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ECAs go to market

A critical review of transparency and sustainability
at seven export credit agencies in Central and Eastern Europe

Finance & Trade Watch
CEE Bankwatch Network



CEE bankwatch
network

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EXECUTIVE SUMMARY

In 2015-2017 Finance & Trade Watch and CEE Bankwatch Network together with its national partners researched export credit agencies (ECAs) in seven countries of the European Union (Austria, Czech Republic, Croatia, Hungary, Poland, Romania and Slovakia). The aim of this research was to assess how the procedures and performance of these institutions comply with the relevant national, European and international regulatory frameworks. These include transparency, accountability, environmental and social standards as reflected in the OECD (Common Approaches), EU (ECA Regulation) and UN (Sustainable Development Goals, the Aarhus Convention and the Paris Agreement). This first-of-its-kind research examines ECAs in the 'new' EU Member States and compares these with an example from the EU 15 – the Austrian ECA OeKB – and offers examples from other EU 15 countries.

ECAs: scale of support

Government-backed export credit agencies enable governments to support their national companies to do business abroad, particularly in financially- and politically-risky parts of the developing world.

According to Berne Union statistics¹ the public export and investment insurance by its ECA members total approximately USD one trillion², a great portion of which are large industrial infrastructure projects in developing and newly-industrialised countries. This makes global ECA-backed investments a multiple of all project volumes financed by multilateral development banks like the World Bank, African and Asian Development Banks combined, and shows the significant role that these financial institutions play globally.

Against this backdrop, Central and Eastern European ECAs tend to see themselves as small players with limited environmental and social impacts. But while it is true that their project volume is comparatively small relative to some ECAs in larger economies, the details we found about the projects supported by ECAs in our research – ranging from negative impacts on the environment and human rights to scandals related to alleged financial mismanagement – show that increased scrutiny of these institutions is needed.

Support for controversial projects with significant impacts

ECAs have so far fallen into a grey zone regarding EU development policy. Article 21 of the Treaty on the EU requires it to work to consolidate and support democracy, the rule of law, human rights and the principles of international law; foster the sustainable economic, social and environmental development of developing countries, with the primary aim of eradicating poverty; and help develop international measures to preserve and improve the quality of the environment and the sustainable management of global natural resources, in order to ensure sustainable development.³ ECAs have so far mainly been oriented towards boosting countries' exports. National governments as well as the EU have not acted sufficiently to ensure their activities' coherence with Article 21 of the Treaty.

One example is in the field of climate. The EU was active in helping to develop the Paris Agreement, but is much less active in ensuring that its ECAs act in line with it.

If the Paris Agreement's goal of limiting climate change to 1.5 degrees Celsius is to be achieved, no more fossil fuel electricity generation facilities can be built at all after 2017, according to a 2016 Oxford University study.⁴ These findings are supplemented by an Oil Change International study that finds that not only can no new fossil fuel power stations be built, but also no new fossil fuel infrastructure. Already now the projected carbon emissions from the world's currently operating oil and gas fields as well as coal mines would already

take us beyond 2 degrees Celsius of warming. And even excluding coal, the reserves in currently operating oil and gas fields would take us beyond 1.5 degrees Celsius.⁵

A recent NGO report⁶ shows that G20 ECAs provided considerably higher levels of support to fossil fuel production between 2013 and 2015 (over USD 38.3 billion annually) relative to all other sources of G20 bilateral public finance for fossil fuels during that period (USD 24.7 billion annually). On top of this, the World Bank provided USD 8.7 billion annually in fossil fuel finance over this same period.

Climate commitments do not seem to play any significant role in decision-making in any of the ECAs evaluated in this study. It appears that none of the ECAs we looked at have begun to think about a long term strategy to truly tackle this issue, even less so to halt support for large industrial and infrastructure projects, which are the real drivers for climate change.

The Czech ECAs EGAP and ČEB, for example, have financed several projects which are not only environmentally but also financially problematic, including the Yunus Emre thermal power plant in northwest Turkey,⁷ the Krasavino power⁸ plant and the Poljarnaja gas-fired power plant in Russia.⁹ As another example, Slovak Eximbanka has recently supported two crude oil plants, Máximo Gómez Unit 6 and Ramón Pérez Unit 1, both in Cuba.

Transparency and public involvement

ECAs enable the development of complex and capital-intensive projects in some of the most volatile, controversial and damaging industries on the planet and are a major source of national bilateral debt in developing countries. ECA-backed projects are often too risky and potentially harmful for the World Bank Group and other multilateral development banks to support.

Considering that these financial institutions are working for national governments and with taxpayers' money, there is overall very little possibility for the public to find out what kind of projects are supported and according to what internal guidelines. Accessing data on ECA-supported projects is challenging and has in many cases proved impossible.

ECAs are generally secretive about all their financial operations, including past and current project information, figures regarding guarantees issued, amounts recovered and outstanding claims, which are only reported on aggregate levels.

Deficiencies we have observed in information disclosure include the following:

- Lack of information about projects under consideration: this effectively disables any public participation, but it also prevents a flow of useful information relevant for ECAs' decision-making. If the public – both in the ECA's home country and in the project country – does not have timely and sufficient information about projects under consideration, they can not provide independent data that would allow ECAs to better assess risks involved in the transactions under consideration, and to reach the best decision reflecting the given situation (including the political, social, environmental and human rights contexts).
- Lack of information about already supported projects: this prevents any public scrutiny of policies and effectiveness of their implementation as an indication of the overall direction of ECAs. In this situation, taxpayers have no say in how public money and support schemes are being used and cannot raise concerns about a lack of policy coherence. Project-affected people or whistleblowers on corruption and malpractice

also cannot raise concerns if they don't know that a certain ECA has financed the project in question.

- In most cases there is no recourse mechanism for affected people. In the few cases where there is (eg. EGAP), information about it is hard to access.

All OECD ECAs are supposed to publish all category A projects with a guarantee duration of more than two years ex-ante (before project approval) and to report all category A and B projects to the OECD Export Credit Group ex-post (after project approval). However, due to the lack of disclosure of complete project lists, our research was not able to confirm that even these minimum standards are met.

A large proportion (by far the majority of individual contracts) of state-backed finance goes for projects with repayment periods of under two years. There is no clear guidance from the OECD on transparency and due diligence procedures for this type of project. So even if a project would otherwise fall into categories A or B, the ECAs examined do not make public any project information.

In addition, none of the ECAs we assessed publishes (ex-post) a list of all projects they supported in a given year. The argument for this is often “banking or insurance secrecy”, but the Dutch ECA Atradius Dutch State Business (ADSB) publishes and updates such a list on a monthly basis without this presenting any problem. The French ECA BPI and the German EulerHermes also publish information on projects ex-post. While delayed and quite aggregated, this proves that more transparency is possible.¹⁰

The decisions made by ECAs have significant implications for sustainable development and the environment. Unfortunately these appear to happen often without sufficient and up-to-date information. The public, mostly via civil society in the ECAs' home countries, as well as in the countries hosting the ECA-supported projects, possesses relevant information and needs to be able to access decision-making to bring forward such information.

Yet the majority of the ECAs in the countries monitored do not seem to expect any public interest and engagement. Given how little publicly accessible information there is, it is also hardly surprising how little engagement there is. None of the monitored ECAs has any mechanism in place for pro-active consultations with relevant CSOs about sensitive projects. Nor is there any clear and standardised procedure within the ECAs or at the level of the responsible ministry for dealing with civil society comments related to projects under consideration.

However, as public institutions ECAs are bound by relevant legislation and other policies and need to behave in accordance with national freedom of information legislation, the Aarhus Convention and the EU ECA Regulation.

Particularly the Aarhus Convention¹¹ sets a clear obligation to parties and their public institutions to collect and disseminate environmental information in a timely manner. They need to provide for adequate information flow for public institutions to possess relevant and updated information i.e. relevant for decisions and measures taken by these public institutions. Due to the refusal to provide sufficient information, several requests for information submitted by Bankwatch during 2015-2017 in the monitored countries resulted in appeals and court cases, with all subsequent rulings so far pointing at a need for ECAs to open their decision-making for a greater public scrutiny.

In addition to binding legislation, “gentlemen's agreements” such as the OECD Common Approaches provide a shared set of voluntary standards and procedures on social, environmental and human rights related issues agreed amongst ECAs themselves. Also the so-called Arrangement sets a negotiated standard on e.g. how to ensure that ECAs' operation costs and losses are in balance with their revenues from premium and interest payments.

Screening, classification and monitoring of projects

Currently the social and environmental screening of projects falls under the obligations within the Common Approaches. There seem to be no set (national or EU) of legal requirements for this kind of detailed project screening. And – as the Common Approaches are non-binding – there is no legal sanctioning mechanism available, if there has been, for example, no Environmental and Social Impact Assessment (ESIA) undertaken.

What is more, impact assessments are usually commissioned by the exporter or the project owner, and therefore often assess a project in favour of their business' interest. This can lead to projects being supported even if they cause severe negative impacts for people and environment.

These screening processes appear different and not entirely systematic in different countries. The agreements within the OECD Export Credit Group provide a rather clear way of categorising projects in terms of environmental and social sensitivity (category A, B and C). Even so, it appears that it is not always so clear in practice. Different ECAs use different methods and have for example differing numbers of staff set aside for sustainability questions to do in-house-assessments. They therefore risk putting the same or similar projects in different categories.

In at least some of the countries, projects which would otherwise be categorised as category A are not being subjected to the assessments outlined in the Common Approaches, but only to a financial assessment, because they have a repayment period of under two years.

In some cases field visits happen before project approval, but other than in the case of the Austrian ECA OeKB, none of the ECAs evaluated in this report has established any kind of a post-project monitoring evaluation in order to assess the long-term impact of projects and safeguard that agreed social and environmental standards stay in place also after the guarantee period has passed.

Reporting

The ECAs have to report back to their governments or the responsible ministry in charge in each country, and in many cases then in turn to the national parliament. Yet in either set-up this reporting usually only covers a very small fraction of the overall amount of ECA-supported projects. Parliamentary scrutiny of ECAs is rather loose and random in practice, reflecting an overall lack of knowledge of and policy coherence regarding export credit schemes.

The EU adopted a regulation¹² in 2011 that requires Member States to provide information about its ECAs to the European Commission, which consolidates it and reports to the European Parliament.

However, Member States' reports do not go beyond a checklist and in many cases lack any informative value. The same applies to the reports that the European Commission distills from the Member State ECA reports, which fail to provide any element of assessment.

So although the EU Regulation has increased the transparency of European ECAs' activities to an extent, in practice it does little to contribute to this goal. Based on current reporting practices within the EU, it is not possible to test whether EU standards are properly applied outside the EU. It is also not possible to determine whether Member States' ECAs are in line with EU foreign policy objectives, environmental risk management regulations, or with EU priorities on global environmental challenges such as climate change and the loss of biodiversity.

Key recommendations for ECAs

Based on our research we offer the following recommendations to EU ECAs in Central and Eastern Europe and institutions related to these agencies at various political levels. Our findings are relevant not only for the ECAs assessed in this report, but also those within and beyond the EU. The outcomes of our research, as well as a full set of recommendations based on our country-specific background studies, can be found in the last section of our report.

The issues raised in this report are international in nature. They require national, EU and international action to make ECAs really reflect environmental, social and human rights standards in their conduct and decisions. ECAs may play a more positive role than they do today, for example by supporting progressive businesses, but this will only happen if they are willing to commit to improved transparency, environmental and human rights standards. The fact that not all ECAs are willing to do the same must not be an excuse for inaction.

Where the objective of ECAs is to support domestic companies doing business abroad, ECAs should stop arguing that they only follow the markets. This dominant paradigm only causes ECAs to place themselves at the lowest end of a race to the bottom. Increasing challenges to society, of which climate change is not the least, require ECAs to assume responsibility and incorporate external risks in their costs of doing business, rather than leaving these to the public sector of host countries where transactions are made.

Only strict and binding standards, transparent and engaging decision-making, and sound monitoring and reporting will lead to responsible financing for a better future.

National level - governments, parliaments and ECAs

Governmental and parliamentary oversight: ECA reporting and accountability

- Governments need to take into account Article 21 of the EU Treaty and their own overseas development priorities in defining and monitoring the activities of their ECAs.
- Parliaments need to increase oversight of the strategic priorities and projects of their respective ECAs and seek ways together with the relevant ministries to increase coherence between the ECAs' state-backed projects and the development priorities of the country and its climate change commitments.
- Reporting by ECAs in accordance with EU ECA Regulation 1233/2011 on officially supported export credits should be more thorough, providing EU institutions, the European Commission, European Council and European Parliament, sufficient information to assess compliance with EU policies on climate, development and environment.
- Each ECA needs to have an independent complaint mechanism with clearly defined procedures. This needs to be clearly advertised on its website, including in English and the languages of the countries where the majority of the ECA's support is directed.

Monitoring and reporting

- Parliaments need to increase their oversight of the strategic priorities and projects of their respective ECAs and seek ways together with the relevant ministries to increase coherence between the ECAs' state-backed projects and the development priorities of the country and its climate change commitments.

Project information disclosure and public consultation

- All ECAs need to formulate and adopt information disclosure and public participation policies fully reflecting the Aarhus Convention. Additionally, control mechanisms for enforcing the compliance with the Convention must be established, regardless of whether the country to which the ECA backed export goes is a party to the Convention or not and regardless of the repayment period of the project.
- Information about all ECA-supported projects must be publicly available and displayed on the ECA web page.¹³
- In line with earlier official proposals from the Netherlands, all ECA-supported transactions should be subjected to screening under the Common Approaches. Disclosure must include projects of all sizes as projects with a repayment period of under 2 years can still have impacts on the environment and host communities. This is both a matter of principle - public money is at stake - and of accountability towards the affected communities. It would also allow public assessment of ECA's portfolio - whether or not it is in line with other public policies as applicable to a given country and within EU.
- Information about all projects under ECA consideration must be disclosed for consultation in a sufficient and timely manner to allow for sufficient scrutiny of a given project.
- A consultation period of 120 days - as is for example the case at the Asian Development Bank - for all category A and category B project transactions (i.e. projects with a high potential for negative social and environmental impacts) would be appropriate to allow relevant information to be provided by the public, irrespective of the repayment period. In many cases the public has relevant information that could prove vital for an ECA to make a balanced assessment of the project. Some of this information is difficult or impossible for ECAs to obtain within their assessment and due diligence because they are not well-connected to local networks and communities in the affected country. The quality of ECA decisions without such information can be significantly impaired.
- ECAs also need to consider to pro-actively reach out to civil society in countries where they support business transactions, to ensure effective participation of project-affected people, as well as of local CSOs in decision making processes.
- Information regarding Category A and B projects (including those with a repayment period of under 2 years) needs to be available in the language(s) of the country and community where the project will take place and in a format and location likely to be accessed by local people.
- Requests for information should be handled in a consistent, transparent and effective manner and all requested information should be provided unless there are well-founded and sufficiently presented arguments. Banking, insurance or commercial secret arguments must be applied restrictively and in most cases cannot be applied given the prevailing interest of public in receiving environmental information.

Due diligence and project selection

- Environmental, social and human rights due diligence within ECAs needs to improve and have sufficient resources dedicated to it, in order to increase ECAs' contributions to EU policy objectives.

- Due diligence of ECAs should be a genuine effort on the side of ECAs to seek and incorporate information from public - both in the ECA home country as well as country of destination, including the affected community.
- Exclusion lists need to be developed to prevent ECAs from supporting particularly environmentally or socially harmful categories of investment. These should include for example: projects with significant negative, irreversible impacts on natural habitats, primary forests, protected areas and Ramsar sites, projects with significant human rights violations, fossil fuel projects, nuclear power plants and weapons deals.
- ECAs should screen all applications for export credit insurance on the use by buyers or debtors of aggressive tax planning schemes.
- ECAs should require all multinational companies involved in export transactions for which it provides cover to apply country-by-country reporting on the taxes they pay.
- ECAs should exclude all business partners that make use of aggressive tax planning schemes from access to export credit insurances.
- Projects supported by ECAs need to be compatible with global commitments such as the Paris Agreement, including the following:
 - ECAs need to publicly report with clear and understandable information on all export credit insurance for transactions in carbon-intensive sectors (eg. transport, cement production, steelmaking), including their climate impact, and set clear targets to phase out these transactions. They need to report on their progress towards these targets.
 - Only transactions that contribute to low-carbon and climate-resilient development should be considered for new export credit support.
 - No new transactions should take place to provide export credit support for fossil fuel-related projects.
 - For A and B category projects, site visits and public consultations in the affected community need to be organised and monitored by the ECA at a stage when all options are still open and no final decisions have been taken.
 - In countries where such consultations will not be able to take place freely and without pressure, ECAs should avoid supporting investments in any category A or B projects as well as any investments in publicly-owned companies or other companies which will support the government.
 - Projects must not be approved before all environmental and social due diligence is completed and realistic and workable mitigation measures are drawn up and publicly disclosed.

Project monitoring

- Social and environmental conditions must be written into project contracts and, at least for category A and B projects, should be available to the public, along with information about monitoring plans and results.
- More participatory monitoring and evaluation procedures are needed. For example, for the duration of the project implementation and repayment period, regular local stakeholder meetings should be part of the monitoring protocols of ECA supported transactions.

- Non-compliance in effectively addressing adverse impacts of transactions underwritten by ECAs should result in a halt to ECA cover and the exclusion of the relevant company from further support.

For the European Commission and European Parliament

- At the EU level, functional and transparent mechanisms should be established to effectively monitor EU ECAs and effectively assess whether Member States' export credits are in line with EU foreign policy objectives or with applicable environmental risk management regulations, EU priorities on global environmental challenges such as climate change and loss of biodiversity. These mechanisms should enable citizens of the EU to provide input, but also they should contain a complaint mechanism. EU law requires reform in this area.
- According to the ECA Regulation, the Commission shall produce an annual review for the European Parliament based on the reports from countries, including an evaluation regarding the compliance of ECAs with Union objectives and obligations. This needs to be done more in-depth with regard to issues such as human rights and the Paris Agreement and scrutinised more thoroughly by the European Parliament.
- Member States' reports submitted under ECA Regulation should be systematically published, should go beyond the checklist format, and should be informative for nonspecialised readers. The European Commission's reports should include an assessment of the information contained in the national reports, which would be annexed to the Commission document and would be made public in EUR-Lex.

Aim of this research

This report is part of the pan-European project Financing development and developing finance for EYD2015, funded by the EU's DEAR programme Non-State Actors and Local Authorities in Development for raising public awareness of and promoting development issues. This three year-project (2015-2017) aims to align European investments in developing countries with the Sustainable Development Goals and EU policies that promote sustainable growth and poverty reduction.

While analysing the impact of investments by EU 'new' Member States (EU13) in developing regions, the Czech NGO Glopolis and CEE Bankwatch Network asked Finance & Trade Watch to research public export support schemes of ECAs and specifically to evaluate their human rights, environmental performance and overall transparency of their operations.

This comparative evaluation is intended to identify commonalities and differences between ECAs in different countries in order to strengthen cooperation and exchange between NGOs and ECA practitioners around these issues and ultimately to lead to policy recommendations for governments in Central and Eastern Europe.

Our report is meant to engage in discussion national and EU-level public officials and decision-makers about the impacts of EU13 ECAs in developing countries in order to strengthen the policy coherence of non-development policies and to increase understanding about the international development dimensions of trade.

Approach used in this research

For this overview and the analysis of norms and regulations applicable to officially-supported ECAs, as well as for the profiling of individual ECAs, we used both publicly-available data (from print and online sources) as well as information gathered through personal interviews and written exchanges with ECA employees.

Qualitative, semi-structured interviews were held in-person with ECAs in Slovakia, Croatia and Austria. Questionnaires were answered in written form in Hungary and Romania. A questionnaire was answered in writing also in Poland and an informational meeting took place between the Polish ECA and the Greenmind Foundation, who conducted a separate study, the findings of which have also been included in this report.

We did not receive any response to several requests for an interview with the Czech ECA EGAP or from the Czech Ministry of Industry and Trade, which is responsible for state-backed export promotion in the country. Colleagues from Bankwatch and other project partners sent a number of freedom of information requests in order to receive a breakdown of specific project support. Some of these requests have led to court cases due to the refusal by certain ECAs to disclose the requested information or providing information only in part.

Structure of the report

Our analysis first lays out the overall context in which export credit agencies operate. We begin with a brief overview of the workings of ECAs, the historical and economic context within which these financial institutions developed and explain the underlying rationale for their existence. We will in this introductory part also raise the question of whether and how the activities of ECAs can be compatible with sustainable development.

This will be followed by an overview of the most relevant regulatory and normative frameworks at the EU and international levels which the ECAs are expected to follow, in particular regarding human rights and environmental performance, measures to counter climate change, transparency, counter-corruption measures and democratic control.

We then provide seven individual profiles of particular EU13 ECAs (Croatia, Czech Republic, Hungary, Poland, Romania, and Slovakia) and – for comparative reasons – one ECA from within the EU15, Austria. These profiles include key economic data about the specific institution as well as their corporate structure and the national legal and political framing. They also include a short analysis of their current social, environmental sustainability and transparency policies and practices.

In conclusion we make a number of recommendations about necessary steps to strengthen policy coherence for the work of EU13 ECAs with sustainable development objectives. Many of these recommendations are applicable for ECAs outside our research sample as well. We also provide specific policy recommendations for the overall regulatory systems in both the EU and internationally.

INTRODUCTION: THE BASICS ABOUT ECAS

Export credit agencies are collectively among the largest sources of public financial support for foreign involvement in large industry and infrastructure projects in the developing world. They are public or quasi-public entities that provide corporations with government-backed export loans, guarantees and insurance to support their exports and foreign investments. Most industrialised nations have at least one ECA. Their services are particularly focused on facilitating domestic companies to be able to do business in lesser developed countries and emerging economies, under conditions of significant political and financial risk.

ECAs do not have a development mandate. But at the same time they support the business activities of export companies in vulnerable parts of the world through state-backed budgets, and as such, ECAs should operate with special care. According to statistics from the Berne Union¹⁴ statistics, the public export and investment insurance of their ECA members amounted to between USD 920 billion and 1.031 trillion in the years 2012 to 2016.¹⁵ A great portion of this support goes to large industrial infrastructure projects in developing and newly-industrialised countries. This makes global state-backed investment through ECAs a multiple of all project volume financed with the help of multilateral development banks (like the World Bank, African and Asian Development Bank) combined.¹⁶

Berne Union members collectively underwrote around USD 1.9 trillion of new business in 2016. This sum amounts to 11 per cent of world trade, which shows the significant role these financial institutions play in the world today.¹⁷

State-backed export credit insurance and guarantees typically cover the risk of exporting capital goods, such as machinery for industrial plants, construction works or infrastructure projects. As insurers, ECAs guarantee that the exporting company will be paid in the event of unforeseen political and economic circumstances or by currency fluctuations that prevent payment by their business partners. Hence, they are an important source of finance and insurance for the private sector.

ECAs often work under the mandate of a country's finance ministry. One or more government departments carry the political responsibility for their operations. In some cases ECAs are state-owned financial institutions, in other cases private or semi-private financial institutions working on behalf of governments. The companies they serve are required to pay premiums or interest rates for this support. With the state taking on certain risks in order to boost exports, private banks are more open to assist with financing projects where ECAs are involved and which otherwise might not have been feasible.

Despite international norms and regulations concerning governments' human rights and environmental obligations, ECAs – who by definition act on a government's behalf – continue to support projects with severe human rights impacts and those that cause environmental damage, reduce of global biodiversity and impact climate change.

Official export promotion for national industries

Exporting companies that supply technology, goods or services for projects abroad carry both creditor and country-specific risks. These can be changes in currency exchange rates,

project cancellation due to bankruptcy of the project owner, or political risk. As state governments have an interest in supporting their national industries to be able to export goods and services with as few “disturbances” as possible they try to protect exporters against such risks.

One way for states to minimise risks for national exporters is to offer the services of national ECAs. These are private, semi-private or state-owned export insurances with a governmental mandate to provide state-backed loan-guarantees (“export guarantees”). The companies they serve are required to pay premiums or interest rates for this support. The minimum levels of premiums and interest rates are regularly renegotiated within the Organisation for Economic Cooperation and Development (OECD), which sets parameters under which member states operate their ECAs. These rates are below the actual market rates and determine the maximum level of subsidies that an ECA can provide. With the state taking on certain risks in order to boost exports, private banks are more open to assist with financing projects which otherwise might not have been feasible.

Hence, ECAs are financial institutions that act as instruments of national export promotion. If a company wants to export goods or services into “high-risk” markets, especially developing and newly industrialised countries, it can apply for a state-backed export guarantee against economic and political risks. Many of these projects would not come to life without the support and financial backing of one or more ECAs.

The changing role of ECAs in the world economy

The first ECAs were created by industrialised countries in the aftermath of the severe economic instability after World War I in order to promote and rebuild their national economies. In the UK for instance, the Exports Credit Guarantee Department (ECGD) was established in 1919 initially to encourage and support exports to Russia that would not otherwise have taken place. A number of other European countries followed:

- Belgium (Ducroire) in 1921;
- Denmark (Eksport Kredit Fonden (EKF)) in 1922;
- Germany’s Euler Hermes added export guarantees to its portfolio in 1926; and
- Atradius, which was founded in 1923 in the Netherlands, became an ECA in 1932.¹⁸

The onset of a worldwide economic depression after 1929 provided a new reason for founding official export credit, guarantee, and insurance facilities. Amongst others, the US Eximbank was created in 1934, which later added export guarantees to its portfolio. Also in 1934, the International Union of Credit and Investment Insurers (more commonly

known as “Berne Union”) was established as an international organisation to encourage cooperation among national export credit insurers.¹⁹

After World War II, many more ECAs were created and recreated. The 1990s witnessed the greatest growth in the establishment of official ECAs. With the fall of the Iron Curtain and the end of a global political divide between “communist” and “capitalist” state systems, many countries that were formerly part of the Eastern Bloc, as well as a number of newly industrialising states, created their own national export promotion schemes.²⁰ New agencies were formed in countries like the Czech Republic, Hungary, Lithuania, Poland, Russia, Slovakia, and Slovenia. In Kazakhstan and Ukraine for instance, foreign trade banks were reconfigured to offer standard ECA programs.²¹

Even so, as the IMF economist Malcolm Stephens stated already in 1999, the role of ECAs is nowadays “by no means as clear, common, or consistent as they may have been at their founding.” As the private sector has in the past two decades increasingly shown willingness to underwrite political risks on a substantially-larger scale, ECAs have started to face competition from private insurers and to operate under seemingly conflicting objectives: “On the one hand, many governments, especially those subject to keen budgetary pressures, today expect their export credit agencies to break even. On the other hand, these agencies often also remain ‘insurers of last resort’, expected to accept business that private sector insurers are reluctant to take, rather than compete with the private sector for the same business.”²²

In order to understand ECAs’ changing role in the global economy it is important not to confuse the measures these institutions provide with programmes intended to help domestic industrial exporting companies or sectors on the one hand, and, as is the case with many ECAs, to support these measures additionally via bilateral aid programmes on the other. With the later, additional considerations will be factored in relating to aid and industrial policy.²³

ECAs are also under pressure to meet the requirement to break even over time, in order not to be in conflict with the World Trade Organisation’s restrictions on trade subsidies (see also: ECAs within the WTO framework). While this long-term balance in ECA accounts is not an easily-measurable objective, it is evident that ECAs bring benefit to national exporting companies via the backing of the state budget with taxpayers’ money.

Regrettably, this is not always an equal equation for the countries in which the ECA-backed projects take place. Our research shows that failed projects can turn into additionally-challenging bilateral debt burdens for low income countries and that there are still numerous ECA-backed projects with negative effects for people and the planet that clearly go against agreements on sustainability set by the international community, such as the Paris Climate Agreement, the Convention on Biological Diversity and the UN Sustainable Development Goals.

How do ECAs work and how are they organised?

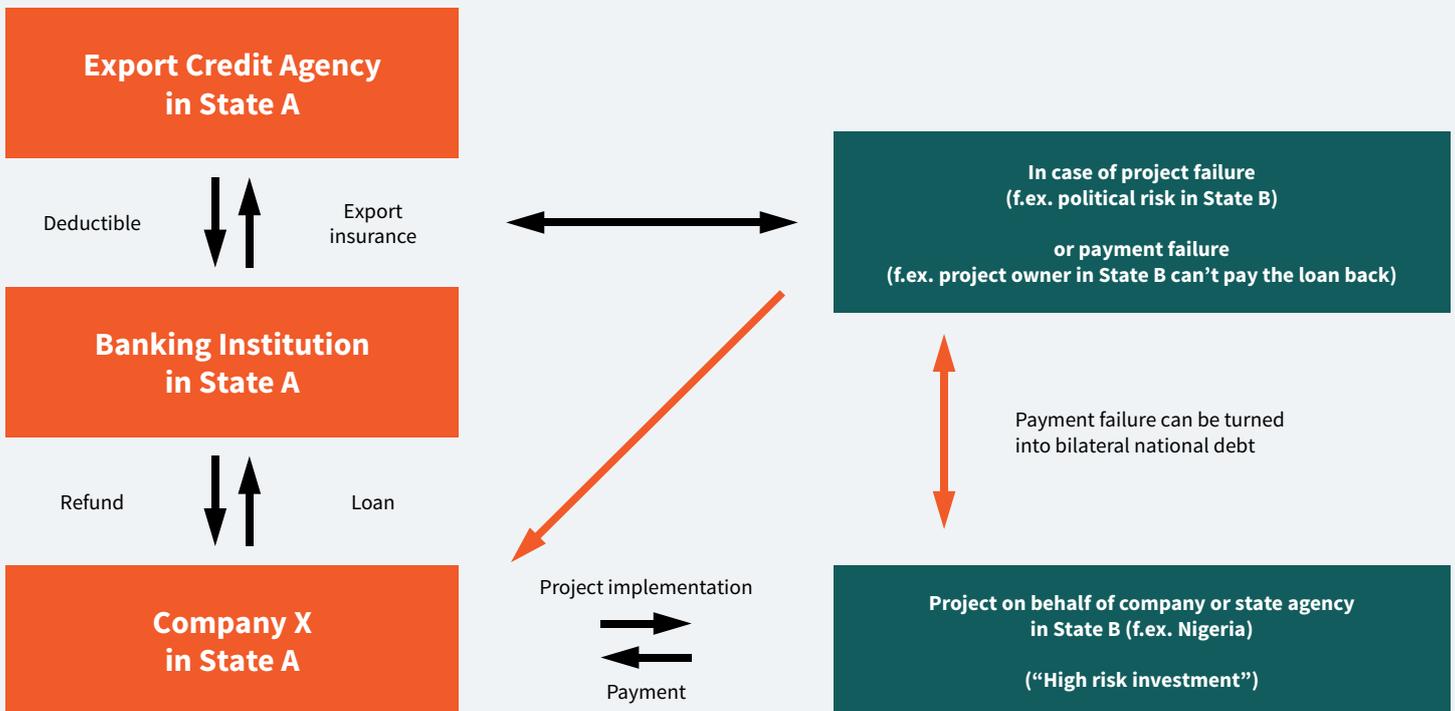
ECAs provide government-backed loans, guarantees, credits, and insurance to private corporations from their home country. They make it easier for those corporations to do business abroad, particularly in financially and politically-risky countries of the developing world. Most industrialised nations have at least one ECA, which is usually an official or quasi-official branch of their government.

An ECA is a kind of investment insurance agency that protects an exporter from a payment default caused by economic or political changes in the project country. The premium that an exporter has to pay depends on the estimated risk of such payment default for a specific project country. In the event of a payment default the exporter gets its loss replaced by the ECA (minus a deductible of usually five to 15 per cent of the contract value). This way export contracts are made

possible with the help of a state's government, which would otherwise not take place because the risk of making a loss on such a deal is too high for the exporter.

ECAs charge lower premiums for their financial services than commercial financial institutions. They also provide insurance and other services for medium-term (from two to five years) and long-term (five to ten years and above), which are usually associated with large projects.

While today many export projects can also be insured on the market, an ECA-backed loan guarantee often brings the benefit of a higher credit rating (as a state or quasi-state actor). In addition, ECAs provide lower interest rates for the buyer, which brings down the overall cost of a project offer and is beneficial for the bid of the exporter.



Example of export promotion through an ECA. In case of payment failure the open debt is often converted into bilateral national debt of State B towards State A. This is usually agreed between State A and State B before an export guarantee is granted by the ECA.

ECAs AND GLOBAL DEVELOPMENT

In September 2015, the United Nations signed the Sustainable Development Goals (SDGs). These goals broadly call for policy coherence with global development goals to tackle the biggest issues of our time: global poverty, environmental destruction and climate change. SDGs are universal and are based on the principle of coherence between different policies in actions for their achievement. Hence, these goals must of course also be applied to state external economic action and state-backed export credit agencies.

ECAs' relevance for global sustainable development

While they mostly help their own national economies develop, ECAs are very often also drivers and supporters of large scale and at times very harmful infrastructure projects in the global South.

ECAs charge lower premiums for their financial services than commercial financial institutions. This way ECAs in some cases make projects possible for which it would otherwise not have been possible to find finance. Steve Tvardek, Head of the OECD Export Credits Division said in 2012, "Official support plays an increasingly important role in individual transactions and for projects in developing countries where the availability of official support is decisive in allowing the project and the related exports to be realised."²⁴

As mentioned above, the annual volume of ECA-backed investments globally is larger than the entire volume of projects financed by multilateral development banks combined.²⁵ Today, ECAs are collectively among the largest sources of public financial support for foreign corporate involvement in industrial projects in the developing world and often back such projects even though the World Bank Group and other multilateral banks find them too risky and potentially harmful to support.²⁶

For example, ECAs provide some of the largest sources of public finances and guarantees for fossil fuel projects in the world, a sum that is estimated to rival or exceed financing by all multilateral finance institutions combined.²⁷ ECAs finance greenhouse gas-emitting power plants, large scale dams, mining projects, road development in pristine tropical forests, oil pipelines, chemical and industrial facilities, forestry and plantation schemes, to name just a few.²⁸

Many of these projects have serious environmental and social impacts, like the Ilisu project that the Austrian ECA OeKB was involved in between 2007 and 2009 (see the Austrian profile) or the 'modernisation' of Block 1 of the crude oil power plant Ramón Pérez in Cuba being supported by Slovakia's Eximbanka SK²⁹ (see the Slovakian profile). These projects often require the displacement of thousands of people and the pollution of air and water. In addition, they lead to an influx of workers, mainly male, that put a strain on health services and water resources and, at times, increase sexually transmitted diseases and crime.³⁰ ECA-financed projects have even resulted in deaths, like those that occurred at the Papua New Guinea liquefied natural gas project.³¹

ECAs also play a big role in promoting projects that result in unsustainable debt problems for developing and newly industrialised countries. Research in 2011 by the NGO network Eurodad shows how export credit guarantees are at the root of many developing countries debt to European governments. Almost 80 per cent of poor countries' debts to four European governments originated in export credits, not development loans. 85 per cent of the assessed countries' bilateral debt cancellations from 2005 to 2009 had been debts incurred from export credit guarantees. So, while ECAs boost the coffers of rich countries' companies, they simultaneously weigh on developing countries to repay the debts.³²

Export credits have in the past been a key reason why developing countries end up in debt crisis and need debt relief. Already in 2002, the World Bank showed that “[ECAs’] total exposure to developing countries reached an estimated USD 500 billion at the end of 2000 – one-quarter of developing countries’ total long-term external debt.”³³ A report to the UN General Assembly showed that at a similar time multiple countries owed more than 50 per cent of their total debt to ECAs. Referencing 2001 OECD figures, the report showed that “around 64 per cent Nigeria’s national debt and 42 per cent of the national debt in Democratic Republic of Congo was owed to ECAs.”³⁴

When creditor governments decide to cancel developing country debts, in many cases they use aid budgets to cover losses incurred by their national ECA.³⁵ In cases of debt cancellation through international donor countries in the framework of the Paris Club, the debt volume that cannot be claimed by ECAs anymore is often subsequently added to the exporting state’s official yearly ODA expenditures (as is the case in Austria or the Netherlands). This means that failed projects that actually incurred a debt burden in the first place can later on make a donor state’s ODA statistic look better than it actually is. What is more, ECAs – unlike commercial creditors – typically recuperate debt claims at nominal value (see also “Export promotion and sustainable development – a contradiction?”).

This way, ECAs use up precious aid money, as the latter is used to subsidise exports of rich country companies. Borrowing for productive investments that promote sustainable and equitable development can be an important strategy for developing countries. This does not apply, though, when financial transactions guaranteed by ECAs have damaging impacts on development, the environment and contribute to human rights violations. Requiring taxpayers in poor countries to repay loans with contested legitimacy diverts much needed resources away from investing in social services and productive development projects. It also places these debt repayments in a legal and moral grey zone.³⁶

As strategic linchpins in global development that play an enormous part in the harmful impacts of corporate globalisation, ECAs have throughout the last two decades been the target of numerous civil society campaigns from European and OECD-countries, in collaboration with NGOs and initiatives in countries of the global South.³⁷

As described more closely in the following section, the OECD Arrangement on officially supported Export Credits is the instrument that allows ECA-backed state aid for domestic corporations under the Agreement on Subsidies and Countervailing Measures (ASCM) of the WTO. But many ECAs simultaneously provide large amounts of support via other specialised financial products for domestic corporations that do not fit under the Arrangement. In many such cases there can be forms of blending support with aid instruments. In cases where there are official development assistance (ODA)-related grant elements under the regular export credit insurance facility, the grant element would be reported as ODA to the OECD Development Assistance Committee (DAC), while the insurance part of the overall public support for such a transaction would be reported to the OECD Export Credit Group (ECG). Thus, in practice the divide between ECAs and aid agencies is less clear than is often portrayed, or better there is a grey area of overlap.

Recently the OECD DAC and ECG began exploring how to draw on export credit expertise, in the context of a wider trend towards stronger private business involvement and investment in publicly-backed development projects.

The rules for ODA are being “modernised” to allow more public support for private sector actors in developing countries to be counted as ODA, and the idea is that the ECG should play a role in oversight of this process.

Such a trend towards greater private business involvement in publicly-backed development projects can currently be observed in many countries throughout Europe. The authors of this study watch this with unease as it shifts part of the state’s responsibility for sustainable development towards business responsibility, which is inherently linked to a direct interest in economic profit for the company involved. If ECAs are to play a role in “modernised ODA”, they need a complete overhaul of their due diligence policies and approaches.

Export promotion and sustainable development – a contradiction?

Reflections on the different scope of ECAs and ODA

By Niels Hazekamp and Wiert Wiertsema (Both ENDS)

The following text is based on extracts from a submission by Both Ends to the OECD DAC Technical Task Force meeting on 17-18 January 2017 concerning ODA modernisation of private sector instruments. (Shortened version of the original text.)

Export credits provided by Export Credit Agencies (ECAs) and Official Development Assistance (ODA) are by nature very different policy instruments for governments, serving *very different objectives*. ODA is (financial) support given by governments and other agencies to fellow governments and agencies - including non-governmental organisations and private companies - to promote the long term economic, environmental, social and political development of developing countries. In contrast ECAs provide credits, insurances and guarantees for domestic private companies engaging in business transactions abroad. Development objectives are not part of the considerations of ECAs.

The support of ECAs is geared towards *individual transactions only*, without any requirements on such transactions serving long-term development processes in the host country of these transactions. ECAs only reflect on the long-term social, environmental, political and economic development of a

host country in order to assist domestic private companies in minimizing payment risks in business transactions.

