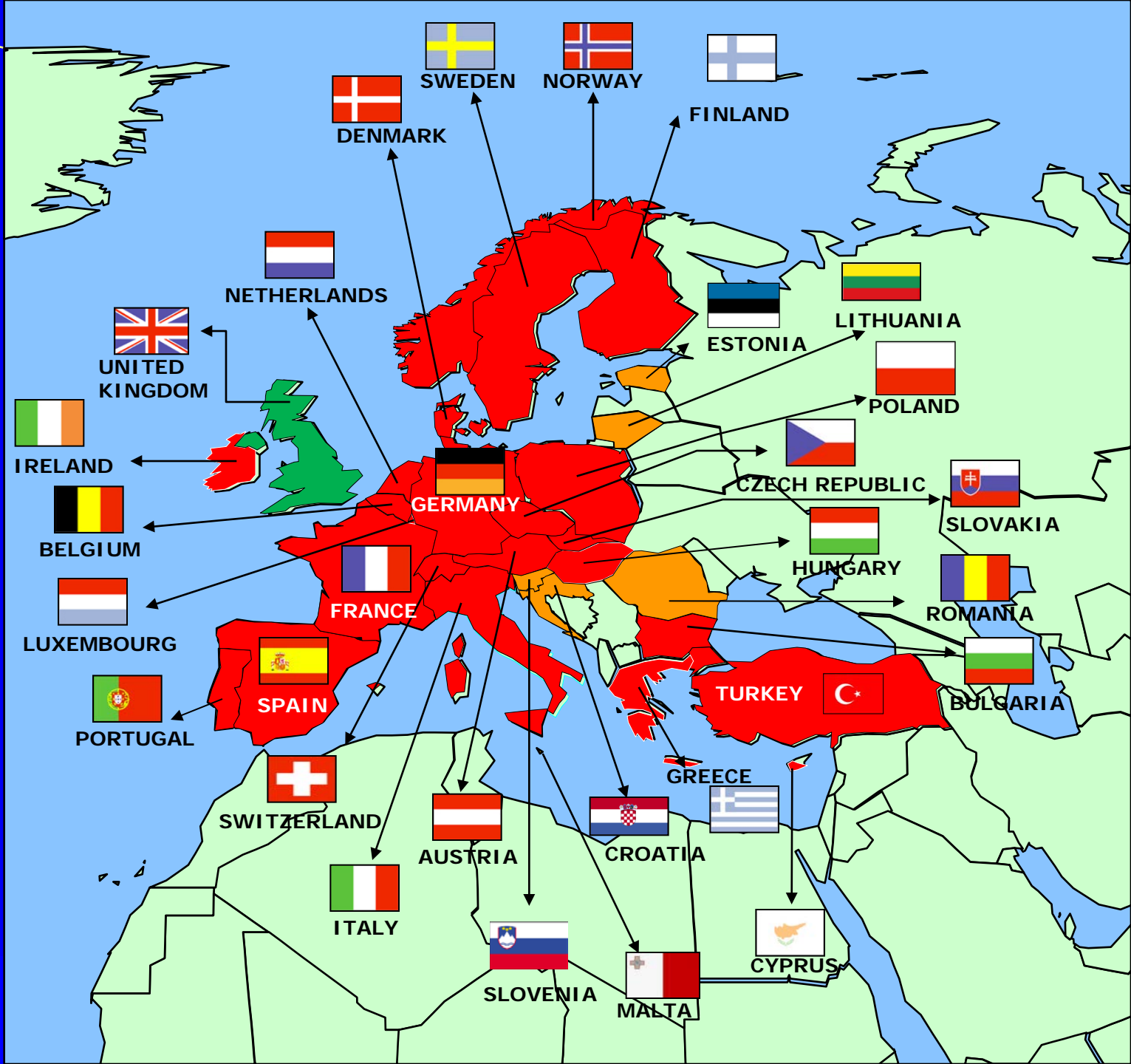
Full member



Observer member



Co-operation
Agreement



ALT in EU procurement directives

- 1971/305, art. 29 (5)
- 1989/440, art. 29 (5)
- 1993/57, art. 30 (4)
- 2004/18, art. 55
- 2013/xxx, art. 69

Basis: reduce protectionism/ barriers

ALT in EU procurement directives

Not covered: bad faith authority

- key priority: “value for money”
(at all cost!)
- disregard clear indications
- check, if any, only formal aspects
- accept any explanation