An important difference between development financing and export credits is that ECAs have the international obligation to break even. The costs of their operations and losses have to be covered by their income in premiums and interest payments from their clients. Essentially, ECAs generate *no financial support for host countries* on their transactions.

In cases where payment problems occur it is the other way around. Public ECAs *typically recuperate debt claims at nominal value*, unlike commercial creditors that usually have to accept lower priced market terms in clearing debt claims. ECAs participate in meetings of the Paris Club, thus allowing for a double role as both claimant and arbitrator to bilateral debt problems. ECAs thus stand in the way of the introduction of fair and transparent debt resolution

mechanisms. In many cases where export credit debt gets written off, *such expenses are reported as ODA*. Thus, in a way ODA has subsidised the ECA community for many years.

ECAs typically support large-scale capital intensive export and investment transactions. In the practice of many ECAs a substantial part of the total volume of their portfolio is directly supportive of (infrastructure) projects that serve the development of different parts of the fossil fuel exploration, production, transportation, processing and consumption chain. In the case of the Netherlands for the period of 2012-2015 some 68 per cent of the volume of cover provided in this period (about EUR 7.5 billion) was fossil fuel related. *The practice of ECAs sharply contrasts with public priorities formulated in relation to the Sustainable Development Goals (SDGs) or the 2015 Paris Agreement on Climate Action.*

ECAs do not reflect on the question who benefits from the transactions their clients implement and support. ECAs make no reference to the obligations of states under the International Covenant on Economic, Social and Cultural Rights in the Context of Business Activities. The only safeguards that ECAs apply are the recommendations for “Common Approaches” on social and environmental issues in the OECD Council Recommendation, a policy statement without any (legal) obligations. ECAs usually argue that these “Common Approaches” are the only ECA-specific framework for social, environmental and human rights due diligence. Sadly these “Common Approaches” lack in substance,

allowing massive failures in addressing social, environmental and human rights issues in ECA supported transactions and only apply to transactions of at least SDR 10 million with a repayment term of at least two years or more. Thus an enormous part of ECA supported transactions are exempted from any formal social or environmental screening. The safeguards of ECAs thus fall significantly short in scope and substance of the safeguards common for development finance institutions.

The concept of ODA is applicable to capital flows to developing countries and territories that are provided by official agencies and that are concessional in character. An additional requirement is that these flows are administered with the main objective of the promotion of the economic development and welfare of developing countries. To ensure this happens ODA requires maximum transparency allowing for full ownership and participation of the beneficiaries. It requires effective due diligence processes that focus on the prevention of adverse environmental, social, and human rights impacts. Also it requires sustained planning, monitoring and evaluation processes, which ensure the official agencies to assume full accountability for the support they provide.

In light of the above, ECAs would require significant reforms in several fields to be able to play a role in providing ODA, most particularly concerning transparency, due diligence, accountability, and monitoring and evaluation.

Endnotes

- 1 The Berne Union is the most important global association for ECAs export credit and investment insurers. Its members include mostly government-backed official export credit agencies as well as private credit insurance companies from 73 countries.
- 2 In 2012-2016 public export and investment insurance via ECAs totalled between USD 920 billion and 1.031 billion. See: Berne Union (3 July 2017): Aggregate Statistics - 2016 Year End, <https://www.berneunion.org/DataReports>
- 3 <http://www.lisbon-treaty.org/wcm/the-lisbon-treaty/treaty-on-european-union-and-comments/title-5-general-provisions-on-the-unions-external-action-and-specific-provisions/chapter-1-general-provisions-on-the-unions-external-action/101-article-10a.html>
- 4 Alexander Pfeiffer, Richard Millar, Cameron Hepburn, Eric Beinhocker: The '2°C capital stock' for electricity generation: Committed cumulative carbon emissions from the electricity generation sector and the transition to a green economy, Received 11 September 2015, Revised 16 February 2016, Accepted 18 February 2016, Available online 24 March 2016, <http://www.oxfordmartin.ox.ac.uk/publications/view/2119>
- 5 Oil Change International et al: The Sky's Limit: Why the Paris Climate Goals Require a Managed Decline of Fossil Fuel Production, September 2016, <http://priceofoil.org/2016/09/22/the-skys-limit-report>
- 6 "Talk is cheap: How G20 governments are financing climate disaster" Oil Change International, Friends of the Earth US, The Sierra Club, WWF, July 2017, p.4, http://priceofoil.org/content/uploads/2017/07/talk_is_cheap_G20_report_July2017.pdf
- 7 <http://www.radio.cz/en/section/business/hn-turkish-coup-attempt-could-lead-to-czk-12-billion-loss-for-cr>
- 8 see: <https://www.respekt.cz/politika/cesku-se-nedari-z-ruska-ziskat-zpet-utopene-miliardy-presto-tam-chce-poslat-dalsi> as well as https://ekonomika.idnes.cz/ceska-exportni-banka-uverovala-neuspesne-elektrarny-p0q-/ekonomika.aspx?c=A160205_201831_ekonomika_jvl
- 9 <http://www.powerengineeringint.com/articles/2015/09/czechs-forced-to-abandon-russian-gas-fired-power-project.html>
- 10 Atradius has started publishing lists of all projects they supported in the previous year (both projects with credit terms over and under two years), including in most cases: name of exporter and importer, guarantee amount and time span, as well as the project categorization and a link to the ESIA, if available: <https://atradiusdutchstatebusiness.nl/nl/publicaties/afgegeven-polissen.html>
France has a similar approach: <http://www.bpifrance.fr/Qui-sommes-nous/Nos-metiers/International2/Assurance-Export/Evaluation-Environnementale-et-Sociale>
Germany publishes at least aggregated data ex-post: <https://www.agaportal.de/main-navigation/experte-exportkreditgarantien/praxis-exportkreditgarantien/projektinformationen-exportkreditgarantien>
- 11 Para 16 of its Preamble: "*The Parties to this Convention, (...) Recognizing the importance of fully integrating environmental considerations in governmental decision-making and the consequent need for public authorities to be in possession of accurate, comprehensive and up-to-date environmental information,*"
Art 5, 1: (a) *Public authorities possess and update environmental information which is relevant to their functions;* (b) *Mandatory systems are established so that there is an adequate flow of information to public authorities about proposed and existing activities which may significantly affect the environment;*"
- 12 Regulation (EU) No 1233/2011 of the European Parliament and of the Council of 16 November 2011 on the application of certain guidelines in the field of officially supported export credits and repealing Council Decisions 2001/76/EC and 2001/77/EC
- 13 Atradius has started publishing lists of all projects they supported in the previous year (both projects with credit terms over and under two years), including in most cases: name of exporter and importer, guarantee amount and time span, as well as the project categorization and a link to the ESIA, if available: <https://atradiusdutchstatebusiness.nl/nl/publicaties/afgegeven-polissen.html>
France has a similar approach: <http://www.bpifrance.fr/Qui-sommes-nous/Nos-metiers/International2/Assurance-Export/Evaluation-Environnementale-et-Sociale>
Germany publishes at least aggregated data ex-post: <https://www.agaportal.de/main-navigation/experte-exportkreditgarantien/praxis-exportkreditgarantien/projektinformationen-exportkreditgarantien>
- 14 The Berne Union is the leading global association for export credit and investment insurers. Its members include mostly government-backed official export credit agencies and private credit insurance companies from 73 countries. In total (both private and publicly backed insurance) Berne Union members provided USD 1.9 trillion of payment risk protection to banks, exporters and investors in 2016 - equivalent to 11% of world cross border trade for goods and services (calculated with respect to WTO statistics). See: <https://www.berneunion.org/>, last accessed on 23 Oct 2017

- 15 Berne Union (3 July 2017): Aggregate Statistics - 2016 Year End <https://www.berneunion.org/DataReports>, last accessed on 23 Oct 2017
- 16 “ECA activity far exceeds that of all multilateral development banks[...]. ECA loans, guarantees, and insurance are also greater than the activity of all overseas development agencies (ODAs), such as the U.S. Agency for International Development.” Gianturco, Delio E. (2011): *Export Credit Agencies: The Unsung Giants of International Trade and Finance*. Westport, Connecticut, Quorum Books. (p.1)
- 17 Berne Union: Yearbook (2016), pages 13 and 28 (<http://www.berneunion.org/wp-content/uploads/2012/10/BU-Yearbook-2016.pdf>)
- 18 Gianturco, Delio E. (2001): *Export Credit Agencies: The Unsung Giants of International Trade and Finance*; individual ECAs websites: <http://www.delcredereeducreire.be/en/about-us/history/>; <http://www.ekf.dk/en/about-ekf/Pages/EKF-and-export-credits-in-2-minutes.aspx>; <https://group.atradius.com/about-us/history.html>;
- 19 William Becker and William McClenahan, *The Market, the State, and the Export-Import Bank of the United States* (New York: Cambridge University Press, 2003): 10-40; *History of the Export-Import Bank of the U.S.*: <http://www.exim.gov/about/history-0>;
- Berne Union: Yearbook (2015), pages 138 and 147: <http://www.berneunion.org/wp-content/uploads/2015/12/Berne-Union-YearBook-2015.pdf>
- 20 STEPHENS, Malcom (1999) “The Changing Role of Export Credit Agencies”, International Monetary Fund, Washington; KRAUSS, Raquel Mazal (2011) „The Role of Export Credit Agencies“ (Research paper, George Washington University)
- 21 Ibid.
- 22 Stephens, Malcom, “The Changing Role of Export Credit Agencies”, IMF, Washington D.C., 1999
- 23 Ibid.
- 24 Berne-Union-Yearbook-2012, p. 48
- “ECA activity far exceeds that of all multilateral development banks[...]. ECA loans, guarantees, and insurance are also greater than the activity of all overseas development agencies (ODAs), such as the U.S. Agency for International Development.” Gianturco, Delio E. (2011): *Export Credit Agencies: The Unsung Giants of International Trade and Finance*. Westport, Connecticut, Quorum Books. (p.1)
- 25 <http://www.eca-watch.org/node/1>
- 26 See: FERN/ECA-Watch Europe (2013): *Still Exporting Destruction. A civil society assessment of Export Credit Agencies’ compliance with EU Regulation (PE-CONS 46/11)* as well as Both ENDS (June 2017): *Towards Export Credit Paris Proof. Why and how the Dutch government must exclude export credit support for fossil fuel.*
- 27 Ibid. See also: Halifax Initiative et. al (2015): *Export Credit Agencies and Human Rights. Failure to Protect.*
- 28 https://www.eximbanka.sk/buxus/docs/Medzinarodne_vztahy/Info_projekty_A_or_B_web_08_2017sk.pdf
- 29 <http://www.eca-watch.org/>
- 30 Ian T. Shearn, *ExxonMobil’s New Guinea Nightmare*, *The Nation* (30 Apr. 2014), <https://www.thenation.com/article/exxonmobils-new-guinea-nightmare/>
- 31 The results were based on data relating to: the Netherlands, the United Kingdom, Belgium and Switzerland. See Eurodad (2011): *Exporting goods or exporting debts? - Export Credit Agencies and the roots of developing country debt*, (http://www.eurodad.org/uploadedfiles/whats_new/reports/exporting%20goods%20or%20exporting%20debts_final%20for%20print.pdfv)
- 32 The World Bank (2002): “Global Development Finance. Financing the Poorest Countries”, p.107 (<http://siteresources.worldbank.org/INTGDF2002/Resources/FullText-Volume1.pdf>)
- 33 United Nations General Assembly (2011): “Report of the independent expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights”, pages 5 and 6 (<https://documents-dds-ny.un.org/doc/UNDOC/GEN/N11/446/07/PDF/N1144607.pdf?OpenElement>)
- 34 In case of payment failure the open debt is in many converted into bilateral national debt of the state, where the export project takes place. This is usually agreed by contract between the exporter’s state and the importer’s state. (see also the graph in “How do ECAs work and how are they organized?”)
- 35 See Eurodad (2011): *Exporting goods or exporting debts? - Export Credit Agencies and the roots of developing country debt*, (http://www.eurodad.org/uploadedfiles/whats_new/reports/exporting%20goods%20or%20exporting%20debts_final%20for%20print.pdfv)
- 36 For concrete examples of “dodgy deal” western ECAs have facilitated in the past visit for instance <http://www.eca-watch.org/dodgy-deals> or see for example the reports: Halifax Initiative et. al (2015): *Export Credit Agencies and Human Rights. Failure to Protect.* as well as Fern/ECA-Watch Europe (2013): *Still Exporting Destruction. A civil society assessment of Export Credit Agencies’ compliance with EU Regulation (PE-CONS 46/11)*“

NORMATIVE AND REGULATORY FRAMEWORKS FOR ECAs

In the following section we lay out the most important EU and international frameworks for ECAs in their role as (state-backed) financial players and in the context of policy coherence with sustainable development. We place special attention on frameworks that ECAs are expected to adhere to in terms of their social and environmental impacts, as well as in terms of transparency on what kinds of projects they support.

These guidelines and standards can provide basic, albeit limited, guidance to ECAs for their own internal policy development towards more coherence with internationally-agreed global development goals and a more sustainable future for all people and creatures on the planet.

It is important to understand that most of these frameworks are non-binding, so there are no legal consequences for an ECA or the state administration overseeing the ECA if the guidelines are not fulfilled.

ECAs within the WTO framework

The WTO sets the overall frame in which ECAs operate as state-backed agencies. ECA activities are de facto deliberately excluded from the WTO treaty. Everything outside the terms defining state-backed export promotion would count as ‘market distortion’ via unlawful state subsidies for exports and could be punished under WTO rules. In this sense, the WTO framework defines the operating radius of financial institutions when they act under the title of “(officially supported) export credit agency” and with the exceptional rights that go along with this definition. This provides ECAs with an advantage over other financial institutions.

ECAs are by definition financial institutions that have been created or commissioned by a state government to support enterprises within this state in their export activities with the backing of the state budget. ECAs therefore play a significant part in many states’ export promotion schemes, and one could easily argue that they distort the bidding market for export projects. Even so, ECAs are not counted as state subsidies within the framework of the WTO.

When the WTO’s Agreement on Subsidies and Countervailing Measures (ASCM)¹ was established at the organisation’s beginning in 1995, it aimed to further “ease” trade between nations through the decrease of national toll sovereignty and a strict regulatory regime against “unfair” market distortions. ECAs were explicitly exempt from these rules.

The ASCM recognises that governments use subsidies to achieve various policy objectives. It defines different forms of government subsidy that are or are not permissible in the area of international trade, and constrains the right of governments to grant subsidies that are seen to have significant trade-distorting effects.² It is explicitly linked to the OECD Arrangement (see below) for export credits by a clause known as the ‘safe haven’ or ‘carve-out’ clause.³ This stipulates that WTO Member States may not facilitate finance at interest rates lower than the country’s own cost of borrowing unless they comply with the interest rate provisions of the OECD Arrangement.

In practice this means that the export credit provisions of a country (which might otherwise be classified as a prohibited export subsidy under the ASCM) are allowed, provided they follow the OECD's rules on interest rate provisions. (ECA and state officials will often say that ECAs do not receive and provide subsidies but rather that they finance themselves from income of premiums and interest paid by customers. Even so, the backing of a state budget gives a clear advantage, and only this fact makes it possible to guarantee for so-called "non-marketable risk" as well as lowering the cost for premiums in comparison to regular insurers.)

This is an important exemption from how such types of national economic support measures are usually treated within the WTO. In short, the WTO tolerates violations of the free market by state subsidies via ECAs, as long as these violations take place in all countries, in the same way, under a framework set out by the OECD. This is the case whether the country involved is a member of the OECD or not.⁴

In this sense, one could argue that the WTO ASCM allows wealthier nations to succeed with a promotion system that favours uneven trade because it gives advantage to only a selected number of players in the bidding market for these projects. Also, as the OECD Arrangement on interest provisions are negotiated by the so-called "Participants"⁵ to the Arrangement, many non-OECD countries that have signed up to the ASCM are therefore bound within WTO rules to a set of provisions over which they can have no influence.⁶

EU legislation relevant for ECAs, sustainable development and transparency

All provisions within EU law that apply specifically to ECAs must be applied and interpreted in line with the primary law of the EU and the binding international treaties which it has signed. Particularly relevant are the Lisbon Treaty and the EU EIA Directive. As a participant in the OECD, the EU has incorporated the OECD Arrangement on ECAs (see below) into European Community and EU law⁷. It has also passed special legislative acts, such as the ECA Directive⁸ and later the ECA Regulation⁹ to harmonise EU export credit insurance "to ensure export policy is based on uniform principles and that competition between enterprises in the Community is not distorted".

At the EU level, the European Commission, in particular the Directorate General for Trade, plays a role in the harmonisation of ECAs and the coordination of policy statements and negotiation positions. Prior consultation among Member States on long-term export credits has been established. Member States may ask each other if they are considering financing a specific transaction with official export credit support and may not subsidise intra-EU export credits.¹⁰

EU Member States have agreed to notify one other about transactions with a credit term of more than five years. Members have also undertaken to adhere to common standards regarding transactions insured with official support. Deviations from these standards must be communicated to the other Member States and to the Commission within the framework of the EU consultation procedure.¹¹

For EU-wide transparency, Member States must report once a year to the European Commission concerning their ECAs' activities, as per EU Regulation 1233/2011. Unfortunately this measure has brought no further transparency to the public at all and only very limited additional oversight from the European Commission so far (see details below).

The Lisbon treaty – treaty on the European Union (Article 21) / Treaty on the Functioning of the EU

The Lisbon Treaty sets out general principles of the EU, the governance of its central institutions (including the Commission, Parliament, and Council), as well as its external, foreign and security policies. It includes key changes aimed at increasing the consistency and coherence of the EU's external actions. The “High Representative of the Union for Foreign Affairs and Security Policy” chairs the EU's External Relations Council and simultaneously acts as vice-president of the European Commission. In addition to these institutional changes, the Lisbon Treaty also provides for a number of changes to the EU's external policies.¹²

The treaty is divided into two parts: the Treaty on the European Union (which sets out the general provisions governing the European Union as well as the overall provisions of the EU's external relations) and the Treaty on the Functioning of the European Union which clarifies the EU's development cooperation policy and explicitly sets out humanitarian assistance as a specific Commission competence.¹³

Within the Treaty on the European Union, Article 21 (External actions - including development cooperation)¹⁴ includes the following paragraphs:

1. *The Union's action on the international scene shall be guided by the principles which have inspired its own creation, development and enlargement, and which it seeks to advance in the wider world: democracy, the rule of law, the universality and indivisibility of human rights and fundamental freedoms, respect for human dignity, the principles of equality and solidarity, and respect for the principles of the United Nations Charter and international law. [...]*
2. *The Union shall define and pursue common policies and actions, and shall work for a high degree of cooperation in all fields of international relations, in order to:*
 - (b) *consolidate and support democracy, the rule of law, human rights and the principles of international law; [...]*
 - (d) *foster the sustainable economic, social and environmental development of developing countries, with the primary aim of eradicating poverty; [...]*
 - (f) *help develop international measures to preserve and improve the quality of the environment and the sustainable management of global natural resources, in order to ensure sustainable development [...]*

The Treaty on the Functioning of the European Union defines the types of export insurance transactions that Member States are allowed to cover through their state-backed ECAs. Article 107 states that aid provided by governments or from public coffers can distort competition and violates the rules of the Common Market.¹⁵ It follows that a public insurance institution cannot insure such risks, but instead the private-sector insurance market must be used.

Such distortions of competition may, in the view of the European Commission, occur in the area of short-term marketable risks. Marketable risks are defined as commercial and political risks (excluding catastrophe risks) which arise from transactions with borrowers or guarantors in any EU country (except Greece) as well as in OECD countries and which

involve a risk period of less than two years (i.e. manufacturing lead time plus credit period). All other risks remain classified as non-marketable.¹⁶

ECA Regulation

The EU's ECA Regulation¹⁷ entered into force in 2011. Replacing the former EU ECA Directive¹⁸ and expanded in scope, this new regulation contains several legal provisions relevant for the environmental and social and transparency provisions of ECAs. This can be seen for example in the Regulation's preamble:

“The Member States should comply with the Union's general provisions on external action, such as consolidating democracy, respect for human rights and policy coherence for development, and the fight against climate change, when establishing, developing and implementing their national export credit systems and when carrying out their supervision of officially supported export credit activities”

“The Participants to the Arrangement are involved in a continuous process intended to minimise market distortion and to establish a level playing field in which the premiums charged by the ECAs are risk based and should be adequate to cover long-term operating costs and losses and in accordance with World Trade Organization obligations. In order to achieve this goal, the export credit systems operate in a transparent way and agencies report accordingly to the OECD.”

“The Participants to the Arrangement and the Member States of the Union agreed to disclose certain information on export credits according to the transparency rules of the OECD and of the Union in order to facilitate a level playing field for the Participants to the Arrangement and Member States.”

Transparency and reporting measures are set in Annex I of the ECA Regulation. Member States are required to report annually to the European Commission on their ECAs' activities:

„[...] Each Member State shall make available to the Commission an Annual Activity Report in order to step up transparency at Union level. Member States shall report, in accordance with their national legislative framework, on assets and liabilities, claims paid and recoveries, new commitments, exposures and premium charges. Where contingent liabilities might arise from officially supported export credit activities, those activities shall be reported as part of the Annual Activity Report.

In the Annual Activity Report, Member States shall describe how environmental risks, which can carry other relevant risks, are taken into account in the officially supported export credit activities of their ECAs.

The Commission shall produce an annual review for the European Parliament based on this information, including an evaluation regarding the compliance of ECAs with Union objectives and obligations.“

Unfortunately, the seemingly added value of transparency brought by the annual reporting requirements to the European Commission and the European Parliament have not proven worthwhile. While in theory the ECA Regulation stipulates that EU Member States should comply with the EU's general provisions on external action through their ECAs, the reporting requirements from the Commission are in no way sufficient to gain any insight if this is actually happening.

In 2013 the NGO network ECA Watch criticised the Commission's lack of oversight by Member States of ECA activities and its coherence with EU external action. After a very delayed publication of the Commission's report,¹⁹ ECA Watch stated the following: “The

process has been unacceptable, both for the EP and for civil society. [...] The report states that it is difficult to define a set of benchmarks against which ECAs' compliance with the EU's external action goals could be measured. ECA-Watch agrees with the EC's recommendation that the Lisbon Treaty provisions 'could serve as a background against which to evaluate the policies applied to export credit transactions'. [But] by highlighting 'a clear general willingness on the side of the Member States to apply policies to their export credit programs, whose objectives are in line with the general language of Articles 3 and 21' the EC wrongly suggests that this willingness is sufficient. [...] The EC needs to show proof that it leads to compliance by assessing the effectiveness of the policies that are in place."

This situation has not changed. In January 2016 ECA Watch filed a complaint against DG Trade to the European Ombudsman concerning "maladministration in relation to its obligations" under the EU ECA Regulation.²⁰ The reporting required by the Commission from Member States lacks in substance and does not in any way provide a qualitative assessment of how ECA activities are or are not in line with policies regarding sustainable development (e.g. "consolidating democracy, respect for human rights and policy coherence for development, and the fight against climate change" as described in the EU's external action provisions.)

Aarhus Convention

The guiding principles of the Aarhus Convention²¹ are stated in its preamble.²² These principles are also considered to be the guidelines for the convention's application in practice. As parties to the Convention, EU Member States acknowledge that adequate protection of the environment is essential to human well-being and the enjoyment of basic human rights, including the right to life itself. They also acknowledge that every person has the right to live in an environment adequate to his or her health and well-being, and the duty to protect and improve the environment for the benefit of present and future generations.

The Aarhus Convention establishes a number of rights for the public with regard to the environment and consists of three "pillars":

- Access to environmental information
- Public participation in environmental decision-making
- Access to justice

The parties to the convention are required to make the necessary provisions so that public authorities (at the national, regional or local levels) will contribute to these rights to become effective.²³

Parties to the convention recognise that in the field of the environment, improved access to information and public participation in decision-making enhances the quality and the implementation of decisions while pursuing the objective to further the accountability of and transparency in decision-making and to strengthen public support for decisions on the environment. The parties also recognise that the public needs to be aware of the procedures for participation in environmental decision-making, have access to them and know how to use them.

The Aarhus Convention stipulates that the obligations of public authorities are, among others, to maintain updated environmental information and to ensure that the way in which public authorities make environmental information available to the public is transparent. Environmental information is to be effectively accessible by providing sufficient information to the public about the type and scope of environmental information held by the relevant public authorities, as well as by establishing and maintaining practical arrangements, such as publicly accessible lists, registers or files which enable real public access to information.

One of the fundamental principles of the Aarhus Convention is that the public should be informed early in an environmental decision-making procedure, and in an adequate, timely and effective manner of the proposed activity and the application on which a decision will be taken, the nature of possible decisions or the draft decision as well as on the relevant procedure. As entities working in the public interest, ECAs hold information that is considered “environmental information”. ECA decision-making about certain projects concerns “activities which may significantly affect the environment” as defined by the Aarhus Convention.

Access to environmental information is in compliance with the Aarhus Convention only if information related to decision-making is available in a timely manner, when all options are still open to provide for real and effective public participation.

In the case of ECA decision-making, timeliness and efficiency in line with the Aarhus Convention is ascertained only if essential information about projects under consideration (types of information mentioned above) is proactively published on the web page of a respective ECA with information on the expected date of approval.

ECAs in the context of OECD frameworks and guidelines

ECAs are organised and meet regularly at the OECD.²⁴ The OECD ECG is charged with carrying forward the work of the OECD in the field of export credits. It was originally set up to coordinate the financing, guarantees, insurance and reinsurance of export transactions (goods and services) supported by member budgets. The group has also taken on the role of ensuring that under the EU’s common commercial policy, EU Member States do not undercut each other internationally and create unfair competition.²⁵

The ECG provides a forum for exchanging information about members’ export credits systems and business activities and for discussing and coordinating national export credits policies “relating to good governance issues, such as anti-bribery measures, environmental and social due diligence, and sustainable lending.” The general objectives of the ECG are to:

- evaluate export credit policies;
- determine the problems which arise; and
- resolve or mitigate these problems by multilateral discussion.

Since the late 1990s, adherents to the OECD ECG worked to ensure that their official export credit programmes operate in a manner consistent with wider government policies.²⁶

As norms developed within the ECG are also directly referenced in EU legislation regarding ECAs (and as the EU has permanent representation within the group), the ECG carries out work in the following areas relevant for the EU context:

- (1) harmonised measures on export credits over five years (1973 Council decision), less than two years (1997 Commission communication) and over two years (1998 Council directive);
- (2) coordination of the EU position at the OECD under the OECD’s 1978 OECD arrangement on officially supported export credits;
- (3) coordination of the EU position at the international working group on export credits where OECD and non-OECD countries (such as China and Brazil) are working towards horizontal global rules on export credits; and
- (4) the transposition of updates of the OECD arrangement into EU legislation (applicable to all 28 EU Member States).²⁷

The main regulatory framework for ECAs under the OECD consists of the so-called “Arrangement” (including sector-specific understandings) and “Common Approaches” (good governance guidelines concerning environmental and social due diligence for ECAs). Additionally, the OECD has sector-specific understandings, guidelines for sustainable

lending, anti-bribery, human rights, and multinational enterprises, which are relevant as normative frameworks for ECA business.

The OECD Arrangement on officially supported export credits

The “OECD arrangement on officially supported export credits”²⁸ (usually simply referred to as “the Arrangement”) is a “gentlemen’s agreement” amongst participants who represent most OECD member governments.²⁹ Its main purpose is to provide a framework for the use of officially supported export credits with the most generous export credit terms and conditions that may be supported by its participants. For EU members the Arrangement represents binding law, in the sense that there is direct reference to its content in the EU ECA Regulation.

The main purpose of the Arrangement is “to provide a framework for the orderly use of officially supported export credits. In practice, this means providing for a level playing field (whereby competition is based on the price and quality of the exported goods and not the financial terms provided) and working to eliminate subsidies and trade distortions related to officially supported export credits.”³⁰

The key rules of the Arrangement cover the size of down payment, local costs, maximum credit terms, repayment conditions, minimum interest rates (CIRR), minimum premiums for political risk, aid-related credits and project financing.³¹ In this sense, the Arrangement places limitations on the terms and conditions of officially supported export credits (e.g. minimum interest rates, risk fees and maximum repayment terms) and the provision of tied aid. It includes procedures for prior notification, consultation, information exchange and review for export credit offers that are exceptions to or derogations of the rules, as well as tied aid offers.³²

Since 1999, country risk categories have been harmonised by the Arrangement and minimum premium rates have been allocated to various risk categories. This is intended to ensure that competition takes place via pricing and the quality of the goods exported, and not in terms of how much support a state provides for its exporters. The Arrangement does not extend to exports of agricultural commodities or military equipment.³³

The Arrangement applies only to credits with a repayment term of two years or more. So many of the ECAs’ state-backed transactions are not covered by this framework at all and are not included in additional sector specific agreements (see below) or the ECG’s joint recommendations for social and environmental due diligence in official export credit support (see “Common Approaches” in the following section). This makes any already non-binding agreements on transparency, due diligence or favourable financing terms for environment-friendly technologies only half as useful as they could be if they included all ECA transactions.

“Sector Understandings” annexed to the Arrangement

Some sectors with special technical and financial characteristics have six separate agreements set out and annexed to the Arrangement. These so-called “Sector Understandings” currently cover export credits in the areas of:

- ships
- nuclear power plants
- civil aircraft
- renewable energy, climate change mitigation and adaptation, and water projects
- rail infrastructure
- coal-fired electricity generation projects³⁴

In the light of global efforts to combat climate change, the Sector Understandings on renewable energy and on coal-fired power plants have received particular attention from NGOs in recent years.

Sector Understandings to combat climate change?

By Kate DeAngelis, Friends of the Earth US

In November 2015, most OECD member ECAs reached an agreement to restrict export credit subsidies for coal plants. This deal is significant as it represents the first time that a large number of ECAs have publicly acknowledged that financing for greenhouse gas emitting projects abroad must be curtailed. As of 1 January 2017, OECD ECAs have been forbidden from supporting many types of coal plants.

If these restrictions had been in place earlier, support for such projects like the Sasan coal plant in India might have been prevented. These restrictions should now prevent OECD ECAs from supporting the Long Phu 1 coal plant in Vietnam, which is trying to get ECA funding. It remains to be seen if ECAs in countries like the Czech Republic³⁵, who are currently evaluating this project for possible export guarantees, will stick to the new Sector Understanding.³⁶ UK Export Finance has decided not to support the project,³⁷ but Italy's SACE is expected to support it.

In their current forms, the Sector Understandings (as part of the OECD Arrangement) specifically aimed at reducing ECAs' contribution to climate change will have a limited impact on transforming export business to truly climate-friendly technologies. For instance, the Climate Change Sector Understanding encourages support for technologies

that are significant sources of greenhouse gas emissions, such as biomass and even coal using carbon capture and storage.

Moreover, the Coal-Fired Electricity Generation Sector Understanding, while a significant step, contains many loopholes that will greatly hinder its intended impact. The restrictions allow support for the "most efficient" coal plants, as well as financing for coal mines and related coal infrastructure, such as transportation. ECAs can still finance dirtier coal plants in the world's poorest countries. The agreement completely omits a much larger area of export credit group financing, oil and gas, which causes great harm to the climate.

The Paris Agreement defines a clear and immediate need to phase out fossil fuels to prevent global warming of more than two degrees Celsius, preferably 1.5 degrees.³⁸ Therefore, governments must end their support for the production and use of fossil fuels, leaving the vast majority of fossil fuel reserves in the ground.³⁹ In order to accomplish this phase out, all countries must shift to renewable energy systems. The OECD ECAs must strengthen their climate change agreements or else their financing will undermine climate commitments made under the Paris Agreement.

The “Common Approaches”

ECG members have committed themselves to taking environmental and social impacts into account when granting officially supported export credits. This commitment is laid out in the “Recommendation of the Council on Common Approaches for Officially Supported Export Credits and Environmental and Social Due Diligence” (or “Common Approaches” in short).⁴⁰ Experience gained from the application of the respective procedures is exchanged on a regular basis, both on a bilateral level with other ECAs and on the OECD level within the Group of Environmental Practitioners.⁴¹

A significant shortcoming of the Common Approaches is that they are to be applied only to export guaranteed projects with a payment period of two years or more⁴² and therefore do not apply to any other ECA operations. For most ECAs this means that only a fraction of their transactions is indeed covered by this set of recommendations. What is more, the Common Approaches are non-binding, and instead merely represent “the values of the OECD-members.”⁴³

The current version of the Common Approaches (revised in 2016) concerns the obligation to protect human rights and fundamental freedoms and refers to several principles and recommendations of international organisations. According to the General Principles of the current Common Approaches these are to: “Promote coherence between Adherents’ policies regarding officially supported export credits, their international environmental, climate change, social and human rights policies, and their commitments under relevant international agreements and conventions, thereby contributing towards sustainable development.”⁴⁴

To achieve the goals stated in the Common Approaches, the adherents are recommended to:

- *“Encourage the prevention and the mitigation of adverse environmental and social impacts of projects and the consideration of environmental and social risks associated with existing operations and take into account the benefits of any projects and existing operations supported, thereby enhancing the overall financial risk assessment process.*
- *Undertake appropriate environmental and social reviews and assessments for projects and existing operations respectively, as part of their due diligence relating to applications for officially supported export credits.*
- *Promote awareness of the OECD Guidelines for Multinational Enterprises among appropriate parties involved in applications for officially supported export credits as a tool for responsible business conduct in a global context.*
- *Encourage protection and respect for human rights, particularly in situations where the potential impacts from projects or existing operations pose risks to human rights.*
- *Foster transparency, predictability and responsibility in decision-making, by encouraging disclosure of relevant environmental and social impact information, with due regard to any legal stipulations, business confidentiality and other competitive concerns. [...]*

This includes publicly-disclosing project information and environmental and social impact information for projects categorised as Category A at least 30 days before a final decision is made about whether to support the project. It also includes providing at least annually environmental and social information on Category A and B projects.⁴⁵

- *Continue to encourage the application of the international standards referenced in this Recommendation or their equivalent by non-Adherents, to promote the adherence to this Recommendation by non-Adherents including through an active dialogue to increase awareness and understanding of the benefits of its application, and to take other appropriate measures with the aim of promoting a global level playing field for officially supported export credits.*⁴⁶

All parties should provide the information necessary to carry out screening in order to categorise whether a project is located within or close to sensitive areas, above SDR 10 million⁴⁷ or if a number of other considerations like industry are relevant for environmental and social assessment.⁴⁸

If there are potential social or environmental risks, the project will be categorised as follows:

- (1) Category A (high environmental and/or social impacts, diverse, irreversible, unprecedented, affecting a broader area. Appendix I includes a list of typical Category A-projects);
- (2) Category B (potential environmental/social impacts, not irreversible, site specific); or
- (3) Category C (minimal impact).⁴⁹

Environmental and social reviews of projects should consist of checking the project's performance against relevant international standards (World Bank Safeguard Policies, International Finance Corporation Performance Standards and others) and consider mitigation measures to improve environmental and social performance. Specific human rights due diligence may be required for high-risk projects.⁵⁰ Reviews of a project should include the potential environmental and social impacts, such as the location of construction, as well as relevant statements and reports.⁵¹

When undertaking a review, the ECAs are to ask the applicant for the relevant information, including where appropriate an environmental and social impact assessment (ESIA). The information provided should as a minimum include:

- *“A description of the project and its geographic, ecological, social, and temporal context.*
- *Information relating to the potential environmental and/or social impacts of the project, together with any information on related mitigating and monitoring measures.*
- *The standards, practices and processes that the parties involved in the project intend to apply, including information that the project complies with local legislation and other host country relevant regulations.*
- *The results of any public consultations with local communities directly affected by the project and/or their legitimate representatives and of any engagement with other parties, such as civil society organisations, that have expressed an interest in the project. It is the responsibility of the buyer/project sponsor to undertake any such public consultations and/or engagements with interested parties. For the purposes of public consultations, environmental and social impact information should be made available to affected communities in a language accessible to them.*
- *For a Category A project, Adherents should require an ESIA to be undertaken; the applicant is responsible for providing the resulting ESIA report, together with other studies, reports or action plans covering the relevant aspects of the project. An ESIA report and any supporting documents should address the issues set out in the international standards applied to the project in accordance with paragraphs 21-26 of this Recommendation: in this context, Annex II contains information on the typical items to be included in an ESIA report. An ESIA should not be carried out and reviewed by the same party.*⁵²

In terms of monitoring sensitive projects, the new Common Approaches recommend ECAs conduct on-going and even ex post evaluation during and after their official support ends:

- *“Where support for a project is provided subject to fulfilment of certain conditions whether during the construction and/or the operation phase of the project, Adherents should ensure that appropriate procedures are in place to monitor the project, regardless of its classification, in order to ensure compliance with the conditions of their official support.*
- *In addition, for all limited or non-recourse project finance Category A projects, Adherents should require regular ex post reports and related information to be provided during their involvement in the project to ensure that relevant potential environmental and/or social impacts are addressed according to the information provided by applicants during the environmental and social review.”⁵³*

The new version of the Common Approaches also recommends giving further consideration to climate change. In order to build experience in this regard, ECAs are asked to:

- *“Report the estimated annual greenhouse gas emissions from all fossil-fuel power plant projects.*
- *Also report the estimated annual greenhouse gas emissions from other projects, where such emissions are projected to be in excess of 25000 tonnes CO₂-equivalent annually and where the applicant or project sponsor has provided the Adherents with the necessary information, e.g. via an ESIA report.*
- *In this context, where relevant and feasible, Adherents shall try to obtain and to report the estimated annual direct and indirect greenhouse gas emissions [...] to be generated during the operations phase of the project [...] as provided during the environmental and social review.*
- *Adherents shall give further consideration to issues relating to support for thermal power plants and nuclear power plants, particularly the use of international standards and relevant sources of international guidance. [...]”⁵⁴*

Despite their recent revision (which included steps forward by acknowledging the potential social and environmental impacts in areas such as human rights, animal welfare and climate change) the Common Approaches still suffer from significant weaknesses. As mentioned, these only apply to a small portion of an ECA’s export promotion. Also, they are non-binding, so all recommendations remain soft law with no set procedures for accountability or remedies.⁵⁵

Moreover, much is left to interpretation. With countries able to interpret these provisions as they see appropriate, the requirements put in place are sometimes weakened.

The Common Approaches refer only to a few aspects concerning human rights, for example the issue of forced resettlement. But they do not contain a detailed examination of a supported project’s potential or real impacts on the economic, social and cultural rights of the affected populations.

Even as soft law, the Common Approaches do not prohibit projects that violate human rights or cause environmental impacts. An exemption clause can be used to skip environmental and social impact assessments, as long as this is reported to other participants of the ECG.⁵⁶

For project support falling under the two-year threshold, a major transparency gap in the operations of ECAs is present, especially in the CEE ECAs we assessed. The lower budgetary

capacity of certain ECAs means that they issue a higher percentage of export loans and guarantees with a repayment period of under two years. The example of EximBank Romania (see profile below) is the most extreme case, when an ECA basically does not issue any export insurance over two years, yet refers to the environmental standards from the OECD Arrangement and Common Approaches as their benchmarks for environmental screening, which it so far never has had to apply.

One of the main problems of the recommendations from the OECD ECG (and hence also the EU ECA Regulation) is that they create the image of an overall referential framework for environmental and social guidelines that can be used for good public relations but which have very little bearing on business as usual.

Principles and Guidelines to promote Sustainable Lending Practices in the Provision of Official Export Credits to Low Income Countries

According to OECD agreements, officially supported export credits should be provided in a responsible manner and contribute to the buyer country's social and economic development. The ECG therefore agreed in 2008 to adopt a set of principles and guidelines⁵⁷ to ensure that loans supported by their ECAs are in line with sustainable development objectives and that ECAs' commercial lending is not likely to contribute to debt distress in the future.⁵⁸

With the IMF and World Bank having revised their respective policies, the ECG also adapted its "Principles and Guidelines to Promote Sustainable Lending in the Provision of Official Export Credits to Low Income Countries"⁵⁹ in November 2016. The principles and guidelines set out commitments for ECAs who wish to provide commercial (i.e. non-aid) credits to public borrowers in low-income countries who face challenges in managing their external debt.⁶⁰

Even so, ECAs still play a large role in promoting projects that result in potentially unsustainable debt problems for developing and newly industrialised countries. Research undertaken by the NGO network Eurodad showed that 85 per cent of the bilateral debts cancelled between 2005 and 2009 was debts resulting from export credit guarantees.⁶¹ It remains to be seen if these new adaptations in a non-binding set of guidelines can bring the necessary changes to the recurring debt-traps for low income countries.

A 2013 report by the Dutch NGO Both ENDS⁶² also showed that a great number of companies receiving ECA support channel their business transactions through tax havens, which is detrimental to sustainable development: "Tax havens act as receptacles for capital from much of the world's organised crime. Revenues from outright tax evasion, the proceeds of corruption, the funding of terrorist groups, profits from corporate crime, the sex trade, the drugs trade or illegal arms trafficking, all find a refuge in tax havens. Their role in the international economy also allows multinational enterprises (MNEs) to massively reduce their tax liabilities. This results in governments losing substantial income, limiting their options for public sector investment in health, education and general public welfare." The subject of taxation in the context of due diligence requirements at the ECAs still has not been addressed.⁶³

There are currently no international obligations for ECAs to ensure that no artificial tax structures are being used by beneficiaries of ECA support in order to adopt aggressive tax avoidance positions and thereby diverting tax revenues away from governments, either on the export or import ends of business transaction.

The 2013 OECD Action Plan on Base Erosion and Profit Shifting (BEPS)⁶⁴ strongly criticises

multinational enterprises (MNEs) for using tax havens to adopt aggressive tax positions. However, it does not contain any explicit provisions that relate to transactions supported by publicly-mandated ECAs. Although the OECD appears to be getting serious about tackling the issue of tax havens, it has not yet called on public ECAs to discontinue support for transactions that run via tax havens.

OECD Council Recommendation on Bribery and officially supported Export Credits

Adopted in 2016, the “OECD Council Recommendation on Bribery and officially supported Export Credits”⁶⁵ is an integral part of the overall OECD anti-corruption strategy. Members are recommended to take concrete, coordinated measures to detect and deter bribery in the export transactions they support. The recommendation also includes specific measures that should be taken in the event that bribery or credible evidence of bribery is uncovered in a transaction.⁶⁶ Key provisions of the revised recommendation are:

- *“Provision by the exporter/applicant of a «no bribery» undertaking is now a prerequisite for obtaining official export credit support.*
- *Members are required to verify whether the exporter/applicant is listed on the publicly available Debarment lists of the major international financial institutions (e.g. World Bank Group).*
- *Exporters/applicants will now be required to disclose whether they or anyone acting on their behalf are currently under charge, or have been convicted within the last five years for violations of laws against bribery of foreign public officials.*
- *Exporters/applicants must be prepared to provide, upon demand, the names of persons acting on their behalf in connection with the transaction and details about the amounts and purpose of commissions/fees paid.*
- *Members will now be required to scrutinise more closely (i.e. apply «enhanced due diligence») applications for official export credit involving exporters/applicants that have been debarred by an International Financial Institution, are under charge for bribery, or have been convicted of bribery in the past [...].*
- *In the event that an exporter/applicant has been convicted of bribery in the last five years, the Member must verify that internal corrective and preventative measures have been taken before new export credit support could be provided again.*
- *Members must develop and implement disclosure procedures, to disclose to law enforcement authorities, instances of credible evidence. For the purposes of the Action Statement, credible evidence is defined as «evidence of a quality which, after critical analysis, a court would find to be reasonable and sufficient grounds upon which to base a decision on the issue if no contrary evidence were submitted».*
- *Members must promptly inform law enforcement authorities if there was credible evidence that bribery was involved in the award of the export contract; previously this was one of the possible actions that could be taken if there was «sufficient evidence» (no definition provided) of bribery.*
- *Members may not provide support for a transaction if there is credible evidence of bribery or if the enhanced due diligence process concludes that bribery was involved in the award of the export contract.”⁶⁷*

OECD Guidelines for Multinational Enterprises

As mentioned above, the Common Approaches recommend that ECAs invite companies to respect the “OECD Guidelines for Multinational Enterprises”. They provide a set of recommendations with principles and standards for responsible business conduct in areas such as: labour rights, human rights, environment, information disclosure, combating bribery, consumer interests, competition, taxation, and intellectual property rights for multinational corporations. In May 2011, the OECD and non-OECD adhering governments updated the Guidelines for MNEs, introducing substantial new provisions concerning human rights protection, due diligence and most importantly supply-chain responsibility.⁶⁸

The guidelines for MNE are non-binding. Even so, these do provide the only existing international corporate accountability initiative backed by governments aimed at encouraging responsible business while including a complaint mechanism.⁶⁹

What distinguishes the OECD Guidelines for MNEs from other corporate responsibility instruments and mechanisms is their international nature, the backing of governments and the presence of a dispute resolution mechanism for resolving conflicts regarding alleged corporate misconduct. However, there is once again no set procedure – including for accountability or redress – for dealing with companies or cases that do not comply with these guidelines or which directly breach human rights.⁷⁰

In recent years, an increasing number of so-called “specific instance complaints” have been brought to the National Contact Points (NCPs), who act as governmental representatives under the Guidelines for MNEs. According to the Common Approaches, ECAs should take into account the findings of NCPs about companies and projects in such complaints. Many of the companies that find themselves in NCP complaint cases are simultaneously beneficiaries of officially supported ECA backing.⁷¹

The Dutch export credit agency Atradius DSB was recently involved in a NCP case where NGOs had lead a complaint against both the ECA and a Dutch exporter for alleged non-compliance with the Guidelines on MNEs. This was the first time that an NCP declared in favour of a complaint. The Dutch NCP concluded in November 2016 that Atradius DSB should have been more proactive in ensuring that its client made every effort to prevent and alleviate the negative effects of the projects.⁷²

The international ECA Watch network, including Both ENDS, Finance & Trade Watch and other NGOs have long argued for export credit insurance agencies to inform local stakeholders much more thoroughly about the projects they support. Many cases, particularly in developing countries, involve local communities affected by a proposed project that have no idea about the scale of a project and what the likely impacts will be. In order to participate in decision-making about how projects are to be designed these people need more information.

The opinions of local people should be heard also to enable alternative, more environmentally and people-friendly strategies to be developed. The NCP confirms this in its ruling on the Suape complaint. The ruling makes it clear that foreign companies and their local business partners must explicitly comply with international standards for fair and responsible business practices. Also, better international agreements must be made so that export credit insurance agencies can no longer act contrary to the OECD Guidelines.⁷³

Export credit insurance agencies in OECD countries have made their own agreements on corporate social responsibility. However, these Common Approaches fall short in many areas when compared to the OECD Guidelines for MNEs.

Gaps between the Common Approaches and the OECD Guidelines for MNEs

By Wiert Wiertsema and Niels Hazekamp

The following is derived and adapted from a submission by Both Ends to the Dutch NCP on 9 June 2016.⁷⁴

This reflection aims to point out some of the differences and shortcomings of the Common Approaches in comparison to the OECD Guidelines for MNEs. It is important to point out that this text is not meant to be seen as exhaustive. To develop and ensure further coherence of the Common Approaches with the OECD Guidelines requires a much more detailed assessment of the differences between the two. To that end, individual ECAs and the OECD ECG stand to benefit from the expertise of NCPs and the OECD Working Party on Responsible Business Conduct.

Although one can observe some recommendations of the Common Approaches for ECAs being more specific than the general recommendations of the Guidelines, the shortcomings of the Common Approaches are such that they may contribute to ECAs potentially violating the Guidelines on a more or less regular and systematic basis. This is problematic as the Common Approaches are applicable to officially supported export credits, i.e. export credits that are provided on behalf of governments. The same governments are committed under the Guidelines to “maintaining and promoting appropriate standards and policies in support of sustainable development and by engaging in ongoing reforms to ensure that public sector activity is efficient and effective” (para 9, p. 15). Hence the inadequacies of the Common Approaches highlighted in this paper could be helpful in raising the standards as currently applied by ECAs to prevent negative social, environmental and human rights impacts.

The foreword of the OECD Guidelines opens with a clear description of the scope of the Guidelines (p. 3):

The OECD Guidelines [for Multinational Enterprises] are recommendations addressed by governments to multinational enterprises operating in or from adhering countries. They provide non-binding principles and standards for responsible business conduct in a global⁷⁵ context consistent with applicable laws and internationally recognised standards. The Guidelines are the only multilaterally agreed and comprehensive code of responsible business conduct that governments have committed to promoting. [...] The Guidelines aim to promote positive contributions by enterprises to economic, environmental and social progress worldwide.

The Guidelines are an instrument introduced by governments to encourage enterprises to contribute positively to economic, environmental and social progress. They are universal in character and ambition and apply to all activities by all multinational enterprises operating in or from adhering countries.

By contrast, the Common Approaches are specifically formulated to address environmental and social issues relating to exports of capital goods or services with a repayment term of more than two years and to the locations to which these exports are destined. As such, they have a much more limited scope.

This means that the vast majority of the export credits provided by ECAs are not subject to the application of the Common Approaches. The statistics of the Berne Union for the period 2010-2014 show for example for the year 2014 that globally only 8.5 per cent of the total volume of export credits issued by ECAs are effectively covered by the Common Approaches.⁷⁶

As the Common Approaches are the only social and environmental standards officially applied to export credits, more than 90 per cent of the volume of export credit supported transactions is not subjected to any such safeguards at all.

Despite many NGOs calling for many years on the ECG to expand the scope of the Common Approaches to all transactions covered by ECAs, the latest revision dated 7 April 2016 still retains this very limited scope.

General policies

The very first recommendation of the Guidelines under the heading of “General Policies” is that enterprises should “contribute to economic, environmental and social progress with a view to achieving sustainable development” (page 19, para A.1). However, in the preamble of the Common Approaches it is explicitly mentioned that “the primary role of ECAs is to promote trade in a competitive environment, whereas multilateral development banks and development agencies focus primarily on development assistance” (page 2, 3). This

seems to reflect the general position of ECAs that it is their primary role to promote domestic enterprises doing business abroad, and that development impacts are less of a concern to ECAs. As will be set out hereunder, the same position is reflected in the specific provisions of the Common Approaches.

The Guidelines recommend a much more proactive attitude of enterprises than the Common Approaches recommend to ECAs. Government supported ECAs assume a much lighter approach to due diligence than the same governments recommend for the enterprises they support.

Disclosure

The Guidelines are explicit in encouraging enterprises to adopt [public] disclosure policies that “should include, but not be limited to, material information on” a range of issues (para 2, page 27) regarding the enterprise and its performance. Also enterprises are encouraged to communicate additional information in areas where reporting standards are still evolving, “such as, for example, social, environmental and risk reporting” (para 33, page 29). It is anticipated that such disclosure will enhance the ability of enterprises to engage with stakeholders and thus enhance the sustainable development outcomes of their activities. The Guidelines acknowledge that disclosure policies of enterprises should be tailored to interests such as costs, business confidentiality and other competitive concerns.

The Common Approaches are also explicit about the disclosure of information (section VII, p. 12-13). However concerns about the “competitive context in which they operate and constraints of business confidentiality” lead in the direction of information sharing between the different adherents – read ECAs subscribing to the Common Approaches – rather than to public disclosure of information.

The Common Approaches recommend public information disclosure of:

- a) limited project information - including environmental and social impact information - in the case of Category

- A projects, to be made available as early as possible in the review process and at least 30 calendar days before a final commitment to grant official support (para 39, p. 12); and,
- b) environmental and social information on projects classified in Category A and Category B at least annually after final commitment to provide support (para 41, p. 12-13).

The Common Approaches also allow the information referred to under a) for exceptional reasons NOT to be disclosed. In those cases ECAs are only required to report to the ECG, the body that convenes the ECAs at the OECD. As a result, the public may not even know that ECA support for such a specific project has been provided (para 40, p 12). In addition, Category A and B projects will only cover a small part of the total portfolio of projects supported by ECAs.

Human rights

The Guidelines are explicit in underscoring that states have the duty to protect human rights. Supplementary to that, enterprises then have – within the framework of internationally recognised human rights – the responsibility to respect human rights. This means that enterprises “*should avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved*” (para 1, p. 31).

The Common Approaches have incorporated language calling on ECAs to respect human rights as well. State backed ECAs are encouraged to protect and respect human rights, “particularly in situations where the potential impacts from projects or existing operations pose risks to human rights” (para 4.iv, p. 6). There is reference to the ‘Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework’ (p. 2, 15) but specific human rights due diligence is left to the discretion of individual ECAs.

Since 2016, the Common Approaches recommend ECAs to consider complementary and specific human rights due diligence only in case of projects with “*a high likelihood of severe project-related human rights impacts occurring*” (p.9).

A footnote on the same page describes these impacts: “For example, impacts that are particularly grave in nature (e.g. threats to life, child/forced labour and human trafficking), widespread in scope (e.g. large-scale resettlement and working conditions across a sector), cannot be remediated (e.g. torture, loss of health and destruction of indigenous peoples’ lands) or are related to the project’s operating context (e.g. conflict and post-conflict situations)”. The Common Approaches do not further define how ECAs should ensure that their due diligence efforts effectively result in respect for human rights.

Employment and industrial relations

The Guidelines contain a full chapter on employment and industrial relations (p. 35-41). The Common Approaches mainly refer to these issues in the context of social and human rights due diligence. The scope seems narrower. The Common Approaches, for example, make no reference to the need for non-discrimination and equal opportunity, unlike the Guidelines (para 1e, p 35).

Environment

The Guidelines explicitly recommend that enterprises establish and maintain a system of environmental management that should include “regular monitoring and verification of progress” (para 1c, p. 42). Enterprises are expected to seek continual improvements of environmental performance (para 6, p. 45) and to “contribute to the development of environmentally meaningful and economically efficient public policy” (para 8, p. 46).

The Common Approaches recommend attention to the environment mainly in the context of ECAs’ screening of projects (p. 8). In reviewing projects, benchmarking against a wide range of standards of other institutions is recommended, in particular the World Bank Safeguard Policies and the IFC Performance Standards (para 21-26, p. 10, 11). However, where a project does not meet the requirements of relevant international standards, an ECA may under the Common Approaches still issue cover while

reporting this to the ECG (para 30, p. 11). This illustrates the primarily commercially motivated character of the Common Approaches, as opposed to that of the OECD Guidelines.

Where an ECA decides to support a project, the Common Approaches state that it may formulate additional conditions that a project sponsor is required to implement (para 32-33, p.11). ECAs should ensure that appropriate procedures are in place to monitor a project in order to ensure compliance with these conditions. The Common Approaches also state that ECAs “*should - where appropriate - encourage project sponsors to make ex post monitoring reports and related information including concerning how environmental and/or social impacts are being addressed publicly available at regular intervals, including in forms accessible to local communities directly affected by the project and other relevant stakeholders*” (para 36, p. 12).

Bribery and corruption

While the Guidelines have a specific chapter dealing with the need to combat bribery, bribe solicitation and extortion, these issues are not at all covered by the Common Approaches. Anti-bribery measures of ECAs are separately covered by the 2006 OECD Council Recommendation on Bribery and Officially Supported Export Credits.⁷⁷

Competition

The Guidelines have a specific chapter with recommendations on the “*importance of competition laws and regulations to the efficient operation of both domestic and international markets*” (para 95, p. 57). Interestingly, the Common Approaches lack recommendations to ensure fair and transparent competition. This is quite remarkable as transparency in the issuing of official export credit support seems to be a necessity to prevent market distortions. Thus the absence of any recommendations on this issue in the Common Approaches seem to be a significant shortcoming as compared to the Guidelines.

UN Guiding Principles on Business and Human Rights

The UN Guiding Principles on Business and Human Rights are a set of guidelines for states and companies aiming to address, prevent and remedy human rights abuses committed in business operations.⁷⁸ They are set out in consideration of: “(a) States’ existing obligations to respect, protect and fulfill human rights and fundamental freedoms; (b) The role of business enterprises as specialized organs of society performing specialized functions, required to comply with all applicable laws and to respect human rights; (c) The need for rights and obligations to be matched to appropriate and effective remedies when breached.”⁷⁹

Considering the state’s duty to protect human rights – explicitly including the role of export credit agencies - they state the following:

- *“States should set out clearly the expectation that all business enterprises domiciled in their territory and/or jurisdiction respect human rights throughout their operations. [...] There are strong policy reasons for home States to set out clearly the expectation that businesses respect human rights abroad, especially where the State itself is involved in or supports those businesses. The reasons include ensuring predictability for business enterprises by providing coherent and consistent messages, and preserving the State’s own reputation.”⁸⁰*
- *“States individually are the primary duty-bearers under international human rights law, and collectively they are the trustees of the international human rights regime. Where a business enterprise is controlled by the State or where its acts can be attributed otherwise to the State, an abuse of human rights by the business enterprise may entail a violation of the State’s own international law obligations. Moreover, the closer a business enterprise is to the State, or the more it relies on statutory authority or taxpayer support, the stronger the State’s policy rationale becomes for ensuring that the enterprise respects human rights.*

Where States own or control business enterprises, they have greatest means within their powers to ensure that relevant policies, legislation and regulations regarding respect for human rights are implemented. Senior management typically reports to State agencies, and associated government departments have greater scope for scrutiny and oversight, including ensuring that effective human rights due diligence is implemented. (These enterprises are also subject to the corporate responsibility to respect human rights [...].)

A range of agencies linked formally or informally to the State may provide support and services to business activities. These include export credit agencies, official investment insurance or guarantee agencies, development agencies and development finance institutions. Where these agencies do not explicitly consider the actual and potential adverse impacts on human rights of beneficiary enterprises, they put themselves at risk – in reputational, financial, political and potentially legal terms – for supporting any such harm, and they may add to the human rights challenges faced by the recipient State.

Given these risks, States should encourage and, where appropriate, require human rights due diligence by the agencies themselves and by those business enterprises or projects receiving their support. A requirement for human rights due diligence is most likely to be appropriate where the nature of business operations or operating contexts pose significant risk to human rights.”⁸¹

- *“States do not relinquish their international human rights law obligations when they privatize the delivery of services that may impact upon the enjoyment of human rights. Failure by States to ensure that business enterprises performing such services operate in a manner consistent with the State’s human rights obligations may entail both reputational and legal consequences for the State itself. As a necessary step, the relevant service contracts or enabling legislation should clarify the State’s expectations that these*

*enterprises respect human rights. States should ensure that they can effectively oversee the enterprises' activities, including through the provision of adequate independent monitoring and accountability mechanisms*⁸²

As ECAs act both on behalf of a state government as well as business enterprises they have a double obligation to be very careful about their business conduct in regards to corporate responsibility, human rights and sustainability. Concerning their role as business enterprises the Guiding Principles state the following:

- *“The responsibility to respect human rights is a global standard of expected conduct for all business enterprises wherever they operate. It exists independently of States’ abilities and/or willingness to fulfil their own human rights obligations, and does not diminish those obligations. And it exists over and above compliance with national laws and regulations protecting human rights.*

Addressing adverse human rights impacts requires taking adequate measures for their prevention, mitigation and, where appropriate, remediation.

Business enterprises may undertake other commitments or activities to support and promote human rights, which may contribute to the enjoyment of rights. But this does not offset a failure to respect human rights throughout their operations.

Business enterprises should not undermine States’ abilities to meet their own human rights obligations, including by actions that might weaken the integrity of judicial processes.”⁸³

Climate and the Paris Agreement on Climate Action

The Paris Agreement, effective 4 November 2016, defines a clear and immediate challenge to the world to phase out the combustion of fossil fuels within the coming years to prevent global warming of more than two degrees Celsius, preferably 1.5 degrees.⁸⁴ This challenge cannot be met without governments phasing out all support to the production and use of fossil fuels.

A 2016 study by Oil Change International shows that the reserves in currently operating oil and gas fields would take the world beyond 1.5° Celsius.⁸⁵ To meet the Agreement, the vast majority of fossil fuel reserves will have to remain in the ground, with all countries requiring a shift to renewable energy systems.

For the governments and the private sector this implies a major effort to phase out the production, distribution and use of fossil fuels. One of the key areas to achieve this scale of divestment is with the state-backed export supporting policies. Unfortunately, ECAs are major supporters of fossil fuels. For example, ECAs from G20 countries provided close to USD 40 billion annually from 2013 to 2015 to fossil fuel projects, compared to USD 3 billion annually for clean energy projects.⁸⁶

In fact, a recent article based on research by The Guardian and Columbia University shows that ECA support for fossil fuel related projects has a major impact on carbon emissions.⁸⁷ The article suggests that emissions of projects supported by US Ex-Im bank would nearly erase all benefits of Barack Obama’s Clean Power Plan over the next 15 years.⁸⁸ Examples of other projects that would result in massive carbon pollution are a liquefied natural gas (LNG) project in Mozambique,⁸⁹ Yamal LNG terminal in Russia,⁹⁰ and the Batang coal plant in Indonesia.⁹¹

The financial products offered by ECAs are vital financial instruments for governments to support their national companies in complex and capital intensive projects. Many

initiatives and investments related to the production of fossil fuels belong to this category. Fossil fuel projects like these receive billions of dollars from ECAs and often would not go forward without that support.

According to OECD statistics, from 2003-2013 ECAs insured electric power projects with more than USD 60 billion under the terms of the Arrangement on Export Credits.⁹² These statistics provide some indication of likely trends of ECA figures for the larger fossil fuel sector. Some 62 per cent of the electric power projects reported on by the OECD are fossil fuel fired projects, 11 per cent is nuclear and 27 per cent is renewable. Since these figures only apply to transactions covered by the terms of the Arrangement it cannot be excluded that additional official export credits were provided for electric power projects in the stated period. But these figures do give an indication of the level of support provided by ECAs for fossil fuel related transactions.

In June 2017, Both ENDS published a report that shows major support by the Dutch export credit agency for the fossil fuel sector. Based on publicly available data, this report concludes that the Dutch state, via Atradius DSB, insured fossil fuel related projects with a total value of EUR 7.3 billion in the period 2012-2015. This is two-thirds of its total insured value for that same period. Almost all (99 per cent) insurance in the energy sector is related to fossil fuels and, of this, almost all (97 per cent) is related to the oil and gas sector. ADSB's support for renewable energy projects in this period is only one per cent of the insured value for energy projects.⁹³

In June 2017, European Parliament Member Bas Eickhout questioned the Commission to better understand the support provided by other EU export credit agencies and the Commission's position towards bringing ECA policies in line with the Paris Agreement.⁹⁴

In response, European Commissioner for Trade Cecilia Malmström rightly recalled that the Coal-Fired Electricity Generation Projects Sector Understanding (CFSU, see also Sector Understandings under the OECD Arrangement) was a political contribution of the OECD Export Credit Group to the Paris Climate Agreement.⁹⁵ However, this is insufficient to achieve the Paris Agreement's goals. Even before closing the negotiations on the CFSU, the International Energy Agency stated that, in order to keep global temperature rise below two degrees Celsius, new coal power plants as well as at least two thirds of the existing stock should be closed by 2035. A typical coal fired power plant has a lifespan of 30-40 years.⁹⁶

Continued support for coal is clearly not in line with the Paris Agreement, no matter the efficiency of the plant. OECD governments responsible for ECAs have an important role to play in achieving the Paris Agreement. This is confirmed in the last line of Malmström's response: "While in the understanding of the Commission the Paris Agreement does not directly address the export credit activities of the Member States, its core objectives should also be duly taken into account in this area like in all areas of government activity."⁹⁷

In this sense, governments should make their ECA 'Paris-proof' and stop all support for fossil fuel projects via their ECA export promotion mechanisms.

Export promotion and the UN Sustainable Development Goals

The United Nations' Sustainable Development Goals (SDGs) officially entered into force on 1 January 2016.⁹⁸ While the SDGs not legally binding, governments are expected to take ownership and establish national frameworks for the achievement of the seventeen goals. Countries have the primary responsibility for follow-up and review of the progress made in implementing these goals, which will require quality, accessible and timely data collection. Regional follow-up and review is to be based on national-level analyses and contribute to follow-up and review at the global level.⁹⁹

The SDGs aim to “mobilize efforts to end all forms of poverty, fight inequalities and tackle climate change, while ensuring that no one is left behind.”¹⁰⁰ This set of seventeen “global goals” calls for action by all countries to promote prosperity while protecting the planet. The SDGs recognise that ending poverty must go hand-in-hand with strategies to address social needs such as health, education, social protection, and job opportunities, while tackling climate change and environmental protection.

Already during the Third International Conference on Financing for Development in Addis Ababa in July 2015, the international community signed amongst others the following commitments:

“We will promote corporate sustainability, including reporting on environmental, social and governance impacts, to help to ensure transparency and accountability.”¹⁰¹

“We commit to fully engaging, nationally, regionally and internationally, in ensuring proper and effective follow-up of the financing for development outcomes and all the means of implementation of the post-2015 development agenda. To achieve this, it will be necessary to ensure the participation of relevant ministries, local authorities, national parliaments, central banks and financial regulators, as well as the major institutional stakeholders, other international development banks, and other relevant institutions, civil society, academia and the private sector.”

Naturally, the Addis Ababa Action Agenda as well as the Sustainable Development Goals were also signed by the states whose ECAs are assessed in this report. Hence, the SDGs must also apply to state external economic action and export promotion schemes such as ECAs.

Since ECAs are not required to meet development objectives with their financing, it should not be surprising that they are not the ones best suited to fulfil the SDGs. The loan terms are usually less favourable than what development finance institutions can offer. Moreover, their focus is on increasing exports to, rather than improving livelihoods of people in low and middle-income countries. For example, ECAs have not financed many projects that improve energy access, which is the aim of SDG 7. The vast majority of people lacking access to electricity live in rural areas, so small decentralised renewables are the most effective means to improve access to electricity. Yet ECAs mainly finance large centralised fossil fuel projects.

Unfortunately, ECAs continue to support projects with severe human rights impacts that cause environmental damage, reduce global biodiversity and have a strong negative impact on the climate.¹⁰² If governments are serious about their goals concerning sustainable development on a global scale, they need to address policies on all possible levels, including through national export promotion.

Also, there is little information disclosure about the human rights and environmental due diligence measures taken by ECAs prior to financing projects, and there are currently no legal frameworks in place requiring ECAs to do so. In addition, states lack meaningful avenues – whether judicial or otherwise – through which to provide the victims of publicly-financed human rights abuses with remedy.

So although these institutions do not have a clearly articulated development mandate, their impact in developing countries demands a closer look at what can be done in order to increase coherence between development policies that are endorsed by governments and actions of all state-backed institutions including ECAs.

In the following section we will at the policy coherence of ECAs in Central and Eastern Europe with the issues discussed above through seven case studies.

Sustainable Development Goals relevant to ECA activities¹⁰³

SDG6: Clear water and sanitation: Ensure availability and sustainable management of water and sanitation for all.

SDG7: Affordable and clean energy: Ensure access to affordable, reliable, sustainable and modern energy for all

SDG8: Decent work and economic growth: Promote sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all

SDG9: Industry, innovation and infrastructure: Build resilient infrastructure, promote inclusive and sustainable industrialization and foster innovation

SDG10: Reduced inequalities: Reduce income inequality within and among different countries

SDG11: Responsible consumption and production: Ensure sustainable consumption and production patterns

SDG13: Climate action: Take urgent action to combat climate change and its impacts by regulating emissions and promoting developments in renewable energy

SDG14: Life below water: Conserve and sustainably use the oceans, seas and marine resources for sustainable development

SDG15: Life on land: Protect, restore and promote sustainable use of terrestrial ecosystems, sustainably manage forests, combat desertification, and halt and reverse land degradation and halt biodiversity loss

SDG16: Peace, justice and strong institutions: Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels

- 1 The ACSM was originally negotiated and adopted during the GATT Uruguay Round of multilateral trade negotiations (1986 – 1994). In summary, it (1) regulates the use of subsidies by Member States and (2) describes measures countries may take to counter the effect of subsidies by others, the so-called “countervailing measures”. (http://www.wto.org/english/docs_e/legal_e/24-scm_01_e.htm)
- 2 <http://www.eca-watch.org/issues/world-trade-organization>
- 3 http://www.wto.org/English/docs_e/legal_e/24-scm_03_e.htm#ann1
- 4 <http://www.eca-watch.org/issues/world-trade-organization>
- 5 (The participants in the Arrangement are: Australia, Canada European Union, Japan, New Zealand, Norway, South Korea, Switzerland, United States. The European Commission is Participant to the Arrangement on behalf of all EU Member States.)
- 6 Ibid.
- 7 Council decision 4 April 1978, and extended indefinitely on 14 December 1992
- 8 98/29/EC Directive on harmonisation of the main provisions concerning export credit insurance for transactions with medium and long-term cover
- 9 1233/2011 of the European Parliament and of the Council, on the application of certain guidelines in the field of officially supported export credits and repealing Council Decisions 2001/76/EC and 2001/77/EC
- 10 Based on Council decisions 73/391/EEC and 76/641/EEC.
- 11 Both buyer credits and supplier credits fall under this consultation procedure if (1) the credit term is more than five years from the starting point of credit or (2) -the transaction involves a deviation from other EC standards. Where cover is promised for an export credit, this must be reported promptly, with the written consent of the applicant. For every notifiable transaction, the following main items of information are stated: Buyer country, location of the transaction, or of the head office of the contracting party in the destination country, goods or services exported, size class of the transaction, whether the buyer and any guarantor is a public or private entity, credit terms and conditions. (<http://www.oekb.at/en/export-services/framework/international-relations/eu/pages/consultations.aspx>)
- 12 The Lisbon Treaty was originally drafted as a replacement for the Constitutional Treaty and intended to reform the functioning of the European Union following the enlargement dynamics taking place since 2004 significantly increasing the number of EU Member States. It was signed by the heads of state and government of the EU Member States in 2007 and entered into force in December 2009. <http://www.lisbon-treaty.org/wcm/the-lisbon-treaty.html>
- 13 Ibid.
- 14 <http://www.lisbon-treaty.org/wcm/the-lisbon-treaty/treaty-on-european-union-and-comments/title-5-general-provisionson-the-unions-external-action-and-specific-provisions/chapter-1-general-provisions-on-the-unions-external-action/101-article-10a.html>
- 15 Already in 1997, the EU Commission adopted a Communication defining certain short term risks as marketable risks, which means that they in principle cannot be insured through a state backed ECA-mechanism. Both according to WTO and to EU rules, state-backed ECA-support is only allowed for non-marketable risks. (<http://www.oekb.at/en/export-services/framework/international-relations/EU/Pages/short-term-transactions.aspx>) See also section on WTO and ECAs above.
- 16 Ibid.
- 17 Regulation (EU) No 1233/2011 of the European Parliament and of the Council of 16 November 2011 on the application of certain guidelines in the field of officially supported export credits and repealing Council Decisions 2001/76/EC and 2001/77/EC (<http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32011R1233>)
- 18 98/29/EC of 7 May 1998 on harmonisation of the main provisions concerning export credit insurance for transactions with medium and long-term cover (<http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:31998L0029&from=EN>)
- 19 While DG Trade had produced a “review” in the form of a “Commission Staff Working Document”, which was sent to the European Parliament’s Committee on International Trade (INTA) on 14 Dec 2012, the EC’s report was only made public on 19 April 2013 - much to the criticism of EP members and civil society. The EP’s rapporteur had in the meantime drafted and presented its own initiative report before the EC had published any official assessment of ECA’s compliance with the ECA Regulation.
- 20 <https://www.unecce.org/env/pp/treatytext.html>
- 21 In June 1998 the United Nations Economic Commission for Europe (UNECE) adopted the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (usually referred to as Aarhus Convention) in the Danish city of Aarhus as part of the “Environment for Europe” process. It entered into force in October 2001 and all countries covered in this report as well as the European Union are parties to the Convention. The Convention has turned into an integral part of the EU legislation.
- 22 <http://ec.europa.eu/environment/aarhus/>
- 23 Established in 1961 by western industrialized nations, the OECD is an international organization with the official aim to „promote policies that will improve the economic and social well-being of people around the world.“ Currently the OECD consists of 35 member countries. (<http://www.oecd.org/about/>)
- 24 <http://www.consilium.europa.eu/en/council-eu/preparatory-bodies/exports-credit-group/>
- 25 <http://www.oecd.org/tad/xcred/about.htm>
- 26 Ibid.
- 27 [http://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?doclanguage=en&cote=tad/pg\(2017\)1](http://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?doclanguage=en&cote=tad/pg(2017)1)
- 28 The Arrangement came into existence in 1978, building on the export credit “Consensus” agreed among a number of OECD countries in 1976. As a so-called a “Gentlemen’s Agreement”, it is not an official OECD act, but an agreement amongst the ECG participants who represent most OECD member governments. Currently, these are: Australia, Canada, the European Union, Japan, Korea, New Zealand, Norway, Switzerland and the United States.
- 29 While the Sector Understandings on Ships (SSU), on Nuclear Power Plants (NSU), on Renewable Energy, Climate Change Mitigation and Adaptation, and Water Projects (CCSU), on Rail Infrastructure (RSU) and on Coal-Fired Electricity Generation Projects (CFSU), are to be read in conjunction with the Arrangement, the Aircraft Sector Understanding (ASU) is a self-contained agreement which operates with no recourse to any of the provisions of the Arrangement. (<http://www.oecd.org/tad/xcred/arrangement.htm>)
- 30 <http://www.oekb.at/en/export-services/framework/international-relations/oecd/pages/arrangement.aspx>
- 31 <http://www.oecd.org/tad/xcred/arrangement.htm>
- 32 <http://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?doclanguage=en&cote=tad/pg%282016%291>
- 33 [http://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?doclanguage=en&cote=tad/pg\(2017\)8](http://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?doclanguage=en&cote=tad/pg(2017)8)
- 34 Other countries that are considering supporting the project are Exiar (Russia), Euler Hermes (Germany), US EXIM, KEXIM (Korea), and SACE. See <https://www.marketforces.org.au/research/vietnam/long-phu-1/>
- 35 Market Forces. Long Phu 1 (1200 MW), <https://www.>

- marketforces.org.au/research/vietnam/long-phu-1/; Wabag. Important Export Success for VA TECH WABAG Brno: USD 19 Million Order from Vietnam, <http://www.wabag.com/wabagmedia/important-export-success-for-va-tech-wabag-brno-usd-19-million-order-from-vietnam/>
- 36 Export Guarantees Advisory Council, Minutes of Meeting Held 15 Dec. 2016, EGAC (2016) 4th Meeting, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/612027/Export_Guarantees_Advisory_Council_minutes_15_December_2016.pdf.
- 37 http://unfccc.int/paris_agreement/items/9485.php
- 38 Greg Muttitt et al., The Sky's Limit: Why the Paris Climate Goals Require a Managed Decline of Fossil Fuel Production (Sept. 2016), http://priceofoil.org/content/uploads/2016/09/OCl_the_skys_limit_2016_FINAL_2.pdf.
- 39 Organisation for Economic Co-operation and Development, OECD Council, "Revised text for the Recommendation of the Council on Common Approaches for Officially Supported Export Credits and Environmental and Social Due Diligence (the "Common Approaches")" (6 April 2016): <http://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=TAD/ECG%282016%293&docLanguage=en>
- 40 <http://www.oekb.at/en/export-services/transparency-compliance/environment/pages/oecd-commonapproaches.aspx>
- 41 <http://www.oecd.org/tad/xcred/environmentalandsocialduediligence.htm>
- 42 Ibid.
- 43 Common Approaches (revised version, 6 April 2016), p.5
- 44 Ibid., p.12-13
- 45 Ibid., p.6
- 46 The ECG uses SDR (Special Drawing Right) value for referencing currency value between its members. Most ECAs covered in this report simply translate the given threshold to EUR 10,000. SDRs were originally created by the IMF in 1969 to supplement its member countries' official reserves. The value of the SDR is based on a basket of five major currencies - the US dollar, the euro, the Chinese renminbi (RMB), the Japanese yen, and the British pound sterling. See: <http://www.imf.org/en/About/Factsheets/Sheets/2016/08/01/14/51/Special-Drawing-Right-SDR>
- 47 Common Approaches (revised version, 6 April 2016), p.7
- 48 Ibid. p.,8
- 49 For example, impacts that are particularly grave in nature (e.g. threats to life, child/forced labour and human trafficking), widespread in scope (e.g. large-scale resettlement and working conditions across a sector), cannot be remediated (e.g. torture, loss of health and destruction of indigenous peoples' lands) or are related to the project's operating context (e.g. conflict and post-conflict situations).
- 50 Common Approaches (revised version, 6 April 2016), see p.8 and paragraphs 21-26 on pages 10f.
- 51 Common Approaches (revised version, 6 April 2016), p.9, paragraphs 14-18
- 52 Ibid., p.11, paragraphs 33 and 34
- 53 Ibid., p.14, paragraphs 46 and 47
- 54 Some countries do in fact claim to screen all their applications in accordance with the Common Approaches (and not only projects with a loan agreement of more than two years) - e.g. Slovakia and the Netherlands. There is a debate within the ECG that the Common Approaches are expanded accordingly, but so far not all ECG members agree. (Interview with Eximbanka Slovakia, April 4th, 2017 and Personal communication with Wiert Wiertsema, Both Ends, April 6th 2017)
- 55 Common Approaches (revised version, 6 April 2016),
- p.11, paragraph 30: "In exceptional cases, however, an Adherent may decide to support a project that does not meet the relevant aspects of the international standards against which it has been benchmarked. In such cases, the reasons for the choice of international standards, the reasons for the failure to meet such international standards, the related justification for supporting the project, and any related monitoring procedures must be reported to the ECG [...]. With due regard to business confidentiality, aggregated information on such cases will be made publicly available by the ECG [...]."
- 56 2008 Agreement on Sustainable Lending Principles and Guidelines (<http://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=tad/ecg%282008%2915&docLanguage=En>)
- 57 <http://www.oekb.at/en/export-services/framework/international-relations/oecd/pages/current-topics.aspx>; <http://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=TAD/ECG%282008%2915&docLanguage=en>
- 58 Principles and Guidelines to Promote Sustainable Lending Practices in the Provision of Official Export Credits to Lower Income Countries (November 2016 Revision): <http://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=tad/ecg%282016%2914&docLanguage=En>
- 59 These credits must respect any limits on such borrowing that have been agreed between these countries and the IMF and World Bank and taking into account the latest Debt Sustainability Analysis (DSA) jointly produced by the IMF and World Bank. Larger transactions with a repayment term of two years or greater should be in line with the country's agreed borrowing and development plans. (Ibid.)
- 60 Eurodad (2011): Exporting goods or exporting debts? - Export Credit Agencies and the roots of developing country debt, p.3 http://www.eurodad.org/uploadedfiles/whats_new/reports/exporting%20goods%20or%20exporting%20debts_final%20for%20print.pdf
- 61 Both ENDS (2013): Cover for what? Atradius Dutch State Business' support for transactions via tax havens (http://www.bothends.org/uploaded_files/document/Cover_for_what.pdf)
- 62 Financial institutions are legally required to report suspicious transactions to their national Fiscal Intelligence Units under anti-money laundering and anti-terrorist financing legislation. However it is not very clear whether this mandatory reporting obligation also applies to ECAs. Usually they commit to the voluntary principles of the Berne Union - the leading international umbrella organisation for public and private sector providers of export credit and investment insurance - to support international efforts to combat corruption and money laundering. However there is very little public evidence of ECAs actively screening transactions to avoid them potentially supporting tax evasion and money laundering.
- 63 <http://www.oecd.org/ctp/BEPSActionPlan.pdf>
- 64 <http://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?docLanguage=en&cote=tdecg%282006%2924>
- 65 <http://www.oecd.org/tad/xcred/anti-briberyasures.htm>
- 66 <http://www.oecd.org/tad/xcred/oecd-recommendation-on-bribery-and-export-credits-14-december-2006.htm>
- 67 The OECD Guidelines for Multinational Enterprises are in their original form annexed to the OECD Declaration on International Investment and Multinational Enterprises - first adopted in 1976. See: OECD (2011): Guidelines for Multinational Enterprises, <http://www.oecd.org/daf/inv/mne/oecdguidelinesformultinationalenterprises.htm>, as well as: <http://www.oecd.org/corporate/mne/>
- 68 <http://www.oecdwatch.org/oecd-guidelines>
- 69 Ibid.
- 70 Eg. Austrian company Andritz has taken part in socially and environmentally harmful projects like the Ilisu dam project in Turkey and the Brazilian