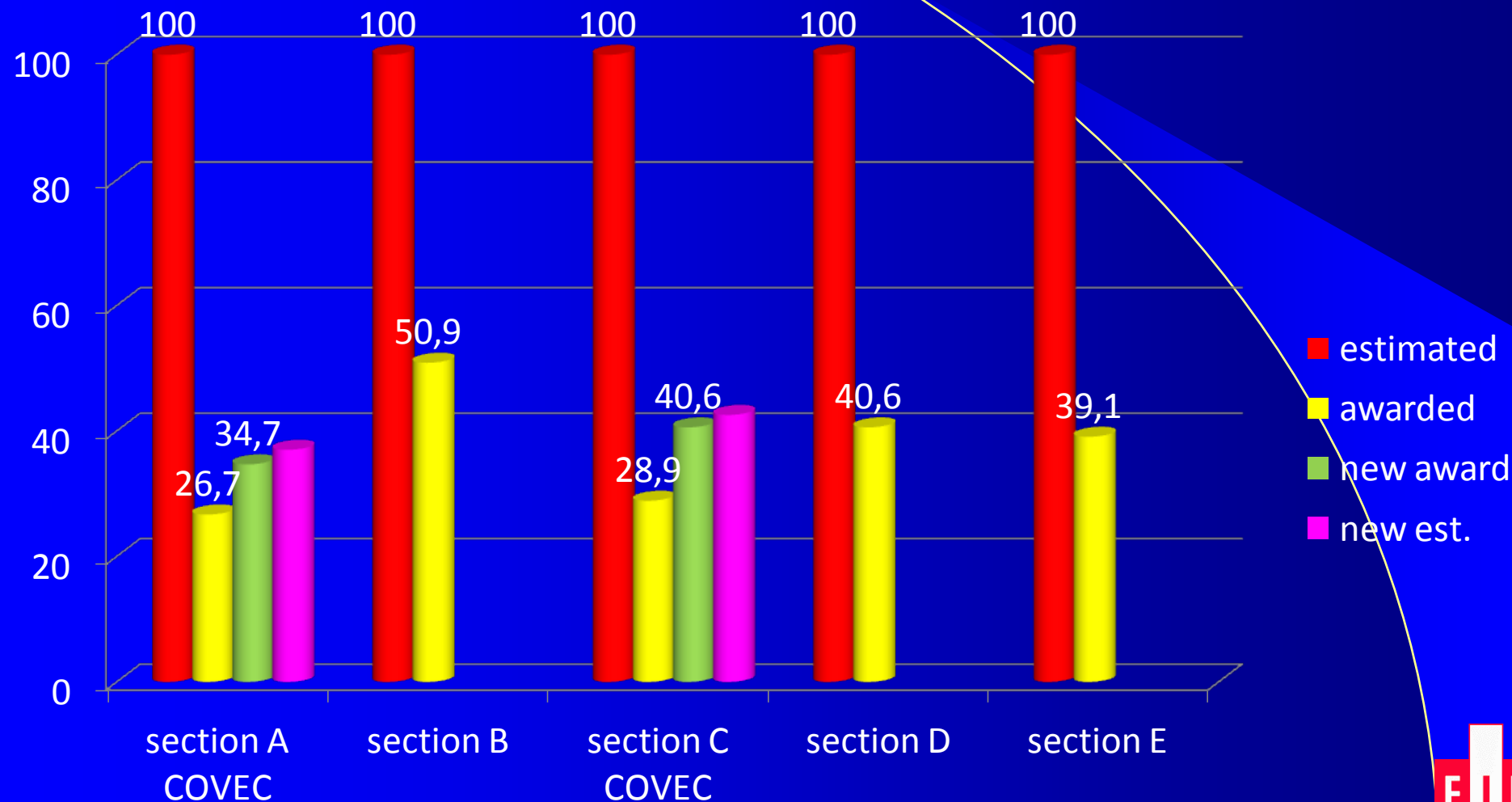
Example: motorway A2, Poland

- Stryków (Łódź) - Konotopa (Warschau)
- 91 km total length, 5 sections
 - A: 29 km, B: 17 km, C: 20 km, D: 18 km, E: 7 km
- client: GDDKiA (Dir Gen of motorways)
- 1st tender as PPP, 2nd traditional
- award criterion: lowest tender
- FIDIC Yellow Book (*"Brown Book"* ☺),
i.e. contractor's design