- 71 Belo Monte dam. Andritz has until recently been under scrutiny in a complaint case under the OECD Guidelines on MNEs because of its involvement in the Xayaburi dam project in Laos. In 2008-2013 alone the company received ECA-backing worth no less than EUR 1.8 billion in export guarantees from OeKB. See: Specific Instance Complaint under the OECD Guidelines for Multinational Enterprises Regarding the Contributions of Andritz AG to Human Rights Abuse and Environmental Damage in Connection with the Xayaburi Hydropower Project in Lao PDR (April 2014) (<http://www.ftwatch.at/wp-content/uploads/2014/04/Andritz-OECD-complaint-re-Xayaburi-FINAL-submitted-9.April2014.pdf>) as well as: Parallel Report Austria's Extraterritorial State Obligations on ESCR - Austria's 5th State Report on the International Covenant on Economic, Social and Cultural Rights (November 2013) (https://fian.at/media/filer_public/5f/a9/5fa9d04e-d94d-4363-b691-fff2e8295761/pr-escr-etos-druck-nov13.pdf)
- 72 http://www.bothends.org/en/News/Laatste-nieuws/newsitem/490/Dutch-Export-Credit-Agency-did-not-prevent-damagingpractices-in-Suape#_ga=1.127802382.203424431.1483085371
- 73 Ibid.
- 74 http://www.bothends.org/uploaded_files/inlineitem/1160609_Common_Approaches_vs_OECD_Guidelines_logo_.pdf
- 75 See: <http://www.oecdguidelines.nl/binaries/oecd-guidelines/documents/publication/2015/12/17/notification-both-ends--forum-suape-atradius-dsb/151217-initialassessment-bothends-suape-atradius.pdf>
- 76 See page 3: <http://www.berneunion.org/wp-content/uploads/2012/10/Berne-Union-2015-Charts-and-numbers-forwebsite.pdf>
- 77 <http://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=td/ecg%282006%2924&doclanguage=en>
- 78 The Guiding Principles apply “to all states and all business enterprises, both transnational and others, regardless of their size, sector, location, ownership and structure.” They were proposed by UN Special Representative on Business & Human rights John Ruggie, and endorsed by the UN Human Rights Council in June 2011. In the same resolution, the UN Human Rights Council established the UN Working Group on Business & Human Rights. (<https://business-humanrights.org/en/un-guiding-principles>)
- 79 UN Guiding Principles on Business and Human Rights (2011), p.1 (http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf)
- 80 Ibid., p.3f.
- 81 Ibid., p.7
- 82 Ibid., p.8
- 83 Ibid., p.13
- 84 http://unfccc.int/paris_agreement/items/9485.php; http://unfccc.int/paris_agreement/items/9444.php
- 85 <http://priceofoil.org/2016/09/22/the-skys-limit-report/>
- 86 Alex Doukas, Kate DeAngelis & Nicole Ghio, Talk is Cheap: How G20 Governments are Financing Climate Disaster (July 2017), http://priceofoil.org/content/uploads/2017/07/talk_is_cheap_G20_report_July2017.pdf.
- 87 <https://www.theguardian.com/environment/2016/nov/30/us-fossil-fuel-investment-obama-climate-change-legacy>
- 88 If all 70 Ex-Im Bank projects approved under Obama were running at full capacity during a 15-year period, they would produce about the same level of carbon emissions as the projected CPP savings (i.e. 2.5 million Mton CO₂).
- 89 ECAs that are currently considering supporting this project include US Ex-Im, Italy's SACE, and Korea Ex-Im. For more information on the negative impacts of this projects, see Letter from Friends of the Earth U.S., Justicia Ambiental, and Center for Biological Diversity to Fred Hochberg, former US Ex-Im Bank Chairman, 16 May 2016, http://webivadownton.s3.amazonaws.com/877/34/5/9042/1/2016.05.15_ExIm_Mozambique_LNG_EIS_Comments.pdf; Kate DeAngelis, Report from the Field: Perspectives and Experiences of Mozambique Communities and Civil Society on Liquefied Natural Gas Exploitation (Sept 2016), http://webivadownton.s3.amazonaws.com/877/8e/a/9041/1/2016.09.14_Mozambique_LNG_Trip_Report.pdf.
- 90 Yamal LNG recently received financing from received China Export-Import Bank, Sweden's SNK, and Germany's Euler Hermes. Vladimir Soldatkin and Olesya Astakhova. Russia's Yamal LNG Gets Round Sanctions with \$12 Bln Chinese Loan Deal, Reuters, 29 Apr. 2016, http://www.reuters.com/article/russia-china-yamal-idUSL5N17W2G8;Yamal_LNG_Secures_€425_Mln_Credit_Facility,_LNG_World_News,_13_June_2017. <http://www.lngworldnews.com/yamal-lng-secures-e425-mln-credit-facility/>.
- 91 The Japan Bank for International Cooperation (JBIC) recently approved financial support for this coal project. JBIC, Press Release, Project Finance and Political-Risk Guarantee for Central Java Coal-Fired Power Generation Project in Indonesia, 3 June 2016, <https://www.jbic.go.jp/en/information/press/press-2016/0603-48595>.
- 92 Arrangement Official Export Credits for Electric Power Generation Projects (2003-2013), OECD, [http://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=TAD/ECG\(2015\)10/FINAL&docLanguage=En](http://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=TAD/ECG(2015)10/FINAL&docLanguage=En)
- 93 The content concerning ECAs and the Paris Agreement is in big parts based on the June 2017 Both ENDS report: Towards Paris Proof Export Support. Why and how the Dutch government must exclude export credit support for fossil fuel. http://www.bothends.org/uploaded_files/document/1Paris_Proof_Export_Support_June_2017.pdf
- 94 <http://www.europarl.europa.eu/sides/getDoc.do?type=WQ&reference=P-2017-004017&language=EN>
- 95 <http://www.europarl.europa.eu/sides/getAllAnswers.do?reference=P-2017-004017&language=EN>
- 96 <https://www.iea.org/newsroom/news/2015/june/iea-sets-out-pillars-for-success-at-cop21.html>
- 97 <http://www.europarl.europa.eu/sides/getAllAnswers.do?reference=P-2017-004017&language=EN>
- 98 The SDGs - the official UN document's name being “Transforming our world: The 2030 Agenda for Sustainable Development” - were developed in a deliberative process involving the 193 UN Member States, as well as global civil society. They are the follow-up framework for the next fifteen years of the Millennium Development Goals. The SDGs are contained in paragraph 54 United Nations Resolution A/RES/70/1 of 25 September 2015. They consist of 17 individual goals with a total of 169 proposed sub-targets. (<http://www.un.org/millenniumgoals/>)
- 99 <http://www.un.org/sustainabledevelopment/development-agenda/>
- 100 Ibid.
- 101 Addis Ababa Action Agenda of the Third International Conference on Financing for Development (7 July 2015), <http://www.un.org/esa/ffd/ffd3/wp-content/uploads/sites/2/2015/07/Addis-Ababa-Action-Agenda-Draft-Outcome-Document-7-July-2015.pdf>
- 102 See for example: Halifax Initiative, Both Ends, CounterCurrent, Fórum Suape and Ríos Vivos (2015): Export Credit Agencies and Human Rights: Failure to Protect; Above Ground (23 September 2016): EDC support to oil companies accused of abuses in Colombia questioned; Asaf Shalev/The Guardian (30 November 2016): “How Obama's climate change legacy is weakened by US investment in dirty fuel”
- 103 For a full description of the Global Sustainability Goals see: <https://sustainabledevelopment.un.org/sdgs>

Country profiles

In the following section we present seven export credit agencies that were assessed for this study. The main objective of these profiles is to map the practices of ECAs in select EU13 countries (and in Austria) with regards to transparency towards the public and their social and environmental sustainability policies.

The profiles are based on both publicly available data as well as information conducted in personal interviews and exchange with ECA practitioners. Qualitative, semi-structured interviews were held in-person with practitioners from ECAs in Slovakia, Croatia and Austria. Questionnaires were answered in writing in Hungary and Romania. A questionnaire was also answered in Poland (followed by a subsequent information exchange meeting) for the Greenmind Foundation, who conducted a separate study, the findings of which we were included in this report.

Our colleagues from CEE Bankwatch Network and other project partners sent a number of freedom of information requests to receive a breakdown of specific project support. Some of these requests have led to court cases due to the refusal of certain ECAs to provide the requested information or to provide only partial information (as in the case of Poland, Croatia and Hungary).

We received no response to several requests for an interview from the Czech ECA EGAP or the Ministry of Industry and Trade, which is partly in charge of state-backed export promotion. Our assessment of the two Czech ECAs is therefore based on publicly-available information and input received from colleagues in the Czech Republic.

Profile make-up

The profiles begin with an overview and brief introduction into the most important export and industry branches of the respective country, as well as the historical and legal specifics which frame the core business activities of the respective ECA. After presenting each ECA's corporate and decision-making structures, we look more in depth at specific questions relevant for social and environmental safeguarding as well as for transparency towards the public. This is followed by an article on specific problematic issues and some concluding remarks for each country.

Austria's OeKB has a longer record of working as a state-backed export insurer than the CEE ECAs in this report, and it has already gone through the experience of being criticised by NGOs and exposed to media scrutiny for certain project involvements in the past. This has ultimately led to better engagement with civil society and improved social and environmental policies. We therefore start with Austria and use it as a reference for the following profiles.

We present our assessments in alphabetical order according to the ECAs' home countries:

- **Austria:** Österreichische Kontrollbank (OeKB)
- **Croatia:** Hrvatska banka za obnovu i razvitak (HBOR)
- **Czech Republic:** Exportní garanční a pojišťovací společnost (EGAP) /Česká Exportní Banka (CEB)
- **Hungary:** Magyar Exporthitel Biztosító Zrt. (MEHIB)/Magyar Export-Import Bank Zrt. (EXIM)
- **Poland:** Korporacja Ubezpieczeń Kredytów Eksportowych (KUKE)
- **Romania:** Eximbank S.A.
- **Slovakia:** Eximbanka SR.

Austria: Oesterreichische Kontrollbank AG (OeKB)

Quick facts

Number of employees

442 (equal to 406 full-time positions on average in 2016)²

Volume of business (balance sheet total 31 December 2016)
EUR 26.5 billion³

Export guarantees covered by the Republic of Austria (2016)⁴

- **Legal maximum volume of exposure** EUR 50 billion
- **Volume of exposure (31 December)** EUR 22.5 billion
- **New guarantee contracts issued in 2016** 824
(3,544 open guarantees in total per 31 Dec.)
- **Failure liabilities** Claims paid in 2016, EUR 77 million

Export financing measures covered by the Republic of Austria (in the form of avals, 2016)⁵

- **Legal maximum volume exposure** EUR 45 billion
- **Volume of exposure (31 Dec.)** EUR 21.96 billion
- **Liabilities granted in 2016** EUR 9.24 billion

Legal framework

- Export Guarantees Act (Ausfuhrförderungsgesetz - AusFG)
- Export Finance Promotion Act (Ausfuhrfinanzierungsförderungsgesetz - AFFG)
- Capital Market Act/Kapitalmarktgesetz (KMG)
- Banking Act/Bankwesengesetz (BWG)

Political responsibility

Ministry of Finance



Oesterreichische Kontrollbank AG (OeKB)¹

Am Hof 4 and Strauchgasse 3
(two addresses)
1011 Wien, Austria

Website: www.oebk.at

Overview

Export promotion is a priority for the Austrian government. In addition to its extensive tourism and banking industries, which have benefited from expansion into the CEE region, Austria's economy relies heavily on the export of goods and technology.⁶ Besides the political promotion of projects of Austrian companies abroad, the Austrian federal government supports corporations in their export business and protects their business activities by means of export, investment and loan guarantees via Austria's ECA "Oesterreichische Kontrollbank AG" (OeKB). A total of EUR 50 billion for export guarantees and 45 billion for additional export finance supporting guarantees can be covered via the federal budget.⁷ OeKB also offers subsidised (soft) loans under certain development aspects on behalf of the Austrian state.⁸

The legal basis for this official export promotion is the Export Guarantees Act⁹ and the Export Finance Promotion Act¹⁰ which authorise the Ministry of Finance to support exports and direct investment in foreign countries and for OeKB to act as Austria's official export credit agency. In its function as an ECA, OeKB is obliged to be in constant contact with corresponding staff in the Ministry of Finance.

OeKB was founded as a joint stock company in 1946 by Austria's largest commercial banks at the time. Already four years after its establishment, the bank was employed by the Austrian government to insure exports on the state's account and since then has developed an export finance programme as well. As Austria's ECA, OeKB provides export guarantees as well as export (re-)financing and soft loans. As well as these activities backed by the Austrian state budget, the OeKB corporate group covers a range of activities on the capital market (see corporate structure).

Both OeKB, as well as Austria's development bank OeEB - a 100% OeKB subsidiary - are entirely in private ownership, whereas all other ECA examples assessed for this study are either entirely or mostly in public ownership.

Also unlike the other ECAs profiled in this report, OeKB guarantees with a value of more than EUR 500 000 have to be presented before approval to the the Export Promotion Council . The Council should survey the applications for export guarantees and consider indicators including economic, environmental, employment and political aspects and can give an opinion to the Ministry of Finance as head of the Council and responsible political body.¹¹

Unlike other ECAs, the Austrian government and OeKB have exclusion lists which take into account some of Austria's policy priorities regarding environmental issues and the arms trade. This could serve as an example for other ECAs to follow.

Corporate structure

OeKB is a joint stock company owned by Austria's largest commercial banks (some of which have in the past decade been taken over by non-Austrian financial actors, like Bank Austria, which is now part of the Italian Unicredit group and BAWAG PSK, which is now mostly owned by the US-based investments fund Cerberus Capital Management LP.)

As a corporate group OeKB does not only conduct business in collaboration with the Austrian Ministry of Finance but covers a whole range of activities. These include a number of funds and holdings active on the capital market (see listings and graph below).

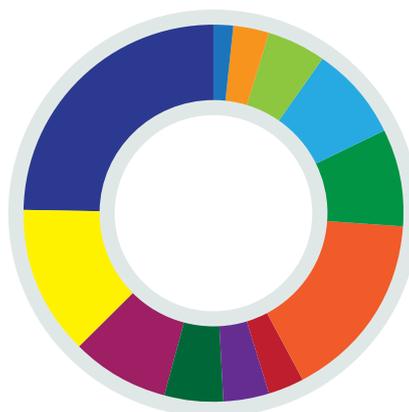
It is noteworthy that Austria's development bank (Oesterreichische Entwicklungsbank or OeEB) is a 100% subsidiary of Österreichische Kontrollbank. Established nine years ago as a private stock company, OeEB acts with an official development mandate on behalf of the Austrian government to administer its development funds. It works with economically weak countries, where investment risk is often too high or business accessibility too low for commercial finance institutions to be involved. OeEB focuses on long-term loans (especially with regards to renewable energy, resource and energy efficiency, microfinance, infrastructure and agriculture). OeEB supports projects in accordance with developmental criteria but at near-market conditions.¹²

The OeKB-Group is a range of separate corporate branches, including: OeKB Central Securities Depository in Austria (100% subsidiary of OeKB); OeKB Central Europe Holding (100% subsidiary of OeKB); Österreichischer Exportfonds GmbH (Owned 70% by OeKB AG) and the Austrian Chamber of Commerce (30%). The OeKB-Group supports domestic small and medium-sized companies by financing their exports and provides funding for export transactions and – outside the EU – market development projects; OeKB EH Beteiligungs- und Management AG (51% OeKB, 49% owned by the German export credit agency Euler Hermes); Acredia Versicherung AG (100% subsidiary of OeKB EH Beteiligungs- und Management AG, including its brands Acredia Versicherung OeKB Versicherung and PRISMA Kreditversicherung); Österreichische Entwicklungsbank AG (100% subsidiary of OeKB); OeKB Business Services GmbH (IT security and capital market information); Central Counterparty Austria (central counterparty for all trades transacted on Vienna Stock Exchange and owned 50% OeKB, 50% Vienna Stock Exchange). OeKB also has additional holdings on the energy and capital markets.¹³

According to interviews with OeKB staff, the ECA and soft loan business undertaken in contract with the Austrian government are strictly separated from other financial activities of the OeKB group.¹⁴

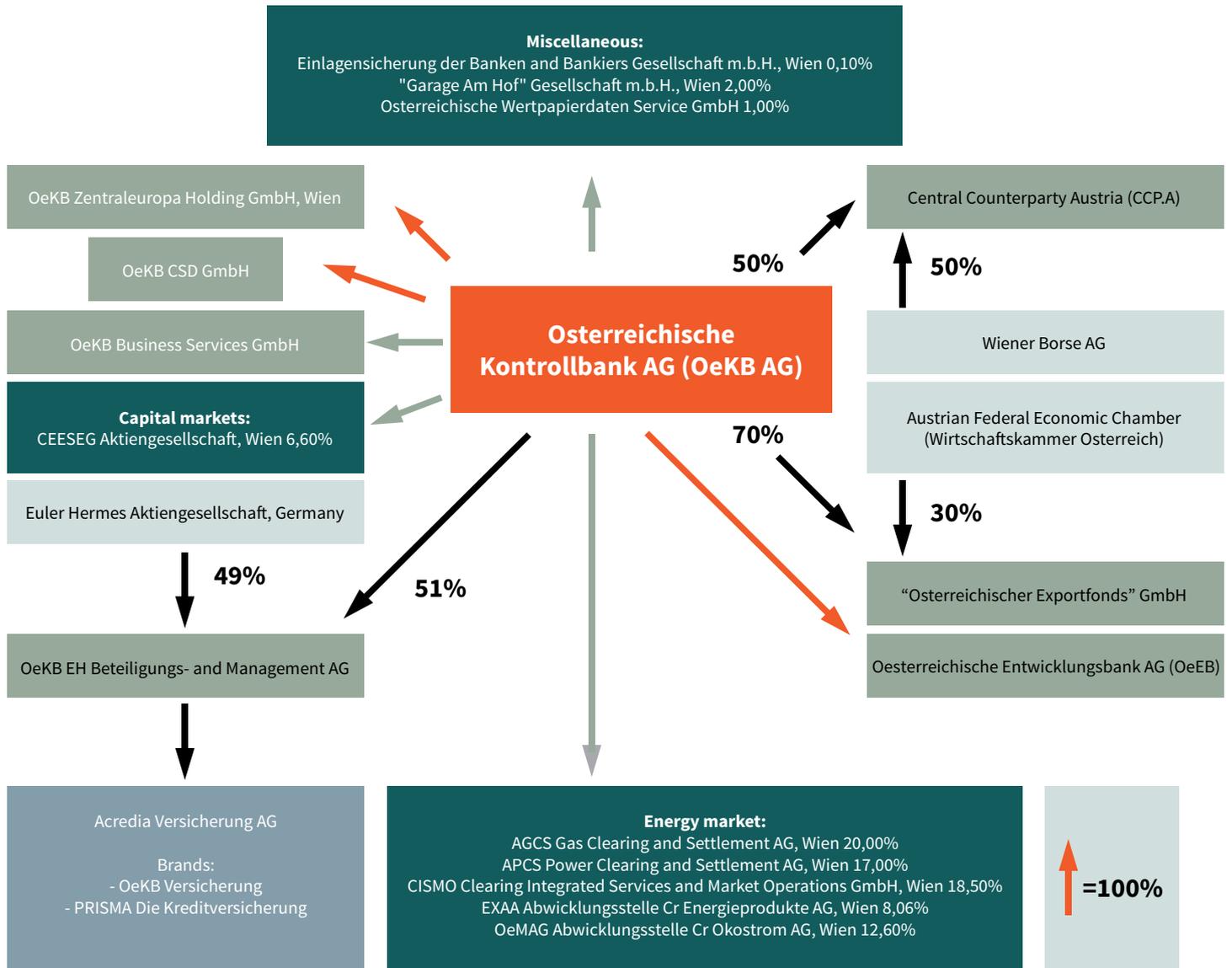
OeKB shareholders

- CABET-Holding-GmbH, Wien
(UniCredit Bank Austria-Gruppe) 24,75%
- UniCredit Bank Austria AG, Wien 16,14%
- Erste Bank der oesterreichischen Sparkassen AG, Wien 12,89%
- Schoellerbank Aktiengesellschaft, Wien 8,26%
- AVZ Finanz-Holding GrmbH, Wien 8,25%
- Raiffeisen Zentralbank Osterreich Aktiengesellschaft, Wien 8,12%
- BAWAG P.S.K. Bank für Arbeit und Wirtschaft und Österreichische Postsparkasse Aktiengesellschaft, Wien 5,09%
- Raiffeisen OeKB Beteiligungsgesellschaft mbH, Wien 5%
- Oberbank AG, Linz 3,89%
- Bank für Tirol und Vorarlberg Aktiengesellschaft, Innsbruck 3,055%
- BKS Bank AG, Klagenfurt 3,055%
- Volksbank Wien AG, Wien 1,5%



OeKB's ownership structure¹⁵

OeKB Group



Decision-making structures

The executive board of OeKB consists of two people, one in charge of the ECA part of OeKB and the responsible for the private portion of OeKB. Additionally, there is a supervisory board with fourteen representatives of the private banks that own OeKB and three staff delegates.¹⁶

OeKB staff is in continuous exchange with the Ministry of Finance concerning the issuance of export guarantees as well as soft loans.

Export guarantees higher than EUR 500 000 have to be presented to the Export Promotion Council (Ausfuhrfoerderungsrat)¹⁷ before approval. Led by the Ministry of Finance, this body should survey applications for export guarantees.¹⁸ Council members must keep discussions and proceedings confidential. According to one former council member, it is common practice that the Council usually follows OeKB's suggestions as there is little opportunity to prepare for the meetings and lack of time and space to discuss projects in detail due to the amount of projects that are scheduled to be evaluated during the meetings that take place once every week.¹⁹

At the same time OeKB wished to emphasize that potentially highly problematic projects usually won't reach the council in the first place, as they would be detected and denied beforehand in the process of OeKB's screening process.²⁰

Since the establishment of this body, at any rate, few cases appear to have been discussed in the Council in terms of their potential environmental and social impacts, and no case exists where the Council recommended not to go ahead with a guarantee. But as the Ministry of Finance is not bound to the recommendations of the Council, guarantees can be granted for a project even in cases where the Council opposes support.²¹

So while having such a Council is in principle a positive step, in practice its usefulness appears limited. With enough time and resources in place for Council members to address potential problems in a project, such a mechanism would be a good practice to add to the decision-making processes of other ECAs.

The Export Finance Committee within the Ministry of Finance decides which projects can be financed via soft loans.²²

Environmental and human rights screening

OeKB's "Environmental and Social Assessment Procedure" is based on the OECD Common Approaches and on the OeKB-specific "Sustainability Policy of the Export Promotion Procedure". Since 2016 the assessment procedure explicitly included a review of social standards including potential human rights issues in addition to environmental standards. Positive impacts on the environment and society are also taken into consideration in the overall assessment of a project.²³

OeKB screens all incoming applications for export guarantees for possible social and environmental risks. All applications with transactions for exporting goods with a credit period of more than two years and a value of over EUR 10 million are automatically evaluated according to the Common Approaches. If transactions have a duration of more than two years but a value under EUR 10 million, they are also evaluated according to the Common Approaches in cases where the project takes place in a 'sensitive area.' All other projects (shorter transaction period, lower transaction value) are screened less thoroughly, according to the OeKB's "Watchful-Eye Procedure".²⁴

Projects are categorised according to the recommendations in the Common Approaches (categories A, B and C), though some guarantees for very small transactions and minor machinery or equipment component parts might not be categorised at all. When assessing pollution limits, OeKB usually does not benchmark against Austrian or EU standards but international standards like those from the World Bank and IFC.²⁵

OeKB has a team of three staff in charge of environmental and human rights screening before approval of a guarantee. They can be supported by up to six persons from other divisions. OeKB has included training on human rights issues for their environmental and social assessment staff.²⁶

For in-depth assessment of a project OeKB staff in some cases makes field visits to a project area before approval. OeKB has installed an ex-post monitoring system where selected projects have been visited after granting approval and sometimes even after the granting period has ended if other guarantees have been granted for the same project/ industrial site. Sometimes specific evaluation field trips to a certain region are also carried out in order to assess the long-term impacts of certain projects. Ex-post monitoring in some cases is alternatively conducted via self-reporting by the project promoter or via evaluation through independent consultants.²⁷

Companies have to state in the application form that they abide to the OECD Guidelines for Multinational Enterprises. They have to answer about possible IFI blacklisting involving bribery or money laundering, and OeKB pro-actively checks these listings. OeKB informs authorities if there is suspicion of corruption, and contracts will be cancelled in cases of bribery or money laundering.²⁸

Exclusion lists

The Austrian government and OeKB explicitly prohibit arms and weapons deals as well as nuclear power projects for official export guarantees. The Austrian soft loans programme, which is also handled through OeKB, excludes project support for military, nuclear power, and genetically modified organisms.²⁹

Climate mitigation measures

Apart from agreements with the OECD ECG (Common Approaches and Arrangement Sector Understandings), OeKB has no specific policies for reducing CO2 emissions in project guarantees, fossil fuels and coal or other climate-related requirements. In agreement with other ECAs in the ECG, OeKB has begun documenting the amount of greenhouse gas emissions from fossil-fuel power plants within the scope of the Common Approaches.

Reporting and transparency

Once a year, the Minister of Finance reports to the budget committee of the Austrian parliament on state-supported export services. Since 2013, the Ministry of Finance annually publishes on its website a report about ex-post evaluated OeKB projects (usually from one specific region visited in the respective year).³⁰ The Austrian Ministry of Finance also reports to the OECD ECG and to the European Commission according to the Common Approaches and the EU ECA regulation.³¹

All projects that have been classified A or B according to the Common Approaches are listed on OeKB's website. Category A projects are listed a minimum of 30 days before approval ("ex-ante"), and category B projects after approval has been given ("ex-post"). The listings contain the categorisation of the project, type and name of the project, the destination country, the transaction period and the date of signing a guarantee contract. In many cases there is a link to a project description (on the OeKB website or an external link). Only few listings show the transaction value and even fewer have a direct link to environmental and social impact assessments (neither has been the case at all in recent years).³²

The OeKB group annually publishes its 'Integrated Report', thereby (voluntarily) fulfilling EU non-financial information (NFI) requirements. This report includes its Annual Financial Report as well as documentation on their state-supported export services. OeKB also publishes the "Export Service Annual Report", which specifically describes its state-

supported export services, and an annual edition of its stakeholder magazine “Relevant” in relation to these reports. The Integrated Report and the Export Service Annual Report are available in German and English, both in print and online.³³

Both the OeKB and the Ministry of Finance have in the past been open to exchange with civil society concerning specific project guarantees with high environmental and social risk and have answered a number of requests for environmental information according to the Austrian Environmental Information Act (based on the Aarhus convention).³⁴ Nevertheless, there is basically no pro-active engagement with civil society (for example with environmental or human rights NGOs), who might have specific insight and contacts in project areas, that could be helpful in assessing projects with high ecological or social risk potential.

If an NGO or another stakeholder asks for details of projects guaranteed by OeKB (such as destination country, project description, date of signature, beneficiary, project fund-element rate, concessionality level, nominal value of a tied aid, disbursed loan amount or OECD project category), the ECA would not provide these, as it claims Austrian banking secrecy laws, and general freedom of information laws do not exist as in other European countries. OeKB will answer requests for environmental and social information according to the Aarhus Convention.³⁵

Complaint mechanisms

Neither OeKB nor its subsidiary, the OeEB, is subject to an accountability mechanism. There are no measures in place within OeKB’s internal workings that ensure public participation and dialogue with Austrian civil society. But the establishment of a regular NGO stakeholder dialogue is under consideration.³⁶

In some cases grievance mechanisms are built into the projects themselves as is the case for example in projects that are also supported by certain multinational development banks.³⁷² Even so, there are no measures within the internal workings of OeKB that ensure the participation of local affected people in consultation processes of projects with potentially high social and environmental impacts.

OeKB has both an internal and external whistle-blowing mechanism for cases of corruption.³⁸ However, there is no formal complaints mechanism via a governmental institution for human rights issues connected to OeKB- and OeEB export projects.³⁹

OeKB in focus: The Ilisu dam project and civil society engagement

By Thomas Wenidoppler, Finance & Trade Watch

Between 2007 and 2009 OeKB received significant press because of its export support for component machinery as part of the Ilisu dam project on the Tigris river in Turkey. Passed on by other ECAs some years earlier, the project had attracted attention because of human rights and environmental issues that catapulted it into the spotlight of international NGO criticism and media coverage.⁴⁰

The Ilisu dam and its reservoir would directly impact approximately 400 kilometres of ecosystem rich in biodiversity and drastically affect the local population that depends on fishing or small-scale farming in the fertile Tigris valley. Hydrologists warned of a drastic deterioration in water quality. 199 settlements were to be relocated and the livelihoods up to an estimated 78 000 people affected.⁴¹

Despite numerous warnings about the project's severe impacts,⁴² the Austrian government played a supportive role in enabling the Ilisu dam. The Austrian company Andritz was to deliver the turbines together with German and Swiss consortium partners. In response to heavy civil society criticism, the Austrian, German and Swiss governments pledged to support the project only if the Common Approaches and World Bank standards were met.

OeKB, together with German ECA Euler Hermes and Swiss ECA SERV, set a precedent (albeit one that was never repeated) to tie the guarantee to detailed conditions for social, environmental and cultural heritage impact measures, including an exit clause in case these conditions were not fulfilled. The ECAs negotiated a 153-point Terms of Reference (ToR) with the Turkish government in order to bring the project in line with international standards.

The implementation of the ToR was to be monitored by three expert panels (Committees of Experts – CoE), consisting of independent specialists for human rights, environment and cultural heritage protection.⁴³ While this was a positive step forward, the impact mitigation measures themselves had the fundamental flaw that they were in great parts not yet developed. The project's impact mitigation was based on a 'rolling plan' in the sense that in-depth assessments on social, environmental and cultural heritage impacts were to be undertaken and mitigation measures developed whilst the construction of the dam was already underway.

In addition, the ToR ignored the difficult human rights situation present in Turkey. For instance, it required the Turkish government to consult with affected population

but did not account for the fact that the previous armed conflict and ongoing human rights violations effectively prevented free expression of opinion and free participation in consultations, and therefore made it impossible to ensure free prior informed consent.

In July 2009, after numerous proven breaches of the ToR concerning issues related to environmental impact mitigation, cultural heritage protection and most particularly to human rights protection within the resettlement programmes, the Austrian, German and Swiss ECAs finally decided to apply the contractual exit clause and pulled out of the Ilisu project,⁴⁴ followed by all three European banks that provided export loans and most of the European companies involved.

Nevertheless, the Austrian company that had originally been backed by OeKB decided to continue with the project (and in 2010 even took over its partners' contracts),⁴⁵ with no consideration for the social, cultural, and environmental impacts it was committing. The same company has been involved in several other large dam projects with documented human rights breaches elsewhere and remains one of the main beneficiaries of the Austrian export promotion system, yet the Austrian government has taken no steps to change this.⁴⁶

One outcome of the OeKB's involvement in the Ilisu project was a parliamentary resolution⁴⁷ that ordered the Ministry of Finance to evaluate Austria's official export promotion system. Two studies were conducted by external institutions and presented in 2010⁴⁸ (one of them was also updated and re-published in 2016⁴⁹), and a number of civil society demands were picked up and subsequently integrated into OeKB's social and environmental screening procedure, such as ex-post monitoring of selected projects. Since 2013, the Ministry of Finance annually publishes an evaluation of these selected projects.⁵⁰

So while the Ilisu case can be seen as best practice for a guarantee contract linked to a clear set of environmental and social measures being observed by a high-level monitoring system, it also shows clearly why it absolutely needs to be ensured right from the start that all relevant information is ready before project approval and cannot be obtained in the phase of an already ongoing construction. The detailed documentation from the independent CoE commissioned by the Austrian, Swiss and German ECAs showed very clearly the continuing flaws of the project setup in all monitored areas.⁵¹

Conclusion

OeKB fulfills its social and environmental screening as well as reporting obligations within the frameworks given by the EU and the OECD. When answering parliamentary requests as well as information requests under the Austrian Environmental Information Act (UIG) about environmental and human rights within its official export promotion, the Austrian Ministry of Finance has stated that Austria applies OECD guidelines when it examines the allocation of grant export guarantees, especially the Common Approaches. But these recommendations only apply to a very small portion of the Austrian ECA's export promotion and all remain soft law, with no set procedures for accountability or remedies.

It is in theory a good practice example that export guarantees with a value of more than EUR 500 000 have to be presented to the Export Promotion Council⁵² before project approval. Unfortunately, as the Ministry of Finance is not bound to the recommendations of the Council, guarantees can be granted for a project even if it opposes support.⁵³ If such external monitoring mechanism is really to have significance, it needs to have the necessary weight and resources so it can fulfil its intended function, rather than merely rubber stamp projects.

The OeKB has increased its transparency towards the public over the course of the past decade, for example by publishing online descriptions of its environmental and social screening procedures. It additionally publishes a yearly integrated report including financial and NFI-reporting. Both the OeKB and the the Ministry of Finance report on selected export projects which were evaluated ex-post.

Still, the allocation of guarantees and securities by Austria's ECA is lacking in transparency. There is no binding definition of the criteria according to which a project is eligible for support. In addition, even the budget committee of the Austrian parliament is informed only about specific guarantees,⁵⁴ which means in practice that information on the vast majority of export guarantees and loans is neither available to the public nor to the Austrian parliament. There is no complete list of projects that the OeKB and the Ministry of Finance have supported via official export promotion. For improved transparency Austria could follow the example of the Netherlands and publish such an exhaustive list once a year.⁵⁵

OeKB shows willingness to exchange with different stakeholders including civil society. Even so, its engagement is not pro-active, and a regular exchange with a minimum of at least one fixed annual NGO stakeholder-meeting OeKB and Ministry of Finance staff should be established. It would also be helpful if OeKB or the Ministry of Finance regularly and pro-actively engaged NGOs in cases where additional information on social and environmental project risk might be available.

It should be noted that the Austrian government by law excludes arms and weaponry deals as well as nuclear power projects from state-supported export guarantees. In our view, such exclusions should be extended to other technologies, particularly in light of progressing climate change, as OeKB has not yet developed specific policies for reducing CO2 emissions in project guarantees regarding fossil fuels like coal.

Neither OeKB nor its subsidiary development bank OeEB is subject to an accountability mechanism. While a National Contact Point has been established at the Austrian Ministry of Economics, offering a complaint mechanism against companies in general within the framework of the OECD Guidelines for Multinational Enterprises (MNE). However, there is no formal complaints mechanism via government institutions for human rights problems with OeKB- and OeEB-supported export projects.⁵⁶

A lesson to be learned from the Ilisu project for all ECAs is that it is necessary to include social and environmental terms of reference into a guarantee contract and set up monitoring procedures through independent experts. The way the Committees of Experts were put together provides a good example of how this can in practice. However, to go ahead with a project on the basis of a “rolling plan” without already finalized impact measures such as resettlement and income restoration plans for affected people proved to be a recipe for non-compliance and should be avoided for all future projects.

OeKB appears to have learned a lesson in this regard and has not guaranteed a project of such scope, size, and potential impact since the Ilisu case. On the Austrian political level, the ECA's involvement in the Ilisu project and its subsequent withdrawal led to a parliamentary resolution⁵⁷ ordering the Ministry of Finance to evaluate the official export promotion system via OeKB. Since 2013, the Ministry of Finance annually publishes an evaluation of OeKB's ex-post monitoring of selected projects.⁵⁸ Another positive step is that OeKB staff regularly makes field visits to project areas for in-depth assessment before project approval and that ex-post monitoring has been installed in order to assess the long-term impacts of projects supported by OeKB.

The case of the Ilisu dam should serve as an example for other ECAs not to repeat similar mistakes. It highlights deficiencies in the ECAs' human rights due diligence, despite the application of the OECD Common Approaches, which in no way provided an adequate framework for making decisions about large-scale infrastructure projects when human rights are a concern.

While the Common Approaches have been adapted in the meantime to strengthen human rights screening, they do not exclude per se the possibility of a “rolling plan”, as was the case in the Ilisu project. No adequate impact assessment on human rights had been conducted, no detailed resettlement plan had been developed and no proper assessment or mitigation plan considering the possible impact on the local environment and the local cultural heritage sites had been put together before the implementation of the project. The hope was that the project owners would be able to come with a mitigation plan as it went, which unfortunately proved to be a rather unrealistic assumption, when no in-depth training was in place for the responsible staff in Turkey.

Endnotes

- 1 The OeKB logo and the picture of the OeKB building at its location at „Am Hof“ have been taken from online sources. Logo: www.oekb.at/oekbstyles/oekbimg/OeKB-Logo.gif ; OeKB building: www.pressetext.com/news/photo/medium/20021113006/0
- 2 OeKB Integrated Report 2016
- 3 Ibid.
- 4 Ibid.
- 5 Ibid.
- 6 Austria's industrial exports include for example high-tech products in the areas of steel production, fire protection engineering, automobile, aviation and space technology, hydroelectric power equipment (such as turbines), tunnel building or cable cars. In 2015 Austria's exports accounted to about EUR 131.5 billion of which 69% went to EU countries. The main product groups of exports were machinery/vehicles (39.8%), processed goods (21.9%), chemical products (13.6%) and nutrition-related products (5.5%). Statistik Austria main data for external trade for the year 2015: http://www.statistik.at/wcm/dc/idcplg?ldcService=GET_PDF_FILE&RevisionSelectionMethod=LatestReleased&dDocName=021403 and http://www.statistik.at/web_de/statistiken/wirtschaft/aussenhandel/hauptdaten/index.html
- 7 Integrated Report 2016
- 8 Ibid.
- 9 Ausfuhrförderungsgesetz – AusFG: Bundesgesetz betreffend die Übernahme von Haftungen für Rechtsgeschäfte und Rechte)<http://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10006677>
- 10 Ausfuhrfinanzierungsförderungsgesetz – AFFG (Bundesgesetz betreffend die Finanzierung von Rechtsgeschäften und Rechten);<http://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10006271> ;
- 11 Ausfuhrförderungsgesetz §5.2: <http://www.oekb.at/en/osn/DownloadCenter/legal-basis/Export-Guarantees-Act.pdf>
- 12 <http://www.oe-eb.at/en/about-oeeb/pages/default.aspx>
- 13 <http://www.oekb.at/de/unternehmen/ueberblick/beteiligungen/seiten/default.aspx> as well as <https://berichte.oekb.at/igb-2015/dienstleistungen-weiterer-toechter.html>
- 14 Interview with OeKB practitioners on May 23, 2017
- 15 Data compiled from: <http://www.oekb.at/de/unternehmen/ueberblick/eigentuemersseiten/default.aspx>
- 16 www.oekb.at/de/unternehmen/ueberblick/management/seiten/default.aspx; www.oekb.at/en/about-oekb/oekb-at-a-glance/shareholders/supervisory-bodies/pages/supervisory-directors.aspx
- 17 The Council consists of one representative each of the Ministry of Finance (Chair), the Ministries of Economics, of Environment, and of Foreign Affairs, one representative each of the Chambers of Commerce, of Labour, and of Agriculture, as well as one representative each of the Austrian Federation of Trade Unions, the Austrian National Bank and OeKB itself (the latter without a voting right).
- 18 Ausfuhrförderungsgesetz §5.2: <http://www.oekb.at/en/osn/DownloadCenter/legal-basis/Export-Guarantees-Act.pdf>
- 19 Exchange with a former member representative in the council who wished to remain unnamed.
- 20 Personal communication on 24 November 2017
- 21 Ibid.
- 22 <https://www.bmf.gv.at/wirtschaftspolitik/aussenwirtschaft-export/softloans.html>
- 23 OeKB Website: Austrian Environmental and Social Assessment Procedure (<http://www.oekb.at/en/export-services/transparencycompliance/Environment/Pages/esa.aspx>)
- 24 Ibid.
- 25 Interview with OeKB on May 23 2017.
- 26 Ibid.
- 27 Email communication with Heidrun Schmid, OeKB on November 9th/10th, 2017.
- 28 Ibid.
- 29 <http://www.oekb.at/en/osn/DownloadCenter/export-services/project-and-environmentalanalyses/Project%20Preparation%20Program%20Soft%20Loan/Guidelines-for-the-Project-Preparation-Program.pdf>
- 30 <https://www.bmf.gv.at/wirtschaftspolitik/aussenwirtschaft-export/nachhaltigkeit.html>
- 31 Interview with OeKB on May 23 2017.
- 32 <http://www.oekb.at/de/exportservice/projekte/umweltkategorie-a-b/Seiten/kategorien-a-b-nachhaftungsuebernahme.aspx>
- 33 <https://reports.oekb.at/igb-2016-en/>
- 34 Ibid.
- 35 Interview with OeKB on May 23 2017.
- 36 Ibid.
- 37 Ibid.
- 38 Ibid.
- 39 Parallel Report Austria's Extraterritorial State Obligations on ESCR - Austria's 5th State Report on the International Covenant on Economic, Social and Cultural Rights (ICESCR) https://fian.at/media/filer_public/5f/a9/5fa9d04e-d94d-4363-b691-fff2e8295761/pr-es-cr-etos-druck-nov13.pdf
- 40 For a detailed description of OeKB's involvement in the Ilisu dam project, the monitoring process that was developed intending to ensure the implementation of international safeguards and the dynamics that eventually led to the withdrawal of the Austrian, German and Swiss governments from the Ilisu project see: Eberlein, C.; Drillisch, H.; Ayboga, E. and Wenidoppler, T (2010): The Ilisu dam in Turkey and the role of export credit agencies and NGO networks, *Water Alternatives* 3(2), pp. 291-312 (<http://www.ecawatch.org/sites/ecawatch.org/files/Art3-2-17.pdf>)

- 41 Kudat, A (2006): Review of Resettlement Action Plan (RAP) for the Ilisu dam and hydro-electric power project
- 42 Before project approval, NGOs and international experts had revealed the complete inadequacy of the Turkish laws governing expropriation and resettlement of people affected by dams, as well as of the Environmental Impact Assessment and Resettlement Action Plan prepared for the Ilisu project. See: Eberlein, C.; Drillisch, H.; Ayboga, E. and Wenidoppler, T (2010): The Ilisu dam in Turkey and the role of export credit agencies and NGO networks, *Water Alternatives* 3(2), pp. 291-312
- 43 Ibid.
- 44 http://m-h-s.org/ilisu/front_content.php?idcat=143&idart=525
- 45 Andritz (06.15.2010): Andritz to supply electromechanical equipment for Ilisu hydropower station, Turkey. <http://www.andritz.com/hydro/hy-news/hy-news-detail.htm?id=5679>.
- 46 Parallel Report Austria's Extraterritorial State Obligations on ESCR - Austria's 5th State Report on the International Covenant on Economic, Social and Cultural Rights (ICESCR) https://fian.at/media/filer_public/5f/a9/5fa9d04e-d94d-4363-b691-fff2e8295761/pr-escr-etos-druck-nov13.pdf
- 47 Entschließungsantrag vom 6. Juli 2007 der Abgeordneten Petra Bayr, Ing. Hermann Schultes, Josef Bucher, Bernhard Themessl, Kolleginnen und Kollegen betreffend den Antrag Krainer/Stummvoll (251/A), mit dem das Ausfuhrförderungsgesetz 1981 geändert werden soll. http://petrabayr.at/fileadmin/archiv/parlament/2007/antraege%2007/070706_antrag_ausfuhrfoerderung%204P_pbayr.pdf
- 48 WIFO (2010): Exportgarantien in Österreich – Auswirkungen auf Beschäftigung und gesamtwirtschaftliche Kennzahlen (Kurzzusammenfassung) <https://www.bmf.gv.at/wirtschaftspolitik/aussenwirtschaft-export/WIFO-Endbericht-2010.pdf?5s3qa9>; ETA Umweltmanagement GmbH/ARBOS Management (2010): Evaluierung der österreichischen Exportförderung - Ökologische, soziale und ökonomische Auswirkungen auf die Zielländer (Kurzzusammenfassung) <https://www.bmf.gv.at/wirtschaftspolitik/aussenwirtschaft-export/ETA-Kurzzusammenfassung.pdf?5s3qas>
- 49 https://www.bmf.gv.at/wirtschaftspolitik/aussenwirtschaft-export/WIFO_Update_2015-2016_Exportgarantien.pdf?67ry4u
- 50 <https://www.bmf.gv.at/wirtschaftspolitik/aussenwirtschaft-export/nachhaltigkeit.html>
- 51 Detailed documentation of the shortcomings that ultimately led to the ECA's withdrawal from the project can be found in the final reports by the ECA's Committee of Experts: CoE (Committee of Experts), 2009a, Comment of the Project Implementation Unit on the Fourth Site Visit Report of the CoE-CH. 01.07.2009; CoE (Committee of Experts), 2009b, Report on the Field Visit and Evaluation Workshop of the Committee of Experts – Resettlement, 7-12 June, 2009 ; CoE (Committee of Experts), 2009c, Subcommittee on Environment Report; Biodiversity, EMP and related aspects. Fourth site visit June 4-12, 2009; CoE (Committee of Experts), 2009d, Report of the Sub-Committee on Cultural Heritage – Fourth site visit May 18-23, 2009.
- 52 The Council consists of one representative each of the Ministry of Finance (Chair), the Ministries of Economics, of Environment, and of Foreign Affairs, one representative each of the Chambers of Commerce, of Labour, and of Agriculture, as well as one representative each of the Austrian Federation of Trade Unions, the Austrian National Bank and OeKB itself (the latter without a voting right).
- 53 Exchange with a former member representative in the council who wished to remain unnamed.
- 54 Austria follows the transparency criteria of the OECD Common Approaches (see below) which only apply to projects with a loan duration of at least two years and a volume of at least 10 million Euros. Out of these, projects that are considered to be especially relevant from an environmental or social standpoint (so-called "Category A" projects) are published at least 30 days before the final decision. Projects considered less harmful are published ex post (Cat. B) or not at all (Cat. C).
- 55 See: <https://atradiusdutchstatebusiness.nl/nl/artikel/afgegeven-polissen.html>
- 56 See: Parallel Report Austria's Extraterritorial State Obligations on ESCR - Austria's 5th State Report on the International Covenant on Economic, Social and Cultural Rights (ICESCR)
- 57 Entschließungsantrag vom 6. Juli 2007 der Abgeordneten Petra Bayr, Ing. Hermann Schultes, Josef Bucher, Bernhard Themessl, Kolleginnen und Kollegen betreffend den Antrag Krainer/Stummvoll (251/A), mit dem das Ausfuhrförderungsgesetz 1981 geändert werden soll. http://petrabayr.at/fileadmin/archiv/parlament/2007/antraege%2007/070706_antrag_ausfuhrfoerderung%204P_pbayr.pdf
- 58 <https://www.bmf.gv.at/wirtschaftspolitik/aussenwirtschaft-export/nachhaltigkeit.html>

Croatia: Hrvatska banka za obnovu i razvitak (HBOR)

Quick facts

Number of employees

361 employees (as of 30 June 2017)²

Volume of business (balance sheet total, 31 December 2016)

HRK 7 billion/EUR 912.1 million³

Export guarantees (insurance policies) issued on behalf of the Republic of Croatia (2016)⁴

- **Legal maximum volume of exposure for exports and avals**
100% of Croatian export volume in the previous year
- **Current volume of exposure**
HRK 1.04 billion/EUR 138.1 million
- **New guarantee contracts issued in 2016**
HRK 127.7 million/EUR 22.9 million⁵
- **Written premium charges**
HRK 8.9 million/EUR 1.2 million
- **Claims paid**
HRK 0.26 million/EUR 0.035 million

Export credit guarantees (insurance policies) for pre-export working capital loans and contract bonds (avals) issued on behalf of the Republic of Croatia (2016)⁶

- **Legal maximum volume of aggregate exposure**
Figure for 2016 not available
- **Current volume of exposure**
HRK 612 million/EUR 81 million
- **New guarantee contracts issued in 2016**
HRK 586.8 million/EUR 77.6 million
- **Written premium charges**
HRK 7.5 million/EUR 1.0 million
- **Claims paid**
HRK 8.6 million/EUR 1.1 million

Legal framework⁷

- Act on the Croatian Bank for Reconstruction and Development (2006) as well as Act on Changes and Amendments to the Act on the Croatian Bank for Reconstruction and Development (2013)
- **The English versions of the legislation are**
 - HBOR Act English text⁸
 - Promulgation of the Act on Amendments to the HBOR Act⁹
 - Statute of the Croatian Bank for Reconstruction and Development¹⁰
 - General Terms and Conditions of HBOR Lending Activities¹¹

Political responsibility

Ministry of Finance



**Hrvatska banka
za obnovu i razvitak (HBOR)¹**

Strossmayerov trg 9
10000 Zagreb
Tel: +385 1 4591 666

Website: www.hbor.hr

Overview

Croatia's export credit agency (ECA) HBOR (Hrvatska banka za obnovu i razvitak/Croatian Bank for Reconstruction and Development) was founded in 1992 on the model of the German Kreditanstalt für Wiederaufbau (KfW). At the time, HBOR's main role was to finance reconstruction in war-torn Croatia.¹² Since 1998 the bank has also carried out export credit insurance on behalf of the Republic of Croatia, as well as other banking activities.¹³ In December 2006, a new Act on the Croatian Bank for Reconstruction and Development was passed and in March 2013, the Act on Changes and Amendments to the Act on HBOR came into force.¹⁴

HBOR's role in supporting Croatia's economy is threefold. HBOR is primarily a development bank supporting sectors like construction and infrastructure. It also acts as an export finance bank providing four types of loans: pre-export finance, buyer credit, supplier credit and the Loan Programme for the Financing of Exporters out of IBRD Loan Proceeds.¹⁵ Its role as a classic ECA in the sense of an export insurer on behalf of the Croatian state includes providing guarantees (insurance and reinsurance) for exports against non-marketable risks.¹⁶ Additionally, HBOR can apply an "escape clause" in order to provide insurance also for a portion of risks not covered in the private markets.¹⁷

The top exports of Croatia between 2013 and 2015 were refined petroleum, medicaments, cut wood, electrical energy, electrical transformers and seats,¹⁸ although HBOR's focus within export credit insurance lies in the shipbuilding and construction industries as well as the energy sector and consumer goods.¹⁹ Croatia's exports were worth EUR 12.8 billion in 2015.²⁰

With insured export turnover of roughly EUR 191 million in 2016 in ECA-activities,²¹ HBOR is no heavyweight compared to other ECAs in this study. According to the bank, HBOR usually handles one or two larger projects annually with loan or guarantee agreements of more than two years.²²

Nevertheless, in recent years HBOR has received critical media coverage concerning alleged unauthorized loans and conflict of interest (see below), which has highlighted the need for increased public scrutiny of the bank.

Corporate structure

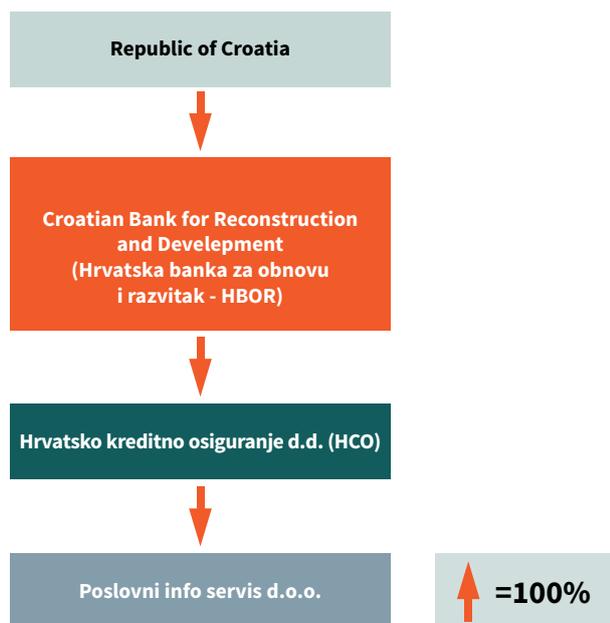
HBOR is entirely owned by the Republic of Croatia. The equity capital of the bank consists of only one share (in the hands of the Republic) which may not be divided, transferred or pledged.²³ HBOR holds regional offices for Slavonia and Baranja, Dalmatia, Istria, Lika, Primorje and Gorski Kotar.²⁴

The HBOR Group was formed in July 2010 when Hrvatsko kreditno osiguranje d.d. (HKO - Croatian Credit Insurance J.S.C.)²⁵ began operations. Since 2012 HKO has been a 100% subsidiary of HBOR and describes its business activities as "insurance for company's (sic) foreign and domestic short-term receivables regarding shipments of goods and services".²⁶

Until 2012 HBOR owned only 51% of the share capital, while the remaining 49% were held by OeKB Südosteuropa Holding Ges.m.b.H - part of the Austrian OeKB group.²⁷

In 2010 HKO established its sub-company Poslovni info servis d.o.o. (100% owned by HKO), which specialises in credit information about businesses and the analysis of their creditworthiness in order to determine the possibility of trade credit insurance.²⁸

HBOR Group



Decision-making structures

According to the bank's website, HBOR's Management Board (executive board) consists of three persons, one of which holds the presidency of the board. In practice, the Management Board is in charge of HBOR's everyday business and can adopt loan programmes, make individual loan and other financial transactions, as well as take employment decisions. It reports to the Supervisory Board.²⁹

HBOR's Supervisory Board consists of ten members (six ministers of the Croatian government, three members of the Parliament and the Chairman of the Croatian Chamber of Economy). The Minister of Finance is the President of the Supervisory Board, and the Minister of the Economy is the Deputy President.³⁰ The Supervisory Board "determines the principles of operating policy and strategy, supervises the business activities of the Bank, adopts HBOR's lending policies, adopts the Annual Financial Statements, and examines the Internal Audit reports and reports drafted by external independent auditors and by the State Audit Office. [It] monitors and controls the legality of the business activities of the Management Board, and appoints and dismisses the President and the members of the Management Board," and also installs the Audit Committee (as regulated in the Audit Act).³¹

Environmental and human rights screening

HBOR has formally committed to adhere to the OECD Common Approaches since 2013.³² However in practice it is unclear how this is implemented as there are no category A or B projects listed on its website. This may be due to the small size and nature of their export guarantee projects, but it is not clear from the bank's annual reports and corporate social responsibility reports.

In addition, HBOR has developed Environmental Review Procedures³³ as part of the World-Bank-financed Croatian Export Financing Guarantee Project (CEFGP). This document serves as a tool for screening sub-projects.³⁴

HBOR has a team of seven employees to screen projects in its internal Department of Technical Analysis and Environmental Protection. Nevertheless most of their resources go into projects not associated with HBOR's ECA activities. According to one HBOR employee, if HBOR had an environmentally-sensitive project and was not able to do the necessary analysis itself, it would ask an external entity for support, such as the German ECA Euler-Hermes.³⁵

In an interview with NGO representatives, HBOR staff said that HBOR's main financial supporters are institutions such as the European Investment Bank, the Council of Europe Development Bank and the World Bank, so HBOR has to adopt whatever these institutions have for procedures concerning the protection of human rights and the environment. They also stated that HBOR follows the OECD Recommendation on Bribery and Officially Supported Export Credits, the Recommendation of the Council on Common Approaches for Officially Supported Export Credits and Environmental and Social Due Diligence, as well as the Principles and Guidelines to Promote Sustainable Lending Practices in the Provision of Official Export Credits to Lower Income Countries.³⁶

Questioned regarding the implementation of the UN Guiding Principles on Business and Human Rights, a HBOR representative answered: "We are aware of the guidelines. Further application to our processes by using the appropriate methods is an ongoing challenge for us." Concerning the OECD Guidelines for Multinational Enterprises she said, "We are committed to responsible business conduct and are aware of stakeholders' expectations of enterprises to implement the best practice and high standards that are over and above the applicable laws and regulations. I wouldn't say that we have made additional procedures for implementation of these particular guidelines. I am not saying we won't [in the future]."³⁷

As HBOR has not published any category A and B projects on its website it is hard to say how often its export credit and guarantee departments support environmentally or socially-harmful projects. However a flavour of the type of projects supported can be gained from its annual reports. In recent years there have not been any noticeably environmentally-problematic projects, but in 2011 HBOR supported some projects with potential impacts such as the manufacture of machinery for mines in South Africa. In the same year the bank also issued a letter of intent for insurance, thus enabling Croatian exporters to participate in international tendering procedures for the construction of a 108 MW hydropower plant in Georgia.³⁸ From the timing and capacity, it seems this might have been the controversial Dariali hydropower plant.³⁹ In 2012 HBOR backed the delivery and operation of boilers for waste incineration in Switzerland and the United Kingdom.⁴⁰ These projects would almost certainly have qualified as category A and B projects if HBOR had adopted the Common Approaches at that time.

HBOR has supported projects with credits and guarantees in some very high-risk countries. Between 2013-2015 these included Turkmenistan and Russia,⁴¹ in 2013 Azerbaijan, Nigeria, and Liberia, and in 2014 Iraq.⁴² While ECAs exist to take risks, they also need to ensure that they properly assess projects' corruption risks as well as the political risks of supporting authoritarian governments. Given that HBOR does not publish information about projects before they are approved, it is not very clear how the bank minimises the risk of supporting projects which are problematic in this regard. Publishing project information in advance would help to provide opportunities for anyone with relevant information to come forward and inform the bank about it.

Exclusion lists

HBOR does not have an exclusion list of certain no-go sectors for projects. Questioned about possible exclusion lists regarding harmful sectors such as nuclear energy or weapons one HBOR representative replied: "Weapons could be covered under our insurance policies. HBOR is quite flexible and as there are not so many projects of this kind so we make case-by-case decisions. The written procedures and concrete guidelines will be adopted depending on the future developments." As HBOR is such a small ECA there is "no use in writing guidelines for projects that might never happen", and there are ECAs that can provide the respective services to HBOR if needed.⁴³

Climate mitigation measures

HBOR does not appear to have developed any kind of climate mitigation measures. Apart from agreements within the OECD ECG, HBOR appears to have no specific policies for reducing CO2 emissions in project export credit and guarantees, regarding fossil fuels and coal or other climate-related areas. It is not clear whether HBOR has started documenting the amount of greenhouse gas emissions from fossil-fuelled power plants within the scope of the Common Approaches, and it is not clear whether it has supported any such projects.

Reporting and transparency

HBOR reports publicly on its activities as part of its semi-annual and annual report and in its quarterly financial statements.⁴⁴ Within the reports basic information is provided about the amounts guaranteed and disbursed together with some, usually anonymised, examples of projects and a breakdown of target countries. HBOR publishes an annual report on social responsibility.⁴⁵

The Croatian ECA also reports quarterly to the Ministry of Finance and the Committee for Export Credit Insurance.⁴⁶

The Committee for Export Credit Insurance is comprised of six members - representatives from the Ministry of Finance, the Ministry of Economy, the Ministry of Agriculture, the Ministry of Foreign and European Affairs, the Croatian National Bank and the Croatian Chamber of Commerce.

The Committee's main tasks are:

- issuing opinions and suggestions on subjects related to export insurance and supervising the implementation of export insurance operations which HBOR carries out on behalf of the Republic of Croatia;
- issuing opinions and suggestions concerning general export credit insurance conditions, opinions on the conclusion of insurance contracts, indemnity payments, premium systems, classifications of country risk assessment and other issues in the field of export credit insurance;
- monitoring EU regulations on export credit insurance;
- proposing measures to the Croatian Government concerning export promotion.⁴⁷

According to the government's Decision establishing the Committee, HBOR is obliged to quarterly and annually inform the Committee on HBOR's business activities as a public export-credit agency.⁴⁸

HBOR provides technical and administrative support to this committee, which is, according to a 2008 Government decision, supposed to send an annual report on its work to the government.⁴⁹ The latest Committee report which was adopted by the Government in 2017 covers the years 2014-2016⁵⁰. For CSOs performing independent oversight over HBOR, the fact that Committee reports for the mentioned years were not published annually suggests that reporting might not be done as regularly as prescribed, although HBOR claims that the Committee reports annually.⁵¹ This raises questions about the institutional framework for oversight over HBOR's export-related decisions and operations, which should ensure that public funds are managed and spent in the best interest of Croatia and its people.

Once a year, the Supervisory Board submits its financial statements and annual report to the Croatian parliament,⁵² and HBOR reports to the EU Commission on its short-, medium- & long-term insurance projects. After the president of the parliament receives

HBOR's financial report, s/he sends it to the government which then issues an opinion and chooses several governmental representatives to be present at the discussions related to the opinion within the parliament and its committees.⁵³ Then discussions about this report take place within at least two parliamentary committees.

On the Croatian parliament's website, there are decisions approving HBOR's financial reports made by the Finance and Central Budget Committee⁵⁴ and the Committee on the Economy.⁵⁵ The committees get HBOR's reports as well as the government's opinion. After discussion, the committees decide on approving the report and propose the approval of the financial report/statements for the parliament.

When answering freedom of information requests from civil society, HBOR stated it would not give out data about its projects like the names of clients or the value of the insured goods, unless the clients agree.⁵⁶ Therefore, when Green Istria asked about projects in October 2016,⁵⁷ HBOR first released only aggregated data, citing banking secrecy laws.⁵⁸

However repeated rulings by the Croatian High Administrative Court found that HBOR's argumentation about banking secrecy is incorrect.⁵⁹ The rulings state that as HBOR uses public funds for its operations, every person has the right to know how public funds are spent. So, even though the HBOR Supervisory Board and Croatian parliament decide about how efficient HBOR is in its activities, this does not mean that a private or legal person has lesser rights to ask for (and receive) information from HBOR.

The rulings also confirm that Art. 16 of the Croatian Act on the Right of Access to Information applies, and that HBOR has no legal grounds for restricting access to information on the basis of Art. 15., par 2, indent 2 ("the information represents a trade or professional secret").

The high administrative court made its first ruling in 2015, after HBOR started an administrative dispute against the decision of the Information Commissioner, in which access to a list of all companies financed by HBOR in the period 2010-2013 was granted to a journalist.⁶⁰

It is worrying to note that even after this final judgement,⁶¹ by not providing the information about projects to Green Istria, HBOR continued with the same practices which the court had explicitly ruled against.

After the Information Commissioner's decision, issued on the basis of Green Istria's complaint against HBOR's decision, again confirmed that every person has the right to know how public funds are spent, and ordered HBOR to provide the information, HBOR again started an administrative dispute against the decision, and, again, lost the case.⁶²

About four months after the High Administrative Court's ruling, in November 2017, HBOR finally fulfilled its legal obligation, and delivered the information to Green Istria. In the letter⁶³ accompanying the documents, HBOR stated that it does not require from its beneficiaries to deliver the name of the projects, and therefore does not have any records about the projects by their names. Also, HBOR explained that within the pre-export finance programme it approves "revolving loans for working capital for export preparation and export of goods", so HBOR possesses only information about the value (which can be up to almost EUR 4 million) of the approved loans, but not information about project names, companies, export countries or economic sectors to which the projects belong. In four⁶⁴ out of the five delivered documents, HBOR kept insisting that the provided data represents a banking secret. The fifth⁶⁵ document is the one containing aggregated data which HBOR had previously already sent to Green Istria.

The issue with the set of data provided was that not a single word of description of the projects was available. Therefore, in late 2017, Green Istria sent a request for amendment and correction of information, and received another set of documents from HBOR.⁶⁶

In January 2018, HBOR delivered amended information and enabled Green Istria to get at least some idea about the projects, as this time HBOR indeed provided a short description of

the goods exported or projects, and associated them with the companies' names, economic activities and sectors (such as energy or wood industry etc.), countries of export and export values, within its export guarantees and export insurance programmes. But still, in relation to some projects, HBOR provided more information (e.g. the exact names of hydropower plants for which the transformers were produced for, like Shiroro in Nigeria or Skedvi in Sweden), while in some cases only the exported product (e.g. transformers) was named.

Also, in the latest document containing the information about HBOR's 2011-2014 export insurance programme, there remained some unclarities. For example, there seems to be a 2011 export to South Africa which is described in the newest document as "demining machines" exported by Croatian DOK-ING to an "unknown" destination in 2011 but in the 2011 HBOR annual report is described as "machinery for mines in South African Republic".

Our research conclude that this is one and the same project but the information being provided is unclear, as there is a huge difference in "de-mining" and the mining industry. The fact that there was information about the mines in HBOR's 2011 report, while in the recently delivered information to Green Istria only "demining machines", but not mines, were explicitly mentioned, suggests that the documents delivered still don't contain all the basic information about the projects which HBOR is in possession of.

Additionally, HBOR keeps insisting in its documents that the data delivered represents a "banking secret" according to the Credit Institutions Act.

Therefore, it remains to be seen whether HBOR would provide a similar data set, as the most recent one, immediately upon a new information request, or whether civil society and institutional resources would again have to be exhausted in an extensive and lengthy legal procedure, in order to again obtain more precise information about HBOR projects.

Unfortunately, there are several recent decisions by the Information Commissioner that show that HBOR is continuing to reject information requests from civil society, and is continuing with non-transparent practices.⁶⁷ This suggests that HBOR is ready to start as many procedures against the Commissioner as necessary, in order to prove that the argumentation about the "banking secrecy" is correct, and ensure the information is not provided to civil society, at least not, in a timely manner.

Additionally, HBOR has been trying to overturn the aforementioned 2015 final court judgement. In November 2015 HBOR filed a motion for a request for an extraordinary review of the legality of this judgement to the Supreme Court⁶⁸ Ironically, HBOR even took the High Administrative Court to the Constitutional Court, trying to prove that HBOR's constitutional rights, such as the right to fair judgement, were violated.⁶⁹ As the Constitutional Court explained in its 2016 decision, "a constitutional complaint cannot be filed by a bank (public body) whose founder is the Republic of Croatia and who is closely associated with the founder in the performance of its activity", as well as that "the constitutional complaint is a constitutional remedy for protection of human rights and fundamental freedoms that may be violated by individual acts of the state or public authorities of the Republic of Croatia". The Constitutional Court explained that "the Republic of Croatia" "in the given circumstances can not be the bearer of the protection of constitutional rights". In other words, "the Republic Croatia is not authorized to be a party to a constitutional complaint in the procedure of protection of constitutional rights before the Constitutional Court of the Republic of Croatia."⁷⁰ Therefore, the Court dismissed the complaint.

Complaint mechanisms

According to the interview carried out with the bank and personal communication thereafter, HBOR offers a complaint mechanism for cases concerning corruption, and has a procedure for handling complaints. The Commission for Taking Action upon Irregularity Reports or other Complaints is the body authorised to act on such complaints.⁷¹ However the Complaint Mechanism is not visible on HBOR's website and its scope is not very clear, meaning that people potentially affected by HBOR's projects are unlikely to know it exists.

HBOR in focus: Media scandals highlighting lack of transparency

By Dunja Mickov (Zelena Istra)

In 2014 and 2015 HBOR-related affairs caught the attention of the Croatian media. In early 2014 the so-called “Assistant Affair” went public, related to the Croatian Minister of Finance’s assistant, Branko Segon. The media reported that his family’s company, Facta Vera, had received a loan from HBOR under favourable conditions⁷² and that, contrary to the loan conditions, around 95 percent of the loan to the Segon family had been used for paying back previous loans and debts.⁷³ Prior to the loan approval, HBOR’s analysts were reported to have found that “the financial situation of the client [was] unfavourable due to high debt and insolvency”, and that “due to a number of unclaritys and incorrect recording of items within the balance sheet, the correctness of the [Facta Vera’s financial] report [was] questionable.”⁷⁴

Gordan Maras, at the time a member of the HBOR’s Supervisory Board as Minister of Entrepreneurship and Crafts, explained to the media that HBOR’s Executive Board had admitted in its report to the Supervisory Board that the purpose of the loan for the Segon family was not in line with HBOR’s loan programmes.⁷⁵ The Croatian Commission for Conflict of Interest Prevention decided that Branko Segon had acted unlawfully and was in a conflict of interest. It fined him around EUR 5 200 because “he put his private interests before those of the public”, and referred the case to the State Prosecutor’s Office for further action.⁷⁶ Segon was dismissed from duty.^{77 78}

The State Prosecutor did not determine criminal acts in the Segon case, but confirmed violations of the Conflict of Interest Prevention Act and filed a charge against Branko Segon’s son Toni Segon as the person responsible within Facta Vera.⁷⁹ The Misdemeanor court of Zagreb found Toni Segon and Facta Vera guilty of not reporting to the Commission for Conflict of Interest Prevention when entering into a business relationship with a state authority, which should have been done, since Branko Segon owned 20% of Facta Vera, and was a public official in the Ministry of Finance, which has political responsibility for HBOR, at the time. Toni Segon was fined approximately EUR 400 and his company approximately EUR 4 000.⁸⁰

Another HBOR-related affair went public in May 2015. Media reported that Dubravka Dolenc, the then deputy director of the Croatian Personal Data Protection Agency, stated in her declaration of assets that she had a housing loan from HBOR, which was approved when she worked in HBOR’s Directorate for Legal Affairs. Reportedly, HBOR explained that, based on a 1999 decision by the Supervisory Board, it gave housing loans for its employees, as if HBOR was any other bank, and Ms Dolenc received the loan under the same conditions as other HBOR employees.⁸¹ The media discovered that over a period of 16 years, HBOR gave its employees a total of 166 loans worth EUR 9.5 million. The media criticised HBOR,

claiming that it is not like other banks because HBOR “does not follow accounting rules like other banks”, “does not do business with the aim of making profit”, “is not subject to auditing by the Croatian National Bank as other banks”, while “the aim of HBOR is to encourage the development of the Croatian economy” so HBOR should be supporting enterprises.⁸²

According to HBOR, “the employees housing loans were approved by Supervisory board”, while giving housing loans is the “usual practice” of “banks and even some public institutions”, as they try to “attract skilled employees”. Also, the “Supervisory Board has not prohibited employees housing loans”,⁸³ as the media reported.⁸⁴ HBOR also states that “one or two cases that haven’t proven irregularities in HBOR’s activities” don’t reveal “a lack of transparency related to HBOR’s operations”.⁸⁵

However, in our opinion, the Segon and Dolenc cases both highlight HBOR’s general lack of transparency, which reduces potential for independent public oversight over HBOR.

If the decisions and reports of the HBOR decision-making bodies were published, the Managing Board might not even consider giving a loan - such as the one in the Segon case - aimed at paying back old loans, as it would be subject to

public scrutiny. Citizens would not need to guess, but would know how and why the Managing Board decided to support a loan request which is not in line with HBOR programmes. The media could check in official documents whether the Supervisory Board indeed knew about or approved the housing loans for its employees. If these documents were published, independent monitoring of state budget funds, which is in the interest of all Croatian citizens, according to the High Administrative Court, would truly be possible.

Therefore, Green Istria submitted a petition⁸⁶ to the Information Commissioner who recently warned HBOR about the need to publish conclusions from its official sessions and the official documents enacted at these sessions. Upon petition and the warning, only the agendas of the Supervisory Board sessions have so far been published in terms of article 10., para 1., indent 12. of the Act.⁸⁷

It is worth mentioning that some of the latest Information Commissioner’s decisions are related to HBOR’s rejection of civil society requests for HBOR’s Supervisory Board decisions, which should have been published already, as prescribed by the Act. Additional public disclosure of information related to loan approvals, companies supported by HBOR and their projects would help control and monitor the Croatian ECA’s activities in the future.

Conclusion

As an ECA with very limited export credit promotion, HBOR lacks certain procedures concerning human rights and environmental protection. It has not yet implemented all international recommendations on human rights and environmental protection that should be applied to the projects it supports. As mentioned above the 'UN Guiding Principles on Business and Human Rights' are not fully implemented, and the 'OECD Guidelines for Multinational Enterprises' still need to be adopted. The fact that HBOR mainly does small projects is not a reason to not adopt guidelines for climate change mitigation. The same is valid for potential exclusion lists of harmful sectors.

Finally, a lack of transparency and public disclosure regarding the projects financed, as well as documents related to decision-making is obvious.

On its website HBOR states that it takes a responsible approach when supporting projects: "HBOR makes constant efforts to incorporate the principles of social and environmental responsibility into all of HBOR's business processes."⁸⁸ However, as one of the HBOR representatives explained during the interview, the financial support of export products such as transformers, which "per se do not do environmental harm", is acceptable to the bank without further screening of the project where these component parts will be used.⁸⁹ If HBOR is serious about its responsibility, it needs to look wider than the products themselves to ensure that also the projects they are used for do not result in negative impacts.

Endnotes

- 1 The HBOR logo and the picture of the HBOR building have been taken from online sources. Logo: <http://www.intranslaw.eu/fina/?lang=hr>; HBOR building: <http://www.turizmoteka.hr/jos-iz-turizma/oprema-i-usluge/program-kreditiranja-turistickog-sektora>
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Czech Republic: EGAP/ČEB

Quick facts

Number of employees

EGAP: 120 (2016)³

ČEB: 148 (2016)⁴

Business volume (operating earnings 2015)

EGAP: CZK 40.5 billion/EUR 1.59 billion⁵

ČEB: CZK 4.04 billion/EUR 158 million⁶

Business volume (operating earnings 2016)

EGAP: CZK 31.9 billion⁷

ČEB: CZK 2025 million⁸



Exportní garanční a pojišťovací společnost, a. s. (EGAP)¹

Vodičkova 34/701, 111 21 Praha
Tel.: +420 222 841 111

Website: www.egap.cz



Česká Exportní Banka, a. s. (ČEB)²

Vodičkova 34/701, 111 21 Praha
Tel.: +420 222 841 100

Website: www.ceb.cz

Export credit insurance cover provided by EGAP for the Czech Republic

- **Legal maximum volume of exposure (2016)⁹**
CZK 230 billion / EUR 8.5 billion
- **Volume of exposure (as of 31 December 2016)¹⁰**
CZK 201.2 billion/EUR 7.5 billion
- **New guarantee contracts issued in 2016**
93 contracts¹¹
- **Claims (Gross claims paid in 2016)**
EGAP: CZK 5.5 billion/ EUR 217.5 million¹²

Export financing measures by ČEB for the Czech Republic

- **Legal maximum volume of exposure (2016)**
CZK 120 billion / EUR 4.61 billion
- **Volume of exposure (as of 31 December 2016)**
CZK 71.08 billion / EUR 2.73 billion¹³
- **New export finance transactions signed in 2016**
80 contracts with a total value of CZK 2.03 billion/EUR 78 million¹⁴

Legal framework

Both EGAP and ČEB operate on the basis of Act No. 58/1995 Co on insuring and financing exports with state support.¹⁵ EGAP is governed by Section 55, Act no. 277/2009 on Insurance¹⁶; the Act on Insurance No. 277/2009 as amended, and the related CNB decree No. 434/2009 which governs certain provisions of the Act on Insurance.¹⁷ For risk classification: Decree no. 434/2009.¹⁸ ČEB is governed by Act No. 21/1992 Coll. on Banks, as amended, and other banking regulations.

Both ECAs are further regulated by the Regulation (EU) No 1233/2011 of the European Parliament and of the Council on the application of certain guidelines in the field of officially supported export credits, as amended, and by the OECD Arrangement on officially supported export credits.

Political responsibility

According to the OECD, the Ministry of Finance is the institution which represents the Czech Republic in matters of state-supported export credits.¹⁹ But the management of EGAP and ČEB is based on shared political ownership between the Ministry of Finance, the Ministry of Industry and Trade, the Ministry of Foreign Affairs, as well as the Ministry of Agriculture.

(See also: Decision-making processes below.)

Overview

The establishment of the Czech Republic's state-backed exports agencies took place in the first half of the 1990s and differs from other examples in this report, as export promotion is separated into two institutions: the Czech Republic's official export insurer EGAP (Exportní garanční a pojišťovací společnost, a. s./Export Guarantee and Insurance Corporation), which was founded in 1992.²⁰ The Czech export bank ČEB (Česká Exportní Banka, a.s./Czech Export Bank), where EGAP holds a minority share, was founded in 1995.²¹

As the 29th largest export economy in the world, Czech industry is heavily based on external trade. In 2015, its top exported goods were cars, vehicle parts, computers, telephones and seats.²² An important part of the country's export strategy for 2012-2020²³ is to gain access to developing countries, since deliveries to traditional export countries like Russia, Syria, Iraq and Libya have recently decreased, due in part to sanctions and political instability.²⁴ Even so, Czech exports are growing overall and equalled almost EUR 148 billion in 2016, with Germany being the top recipient, with almost one third of its exports.²⁵

The Czech Republic's institutional set-up for state-backed export promotion is two-fold: while EGAP insures state-supported exports, ČEB finances the exports of goods and services, and provides additional financing for engineering projects. According to Act No. 58/1995 ČEB's basic task is the promotion of exports and the provision of preferential loans for financing on terms that are customary on international markets for officially-supported export credits.²⁶ The two institutions often work in collaboration.