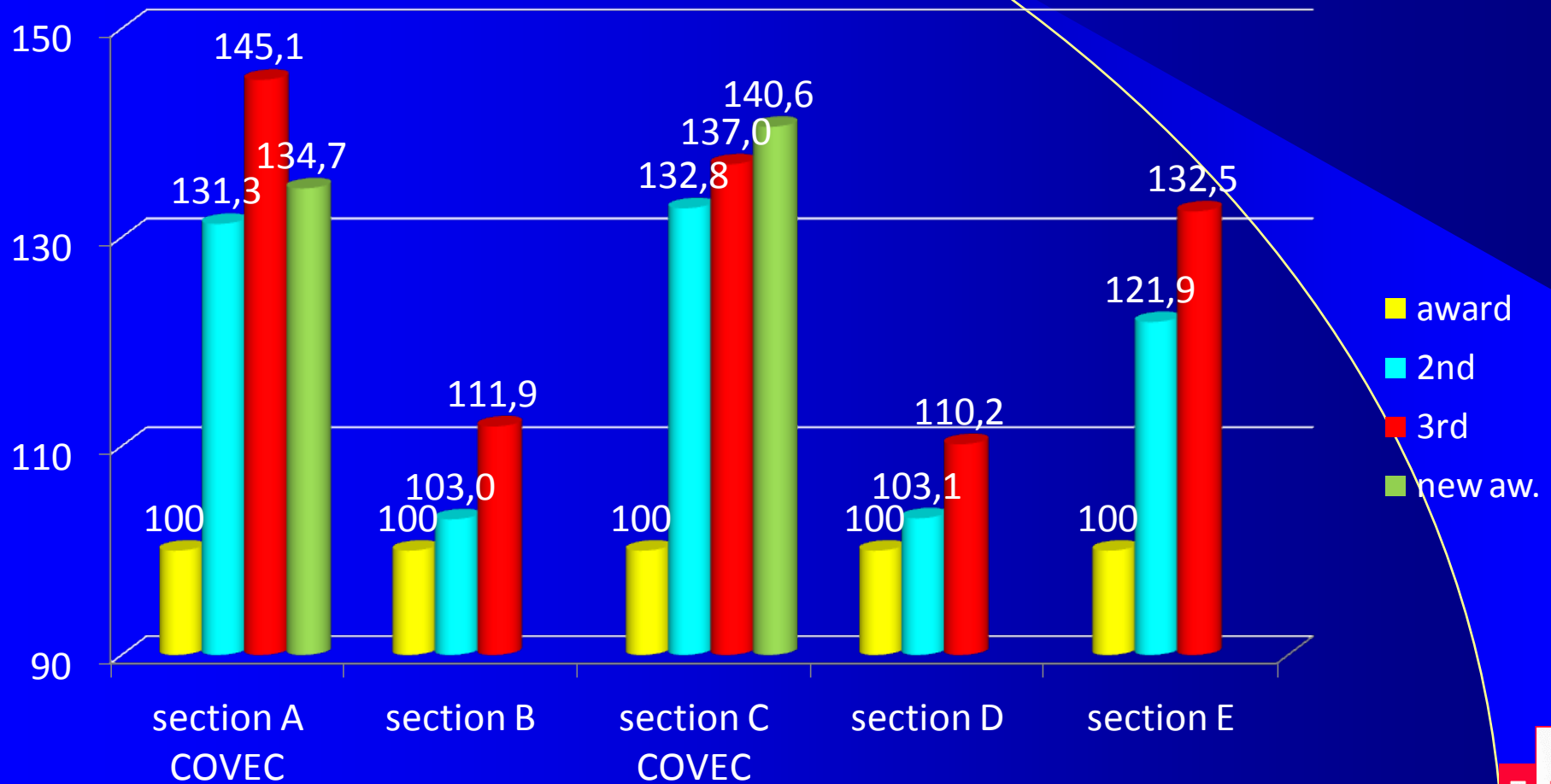
time line of award procedure

- 14/8/2009 tenders opened
- 17/8/2009 ALT-requests to COVEC
- 19/8/2009 COVEC-explanations
- 7/9/2009 "protest" of 2nd to GDDKiA
- 17/9/2009 appeal to nat. proc. office
- 28/9/2009 award to COVEC
- 9/6/2011 termination by GDDKiA
- 28/7 + 1/8/2011 new awards

A2: client's estimation ./ award price



A2: award price ./ 2nd ./ 3rd



A2: explanations given for low price

1. 100 million USD cash for tender phase, plus further payments after award
2. no need for expensive European credits
3. efficient organisation of work
4. no need for risk margins
5. use of own construction machines

A2: explanations given for low price

- 6. cheaper costs of Chinese staff
- 7. unique organisation methods
- 8. low benefit margin
- 9. price calculated on assumption of winning 2 lots, so advantage of scale

➔ **Conclusion: all is fine! 😊**

A2: other aspects (not covered here)

- **State aid/ SOE**
- **Use of EU funds**
 - no rule for fair contract conditions (contrary to art. 3.24 EBRD rules)
- **External trade/ market access**
 - symmetric market access, worldwide
- **Professional project preparation**
- **and project management**

Ideas what to do? → “ice”

identify ALTs

- definition
- indications

check explanations

- genuinely, not just formally !

exclude

- unless ALT proven to be “LT”

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