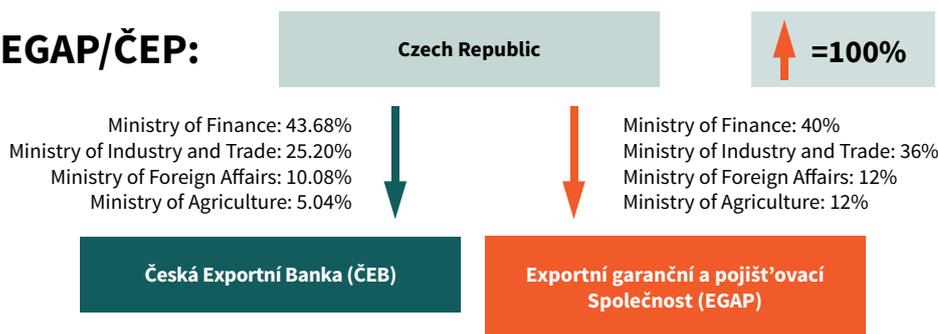
Most of the long-term projects financed by ČEB are also insured by EGAP.²⁷ While ČEB provides loans for exports from Czech suppliers, EGAP insures the project. In cases where ČEB cannot get back its financing, EGAP will cover the sum of money lost. Simultaneously, EGAP cooperates with commercial banks, and directly with Czech exporters, producers for exports and Czech investors, while in large-scale transactions ČEB participates in bank syndicates with commercial banks, meaning that ČEB's share in EGAP's business is declining.²⁸ In recent years ČEB has also tried to increase the number of contracts without EGAP insurance, especially for SME transactions. For large-scale transactions ČEB has been aiming to structure bank syndicates with commercial banks.²⁹

In 2016 new exports insured by EGAP were dominated by Russia (22.5%) and Azerbaijan (21%), followed by Turkey and Slovakia (11–12%) and then Georgia, Belarus, China and Serbia (2–4%).³⁰ In 2016 almost all transactions (94%) were related to machinery and transport equipment.³¹ The majority of ČEB's 2016 loans and receivables went to production and distribution of electricity, gas, heat and air (58.14%), followed by the processing industry (18.80%) and public administration and defence (10.16%).³² ČEB wants to focus on high technologies, the energy sector and aviation.³³ Both institutions intend to diversify their portfolio by increasing contracts with small and medium businesses. Both support outreach to new potential export countries in order to open new markets, among other things to be less dependent on exporting to Russia.³⁴

In 2008, as a reaction to the global financial crisis, the Czech government decided to actively push for an increase in the volume of exports to support the national economy. EGAP and ČEB began to support more risky projects, many of which failed and resulted in various scandals.³⁵ Even today ČEB and EGAP are struggling with some of these projects.³⁶ ČEB's 2015 state-backed insurance volumes dropped to roughly only 30% compared to the previous year.³⁷ This decrease in demand continued at the same pace in 2016, when ČEB's total volume of new transactions amounted to CZK 2.025, totaling one of the lowest amounts since the system of state support for export financing was established.³⁸

In a few cases these two institutions have disagreed over who should take responsibility for these problems.³⁹ As a result, a political discussion arose in the Czech Republic on whether EGAP and ČEB should be merged. In autumn 2016 the Czech government declared that "the best solution" would be found by the end of 2017.⁴⁰ The final decision should be based on an analysis of the current situation and made by the new government after the elections in October 2017. It is unclear which way the discussion will lead.

EGAP/ČEB:



Corporate structure

EGAP is 100% owned by the Czech Republic.⁴¹ Control of EGAP is shared by four ministries: The Ministry of Finance (40%); Ministry of Industry and Trade (36%); Ministry of Agriculture (12%); Ministry of Foreign Affairs (12%).⁴² Export credit insurance is a major part of its activities, especially export buyer credits, where the bank makes payments to a Czech exporter and the amount owed is then paid back by a foreign buyer on regular dates given by the credit agreement.⁴³ It also carries out investment insurance⁴⁴.

Similarly, the Czech state directly holds 84% of ČEB's shares, while the remaining 16% are held by EGAP and are thus indirectly state-owned.⁴⁵

Decision-making structures

Both EGAP and ČEB are overseen by representatives from the Ministry of Finance, the Ministry of Industry and Trade, the Ministry of Foreign Affairs, as well as the Ministry of Agriculture.

As sole shareholder of EGAP, the Czech state exercises its shareholder's rights through the four ministries who hold the following share percentage and corresponding voting weight in EGAP's general meeting: the Ministry of Finance (1630 votes)⁴⁶, the Ministry of Industry and Trade (1467 votes), the Ministry of Foreign Affairs (489 votes) and the Ministry of Agriculture (489 votes). The representatives of these four ministries together with representatives from the Confederation of Trade Unions sits also in EGAP's Supervisory Board. EGAP's chairman (executive director) and main representative is currently Ing. Jan Procházka.⁴⁷

ČEB's supervisory board currently consists of two representatives of the Ministry of Industry and Trade, two representatives of the Ministry of Finance, one representative each of the Ministry of Foreign Affairs and the Ministry of Agriculture as well as one representative from ČEB's staff.⁴⁸ ČEB's operations are also supervised by the bank's audit committee.⁴⁹ Chief Executive Officer and chairman of ČEB's Board of Directors (management board) is currently Ing. Karel Bureš.⁵⁰

Environmental and human rights screening

For its environmental and social project screening EGAP follows the recommendations of the OECD ECG (Common Approaches): "A positive assessment of environmental acceptability of the export and investment in the country of final destination is one of the basic preconditions for conclusion of an insurance contract. Environmental review shall be made for all projects where the Exporter applied for insurance of a credit with state support with repayment exceeding 2 years as well as for all investment in foreign countries."⁵¹

The assessment process starts with the exporter filling a questionnaire concerning the environmental review of the export project. Based on this, EGAP internally classifies the application into one of three categories (A, B, C) and decides if an expert opinion on the environmental impact needs to be prepared. The process of environmental and social assessment is carried out within EGAP in the case of projects with a transaction value under SDR 10 million.⁵² These projects are categorised based on the questionnaire form the exporter. Larger projects (over SDR 10 million) and projects of a “sensitive area or with impact on human rights” have to be sent beforehand by the exporter – at its own cost – to external experts who then decide on the categorisation.⁵³

It is EGAP, rather than the exporter, which makes the primary assessment about whether a project is taking place in a sensitive area or is likely to impact human rights.⁵⁴

The list of experts accepted by EGAP for external consultancy is publicly available.⁵⁵ The two recent ESIA's conducted in connection with Environmental and Human Rights Screening were evaluated by the same two people from the Czech University of Life Sciences in Prague.⁵⁶

When an assessment contains an obligation to present regular monitoring reports in compliance with ecological parameters, EGAP is to include this into the wording of the insurance contract. According to EGAP, monitoring is usually conducted until the date of expiry of the guarantee period and by the end of the insurance period at the latest.⁵⁷

There is no strict regularity of reporting since it depends on the particular project. According to EGAP, monitoring takes place throughout the guarantee period, so there is some time during the construction phase and operational phase to address any issues arising..

For cases where claims arise from an export guarantee or insurance, EGAP states: “During the claim settlement, EGAP shall investigate whether the reason for the claim was a non-compliance with ecological limits contained in the assessment and eventually penalize the exporter accordingly in the form of reduction of indemnification payment or application of recourse.”

EGAP does not screen or classify projects with repayment under two years for their potential environmental and human rights impact, citing the fact that it is not obligatory under the 2016 Common Approaches for ECAs.⁵⁸

In collaboration with the Czech Technical University in Prague, EGAP has developed a system for risk-evaluation which it has labelled “Effectiveness of Support for Exports”.⁵⁹ This approach is geared towards economic risk assessment and does not include an assessment of ecological or social impacts.

ČEB essentially follows the same procedure as EGAP. Since 2002 applicants for officially supported export financing through ČEB are obliged to provide the export bank with information that will allow it to assess the project’s environmental impact potential in the final destination country. This obligation applies to all export projects with export credit

repayment terms of two years or more (as accepted by the Czech Republic at the OECD ECG in November 2001).⁶⁰

In projects where both institutions are involved, usually EGAP does the initial assessment and categorisation. When ČEB provides loans for projects without insurance from EGAP, it has to carry out the process itself.⁶¹

It is not clear whether ČEB has staff trained for doing in-house preliminary social and human rights assessments before deciding whether a project needs to be evaluated by external consultants.

Concerning monitoring compliance with environmental requirements (when stipulated in an ESIA) ČEB states the following: “During the entire life of a credit CEB is entitled to require the exporter to provide written monitoring reports that include the requisites stipulated in the assessment. The reason for such a request may be any information or suspicion that during the execution of the project there has been environmental damage. The obligation of the exporter to comply with the conditions in the assessment will be one of the conditions for the provision of the export financing. The Applicant will submit the monitoring reports to CEB; the exporter will ensure their preparation by an authorised person at its own cost.”⁶²

ČEB states further: “If a monitoring report demonstrates serious non-compliance with the conditions of an assessment by the exporter, ČEB will be entitled to suspend financing until the situation is brought into compliance with the assessment. ČEB will inform the Applicant in writing of the suspension of financing and the conditions for its renewal. ČEB will renew financing only on the basis of a new monitoring report submitted by the Applicant that demonstrates that the conditions of the assessment stipulated for the environmental impacts of the respective export transaction have been fulfilled.”⁶³

Again it is not clear whether ČEB requires regular monitoring reports or whether it is only entitled to do so. Even though monitoring is no substitution for ex-ante project impact assessment, this could make a difference in addressing issues that arise during project implementation.

Exclusion lists

Both EGAP and ČEB share a list of sensitive sectors and areas from the OECD recommendations.⁶⁴ Apart from this, no exclusion lists for specific business types with high potential negative environmental or human rights impact were found.

Climate mitigation measures

There appear to be no specific climate change-related policies in place within ČEB and EGAP or towards officially-supported export promotion other than sector-specific agreements in the OECD ECG’s Sector Understandings.

Reporting and transparency

Both ČEB and EGAP send quarterly reports to the Czech National Bank (CNB) about their financial situation.⁶⁵ Based on the new EU Solvency II Directive, EGAP will have to provide additional disclosure to CNB (“Solvency and financial condition report”⁶⁶ and “Regulatory Supervisory Report”).⁶⁷ As is the case for most other ECAs covered in this report, the Czech government and its ECAs also report on certain (small) aspects of their state-backed export promotion both to the OECD ECG⁶⁸ and to the European Commission, as per the OECD Arrangement/Common Approaches and the EU ECA Regulation.

The lower house of the Czech Republic’s parliament, the Chamber of Deputies, receives a report once a year about state-backed supported financing via EGAP and ČEB which is disclosed and can be discussed in the chamber’s economic committee.⁶⁹

Both EGAP and ČEB have overall relatively detailed online descriptions of some of the international standards they apply,⁷⁰ as well as about their disclosure policies and the procedures they use for environmental assessment and screening.⁷¹ In parts, ČEB links to EGAP’s website on this matter.⁷²

EGAP’s website shows a list of category A and B projects which are published according to the Common Approaches (guarantees for a loan contract of more than two years). For each Category A project EGAP provides an authorisation of an environmental impact assessment and is obliged to publish it at a minimum of 30 days before the conclusion of the contract.⁷³

For each project EGAP states: the name of the project; export country; supplier; export contract amount; category; reason for classification into the category; date of conclusion of the insurance contract; and contact person. The oldest project published is from March 2014.⁷⁴ EGAP published a list of recent overall representative projects online up through 2013.⁷⁵

Both institutions provide annual reports online. Since 1998, ČEB’s annual report appears to provide some relatively detailed information on business activities, key markets risks and finances, in comparison to other ECA annual reports. EGAP’s report even lists the monthly fees its management is paid.⁷⁶ Nevertheless it is unclear from their reports which projects are backed by the state budget and to what extent and which projects are not.

In general, both institutions have a serious problem with communication about their projects. As was described above, both ČEB and EGAP give some information in their annual reports. According to the OECD Common Approaches, ECAs should release a complete list of Category A and B projects every year. EGAP also discloses some projects categorised as B on its websites, and two Category A projects are listed there together with an Environmental and Social Impact Assessment. According to EGAP, this represents all category A and B projects since 2014.⁷⁷ But neither of the institutions publishes a full list of the projects supported in past years, so it is difficult to assess whether projects were properly categorised. Clearly this lack of complete project lists represents a lack of transparency and public participation,⁷⁸ however, ČEB states that it is lack of disclosure is due to relevant applicable banking regulations which must be taken into account when communicating publicly about bank’s clients.

When the prime minister was asked via a parliamentary interpellation for a list of projects the parliamentarian was denied this information. All information was declared banking secret by ČEB and business secret by EGAP.⁷⁹

In reaction to this refusal to disclose the list of projects, the Prague-based environmental NGO Center for Transport and Energy (CDE) sent two freedom of information requests to EGAP.⁸⁰ The first asked for a list of the projects supported in the last seven years and the second requested all available information about the Long Phu coal power plant which is to be built in Vietnam and where EGAP is listed as a potential source of financing. In each request one paragraph warned that such information cannot be a business secret. But EGAP refused to disclose the information and answered that EGAP is not a public institution and therefore is not obliged to answer a FOIA. The same answer came after an appeal against this response.⁸¹

Similar requests were sent then to the Ministry of Finance and Ministry of Industry and Trade. The requests were refused with the questionable argument that ministries do not have such information.⁸²

EGAP's management was also asked for an interview about its processes, transparency and planned revision. Unfortunately, there was no answer from their side to set up a meeting. A similar request was sent to the Ministry of Industry and Trade which had been appointed by the Czech government to do an analysis of the current state of the two Czech export financing institutions and to deliver a proposal of changes and/or a new structural setup for state-backed export financing for the Czech Republic. While an initial meeting concerning possible structural deficits did take place in April 2017,⁸³ subsequent requests to conduct an interview for this report were not answered at all.⁸⁴

Complaint mechanisms

EGAP accepts complaints concerning the non-fulfillment of contracts relating to insurance and other services. A description how a complaint can be sent is provided on EGAP's website.⁸⁵ A complaint can be sent by anybody who is harmed by a contract. EGAP is supposed to answer within 30 days.

While this is in principle a useful tool in cases of misconduct for projects supported by EGAP (with which the insurer has had numerous experiences in recent years - see the section below), the authors notice that the guide is 'hidden' at the bottom of the page with contacts and is available only in Czech.

ČEB does not offer any possibility for complaints on environmental and social issues via its website, however it states that it accepts complaints concerning the non-fulfillment of contracts relating to financing and other services and also provides this information in English.⁸⁶ ČEB also states that a complaint can be sent by anybody who is harmed by a contract and that the bank is supposed to answer within 30 days.⁸⁷ However it is not obvious from the website text that the complaint mechanism also applies to affected people other than those involved in contract disputes.

EGAP and ČEB in focus: Increasing involvement in dubious projects and possible financial misconduct⁸⁸

By Dan Heuer (*Centrum pro dopravu a energetiku*)

Although not institutions that typically receive much fanfare, the Czech Republic's two collaborating state-backed export credit agencies EGAP and ČEB have a poor track record worthy of more scrutiny: As a response to the financial crisis and thus a desire to boost exports, the two institutions became more lenient in evaluating the financial and political risks of the projects and so a number of loans were made to projects that otherwise would not normally have received them. Without the proper safeguards in place, several problematic projects emerged.

There was a scandal caused by a police investigation against EGAP and ČEB. On 15 January 2014 ČEB and EGAP were closed because of investigations by Czech police. Also the Czech Supreme Audit Office conducted an investigation of both institutions.^{88,90}

Between 2005 and 2011, a significant amount of financing was distributed questionably by ČEB and backed by EGAP. During the six years, a total of 143 billion CZK/EUR 5.6 billion was sent to more than one hundred applicants. But almost 14 percent of this amount was received by just two companies. One of them even sent 40 percent of the loan to its supplier in a tax haven.⁹¹ ČEB was accused by the Supreme Audit Office of breaking the bank law by admitting numerous loans which should have never been given.⁹² In addition, EGAP was accused of receiving donations from the state in 2012 and 2013 even though it was not necessary.⁹³

The latest troubled project of ČEB and EGAP relates to a contract for the construction of the Yunus Emre thermal power plant in the north west of Turkey.⁹⁴ The operator of the power plant, Adularya, alleges that the components and machines provided by Czech exporter Vítkovice Machinery Group are not suitable for the low quality coal that is used at its Yunus Emre power plant. Neither side

wants to take responsibility for the dispute, so the future of the plant is now unclear. Since the beginning of 2017, the Czech government has sought a solution with its Turkish counterpart who took over Adularya after the political purge in 2016. There is, however, no agreement among Czech politicians about how to resolve this situation⁹⁵ and no will on the Turkish side to finish the construction of the power plant, so there is little chance the loan will be paid back.⁹⁶

This is not the first time ČEB and EGAP have supported failed coal power plant projects, resulting in losses for the state.⁹⁷ One was the Kolubara power plant in Serbia, which received a loan in 1999 following damage it sustained during the war in the former Yugoslavia. But part of the loan was never repaid, making top-ups from the Czech state budget necessary. EGAP also had to pay for power plants at Balloki and Muridke in Pakistan because the Czech supplier was not able to finish construction.⁹⁸

Three more unsuccessful projects backed by the ECA are located in Russia: A power plant in Kurganskaja had temporary difficulties with paying back ČEB, because of losses it incurred as a result of the devalued Ruble.⁹⁹ As of 2017, ČEB reports that the project is back on track, resulting in regular re-payments of the loan.¹⁰⁰ The Krasavino power plant, which is already running, split into two divisions, neither of which is willing to pay back the loan from ČEB.¹⁰¹ In addition, ČEB had to freeze payments for the 268 MW Poljarnaja gas-fired power plant, near Salekhard, Siberia. Its Russian partner did not adhere to its contract and the plant is not going to be finished.¹⁰² ČEB once again faces the severe headache of trying to recover its loans and will lose a significant amount of money on the deal.

It is estimated that all these measures, which were supposed to help the Czech state to get through the financial crisis, will

end up costing the Czech population at least CZK 20 billion (over EUR 740 million) due to materialisation of political risks and poor performance of projects especially in the Russian Federation.¹⁰³ Aiming at the mitigation of negative budgetary impacts, both institutions have established specific departments engaged in recovery operations concerning troubled projects.¹⁰⁴

In spite of these failures, ČEB and EGAP also considered supporting, a new unit at the Pljevlja lignite power station in Montenegro. Right from the beginning, the project was questioned by several NGOs, including CEE Bankwatch Network.¹⁰⁵ The construction company Škoda Praha – owned by the Czech state via ČEZ – was chosen for the project without a regular tender process, for which the Montenegrin government had to adopt a special law. Experts and local NGOs doubted future energy demand scenarios as well as the predicted price of the power plant.¹⁰⁶ Following public criticism and after internal evaluation of the project (reflecting ČEB’s newly introduced risk guidelines and procedures),¹⁰⁷ ČEB declined financing of the Pljevlja project, announcing in October 2016 that the project was too risky to participate in.¹⁰⁸

The only publicised outcome in terms of responsibility for failures so far was the charging of two former EGAP managers on 30 June 2016¹⁰⁹ for falsifying documents which constituted the basis for a decision to provide export support via EGAP and ČEB for the construction of a cement production plant in Vietnam. ČEB collected and prepared all the project documentation to be approved for support. Among the documents was also a study conducted by KPMG that had originally said that there was too low cement demand in Vietnam. Before the project documentation reached EGAP’s Supervisory Board, the KPMG study was removed by two managers of EGAP.

ČEB, which was to provide the export loan, stepped back from financing the project, aware that the deal might not end well. But EGAP’s Board approved the project, lacking the results of the KPMG study to guide their decision-making. And the Czech bank PPF, also mis-informed due to manipulated project data, stepped in to provide an export loan for the project. In the first third of the financing PPF bank realised the infeasibility of the project and stopped disbursement of the loan. Of a total EUR 100 million, PPF lost EUR 30 million which the bank had already transferred for the project. EGAP, which had provided insurance for the deal, was forced to pay back PPF’s losses.^{110 111} The trial of the two managers started in May 2017 but may take some years to complete.¹¹²

Despite all the scandals so far, another one may be on the way for EGAP, which is reinsuring another ECA, which is leading the transaction for the Long Phu coal power plant in Vietnam. EGAP is also negotiating with Russia about the construction of nuclear power plants in third countries.^{113 114}

EGAP does not actively share data about Long Phu. This lack of transparency is one of the reasons for all EGAP’s troubles. Neither potential nor finished projects can be properly discussed in public. EGAP has not considered public interest in the project and therefore other interests have a bigger influence. There is a lack of political responsibility in the Czech Republic for export financing.

While there is currently an ongoing political discussion about reform of EGAP and ČEB and even about a possible merging of the two institutions, the lessons to be learnt from recent years’ shortcomings have to be seriously taken into account. Hopefully, there will be better transparency and responsibility in the new future Czech ECA(s).

Conclusion

ČEB and EGAP, both state-owned enterprises, have used funds that are backed by public money through state-backed guarantees and insurance to finance a number of problematic projects in recent years, both from a financial and environmental point of view. These include coal, gas and nuclear power stations. This is in part due to the Czech strategy of boosting exports and minimising the impacts of the financial crisis. ČEB and EGAP relaxed their rules and provided loans and guarantees for riskier projects. The fact that several projects have been under investigation by the Czech police since at least 2014 shows that the problem goes far beyond this. Since 2014 at least the risk appetite of both ČEB and EGAP seems to have decreased. And, according to ČEB, internal rules and procedures under which new projects are assessed, have tightened in this regard.¹¹⁵

The unsuccessful projects financed by ČEB and EGAP such as the Krasavina and Poljarnaja power stations in Russia raise the alarm about their decision-making processes, transparency and accountability. In theory the Czech Ministries of Finance, Industry and Trade, Foreign Affairs and Agriculture supervise the institutions through their shareholding, but in practice there has been a serious lack of political accountability for the failed projects. Until the end of 2016 the only result of all the investigations was that two former EGAP managers were charged with falsification of documents.

In theory ČEB and EGAP support Czech business abroad, but their backing for projects like coal and gas power projects which impact climate change are incompatible with achieving the goals of the Paris Agreement¹¹⁶ and in fact have served to prop up Czech companies' outdated business strategies. ECAs should rather help transform or grow companies which are more future-proof and operate in developing industries like renewable energy or public transport. They should adopt stricter criteria preventing financing for fossil fuel projects.

Unfortunately, there appear to be no specific climate change-related policies in place within ČEB or EGAP other than sector-specific agreements in the OECD ECG's Sector Understandings. Both ECAs should develop their own internal exclusion lists for specific business types with specifically high potential negative environmental or human rights impact where no support will be granted.

Both ČEB and EGAP operate with public finances, so the public has the right to actively participate in environmental decision-making related to their operations.

The most urgent need in this respect is to disclose the list of projects financed between 2010-2016. In addition the ECAs need to actively disclose information about projects that they discuss at an early stage, before decisions on financing are made. This way, NGOs can evaluate the potential environmental and social impacts of projects and the public can express its views. This would go a long way to help avoid the conflicts and criticisms that have arisen so far across the portfolios of ČEB and EGAP. Disclosing information on Category A and B projects 30 days before board approval may be in line with the OECD's Common Approaches for Export Credit Agencies but is insufficient for real public discussion to take place.

Projects which take place in sensitive areas or are likely to have human rights impacts are classified by external experts as Category A or B. Relatively few of these have been published, but since no overall project list is published, it is impossible to tell whether some projects have escaped scrutiny this way.

ČEB and EGAP both write on their websites that they have the right to ask for monitoring reports on projects they support. They do not publish any of these reports or summaries, so it is unclear to what extent monitoring is really taking place, however according to EGAP, monitoring reports are requested for all projects of category A and B.¹¹⁷

EGAP has developed a basic complaint mechanism, but it does not have clearly developed rules of procedure, is not very visible on its website, and the information about it is only available in Czech.

Complaints can be made by any natural or legal person, e.g. damaged third party. There is no restriction when reporting environmental violations or corruption allegations. ČEB accepts complaints concerning the non-fulfillment of contracts relating to financing and other services.¹¹⁸ It also states that a complaint can be sent by anybody who is harmed by a contract, however this is not immediately obvious from looking at the website.

EGAP and ČEB's commitment to answer complaints within 30 days is welcome, but information about these needs to be available in the languages relevant for the countries where their impacts are felt and to be made much more visible on their websites. A list of complaints received and ČEB/EGAP's conclusions and any corrective action to be taken also needs to be published.

Endnotes

- 1 <http://www.egap.cz/styles/logo-egap-en.png>
- 2 <https://www.ceb.cz/webs/ceska-exportni-banka/images/logo.png>
- 3 EGAP Annual report 2016: <http://www.egap.cz/dokumenty/vyrocnizpravy/vyrocnizprava-2016-en.pdf>
- 4 ČEB Annual report 2016: https://www.ceb.cz/_sys_/FileStorage/download/2/1944/vz_en_16_fin_last.pdf
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- 7 EGAP Annual report 2016
- 8 ČEB Annual report 2016
- 9 EGAP Annual report 2016, p.7
- 10 Ibid.
- 11 EGAP Annual report 2016, p.10: Sum of “Number of Insurance Contracts by Products concluded in 2016” (Chart 5)
- 12 Ibid., p.14
- 13 ČEB Annual report 2016, p.27, see “Loan principal balance in 1996–2016” (Graph 3)
- 14 This corresponds with a decline in volume of nearly 50% compared to 2015. 41% of this volume related to transactions made with insurance of EGAP. (ČEB Annual report 2016, p.25)
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- 16 EGAP Annual report 2015, p.25
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- 19 <http://www.mfcr.cz/cs/zahranicni-sektor/podpora-zehranici/podpora-exportu>
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- 25 Ibid.
- 26 <https://www.ceb.cz/en/about-us/history/>
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- 29 https://www.ceb.cz/_sys_/FileStorage/download/2/1608/vz_en_15_fin.pdf p.30, Communication with ČEB on 22 November 2017
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- 31 EGAP Annual report 2016, p.13: <http://www.egap.cz/dokumenty/vyrocnizpravy/vyrocnizprava-2016-en.pdf>
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- 35 For details see in-depth section towards the end of this profile.
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- 44 Ibid., p.10: <http://www.egap.cz/dokumenty/vyrocnizpravy/vyrocnizprava-2015-en.pdf>
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- 52 SDR 10 million currently equals circa EUR 12 million (last checked on Nov 13 2017). The ECG uses SDR (Special Drawing Right) value for referencing currency value between its members. Most other ECAs covered in this report simply translate the OECD Common Approaches’ threshold of SDR 10 million to EUR 10 million. SDR were originally created by the IMF in 1969 to supplement its member countries’ official reserves. The value of the SDR is based on a basket of five major currencies - the US dollar, the euro, the Chinese renminbi (RMB), the Japanese yen, and the British pound sterling. See: <http://www.imf.org/en/About/Factsheets/Sheets/2016/08/01/14/51/Special-Drawing-Right-SDR>
- 53 Ibid.
- 54 E-mail communication from EGAP with Center for Transport and Energy (CDE), 28 November 2017
- 55 <http://www.egap.cz/informace/o-vlivu-vyvozu-na-zivotni-prostredi/seznam-zpracovateluv/index-en.php> and <http://portal.cenia.cz/eiasea/osoby/osoby>
- 56 http://www.egap.cz/dokumenty/vliv-vyvozu-a-investicna-zivotni-prostredi/projekty-a-autorizace_posudku_je_mochovce_na_slovensku.pdf;
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- 67 Letter from Czech Prime Minister Bohuslav Sobotka to Member of Parliament Michal Kučera in response to interpellation sent on 28th of April 2017.
- 68 See for example the ECG's summary on ECG members' reporting from January 8th 2016: Trade and Agriculture Directorate (Trade Committee, Working Party on Export Credits and Credit Guarantees): INFORMATION ON CATEGORY A AND CATEGORY B PROJECTS (2013 REPORTS).
- 69 Letter from Czech Prime Minister Bohuslav Sobotka to Member of Parliament Michal Kučera in response to interpellation sent on 28 April 2017.
- 70 see for example: <https://www.ceb.cz/en/about-us/legislation/international-standards/>
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- 73 <http://www.egap.cz/informace/o-vlivu-vyvozu-na-zivotni-prostredi/postup-pri-vyhodnoceni-vlivu-vyvozu-na-zivotni-prostredi/index-en.php>
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- 75 <http://www.egap.cz/dokumenty/brozura-projekty-en.pdf>
- 76 <http://www.egap.cz/dokumenty/vyrocní-zpravy/vyrocní-zprava-2015-en.pdf> p. 51
- 77 E-mail communication from EGAP with Center for Transport and Energy (CDE), 28 November 2017
- 78 OECD, Common Approaches 2016, par. 41.
- 79 Letter from Czech Prime Minister Bohuslav Sobotka to Member of Parliament Michal Kučera in response to interpellation sent on 28 April 2017
- 80 Both letters were sent on 13 July 2017. Negative answers were received on 21 July 2017.
- 81 The appeal was sent by CDE on 28 July 2017 and the answer was received on 31 August 2017.
- 82 The requests for a list of approved projects and environmental information about Long Phu were sent by CDE both to the Ministry of Finance and the Ministry of Industry and Trade on 11 September 2017. The Ministry of Finance answered negatively on 25 September 2017. The negative answer from the Ministry of Industry and Trade was received on 4 October 2017. Again all the communication was between the ministries and CDE.
- 83 Meeting between representatives of the Czech Ministry for Industry and Trade, Dan Heuer, CDE and Barbora Urbanová, Center for Transport and Energy, on 13 April 2017.
- 84 The fact that neither EGAP's management nor representatives of the Ministry of Industry and Trade responded to the authors' requests to arrange an interview can be assumed to be an indicator of their willingness to engage with the public and their views on transparency. (Emails offering the opportunity for an exchange meeting and asking to carry out an interview were sent the Ministry of Industry and Trade on 25 April 2017, on 16 May 2017 and on 07 June 2017. EGAP management was contacted by e-mail with a request for an interview on 27 March 2017, on 04 May 2017 and on 22 May 2017.) A lawsuit was filed against EGAP in October 2017 by the Czech NGO CDE for not disclosing a list of projects supported in 2010-2016.
- 85 <http://www.egap.cz/kontakty/vyrizovani-stiznosti/index.php>
- 86 <https://www.ceb.cz/en/about-us/further-information/rules-for-handling-complaints-and-grievances/>
- 87 E-mail communication from EGAP with Center for Transport and Energy (CDE), 28 November 2017
- 88 The following text is an adapted and updated version of Dan Heuer's original article "Lack of transparency hindering Czech export agency" form February 15th, 2017 to be found on CEE Bankwatch's website: <https://bankwatch.org/news-media/blog/lack-transparency-hindering-czech-export-agency>
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- 97 https://ekonomika.idnes.cz/ceska-exportni-banka-uverovala-neuspesne-elektrarny-p0q-/ekonomika.aspx?c=A160205_201831_ekonomika_jvl
- 98 <http://archiv.ihned.cz/c1-38211900-pojistovne-egap-mizi-rezervy>
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- 100 Communication between ČEB and CEE Bankwatch Network, 28 November 2017
- 101 see: <https://www.respekt.cz/politika/cesku-se-nedari-z-ruska-ziskat-zpet-utopene-miliardy-presto-tamchce-poslat-dalsi> as well as https://ekonomika.idnes.cz/ceska-exportni-banka-uverovala-neuspesne-elektrarny-p0q-/ekonomika.aspx?c=A160205_201831_ekonomika_jvl
- 102 <http://www.powerengineeringint.com/articles/2015/09/czechs-forced-to-abandon-russian-gas-fired-power-project.html>
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- 105 <http://bankwatch.org/our-work/projects/pljevlja-ii-lignite-power-plant-montenegro>
- 106 <http://bankwatch.org/sites/default/files/WBalkans-stranded-assets.pdf>
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- 114 <https://www.respekt.cz/politika/co-resil-zemanuv-poradce-nejedly-v-moskve>
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Hungary: EXIM (Eximbank and MEHIB)

Quick facts

Number of employees (EXIM total, average of 2015)

192¹

Volume of business (balance sheet total 2016)

Eximbank: HUF 94 billion/EUR 3.01 billion²

MEHIB: HUF 17.66 billion/EUR 56.6 million³

Guarantees covered by the Republic of Hungary (MEHIB)

Legal maximum volume of exposure HUF 600 billion/EUR 1.91 billion⁴

Current volume of exposure (2016) ?

New guarantee contracts issued in 2016 ?

Failure liabilities ?

Export financing measures covered by the Republic of Hungary through Eximbank

- **Legal maximum volume of exposure Eximbank**

HUF 1200 billion/EUR 3,828 billion⁵

- **Volume of exposure**

HUF 8,99 billion⁶

- **Volume of exposure (2015)**

HHUF 876,7 billion/EUR 2.796 billion⁷

- **Written premium charges (2015)**

HUF 32.002 million/EUR 102.075 million⁸

- **New guarantees issued in 2015/16**

Information not found

Legal framework⁹

- Act XLII of 1994 on Hungarian Export-Import Bank Ltd. and on Hungarian Export Insurance Ltd.
- Act C of 2000 on Accounting
- Act CXXII of 2009 on the more efficient operation of publicly-owned companies
- Act CXII of 2011 on the Right of Informational Self-Determination and on Freedom of Information
- Act CCXXXVII of 2013 on Credit Institutions and Financial Enterprises

Political responsibility

Ministry of Foreign Affairs and Trade¹⁰



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Overview

Similar to the Czech Republic, Hungary also has two institutions responsible for official export promotion. MEHIB (Magyar Exporthitel Biztosító Zrt./Hungarian Export Credit Insurance Plc.) acts as Hungary's state-backed export insurance provider. Eximbank (Hungarian Export-Import Bank Plc.) fulfills the role of Hungary's official export bank. When providing information to the public they appear jointly as EXIM.

Both institutions were founded simultaneously in 1994, and they are 100% owned by the state. The two ECAs work very closely, sharing one management structure, as well as their headquarters in Budapest and their joint website.¹¹

According to written response to our interview questionnaire, EXIM's mission is "to serve Hungarian exporters through the provision of effective financing and insurance facilities and support the export of goods and services of Hungarian origin. One of the most important requirements regarding the financed and insured export contracts is that the exporters are obliged to prove the Hungarian origin of the exported goods and services according to the applicable governmental decrees."¹²

Eximbank and MEHIB's general structure and main activities are regulated in Act XLII of 1994 on the Hungarian Export-Import Bank Corporation and the Hungarian Export Credit Insurance Corporation.¹³ Jointly, they offer export insurance, investment insurance, export promoting loans as well as tied aid loans,¹⁴ which links them closer to state-supported ODA-programmes (like in Austria, where OeKB provides tied aid loans for the Austrian Ministry of Finance) than is the case in most other ECA examples in this report.

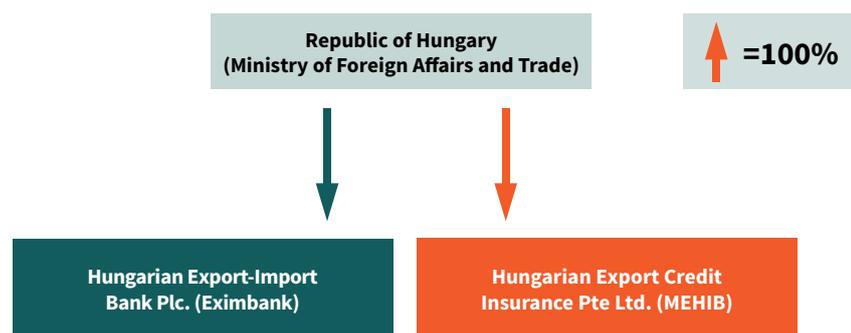
In support of its mandate, EXIM provides export loans and export insurance directly to exporters of Hungarian products/services as well as to suppliers or their foreign purchasers. It also provides refinancing facilities for domestic and foreign commercial banks who finance Hungarian export-related transactions. The majority of its loans are offered in accordance with OECD rules in the form of medium- to long-term credits at favourable fixed interest rates.¹⁵

In recent years Eximbank as part of EXIM has tried to significantly grow its loan portfolio by venturing onto the private financing market. In line with its objective on "the maintenance and creation of jobs in Hungary". The ECA now also indirectly provides equity financing to Hungarian exporting companies through investment in selected equity funds. It can itself establish venture capital and private equity funds or join as an investor.¹⁶

In recent years EXIM has been involved in a series of controversies which received significant publicity in the media, particularly concerning the finance of several questionable projects, as shown below.

It has also been the subject of discussion between Hungary and the European Union about whether it should be classified as governmental institution or in the financial corporations sector.

Eximbank/MEHIB (EXIM)



Corporate structure

The Hungarian state owns 100% of both Eximbank and the Hungarian Export Credit Insurance Pte Ltd. (MEHIB), and since 2014 the Ministry of Foreign Affairs and Trade holds all shareholder rights. The owner's (shareholder's) rights in respect of the shares held by the state in Eximbank and MEHIB are exercised by the minister in charge.¹⁷

The two ECAs jointly provide export and export-related financing (directly through lending or indirectly through venture capital and/or private equity funds) and export-related insurances and guarantees. They operate jointly within an integrated framework and carry out their duties with a shared organisation and corporate identity under the name of EXIM.¹⁸

As a specialised credit institution Eximbank also provides loans - in addition to its state-backed activities - through private-business-backing.¹⁹ In this case the source of financing for export project loans stems from private equity.²⁰ Since the change in ownership from the state-owned Hungarian Development Bank to direct ownership by the Hungarian state in 2012 Eximbank "has sought to meet its medium- and long-term funding needs primarily through issuing debt securities in the international capital markets and money markets, [...], rather than loans from the Hungarian state or state-owned entities."²¹

Eximbank owns shares in the following enterprises:²²

- Exim Exportösztönő Magántőkealap (100 % ownership)
- Exim Növekedési Magántőkealap (100 % ownership)
- PortfoLion Regionalis Magantőke-alap (50 % ownership)
- Kazakhstan Hungarian Investment Private Equity Fund (49.50 % ownership)
- IFC Financial Institutions Growth Fund, LP (11.72 % ownership)
- China-Central and Eastern Europe Investment Co-Operation Fund (6.90 % ownership)
- China-CEE Management S.a.r.l. (10 % ownership)
- Garantiqua Hitelgarancia Ltd. (0.15 % ownership)

MEHIB, as an export insurance institution, provides export credit insurance to exporters or their banks, including also Eximbank's borrowers.²³ The activities of MEHIB extend to non-marketable risk insurance and reinsurance policies of insurance in the branches of credit, suretyship and various financial losses. MEHIB performs its activities generally in relation to export-oriented foreign trade transactions.²⁴ Export insurance coverage can be provided for pre-shipment risks, post-shipment risks and outstanding debts as well as for manufacturing risk, supplier credit, buyer credit, leasing, bank guarantee, and investment.²⁵

Under the joint label EXIM the two institutions perform the tasks of Hungary's export credit agency, which are regulated by the legislative frameworks of the OECD and the EU, with the basic objective of facilitating the sale of Hungarian goods and services in foreign markets.²⁶

EXIM also holds offices abroad in Istanbul, Moscow and Belgrade.²⁷

Decision making structures within EXIM acting as officially-supported export credit agency

EXIM's main corporate bodies of are (according to the "EXIM Act"²⁸):

- The "Founder": The Minister in charge of foreign economic affairs.
- The Board of Directors as governing body of Eximbank and MEHIB.
- The Supervisory Board, performing oversight of the management and administration of Eximbank and MEHIB.
- The functional units of Eximbank and MEHIB are headed by the Chief Executive Officer, whose duties and powers are determined by the Board of Directors.²⁹ Apart from the CEO, the Executive Board consists of the Deputy CEO, Executive Director for IT and the Executive Director for Risk Management.³⁰

Environmental and human rights screening

According to EXIM any environmental and social impacts and risks of a project potentially supported by export credit financing must be reviewed and assessed during the course of the application and decision on the project: "The Hungarian ECAs have to contribute to the environmental protection by ensuring the principle that EXIM's sources should not support projects with unacceptable adverse environmental impact. By law the EXIM is obliged to take into account environmental and social considerations as well among the criteria of eligibility for insurance in line with the relevant regulation applied by the OECD."³¹

EXIM states that it has implemented the Common Approaches in its internal regulatory system. According to these, transactions are pre-monitored and ranked at an early stage. Based on the monitoring and questionnaires a decision is made: acceptance of the transaction, acceptance with provisions, or rejection.³²

According to EXIM's answers to our questionnaire, the Guiding Principles of the Hungarian environmental and social policy applied by EXIM are: to comply with relevant Hungarian legislation, including international commitments and environmental agreements undertaken by Hungary; to be in observance of the legal regulations pertaining to commercial confidentiality and business interests, in line with relevant rules of public disclosure; and to have procedures and rules flexible enough and suitable for continued enhancement in order to follow international rules and trends. When assessing environmental and social impacts of projects EXIM should work in cooperation with stakeholders and respect the rights of buyer countries.³³

With regards to the question whether public participation by project affected people is sufficient, EXIM states: "According to the Recommendation, the information to be supplied should include, but is not limited to e.g. the results of any public consultations with local communities directly affected by the project and/or their legitimate representatives and of any engagement with other parties, such as civil society organisations, that have expressed an interest in the project. It is the responsibility of the buyer/project sponsor to undertake any such public consultations and/or engagements with interested parties. For

the purposes of public consultations, environmental and social impact information should be made available to affected communities in a language accessible to them.”

EXIM also states that it has no experience with cases where a public participation process has not been satisfactory. In such a case, EXIM would require the applicant to present its suggestions for a solution that may be prescribed in the underlying documentation as well.³⁴

With regards to its screening procedures for potential environmental or human rights impacts, EXIM gave a detailed description concerning what the insurer should do according to OECD recommendations, as well as according to its own policy guidelines (see above).

Unfortunately, there was no description about whether or to what extent these guidelines have actually been followed on a day-to-day basis. To be sure, there is no separate structure responsible for environmental and social assessment, as its legal department is responsible for the assessment.

In its environmental policy the bank claims that, “For category A projects, the Environmental and Social Impact Assessment (or its key findings) has to be disclosed as far as possible but at least 30 days prior to the commitment (issuance of policy). EXIM ensures - in view of the disclosure provisions in the national laws and of business interests - ex post disclosure of the environmental information in case of category A and B projects. This ex-post disclosure may be accomplished via its web site.” But there is no such information disclosed on the website of the bank, although the bank definitely has category B projects, as it was acknowledged in response to an official information request made by Friends of the Earth Hungary.³⁵

The seriousness of the ex-post evaluation is also questionable. For instance, the question “Are there post-project monitoring and evaluation processes [concerning environmental information and human rights]? How are they implemented in practice? If no, have such measures been considered within your ECA?” was answered: “In case of Category A projects, EXIM should require regular ex post reports and related information to be provided during their involvement in the project to ensure that relevant potential environmental and/or social impacts are addressed according to the information provided by applicants during the environmental and social review. In the case of non-compliance with the conditions of official support, EXIM should take actions that they deem appropriate in order to restore compliance, in accordance with the terms of the contract for official support. EXIM should, where appropriate, encourage project sponsors to make ex post monitoring reports and related information including concerning how environmental and/or social impacts are being addressed publicly available at regular intervals, including in forms accessible to local communities directly affected by the project and other relevant stakeholders.”

From the answers received by EXIM, it is hard to estimate whether there are for example field visits undertaken, how large the screening team is, or whether there is an internal post-project-monitoring system in place.

The only actual reference to screening in practice by EXIM was the following: “EXIMBANK is ready to participate in the exchange of information with foreign partner institutions as well as in its joint insurance undertakings and in any other partnerships (re-insurance, co-insurance, etc.) [on social and environmental information].”³⁶

Exclusion lists

EXIM states that it does not underwrite the following projects (pursuant to the MIGA exclusion list):

- Production or trade in any product or activity deemed illegal under host country laws or regulations or international conventions and agreements, or subject to international bans, such as pharmaceuticals, pesticides/herbicides, ozone depleting substances, PCB, wildlife or products regulated under CITES.
- Production or trade in weapons and munitions.
- Production or trade in alcoholic beverages (excluding beer and wine).
- Production or trade in tobacco.
- Gambling, casinos and equivalent enterprises.
- Production or trade in radioactive materials. This does not apply to the purchase of medical equipment, quality control (measurement).
- Production or trade in unbonded asbestos fibers. This does not apply to purchase and use of bonded asbestos cement sheeting where the asbestos content is less than 20 percent.
- Drift net fishing in the marine environment using nets in excess of 2.5 km. in length.
- Production or activities involving harmful or exploitative forms of forced labor/harmful child labor.
- Commercial logging operations for use in primary tropical moist forest.
- Production or trade in wood or other forestry products other than from sustainably managed forests.
- Production, trade, storage, or transport of significant volumes of hazardous chemicals, or commercial scale usage of hazardous chemicals. Hazardous chemicals include gasoline, kerosene, and other petroleum products.
- Production or activities that impinge on the lands owned, or claimed under adjudication, by Indigenous Peoples, without full documented consent of such peoples.³⁷

Furthermore each EXIM product description contains a detailed list of excluded activities.³⁸

Climate mitigation measures

Concerning climate-change related policies within EXIM, the ECA stated in response to our questionnaire: “The purpose of the Sector Understanding on export credits for renewable energy, climate change mitigation and adaptation and water projects is to provide adequate financial terms and conditions to projects in selected sectors identified including under international initiatives as significantly contributing to climate change mitigation, including renewable energy, greenhouse gas (GHG) emissions’ reduction and high energy efficiency projects, climate change adaptation, as well as water projects.

The Participants to this Sector Understanding agree that the financial terms and conditions of the Sector Understanding, which complements the OECD Arrangement, shall be implemented in a way that is consistent with the purpose of the OECD Arrangement.”³⁹

It appears that there are no specific climate-change related policies in place within EXIM or regarding officially supported export promotion other than sector-specific agreements in the OECD Sector Understandings.

Reporting and transparency

EXIM provides project information to the ECG forum at least semi-annually according to the OECD recommendation.⁴⁰ As per the EU ECA Regulation the Hungarian government is obliged to also report on their state-backed export promotion to the European Commission.

The Hungarian ECA has not published all of its annual and financial reports in English. In particular, MEHIB's annual reports are available in Hungarian only.⁴¹

In order to better understand the activities of the bank, in the first half of 2017 Friends of the Earth Hungary requested information on tied aid loans (eg. name of the project, nominal value and disbursed loan amount) based on the Hungarian Freedom of Information Act. The state-owned bank refused to release it on the basis of banking secrecy.

After the case was taken to court, in October 2017, at the first instance the Budapest-Capital Regional Court ordered the bank to publish the requested information. In matters of public money and data of public interest, banking secrecy, as a special type of business secret, cannot be automatically excluded from the regulations about freedom of information, i.e. monitoring by the public.⁴² According to the Budapest-Capital Regional Court decision, a borrower using public money should be aware of the fact that the transaction can be made public due to constitutional provisions.

However in a similar case – the verdict of the Curia (Supreme Court of Hungary) resulted in the opposite decision, whereby Exim does not have to release the information.⁴³

Complaint mechanisms

According to EXIM's internal regulation, clients are entitled to fill a written complaint to EXIM and should receive a response in 30 days. If the complaints are rejected then the clients are allowed to submit their complaints to the National Bank of Hungary or to the Hungarian Competition Authority.

The Business Regulation of MEHIB claims that “The procedure for handling complaints is regulated by the Insurer's Complaint Handling Regulations, which are published by the Insurer on its website (www.exim.hu) and in its registered office.”⁴⁴, but we could not find the more detailed information on the website.

There is no information about whether EXIM has any procedure for handling complaints from people affected by projects it finances.

EXIM in focus: The Hungarian ECA needs more transparency and to remember its roots

By Ákos Éger, Magyar Természetvédők Szövetsége/Friends of the Earth Hungary

While the subscribed capital of the Hungarian ECA EXIM was boosted from HUF 4.25 billion in 2010 to HUF 133.7 billion in 2016, the bank was involved in several cases that received significant publicity in the media. EXIM financed several questionable projects not directly linked with export, and at the same time, Eurostat, the European Commission's statistical agency, pressed the Hungarian government to calculate its public debt levels, including the debt of EXIM.

The questionable projects included a loan to buy Hungary's second largest commercial television station TV2. The deal raised criticism for not being related to the bank's official mission. The same argument applied to another project supported with a HUF 16.5 billion loan to an office and residential development in the south of Budapest. In 2016 news reports said that the bank was criticised for loaning money (HUF 41 and 25.5 billion) to companies that do not have a relationship with export business. According to the bank, these loans were legal, and supported the purchases of

the borrowers from foreign sources.⁴⁵

Another disputed issue is whether the debt of Eximbank should be calculated as state debt or not.⁴⁶ According to the Hungarian government EXIM is an independent organisation, therefore the bank's assets and liabilities are not to be included into the national budget. Eurostat argues to the contrary, and its opinion was backed by a recent decision of the EU's Committee on Monetary, Financial and Balance of Payments Statistics that Eximbank is a captive financial institution controlled by the government⁴⁷.

In these circumstances transparency of the bank is crucial, which is currently not the case. This urgently needs to change if EXIM is to use public money in the most effective and transparent way.

Hence, the Hungarian ECA should increase transparency and return to its original mission.

Conclusion

Eximbank has a rapidly increasing role in Hungary's development financing and most of its activities contribute to shaping the future of developing countries.

For this reason it is important to:

- implement all the requirements of the OECD guidelines in practice;
- increase the transparency of the institution and its projects for Hungarian taxpayers and for affected people in the recipient countries;
- integrate environmental and social sustainability criteria in all the phases of the project pipeline.

Only in this way can it be guaranteed that projects financed by Eximbank support real solutions to global problems.

Endnotes

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- 7 Signed Financial Statements 2015, p. 42
- 8 Ibid., p. 81
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- 38 See the Hungarian version of EXIM's website: <https://exim.hu/szabalyzatok-kondiciok/bank/miga-kizarolista/file>
- 39 Written communication with EXIM (04 July 2017)
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Poland: Korporacja Ubezpieczeń Kredytów Eksportowych (KUKE)

Quick facts²



**Korporacja Ubezpieczeń
Kredytów Eksportowych (KUKE)¹**

ul. Sienna 39
00-121 Warsaw
Phone +48 22 35 68 300
Fax: +48 22 313 01 20

Website: www.kuke.com.pl

Number of employees (2016)

177

Volume of business (2015)

PLN 30.7 billion / EUR 7.22 billion
(Value of total insured turnover of KUKE S.A.)³

Export insurance and guarantees covered by the Republic of Poland (2015)

- **Legal maximum volume of exposure**
PLN 15 billion / EUR 3.5 billion⁴
- **Volume of commitment at the end of 2015**
PLN 6.3 billion / EUR 1.5 billion⁵
- **New guarantee contracts issued in 2015**
PLN 3 billion / EUR 0.7 billion⁶
- **Failure liabilities**
PLN 145 million / EUR 34.1 million⁷

Legal framework

- The Insurance Act dated 15 September 2015 (Journal of Laws of 2015 item 1884)
- The Act dated 7 July 1994 on Export Insurance Guaranteed by the State Treasury (Journal of Laws of 2017 item 826)
- The Statute of the Export Credit Insurance Corporation Joint Stock Company.⁸

Political responsibility

Ministry of Development and Finance

Overview

Founded in 1991, Poland's export credit agency KUKE (Korporacja Ubezpieczeń Kredytów Eksportowych/Export Credit Insurance Corporation Joint Stock Company)⁹ is a state-backed export insurer based on the Insurance Act from 11 September 2015 and the Act dated 7 July 1994 on Export Insurance Guaranteed by the State Treasury and its Statute. KUKE S.A. is completely state-owned.

KUKE works together with the Bank Gospodarstwa Krajowego (BGK), a state bank whose strategic task is to support the development of Polish companies operating internationally. BGK is regulated by the Law of 14 March 2003 on Bank Gospodarstwa Krajowego and by the Regulation of the Minister of Development of 16 September 2016 on the statute of the Bank Gospodarstwa Krajowego. Among other things, BGK supports companies under the government's Export Promotion Programme,¹⁰ which consists of "Financial Support for Export" and "Export Credit Facility (DOKE) Programme".

According to the BGK website, all loans granted under the first of the above programmes are insured at KUKE.¹¹ This is confirmed by a letter signed on behalf of the Minister for Development and Finance, which says: "All export credits granted by BGK under the government's "Financial Support for Export" and "Export Credit Facility Program" must be insured at KUKE S.A. within the framework of export insurance guaranteed by the State Treasury. Therefore, all the export credits covered by the recommendation (...), granted by BGK under these two programmes are in line with the OECD's recommendation."¹²

Poland's top exports are machinery and vehicle parts, ships and furniture. Total exports amounted to EUR 172.2 billion in 2015.¹³ Similar to Poland's overall exports, KUKE's geographic structure of export turnover was dominated by EU countries (65.9%) as well as CIS countries (16.6%), specifically led by Germany (21.3%), Russia (8.3%) and the Czech Republic (5.7%)¹⁴

KUKE is supervised (the performance of duties and powers of the Minister) by the Minister of Development and Finance. According to art. 7 of the Act on Export Insurance Guaranteed by the State Treasury, KUKE's operations regarding export insurance guaranteed by the State Treasury and insurance guarantees are determined by the Committee on Export Insurance Policy (KPUE)¹⁵, which additionally provides guidance for export insurance and insurance guarantee orders. KUKE also provides insurance services on a commercial basis, regulated by the Act of 11 September 2015 on insurance and reinsurance business. KUKE S.A., although it fully belongs to the State Treasury, cannot be regarded as a "public authority" as per art. 2 sec. 2 of the Aarhus Convention. Nevertheless, there is no doubt that KUKE S.A. is subject to the Act on Access to Public Information (vide Opinion of the Ombudsman of January 31, 2017).¹⁶

The OECD Common Approaches are applied not only by the Export Credit Corporation (KUKE) but also by the Bank Gospodarstwa Krajowego (BGK).¹⁷ The need for KUKE to implement the OECD Common Approaches is regulated by Resolution No. 20/2016 of KPUE from 29 July 2016 on the detailed rules for the operation of the Export Credit Corporation of the Joint Stock Company for environmental and social procedures, (the so-called KPUE resolution).

Corporate structure

63.31% of KUKE S.A.'s shares belong to the Polish State Treasury (represented by the Minister of Development), while 36.69% of shares are in the hands of BGK, which is also state-owned.¹⁸

KUKE's major facilities are: export credit insurance, including marketable and non-marketable risk cover for short, medium and long-term projects; supplier credit and buyer credit facilities; investment insurance; bonds and guarantees; and domestic credit insurance.¹⁹ In 2014 its domestic insurance was worth three times as much as export trade insurance cover.²⁰

KUKE has offices in Warsaw, Gdańsk, Katowice, Kraków, Poznań, and Wrocław.²¹

In November 2014, KUKE Finance JSC, a 100% subsidiary of KUKE started operations.²² The institution's general objective is "to provide export and domestic factoring services in all available forms, particularly within the framework of non-recourse factoring i.e. where the factor assumes the risk of non-payment by his client's buyer."²³

Decision-making structures

The highest decision-making body of KUKE is the General Meeting of the Shareholders (the Polish State Treasury represented by the Minister of Development and BGK).²⁴

The Supervisory Board exercises permanent supervision over the agency's activities, although it has no right to issue binding instructions to the Management Board regarding the agency's affairs. Its Supervisory Board consists of a chairman and five additional members.²⁵ KUKE's Management Board manages its affairs and represents the agency, with four members plus the president.²⁶

On the political level the Minister of Development and Finance is responsible for KUKE's activities.²⁷

Environmental and human rights screening

According to its website, KUKE follows OECD recommendations regarding environmental protection, social rights as well as concerning issues of transparency.²⁸

KUKE's environmental procedures have been analysed by Greenmind foundation on the basis of information obtained from KUKE's website, the content of the Environmental Impact Questionnaire that has to be filled in by credit insurance applicants, information provided to Greenmind foundation at a meeting with KUKE representatives, and written information sent after the meeting.

The environmental assessment procedure is as follows:

1. The applicant attaches to the application for credit insurance a completed Environmental Impact Assessment Questionnaire. The questionnaire makes it possible to select, or evaluate, whether the project is potentially subject to assessment under the Common Approaches. According to KUKE, at this stage most projects are assessed as not being subject to classification due to the type of export item not being related to a specific site (e.g. ships) or the amount of insurance being less than SDR 10 million. Selection is then carried out by KUKE employees.
2. During the classification process, data from the questionnaire is used. At this stage, KUKE uses an external expert support (in accordance with § 5 of the KPUE resolution) who, for example, can verify the exporter's declaration on whether the project location is in a sensitive area using, for example, inventories and geospatial data. At this stage, the exporter may be asked to provide more detailed information than that in the questionnaire. According to KUKE: "The questionnaire is therefore the beginning of an environmental procedure, in which an exporter often presents his idea for a transaction, which is then extended with additional information already during the transaction analysis. At the end of the process, KUKE and the environmental expert have sufficient data to finally categorize the project." The final result is to classify the project into categories A, B or C, as reflected in "the Project Classification Note".
3. The assessment of a project classified as category A or B is based on additional documentation provided by the applicant. As stated by KUKE: "At this point, specialised documents are required, containing information on the detailed terms of the Project, emissions, technical conditions, permits, etc. In case of category A projects and in justified cases for category B projects, an Environmental and Social Impact Assessment (ESIA) Report is required." A summary of the assessment is gathered in 'the Environmental Impact Assessment Note,' prepared by an environmental expert. It contains among others things recommendations for the

acceptance (or rejection) of a project for insurance and possible additional conditions for granting insurance cover.

4. Information about category A and B projects is published on the KUKE S.A. website, although it should not be regarded as the full implementation of Art. 41 of the Common Approaches as it does not have sufficient content. Information about category A projects is published 30 days before the decision, 'to gather comments from anyone environmentally concerned' as is stated in its Environmental Procedure. However, the procedure for dealing with submitted comments is not specified, which makes it questionable how Art. 36 and 40 of the Common Approaches are being applied. There is also no place for these to be made public. So far, no comments on category A projects have been submitted, which KUKE cites as the reason why there's no procedure to deal with them.

As for human rights screening, Art. 14 of the Common Approaches has not been properly implemented. There is no specific human rights due diligence procedure in cases where there is a high likelihood of severe project-related human rights impacts. What is more, it is not possible to assess whether a proper assessment of the likelihood is going to be done, as the relevant information is not published.

The team in charge of the initial screening consists of several people experienced in environmental and social assessment. The team also participates in meetings of ECA environmental practitioners.

Anti-bribery

In the light of Poland's obligation to implement the principles and the solutions adopted by the ECG Group from the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, the Committee for Export Insurance Policy has introduced regulations aimed at preventing bribery into insurance procedures for export credit insurance with Treasury backing. KUKE is obliged to undertake the following actions:

- to require the exporter/financing institution to provide a statement confirming, among others, that neither they nor anyone acting on their behalf in connection with the transaction are currently under charge or, within a five-year period preceding the application have been convicted for violation of the law against bribery of foreign public officials and that they are not listed on the publicly available debarment lists of the international institutions;
- to require the exporter/financing institution to disclose, in justified cases, the identity of persons acting on their behalf in connection with export contract or credit agreement, as well as the amount and purpose of the commission paid;
- to verify, in justified cases, before making a final decision on providing insurance cover, whether internal corrective and preventative measures have been taken by an exporter/financing institution convicted of bribery of a foreign public official in the past.

Furthermore, KUKE encourages exporters and financing institutions to develop and apply management control systems, which would reflect transparency in their activities in relation to preventing bribery.

At the same time, the general conditions of export credit insurance with State Treasury backing include provisions resulting from the transposition of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and the OECD Recommendation into the Polish Criminal Code. These provisions allow the refusal to pay indemnity for receivables relating to export contracts – in case of supplier credit cover – or refusal to indemnify with respect to the agreement on financing the export contract if bribery has been committed in connection with the contract. If – in case of buyer credit cover – after the insurance agreement has been concluded, it is proved that the export contract was concluded as a result of bribery of a foreign public official and the financing institution did not have any knowledge in this respect and could not have had this knowledge by undertaking due diligence, KUKE is entitled to indemnify the insured.

Under such circumstances however KUKÉ has recourse to the exporter in relation to the indemnity paid.²⁹

Exclusion lists

There are no specific lists of no-go projects for KUKÉ.

Climate mitigation measures

Apart from the OECD Common Approaches' environmental and social procedure, there is no additional assessment or policy related to climate mitigation.

Reporting and transparency

Since 2007 KUKÉ has published its annual report online in Polish and English.³⁰ Its reports as well as its website enable the reader to differentiate between KUKÉ's commercial business and its state-backed activities.

Lists of its projects falling under the OECD Arrangement (more than two years' repayment period, category A projects ex-ante and category B projects ex-post) are published, although the list of the projects of category A or B includes some projects that were not in the end covered by the State Treasury guarantee, for example a duck farm in the Chernigiv region of Ukraine, and a project supplying mining equipment to the Amasra B Coal Mine in Turkey.³¹ This makes it impossible for stakeholders to properly understand the impact of KUKÉ's activities.

It is not possible to verify if the list is full, as there is no list of projects available on the website or in the annual reports, or even on request. KUKÉ denies access to information about the full list of projects on request, claiming this information is covered by rules on insurance secrecy. Unauthorised use of the concept of insurance secrecy has been criticised by the Polish Ombudsman, who clearly stated that KUKÉ cannot refuse to make public information regarding the projects supported, pursuant to Art. 5 sec. 1 of the Freedom of Information Act.³²

The Ministry of Finance (currently Ministry of Development and Finance) reports annually to the European Commission Regulation (EU) 1233/2011.

Complaint mechanism

According to KUKÉ's website complaints concerning KUKÉ's can be submitted directly to KUKÉ offices and KUKÉ's head office by telephone or in person, in writing or in electronic form by e-mail.

It states that "KUKÉ's responses to complaints will be provided in writing within a term of 30 days from their receipt. In the case of particularly complicated cases preventing the handling of a complaint and granting of a response within the deadline specified, KUKÉ will provide information with an explanation of the reason for the delay, detailing the circumstances that require clarification and settlement in order to successfully examine the case and will further specify the date of the foreseen response, which will be provided within a term of 60 days of the day of receipt of the claim or complaint. KUKÉ is subject to the supervision of the Polish Financial Supervision Authority."³³

There appears to be no complaint body for KUKÉ activities independent from KUKÉ's management and no whistleblowing mechanism such as in some other ECAs looked at in this report.

KUKE in focus: NGOs challenging non-transparency

By Aleksandra Antonowicz-Cyglicka (Polish Green Network)

Since 2015 a number of Polish NGOs have been trying to shed some light on the activities of Poland's state-supported export credit agency KUKE.

In 2015 Polish Green Network requested from KUKE a list of the projects the ECA supported in 2014 with state-backed guarantees as well as a list containing information about the value and subject of the projects.³⁴ The reason for asking for this information was to assess the ECA's contribution to the country's development objectives.

KUKE denied this information request twice, citing "insurance secrecy" under the Act on the Insurance and Reinsurance Business.³⁵ Polish Green Network appealed against KUKE's decision to the Administrative Court in Warsaw with the help of lawyers at Watchdog Polska Association. The court ruled in June 2016 and dismissed the complaint, arguing that insurance secrecy applies in this case³⁶. Watchdog Polska appealed on Polish Green Network's behalf to the Supreme Court with the argument that the Administrative Court did not take into account the 'Act on Export Insurance Guaranteed by the State Treasury', Article 5, point 4, which excludes bodies such as KUKE from the Act on the Insurance and Reinsurance Business.

After appealing to the Supreme Court, Polish Green Network asked the Polish Ombudsman to join the case. The Ombudsman sent a letter to KUKE asking for the reasons for non-disclosure of the requested information and supporting

the argumentation from the appeal to the Supreme Court.³⁷ KUKE has yet to respond, and the final decision of the Ombudsman as well as the date of the Supreme Court hearing are pending.

In 2017, the Polish NGO Greenmind Foundation started an analysis of KUKE's and BGK's³⁸ compliance with the Aarhus Convention and OECD Common Approaches. Greenmind Foundation sent detailed requests for information to find out how KUKE assesses the environmental and social impact of the projects supported. None of the responses included information on concrete projects, and insurance secrecy was still used as an argument.

Nevertheless, Greenmind Foundation met with KUKE in April 2017 to talk about their standards. KUKE claims to be fully in line with OECD Common Approaches, although its assessment is not transparent and the information disclosed on its website (regarding category A and B projects) is not always valid.

It is clear that there is more need for transparency on KUKE's end. The unauthorised use (see the statement of the Polish Ombudsman, above) of the concept of insurance secrecy significantly reduces the transparency of export credit agencies such as KUKE and BGK. As well as KUKE, which is officially recognised as the Polish ECA, high levels of transparency should also be applied to BGK as a provider of state-backed export credit loans.

Conclusion

Both KUKE, as officially recognised Polish ECA, as well as BGK as provider of state-backed export credit loans, should apply high levels of transparency, as they are both dealing with public money to provide export support for Polish business.

It is recommended that KUKE to start publishing a list of all projects that were supported per given year, as is for example the case with the Netherlands' ECA Atradius.

KUKE's environmental procedure – with a few exceptions – is theoretically aligned with the Common Approaches but assessment of its practices is not possible due to the refusal to provide key information.

Information regarding category A and B projects, which are disclosed on the KUKE website, cannot be treated as environmental and social information in the sense of the definitions from the Common Approaches as the information provided is insufficient.

KUKE has so far not implemented any procedures for public consultation (dealing with the comments submitted) within the assessment of category A projects. According to KUKE this is because no one has ever submitted comments.

There is no specific human rights due diligence procedure in cases where the likelihood of severe project-related human rights impacts is high, which is a violation of Art. 14 of the Common Approaches.

It would be advisable for KUKE to start evaluating the long-term impact of projects that have been supported by state-backed export guarantees or insurance in the form of post-project-monitoring, such as has been done for example in the past by Austrian ECA OeKB. There appear to be no specific lists exclusion lists for harmful project types that KUKE will not support per se. There also do not appear to be any specific climate mitigation measures in place or being developed within KUKE.

In the light of current international efforts to combat climate change and to foster global sustainable development it would be highly advisable if KUKE started entering dialogue on such issues with drivers of change and started adopting pro-active steps towards ecologically more sustainable policies.

Endnotes

- 1 Logo: <http://www.kuke.com.pl/szablony/kuke/images/logo.gif>, Picture: Streetview screenshot
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- 24 <http://www.kuke.com.pl/en/about-kuke/shareholders>; https://www.en.bgk.pl/files/public/en/files/investor_relations/annual_report/Annual_Report_2015.pdf, p. 10
- 25 As stated online 27.03.2017 <http://www.kuke.com.pl/en/about-kuke/supervisory-board/>
- 26 Currently (after 06.09.2017) no executive board president is listed. In accordance with the KUKE statute, if the fourth member of the Management Board is missing, there are 30 days to take steps in order to complete the Board. <http://www.kuke.com.pl/en/aboutkuke/management-board>
- 27 <http://www.kuke.com.pl/en/about-kuke/>
- 28 <http://www.kuke.com.pl/en/about-kuke/international-and-domestic-regulations/environmental-protection/>
- 29 <http://www.kuke.com.pl/en/about-kuke/international-and-domestic-regulations/anti-bribery/>
- 30 <http://www.kuke.com.pl/o-kuke/raporty-roczne/>; <http://www.kuke.com.pl/en/about-kuke/annual-reports/>
- 31 <http://www.kuke.com.pl/en/about-kuke/international-and-domestic-regulations/environmental-protection/projects-notified-exante/>
- 32 <https://www.rpo.gov.pl/pl/content/rpo-pyta-prezesa-zarzadu-korporacji-ubezpieczeniowych-eksportowych-onieudostępnienie-informacji>
- 33 <http://www.kuke.com.pl/en/about-kuke/international-and-domestic-regulations/complaints-mechanism/>
- 34 Electronic communication sent on 18 November, 2015.
- 35 Letters dated 23 December 2015 and 21 January 2016.
- 36 Ruling of the Administrative Court in Warsaw from 30 June 2016. Case no II SA/Wa 400/16.
- 37 Letter available at: <https://www.rpo.gov.pl/pl/content/rpo-pyta-prezesa-zarzadu-korporacji-ubezpieczeniowych-eksportowych-onieudostępnienie-informacji>
- 38 BGK (Bank Gospodarstwa Krajowego) is Poland's state development bank. In collaboration with other financial institutions, provides access to funding for Polish businesses. Inter alia, it supports Polish exporters by taking on part of the risk related to trading activities of Polish companies and provides state-backed export credit loans.

Romania: EximBank S.A.

Quick facts



EximBank S.A.¹

Strada Barbu Delavrancea 6,
Bucharest, Romania
Tel.:+40 21 405 3096

Website: www.eximbank.ro

Number of employees

348 (as of 31 December 2016)² out of which 20 working on state-backed activities.

Volume of business (balance sheet total 31 December 2016)

RON 4.2723 million³

Export credit insurance and guarantees covered by Romania (2016)

- **Legal maximum volume of exposure for export credit insurance on behalf of the state** EUR 50 million⁴
- **New export credit insurance policies issued in 2016** 10⁵
- **Failure liabilities** none⁶

Legal framework

- Decree number 189 from 1991 on the approval of establishing the Import-Export Bank of Romania⁷
- Law number 96 from 2000 on the organisation and functioning of EximBank Romania⁸

Political responsibility

Ministry of Finance

Overview

EximBank S.A. was founded in 1991 by government decree with the aim of supporting the Romanian business environment and international transactions. According to this decree, its objective is “ensuring credits for export or import operations, insuring investments from and in other countries and other bank specific operations.”⁹ The legal act on the organisation and functioning of EximBank Romania clarifies the objectives and activities of the institution. It performs banking activities on its own behalf (ie. commercially) but also has a mandate to provide financing, guarantees and insurance on behalf of the state to support both domestic and international transactions.¹⁰

EximBank’s ECA (international) activities on behalf of the state represent a relatively small part of its state-backed activities - the majority are domestic.

EximBank Romania’s areas of activity are stipulated in Law no 96/2000 as follows: developing infrastructure, utilities of public interest, regional development, research and development support, environmental protection, supporting for SMEs, as well as international transactions in line with the economic policies of the government.¹¹ The institution conducts transactions such as loans for priority sectors of the Romanian economy, guarantees for domestic and international transactions and export credit insurance in the name of the state. EximBank’s private business as a commercial bank includes products and services such as corporate banking solutions addressing financing, factoring, trade finance, cash management and financial risk management solutions as a commercial bank.¹²

EximBank Romania is almost entirely state-owned with 95% of the bank’s shares belonging to the state. All operations conducted in the name and account of the state (‘state-backed’) are submitted for approval to an inter-ministerial committee.¹³

In 2016 Romania exported goods worth EUR 57.4 billion¹⁴, among which vehicle parts and cars, insulated wire, refined petroleum and rubber tires were the top exports.¹⁵ This also reflects EximBank’s overall portfolio, which in 2016 was oriented mainly towards these priority areas, including the production and distribution of energy (16%), metallurgy (16%), trade (10%), electrical equipment (7%) and extractive industries (6%). In terms of its external operations, EximBank mainly focuses on the energy, transport and infrastructure and agriculture sectors.¹⁶

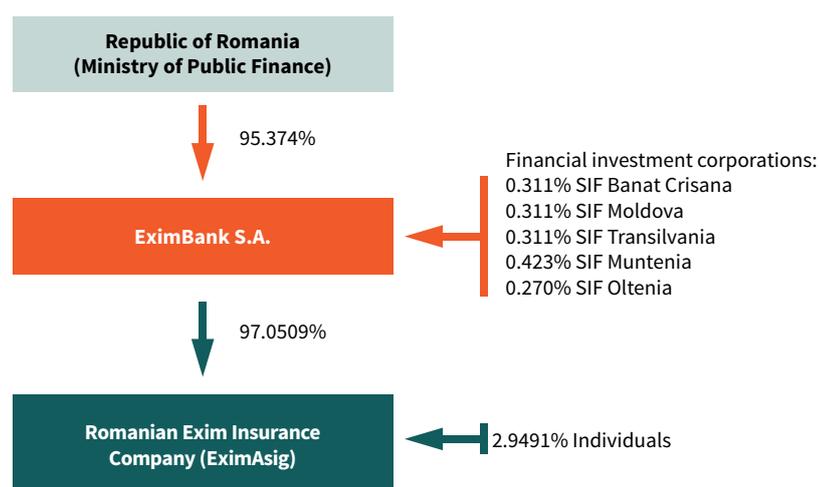
In 2016 a major legislative proposal was put forward to the parliament to transform EximBank Romania into a development bank. This would make it eligible to invest in infrastructure and the socio-economic development of Romania. With this new role, the bank would manage funds allocated by the EU to Romania, act as a financial intermediary for funding coming from international financial institutions and would aim to fill the gaps in the market that are not covered by commercial banks or other private financial institutions. The decision-making process on projects, both internal and external, would be transferred from the administrative committee to an inter-ministerial committee.¹⁷

The proposal has not yet been approved, because in December 2016 the government first requested an expert assessment on the proposal. According to the new legislative proposal, the bank would continue to have at its disposal the same financial instruments (loans, guarantees, refinancing) but its aim would be broader than just supporting the exports of Romanian companies and transactions in priority sectors within Romania. The bank would aim at covering market failures in order to improve the Romanian business environment internally, in line with the strategic priorities of the state and would play an important role in implementing EU financial instruments, including those within the Investment Plan for Europe.¹⁸

Corporate structure

EximBank Romania is part of the EximBank SA Group. The group is almost entirely state-owned with more than 95% of its shares belonging to Romania. The rest is divided up between five ‘financial investment corporations’ (SIF/Societate de Investitii Financiare¹⁹).²⁰

EximBank SA Group:



Besides its Bucharest office, EximBank Romania holds branches in 19 locations all over Romania.²¹

The ownership structure is as follows:

- Romanian state through the Ministry of Public Finance: 95.374%
- SIF Banat Crisana: 0.311%
- SIF Moldova: 0.311%
- SIF Transilvania: 0.311%
- SIF Muntenia: 0.423%
- SIF Oltenia: 0.270%²²

The EximBank SA Group also includes the Romanian Exim Insurance Company (EximAsig). It was established as a professional entity specializing in financial risk insurance, both for export (marketable risks) and domestic commercial operations. The company started its activity in August 2010, being authorised to practice credit insurance classes and goods insurance. Its products are aimed at companies engaged in the fields of trade, production, transport, construction, factoring, oil and IT.²³

Decision-making process within EximBank Romania as a commercial bank

EximBank's Executive Board, consisting of three members - The Executive President and two Executive Vice-Presidents, is in charge of the banking activities performed by EximBank on its own behalf.

EximBank's Administrative Committee (Supervisory Board) is named during the general meetings of shareholders and is composed of seven members: these are the president of the committee, the Executive President of the Bank as a member, the two Vice-Presidents, also as members, and a further three members.²⁴ The committee approves the structure of the bank, number of positions, salaries, internal regulation; approves the functioning of audit committees, risk committees, credit, assets and liabilities, and other working bodies.²⁵

Decision-making structures

The decision-making body for all instruments issued by EximBank on behalf of the Romanian state, as well as for the approval of internal regulations, maximum exposure of funds and individual operations is the Inter-ministerial Committee on Financing, Guarantees and Insurance.²⁶

The Committee is responsible for approving the maximum exposure limit of government allocated funds. The committee examines and approves with the majority of present members project proposals (loans, guarantees and insurance) as well as other mechanisms of support for external trade set up by legislation in accordance with government policy and foreign trade objectives.²⁷

The Inter-ministerial Committee should be composed of 11 members, including one president and two vice presidents, representatives of specialised bodies from public administration and the Import-Export Bank of Romania - EximBank. Members are named by Ministerial Order under which they conduct their activity.²⁸

Current members of the inter-ministerial committee are:

- Coordinator of the General Treasury and public debt department of the Ministry of Finance (President of the committee)
- Secretary of State from the Ministry of Economy (Vice-president)
- President of the EximBank (Vice-president)
- Coordinator of the budgeting department in the Ministry of Finance
- Secretary of State from the Ministry of Interior
- Secretary General of the Government
- Representative from the Ministry of Finance
- Secretary of State from the Ministry of Regional Development, Public Administration and European Funds
- Representative of working staff of the government
- Representative from the Ministry of Agriculture and Rural Development
- Representative from Ministry of Transport

Environmental and human rights screening

While Romania is not yet an OECD member, EximBank Romania, when acting in its capacity as an export credit agency of an EU Member State, and providing support for export products with a repayment term of 2 years or more, has to conform with the provisions of EU Delegated Regulation no. 155/2016 and the OECD Recommendation on Common Approaches for Officially Supported Export Credits and Environmental and Social Due Diligence, currently in the form adopted in 2016.²⁹

Currently, EximBank's ECA list of products includes only export credit insurance policies as instruments of last resort: short-term non-marketable risks (up to 2 years to non-EU, non-OECD countries), short-term temporarily non-marketable risks (up to 2 years EU, OECD countries); medium and long term risks (2 years or more); insurance of export guarantees; and insurance of Romanian capital investments abroad.

Following closely the OECD Common Approaches, the bank has formulated an environmental and social policy document³⁰ according to which it is obliged to conduct environmental impact assessments for category A projects and for some category B projects as well as disclose information about category A and category B projects on its website, when they receive a loan or export credit insurance for longer than two years.

On its website EximBank states:

“EximBank procedures in place require due diligence for all export projects with a repayment term of two years or more, supporting the bank’s focus on responsible environment and communities’ protection in the areas where such projects are implemented. In this respect, EximBank strives to create synergy between Romanian exporters’ best interests, ECA activity provisions and the activity of ministries and other entities. Export credit insurance applications related to export credits with a repayment term of two years or more are screened in light of the potential risks towards the natural and social environment, also taking into consideration the project’ sustainability, human rights and compliance with the international standards and best practices. In his current activity of insuring the export credits, EximBank assesses the environmental and social impact of all transactions with a repayment term of two years or more that may qualify for Romanian state support, classifies the projects under categories A, B, C as per the identified impact and international practices, and publishes the A project list on its website.”

Only recently has EximBank published information about an A Category project on its website.³¹ According to information by the Romanian Ministry of Finance in 2016, this is because EximBank Romania had previously not dealt with any project loans or export credit insurance exceeding the OECD's two year limit for recommended social and environmental screening.³²

The bank states that it applies the World Bank Safeguard Standards and the International Finance Corporation (IFC)'s Performance Standards for projects with a repayment period of more than two years.³³

It seems evident that EximBank Romania does not apply social and environmental screening policies to projects with a repayment period of under two years. In reference to the ministry's answers in 2016 it appears as if no internal classification is conducted for such projects within EximBank, and EximBank has confirmed that applicants do not have to provide an assessment of social and environmental impacts for projects with coverage of less than two years. This is, according to EximBank, because there is no EU or OECD regulation stipulating such a requirement.³⁴ It is also not clear if there is staff or a team employed at EximBank Romania in charge of conducting environmental and social screening of projects.

According to EximBank's website "exporters applying for insurance in order to cover risks associated with export projects with repayment term of two years or more fill in a Questionnaire on the environmental and social impact that is part of the application file."³⁵

EximBank does appear to screen all export transactions benefitting from Romanian state support against possible bribery. Exporters are required to provide a declaration on anti-bribery commitments in order to be eligible for official export credit support. According to its website EximBank follows the following anti-bribery provisions: OECD Council Recommendation on Bribery and Officially Supported Credits³⁶, as well as EximBank's Anti-bribery policy for officially supported export credits (again worded closely in accordance the OECD recommendations)³⁷.

Exclusion lists

The specific exclusion list for projects that might constitute no-go projects for Romania's export promotion via EximBank Romania is provided in the Norms that regulate the export credit insurance activities.³⁸

Climate mitigation measures

There appear to be no specific climate change-related policies in place within EximBank or towards officially supported export promotion other than sector-specific agreements in the OECD ECG's Sector Understandings.

Reporting and transparency

As an EU Member State, Romania and its ECA have to report to the European Commission on a regular basis regarding the export credit insurance part of EximBank's activities. While Romania itself is not a member of the OECD, EximBank Romania also reports annually to the OECD Export Credit Group via the European Commission.

According to Romanian legislation, EximBank provides annual reports to the Government³⁹ and the Ministry of Finance,⁴⁰ but there is no legal obligation to report EximBank's state-backed activities towards the Romanian parliament.

Annual reports are only publicly available on EximBank's website dating back to fiscal year 2014.⁴¹ (The first publication of an annual report appears to have taken place only in 2015.) In general, EximBank's website lists a wide range of projects supported by the bank, but according to our analysis of the information made available, in many cases it is unclear whether the mentioned projects were backed by the state budget or not. According to the annual reports the exposure on behalf of the state gets smaller every year, while the exposure on behalf of the commercial part of the bank is growing.⁴²

EximBank Romania in focus: non-disclosure for repayment under two years, a loophole in transparency

By Ana-Maria Seman, Bankwatch Romania

EximBank Romania: non-disclosure for repayment under two years, a loophole in transparency Ana-Maria Seman, Bankwatch Romania

EximBank Romania's website has a rather long description of which social and environmental screening procedures it follows as an officially supported ECA, how EximBank follows the OECD Common Approaches, and how the financial institution follows recommended project categorisation and public disclosure recommendations.

But while most ECAs that follow the OECD and EU standards have some export projects that are categorised for screening and disclosure according to the duration of the financial contract (under two years), EximBank has so far approved none that fall into this category. This means that EximBank had no export projects with a repayment term of 2 years or more that needed screening for environmental or human rights impacts and about which public information needed to be disclosed. EximBank states that, in late 2017, as soon as such a project was under assessment, it disclosed public information about it.⁴³

This raises issues about the loopholes within the OECD ECG's export project categorisation, screening and disclosure guidelines for ECAs:

According to the OECD ECG criteria, the Common Approaches only apply to export projects that have a repayment period of more than two years.⁴⁴ Moreover, the EU reporting requirements for ECAs of EU Member States do not require

any extra information besides confirmation of compliance with the OECD guidelines.

Only a handful of ECAs claim to screen and internally categorize all export project applications. Only one known ECA (Atradius in the Netherlands) discloses all export projects that are supported with state-backed export promotion measures. So while on paper all procedures seem to be in place to ensure that environment and human rights are always accounted for when ECAs grant insurance or loans to foreign buyers for their home countries' export industry, the vast majority of individual export project support through ECAs plainly does not fall into these guidelines.

Such is the case with one project that Bankwatch Romania recently followed, a greenfield gas power plant in Egypt. In response to a request for information demanding details on project categorisation, both EximBank and the Romanian Ministry of Finance refused to disclose the information arguing that by having a repayment period of less than two years, they do not have to apply the Common Approaches and therefore, it does not have to conduct any ESIA or disclose information on the project.⁴⁵ The complete lack of information that the Ministry of Finance and EximBank have for such projects raises questions over the nature of the projects supported and their environmental and social impacts. This leads to situations where EximBank can provide export credit insurance for any type of project as long as they have a repayment period of under two years.⁴⁶

This obvious lack of transparency represents a major flaw in responsible business conduct for the ECA.

On the national level, EximBank Romania reports to the Government on an annual basis with an activity report and monthly to the Ministry of Finance.⁴⁷ Experience in communicating with EximBank Romania shows that the Ministry of Finance responds to all requests for information based mostly on information provided by EximBank Romania. However, the Ministry of Finance does not have a publicly available and centralised source of information related to the operations of the bank.

While on paper all procedures seem to be in place, requests for information have brought to the surface the fact that all export projects supported by EximBank Romania with its ECA instruments until now have had a repayment period of under two years.⁴⁸ However as mentioned above a category A project has recently been disclosed.⁴⁹

EximBank does not appear to have a policy towards the pro-active exchange with civil society.

Conclusion

In comparison to some other ECAs in this report, EximBank Romania appears to still be a relatively small player in the world of state-backed export financial institutions.

EximBank states on its website that one of its strategic objectives for the near future is “to promote the products in the EximBank portfolio more extensively, as alternative or complementary solutions for the business environment.” Towards this end it wants “to intensify international cooperation with financial and banking institutions, in order to support joint exports by Romanian and foreign companies on third markets,” as well as “to intensify cooperation with specialized institutions in order to provide official support for exports as part of OECD, by means of actively participating in the meetings about credit and export guarantees within the Council of Europe and OECD.”

But nowhere in its strategic objectives can one find wording about corporate responsibility towards project-affected people and ecology, or wording considering sustainable development as a goal for this ECA when acting in the name of the Romanian state. It appears that while EximBank engages with other financial institutions and fellow ECAs within the framework of the OECD Export Credit group, discussions about issues of environmental and human rights impact have not truly reached the decision-making bodies that approve EximBank commitments and the Romanian ECA, ie. the Interministerial Committee for Financing, Guarantees and Insurance, or that of its public authority supervisor, the Romanian Ministry of Finance.

A critical aspect of the ECA’s history of operations is that all export credit insurance issued by EximBank Romania on behalf of the state so far have had a repayment period of less than two years. EximBank states that this corresponds to the needs of Romanian exporters which supply goods and services to large global companies. It admits that the projects in which these global companies act as main contractors may fall into environmental and social categories A and B. However the repayment period of less than two years for the Romanian component means that it has never put into practice the OECD Common Approaches until its recent screening and publication of a category A project.⁵⁰

This brings to the surface a major loophole in the transparency of ECAs in general, given that the majority of (in the case of Eximbank Romania, all) its state-backed export credit insurance goes to this category. This implies that even though the bank provides export credit insurance on behalf of the Romanian state for category A and B projects, those with an under two year repayment period do not require the bank to make public any information regarding these projects.

There are no specific climate change-related policies in place within EximBank or towards officially supported export promotion other than sector-specific agreements in the OECD ECG’s Sector Understandings. EximBank Romania states that this is because there are no legal obligations from the OECD or the EU for ECAs on this matter.⁵¹ And Eximbank does not have a policy towards pro-active exchange with civil society stakeholders.

Overall, the lack of clear guidance from the OECD on transparency and due diligence procedures for projects with a repayment period under two years constitutes a major loophole for the transparency of ECA projects, even more so for ECAs from Central and Eastern Europe that have a lower financial capacity.

In conclusion, EximBank Romania has demonstrated that it is aware of the provisions in the OECD Common Approaches regarding the publication of category A and B projects and has recently implemented the recommendations regarding a category A project. However, it should still improve its transparency procedures by providing information on the category A and B projects it supports, even if their repayment period is under two years. We do not believe that it is necessary to wait for agreement within the OECD or EU on this, but EximBank Romania does not appear to be willing to take a pro-active approach on this issue. It states that “As soon as the international framework of OECD or EU changes and requires providing information on the category A and B export projects with repayment terms less than 2 years, EximBank will have to <request that clients with projects that have a repayment period under two years fill in the screening questionnaire of EximBank Romania that requests information about social and environmental impacts>”. In this way, the public could have access to general information on the category A and B export projects supported by the bank in its role as ECA.

Furthermore, the Romanian parliament needs to increase oversight of the strategic priorities and projects of EximBank Romania when acting in its capacity as an ECA and seek ways together with other line ministries, including the Ministry of Foreign Affairs and Environmental Ministry, to increase coherence between the state-backed export projects of EximBank Romania and the development priorities of the country and its climate change commitments.

Endnotes

- 1 The EximBank S.A. logo and the picture of the EximBank S.A. building have been taken from online sources. Logo: www.eximbank.ro; Building: EximBank S.A. via Google Maps: <https://goo.gl/maps/cAixwkzhtwT2>
- 2 EximBank Romania Annual Report 2016, p.34: <https://www.eximbank.ro/en/wp-content/uploads/2016/06/Raport-EximBank-2016-ENG-WEB-ilovepdf-compressed-1.pdf>
- 3 EximBank Romania Annual Report 2016, p.25
- 4 Romanian Ministry of Finance reply to Bankwatch Romania, 17.07.2017
- 5 The total exposure at the end of 2016 consists of total of 257 guarantees amounting to RON 1.628 million, of which 60% were for supporting export related activities, and 10 export credit insurance policies amounting to RON 21 million. Personal communication between the Romanian Ministry of Finance and Bankwatch Romania dated 17.07.2017 and between EximBank and Bankwatch 10.11.2017. The amount of exposure stemming from these new contract is unclear/not available in the listings of the EximBank Romania Annual Report 2016, (see p.22f.)
- 6 EximBank Romania Annual Report 2016, p.101, Financial Statements, note 23, Foreclosures/Claims amount at 0 lei (Fund for insurance and reinsurance activities column).
- 7 http://www.cdep.ro/pls/legis/legis_pck.htm_act_text?idt=8066
- 8 <http://www.legex.ro/Legea-96-2000-21089.aspx>
- 9 Decree number 189 from 1991 on the approval of establishing the Import-Export Bank of Romania http://www.cdep.ro/pls/legis/legis_pck.htm_act_text?idt=8066
- 10 Law number 96 from 2000 on the organization and functioning of EximBank Romania <http://www.legex.ro/Legea-96-2000-21089.aspx>
- 11 Ibid.
- 12 <http://www.eximbank.ro/en/general-informations/>
- 13 Law number 96 from 2000 on the organization and functioning of EximBank Romania <http://www.legex.ro/Legea-96-2000-21089.aspx> and Government Decision no 534/2007 on the setting up, responsibilities, competence and functioning of the Interministerial Committee for Financing, Guarantees and Insurance and the regulation of financing, guarantee and insurance activities performed by Banca de Export-Import a Romaniei EXIMBANK - S.A. on behalf of and for the account of the state.
- 14 <https://www.profit.ro/stiri/economie/exporturile-romaniei-au-crescut-cu-5-1-in-2016-si-au-ajuns-la-un-nivel-record-16627089>
- 15 The Observatory of Economic Complexity <http://atlas.media.mit.edu/en/profile/country/rou>. The data is provided by United Nations Statistical Division/UN COMTRADE (<https://comtrade.un.org>).
- 16 https://www.eximbank.ro/wp-content/uploads/2017/05/AnuarEximBank-2016-mic_final-ilovepdf-compressed.pdf p. 19
- 17 New law on the Romanian Development Bank, EximBank Romania http://media.hotnews.ro/media_server1/document-2016-10-3-21329096-0-propunere-banca-dezvoltare-romaniei.pdf
- 18 Ibid. http://discutii.mfinante.ro/static/10/Mfp/transparenta/EMProiectLegeprivindfunctionareaBanciiDezvoltareRom_en06112015.pdf
- 19 These entities are a result of the privatisation of the former state investment companies that existed during the communist regime. All citizens are free to become shareholders in the SIFs.
- 20 http://www.eximbank.ro/en/wp-content/uploads/2016/06/Raport-EXIM-2015_en.pdf p. 11
- 21 <http://www.eximbank.ro/en/retea/>
- 22 <http://www.eximbank.ro/en/general-informations/>
- 23 <http://www.energynomics.ro/ro/companii/eximasig-romania/>
- 24 EximBank Annual Report, 2016, page 31 https://www.eximbank.ro/wp-content/uploads/2017/05/AnuarEximBank-2016-mic_final-ilovepdf-compressed.pdf
- 25 <http://www.legex.ro/Legea-96-2000-21089.aspx>
- 26 Art.9 (1) f) of Law no 96/2000 and Governmental decree number 534/2007 regulate the activity of the Committee. <http://lege5.ro/Gratuit/geydmmbzhe/hotararea-nr-534-2007-privind-infiintarea-atributiile-competentele-si-modul-de-functionareale-comitetului-interministerial-de-finantari-garantii-si-asigurari-si-reglementarea-operatiunilor-de-finanta>
- 27 Art.9 (1) f) of Law no 96/2000 and Governmental decree number 534/2007 regulate the activity of the Committee. (<http://lege5.ro/Gratuit/geydmmbzhe/hotararea-nr-534-2007-privind-infiintarea-atributiile-competentele-si-modul-de-functionareale-comitetului-interministerial-de-finantari-garantii-si-asigurari-si-reglementarea-operatiunilor-de-finanta>)
- 28 Ibid.
- 29 <https://www.eximbank.ro/en/general-informations/>
- 30 https://www.eximbank.ro/en/wp-content/uploads/2016/06/Environmental-and-Social-Policy_2017.pdf
- 31 <https://www.eximbank.ro/en/general-informations/>
- 32 Official reply by the Ministry of Finance to Bankwatch Romania, 24.10.2016
- 33 EximBank Environmental and Social Policy for Officially Supported Export Credits, approved 13.09.2017 https://www.eximbank.ro/en/wp-content/uploads/2016/06/Environmental-and-Social-Policy_2017.pdf
- 34 E-mail communication between EximBank and Bankwatch Romania 10.11.2017 and 15.07.2017
- 35 <https://www.eximbank.ro/en/general-informations/>
- 36 <http://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=td/ecg%282006%2924&doclanguage=en>
- 37 <http://www.eximbank.ro/en/wp-content/uploads/2016/06/Anti-Bribery-Policy-for-Officially-Suported-Export-Credits.doc>
- 38 Norma "Asigurarea pe termen scurt, în numele și în contul statului, a riscului de neplată la extern, riscuri nonpiață și riscuri temporar nonpiață" (NI-ASR-07-VII/0), published in the Official Journal of Romania, Part.I, no 211/28.03.2017; Norma „Asigurarea creditelor la export pe termen mediu și lung și a investițiilor românești de capital în străinătate, în numele și în contul statului” (NI-ASR-05-VI/0), published in the Official Journal of Romania, Part.I, no 869/03.11.2017
- 39 According to the provisions of Art.8 from Law no.96/2000 republished
- 40 According to Order no 2306/10.07.2009 of the Minister of Public Finance, published in the Official Journal of Romania, Part I, no 566/14.08.2009
- 41 See "Annual Reports" under <https://www.eximbank.ro/en/general-informations/>
- 42 Ibid.
- 43 <https://www.eximbank.ro/en/general-informations/>
- 44 Common Approaches, II) 2: "This recommendation applies to all types of officially supported export credits for exports of capital goods and/or service, except of military equipment or agricultural commodities with a repayment term of two years or more."
- 45 Official reply by the Ministry of Finance to Bankwatch Romania, 18.08.2016
- 46 In compliance with the Communication from the Commission to the Member States on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to short-term export-credit insurance (2012/C 392/01), <http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=OJ:C:2012:392:TOC>
- 47 According to the provisions of the Order no 2306/10.07.2009 of the Minister of Public Finance, published in the Official Journal of Romania, Part I, no 566/14.08.2009
- 48 Official reply by the Ministry of Finance to Bankwatch Romania, 24.10.2016
- 49 <https://www.eximbank.ro/en/general-informations/>
- 50 <https://www.eximbank.ro/en/general-informations/>
- 51 E-mail communication between EximBank and Bankwatch Romania 10.11.2017

Slovakia: Eximbanka SR

Quick facts

Number of employees

97 (as of 30 June 2016)²

Business volume (2016)

EUR 363.7 million³

Export guarantees covered by the Slovak Republic (2016)

- **Legal maximum volume of exposure**
There is no fixed maximum volume of aggregate exposure, it is linked to Eximbanka SR's available equity at the time.⁴
- **Volume of exposure (2016)**
EUR 670.2 million⁵
- **New guarantee contracts issued in 2016**
no information found⁶
- **Failure liabilities (claims paid 2016)**
information not available⁷;
(total loss 2016: EUR 4.7 million⁸)

Export loans covered by the Slovak Republic (2016):

- **Legal maximum volume of exposure**
no information found
- **Volume of exposure 2016**
EUR 160 million⁹
- **New export loan contracts issued in 2016**
no information found

Legal framework

Act no. 80/1997 (as amended) on Eximbanka SR¹⁰

Political responsibility

Ministry of Finance



Eximbanka SR¹

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813 50 Bratislava
Tel.: + 421 2 59 398 111

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Overview

The Slovakian ECA Eximbanka SR was established in July 1997, celebrating its twentieth anniversary this year. The mission is “to improve the economic exchange of the Slovak Republic with foreign countries [as well as] the competitive strength of Slovak producers on the international markets.”¹¹

Eximbanka SR is 100 percent state-owned, and it provides state support to Slovak exporters by financing and insuring export credits. The political responsibility lies within the Ministry of Finance.

In recent years, the energy sector has received the lion’s share of export promotion, including recently a small share of renewables and so-called “hybrid”¹² energy projects. Other important areas where support was demanded were production lines for food processing, chemical industry, infrastructure projects and machinery.¹³ In 2016 most support went to the chemical industry sector (56.64%), followed by the mechanical engineering industry (11.42%) and the pulp and paper industry (11.32%). Compared with the previous year, there was a slight increase in the amounts received by the chemical and mechanical engineering industries and a decrease in the metallurgical industry.¹⁴

Currently Slovakia exports relatively few high-tech products, compared to similar economies such as the Czech Republic or Hungary. Eximbanka provides services for small and medium-sized as well as large companies, aiming to help these accessing international markets.¹⁵ According to the institution’s Annual Report, Slovakia had a slight slowdown in its GDP growth rate in 2016 (3.3%) compared to 2015. Even so, the total merchandise export increased by 3.6% to slightly more than EUR 70 billion, of which 2.38 percent was supported by the Slovak ECA.¹⁶

Eximbanka SR’s export credit support generally follows the territorial structure of the Slovak exports. In recent years the most important export partners for Eximbanka SR were importers from the Visegrád countries, as well as Austria and Germany, while significant export growth was directed to countries outside the EU, including Ukraine, Norway, China, India, the United Arab Emirates and Vietnam. Non-marketable risk insurance mainly went to projects in the region of the Commonwealth of Independent States, Balkan countries, and other territories where Slovak exporters have historically strong business relations, such as Cuba, Romania or Turkey.¹⁷

During this time Eximbanka SR’s involvement in a series of disputable projects concerning the energy sector has surfaced. Three of these projects were suspended, though not based on results from proper due diligence processes, but rather on economic grounds: two Eximbanka SR clients have been involved in bankruptcy proceedings.

Corporate structure

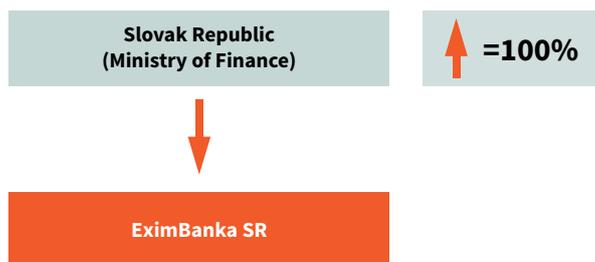
Eximbanka SR is owned entirely by the Slovak Republic. Its banking and insurance divisions operate strictly separately, according to Slovak banking law.¹⁸

According to Act no. 80/1997¹⁹ as amended on EXIMBANKA SR the Slovakian state is unconditionally and irrevocably liable for the commitments of Eximbanka SR arising excluding commitments arising from marketable risks insurance or reinsurance.

Eximbanka SR’s funding sources are

- a) its own financial resources covering registered capital; profit from the current accounting period; profit from previous years; and legally specified funds (for the

Eximbanka SR



creation of the following: a reserve fund; an export credit financing fund; an import credit financing fund; a guarantee fund; a fund for covering marketable risks; a fund for covering non-marketable risks; as well as other special-purpose financial funds)

b) borrowed financial resources comprising temporarily disposable foreign funds.²⁰

Decision-making structures

The governing bodies of Eximbanka SR are the Bank Board and the Supervisory Board.

Eximbanka SR's Bank Board (executive board) is the statutory authority of the bank. It has five members: the Chairman/Chief Executive Officer, three Deputies to the Chief Executive Officer and one member who is not an employee of Eximbanka SR.²¹

The Supervisory Board reviews Eximbanka SR's activities. It is authorised at any time to inspect accounting documents and records concerning activities of the bank, as well as other deeds such as agreements entered into by Eximbanka SR. The Supervisory Board consists of seven members.²²

Environmental and human rights screening

Eximbanka SR has used the UN Guiding Principles on Business and Human Rights for their internal guidelines since signing on to these in 2012. The institution refers to the OECD Guidelines for Multinational Enterprises, provides a link to the Slovak language text version and has in the past organised a conference to raise awareness about these guidelines amongst Slovak multinationals.²³ It is not clear however if Eximbanka SR would support a project of a company that was found in breach with the OECD guidelines for multinationals.

Eximbanka SR updated its environmental and social screening procedures in July 2016. It claims to follow the OECD Common Approaches (for project categorisation), the EU Environmental Impact Assessment (EIA) Directive and the EIA legislation of Slovak Republic when assessing projects for export support. It also claims to be legally bound by the Common Approaches as well as the OECD anti-bribery guidelines.²⁴

The project categorisation takes place immediately after the application for project support has been received. The projects are evaluated according to internal guidelines, with pre-set procedures, having to go through a two-stage approval process. In the first step the applicants have to fill out a questionnaire and give basic project information for the first screening. When more information is needed Eximbanka SR staff requests further details of applicants or begin its own information gathering in exchange with other financial institutions or on their own accord.²⁵

Concerning EIA and Environmental and Social Impact Assessment (ESIA), Eximbanka SR often works with colleagues from other like in the Czech Republic. According to Eximbanka SR, the quality of the assessments can vary significantly and sometimes the assessments lack certain details.²⁶

The decision whether supplementary information is needed is made on a case-by-case basis. For example, with a wind park project, screening staff was concerned about migrating birds, so an environmental impact assessment was requested in addition to already provided information even though officially it was not necessary for the project. If the assessments appear comprehensive, Eximbanka SR usually relies on them. In other cases the screening staff requests an additional overall assessment or an additional separate study.²⁷

Eximbanka SR has four international relations staff, including one in charge of social and environmental evaluation. According to Eximbanka SR all projects are screened and internally categorised, including those lasting less than two years (going beyond the Common Approaches' recommendations). Eximbanka SR's employees explain that this is possible due to the fact that it is a relatively small financial institution, receiving approximately "three project applications per every two weeks."²⁸

Since the local benchmark for pollution limits can in some projects be lower than Slovak and EU standards, it is a significant question which benchmark to use. Eximbanka SR applies pollution limits of the country of destination and reflects WHO ambient air quality standards, EU limits, along with IFC and World Bank standards. Eximbanka SR also assesses the benchmarking applied in the available ESIA to see if the ESIA is reliable.²⁹ However it is not possible to assess how higher environmental limits are reflected in the process of project assessment, if at all. If for example the assessed project is within the host country's limits, yet breaching EU limits, it is not clear whether such a project will be turned down or can still receive Eximbanka SR's support.

The screening team does not have a lot of resources for screening projects for possible human rights issues. Overview scoping for potential environmental and human rights related factors in or surrounding a project appears to happen through ad-hoc internet research and in some cases via the Slovak representation in a project country. Eximbanka SR staff has taken part in a small number of field visits to project sites in the past, usually when other ECAs or IFIs were involved as well.²³⁰

Asked if Eximbanka SR checks if public participation was sufficient, what comments were raised and if those were addressed, employees answered: "When an exporter goes into the territory we try to convince them to address the relevant public - especially regarding re-settlement - they should try to talk to people as soon as possible. When an exporter comes to explore the project in the country, public participation is often in progress already when the EIA is done," ie. before the guarantee is requested.³¹

According to Eximbanka SR, it speaks to the project leaders if there is doubt about the public participation process for a project. But this is not necessarily a clear no-go for project support. According to the Terms and Conditions of Credit Insurance (Insurance Policy) Eximbanka SR is "fully eligible" to refuse support in such cases.³² The decision for or against support lies with management in the end: "[The screening staff's] position is to find risks, collect and exchange with the management when there are risks related to a project. It is our role to see if there is a reputational risk involved in a particular project and bring it to [management], for them to decide if we should go ahead with transactions. The Stakeholders [businesses] always are well informed, we do good awareness raising. Transparency [towards other external stakeholders] starts when somebody is asking."³³

For monitoring of sufficient participatory measures for project affected people, Eximbanka SR staff stated that they usually rely on assistance from a local partner like a bank. There does not appear to be an internal set-up within Eximbanka SR to perform check-ups for the fulfillment of public participation requirements in cases where obligatory monitoring is part of a project's impact mitigation measures. Eximbanka SR staff additionally claimed that they “never participate in such risky projects”, where this would be necessary.³⁴

Regarding corruption – be it within the institution or projects for which guarantees or loans are being made - Eximbanka SR staff states: “We follow all OECD policies related to bribery. There has been an anti-money laundering system produced for Eximbanka with an action-plan and a manual on preventing corruption.³⁵ Transactions get rejected when there is a suspicion of bribery.”³⁶

Exclusion lists

There doesn't appear to be a specific exclusion list for no-go' projects. According to Eximbanka SR, the ECA does not fund certain sectors, such as arms and military equipment including dual-use-products. They further state that Eximbanka SR does not fund projects in war regions, post conflict areas, and areas where conflicts are ongoing or in countries where there are EU or UN sanctions.³⁷

Climate mitigation measures

There appear to be no specific measures in place concerning climate change within Eximbanka SR's internal policies. Eximbanka SR staff states: “There are no limits on our web page – but right decisions are made. Due to reputational risks we carefully assess case by case.” There is no general exclusion list or special handling policy for fossil energy based projects.³⁸ Coal fired plants are limited due to the agreement under the OECD Arrangement.

According to Dušan Keketi, the CEO of Eximbanka SR, they “try to balance” the ecological impact of their projects. This is how Mr Keketi explained “balancing” in a specific case: “Eximbanka SR supports modernisation of crude oil power plants in Cuba, which have better environmental standards than the previous one. Engagement in Felton and Mariel's Máximo Gómez power plant projects is a precondition for the Slovak business to be involved in renewable energy projects like a biomass project, split fuelwood etc.” Unfortunately, while this kind of trade-off may seem reasonable from a business point of view, CO2 emissions are absolute and cannot be undone or offset by later involvement in renewable energy projects.

Reporting and transparency

Eximbanka SR has an overview description of its social and environmental categorisation according to the Common Approaches (ie for export guarantees longer than two years).³⁹

Those projects with guarantees longer than two years that have been defined as category A or B projects in line with the agreements in the OECD ECG are listed online.⁴⁰ All other projects supported by Eximbanka SR are not published.

In terms of reporting Eximbanka follows EU and OECD requirements: “In its activities, EXIMBANKA SR fully respects the recommendations of the Organization for Economic Co-operation and Development (OECD) and the World Trade Organization. EXIMBANKA SR accepts so-called “Consensus” - Arrangement on Officially Supported Export Credits. The Act on EXIMBANKA SR is in accordance with European Union legislation that governs the area of officially supported export.”⁴¹

In line with Slovakian legislation, the Ministry of Finance approves a draft of the financial statements, the annual report and the trading income distribution. Eximbanka SR’s annual report is available on its website in Slovak and English. Due to its rather general nature it can hardly serve as a source of information about specific projects or a basis for assessing the environmental, social and human rights aspects of Eximbanka SR’s performance.

The Bank Board, following discussion with the ministry, submits to the government for review a draft of the budget of Eximbanka SR for the subsequent fiscal year. The Bank Board submits to the National Council of the Slovak Republic for approval a draft of the budget of Eximbanka for the subsequent fiscal year (Article 6 par.5 and 6 of the Act). Members of the Bank Board (Article 6 par.1) are appointed and recalled by the government upon the recommendation of the Minister of Finance (Article 7 par.3).⁴²

According to Eximbanka SR, the ECA follows the Slovakian Transparency Act: “If there is a request from the public we have to answer it, but must also consider banking secrecy laws. We have the same rules as any other bank.”⁴³

In 2015-2017 the NGO People in Need Slovakia in cooperation with Bankwatch filed seven requests for information to Eximbanka. Six of these concerned a specific project under consideration and one aimed to gain information about Eximbanka SR’s portfolio. Three of the requests led to an appeal, due to incomplete replies by Eximbanka and one resulted in a court ruling in favour of People in Need Slovakia. Eximbanka later provided the same type of information as was the subject of the court proceeding, as the result of a different request.

The environmental questionnaire which project applicants have to fill out when requesting export guarantees or export loans is available online.⁴⁴ However information provided by exporters based on the questionnaires submitted to Eximbanka SR in 2013-2016 shows that they are very superficial and nearly useless for an environmental due diligence process. These questionnaires were provided to People in Need Slovakia by Eximbanka SR based on a request for information,⁴⁵ however they were all heavily redacted.

Complaint mechanisms

Eximbanka has no ombudsman in place, Eximbanka SR argues that this is due to the fact that it is “a small ECA.”⁴⁶ There is a tool for whistleblowing though, as an obligation by law for any public entity in Slovakia. Eximbanka has an internal auditor who also handles such complaints and can be contacted via an online whistleblowing tool which, according to Eximbanka, allows the sender to remain anonymous and untraceable. He is accountable to the CEO, but acts “completely independently.”⁴⁷

Eximbanka SR in focus: Fossil fuels around the globe

By Dana Marekova (CEE Bankwatch Network, Slovakia)

Eximbanka SR is a public institution, set up by law whose finances are fully public. These factors make it obligatory for Eximbanka SR to follow not only relevant legislation but also to act in accordance with relevant governmental policies. In recent years Eximbanka SR's involvement in several disputable projects concerning the energy sector has surfaced. Three of these projects were suspended: a planned coal power plant in the Turkish province of Konya-Karaipinar, a planned coal power plant in Pljevlja, Montenegro, two crude oil plants in Cuba and the Long Phu 1 coal power plant in Vietnam.

Long Phu-1 is the first of three coal power stations planned at the Long Phu Power Centre in southern Vietnam. Vietnam's PetroVietnam Technical Services Corporation, a subsidiary of the energy provider PetroVietnam Group, should build this 1200 megawatt coal-fired power station using supercritical boiler technology and scrubbers. In the future two more power stations (Long Phu 2 and 3) are planned to be built nearby.

Long Phu-1 was supposed to be realised by a consortium of three companies: Russia's Power Machines, Slovakia's BTG Holding, and Vietnam's PetroVietnam Technical Services Corporation (a subsidiary of PetroVietnam Group). Contracts regarding engineering and construction were signed with PetroVietnam in 2013 already. Construction of the first unit, worth an estimated EUR 1.5 billion, including Eximbanka SR's USD 200 million, should originally have been finished by the end of 2017 but was postponed to 2019.⁴⁸

Eximbanka SR was considering to back BTG Holding, which was expressed by two letters of intent in 2012 and 2013. It was clear however that Long Phu-1 fails to comply with international policies, including those establishing requirements for environmental and social assessments, and mandating intervention in cases of corruption.⁴⁹

In March 2017 in reply to a freedom of information request, Eximbanka stated that it did not receive an official request for support and did not support this project. One month later it became clear, why: In April and August 2017 two articles published by a Slovak economic newspaper revealed that BTG Holding was in bankruptcy after "losing several key contracts in Cuba, Columbia and mainly Vietnam".

In 2013-14 Eximbanka SR expressed interest in supporting Slovak investors in the construction of a 5000 megawatt lignite-fired power plant in Konya-Karaipinar, Turkey. In a consortium with Hornonitrianske bane Prievidza (Hungary), Singa Energy Solutions (Thailand) and ACWA Power (Saudi Arabia) the Slovakian company Istroenergo Group requested support for this project, totaling roughly EUR 10 billion. Turkish NGOs had fundamental concerns regarding the environmental impact

of the plant, including the possible depletion of groundwater in the area. Eximbanka SR proceeded to back Istroenergo Group and provided letters of intent. An NGO request for more information about this project was first denied by Eximbanka⁵⁰ and later endorsed by the court in a first of a kind ruling against Eximbanka Slovakia, which helped establish transparency benchmarks.⁵¹ Meanwhile Istroenergo went insolvent, which meant the end of the project also for Eximbanka SR.

Elektroprivreda Crne Gore, owner of a coal power plant in Pljevlja, Montenegro, has plans to build another 254 megawatt unit. The Slovakian company SES Tlmače should work as a subcontractor for the Czech company SKODA Praha, backed by the Czech ECAs EGAP and CEB. Eximbanka SR planned to reinsure the project. In August and September 2016 NGOs including Bankwatch raised concerns about the economic and environmental risks.⁵² As this project does not meet OECD criteria for coal power plants which entered into force in January 2017, it could no longer be funded by Slovak or Czech ECAs. As a result EGAP, CEB and Eximbanka dropped the project in October 2016.⁵³

From 2016 Eximbanka helped finance the Cuban crude power station Maximo Gomez with EUR 86.76 million. This modernization⁵⁴ of the sixth unit was classified as category B. The company SES Tlmače and VUB Banka from Slovakia are involved by receiving insurance of investment from Eximbanka SR⁵⁵.

Analyses of available ESIA documentation showed that expected levels of PM and SO₂ emissions would vastly exceed EU and ambient air pollution limits set by the WHO⁵⁶. Based on these findings and the fact that consultation of the affected local community was severely deficient, NGOs communicated their concerns and objections to this project to Eximbanka SR.

It was decided in 2017 that another crude oil power plant in Cuba is receiving Eximbanka SR's support – Ramón Pérez plant is going through a proclaimed "modernization" of unit one. This project is considered category A. There are major concerns about environmental, social and human rights assessment of the project's impacts. Cooperation with Cuban civil society in recent years also shows increased repression by the government during 2016 and 2017, which includes any participation or even expression of dissent to the official line, which is in this case a "public interest to produce energy".

These examples show that Eximbanka will benefit from closer scrutiny and information about real effects of considered projects. Based on timely and efficient engagement of public Eximbanka can avoid supporting projects that are on the one hand economically risky (amounting to negligent use of public finance) and on the other violating public policies, mainly related to climate and development objectives binding for all EU members.

Conclusion

According to its website⁵⁷ Eximbanka SR's main objective is "to support the maximum export volume of sophisticated production to the numerous countries, while ensuring the return on investment through the minimization of the risks arising from insurance, credit, guarantee, and financial activities." As the only institution in Slovakia Republic authorised to provide government-backed export financing, it states in its slogan: "We can help you with export there, where others cannot go."

Eximbanka SR seems to operate under the assumption that its openness and transparency is sufficient and that being "demand driven" no questions about coherence with other public policies should be asked. This approach remains questionable for a public institution in principle since export credit funding should be an instrument to pursue and enhance public policies.

While Eximbanka SR is known to a certain segment of the Slovak business community, it is entirely unknown to the general public. In comparison with the neighboring Czech Republic for example, media coverage of Eximbanka SR's activities is less frequent and less critical. There is a general lack of critical monitoring of Eximbanka SR's performance, even though there is well-founded concern about the environmental and social impacts of projects supported by this public institution.

Hence, transparency on Eximbanka SR's activities remains an issue that needs improvement, both concerning active disclosure of information as well as the handling of requests for information. Of the five projects monitored by People in Need Slovakia with Bankwatch during 2015-2017, concerns about the environmental, social and human-rights policies of Eximbanka SR's decision-making persist. These concerns were only magnified after receiving heavily censored environmental questionnaires as Eximbanka SR's reply to information aiming to get a picture about its portfolio.

During meetings with Bankwatch, management of Eximbanka SR expressed willingness to increase the openness of their decision-making. The Slovak Freedom of Information Act and the Aarhus Convention need to be applied. It is clear that citizens have a right to know about projects with significant impacts, especially when public money is used and managed.

At the same time, in many cases citizens have information and contacts (for example to communities affected by considered projects) which can provide input for Eximbanka SR's decision-making. It is evident that the Slovak government and the Slovak ECA need to take issues of sustainable development and of the global climate crisis more seriously. Towards that end it would therefore be advisable if Eximbanka SR also engaged more pro-actively with NGO representatives.

Endnotes

- 1 Photo/Image Credits: Eximbanka SR Logo: www.eximbanka.sk; EXIMBANKA SR building: Google Street View
- 2 https://www.eximbanka.sk/x-en/english/about-us/profile/basic-data.html?page_id=194152
- 3 Annual Report 2016, p.13 https://www.eximbanka.sk/buxus/docs/Vyrocne_spravy/Vs-AR_2016_preview_version_LR.pdf
- 4 Eximbanka replied the following regarding its legal maximum volume of aggregate exposure (E-mail communication with Eximbanka SR on 31 May 2017): "According to respective provisions of Prudential rules of EXIMBANKA SR the maximum aggregate exposure shall not exceed amount of equity multiplied by approved coefficient (current coefficient equals eight)."
- 5 Annual report 2016, p. 13
- 6 Total amount of guarantees issued in 2016 amounted to EUR 83.7 million according to Annual report 2016 (p. 13).
- 7 There is no information available concerning what amount of liabilities had to be paid out due to state-backed guarantees or insurances for export projects. Eximbanka (E-mail communication with Eximbanka SR on 31 May 2017): "EXIMBANKA SR based on the Prudential rules is committed to establish technical reserves at the beginning of each accounting period in order to prevent potential risks and threads; therefore EXIMBANKA SR is not arranging any complex list of failure liabilities."
- 8 Annual report 2016, p. 13
- 9 Ibid.
- 10 Act No. 80/1997 on the Export-Import bank Slovak Republic (amended by Act No. 336/1998, Act No. 214/2000, Act No. 623/2004 and Act No. 688/2006). See also: https://www.eximbanka.sk/en/english/about-us.html?page_id=192; Unofficial english translation: https://www.eximbanka.sk/buxus/old/docs///EXIM_Law_80_1997_as_amended.pdf
- 11 https://www.eximbanka.sk/en/english/about-us/the-profile-of-eximbanka-sr.html?page_id=459
- 12 "Hybrid" meaning the modernisation or back-up of fossil fuel power plants through renewable energy sources.
- 13 Interview with Eximbanka SR employees on 4 April 2017
- 14 Annual Report 2016, p.37f.
- 15 https://www.eximbanka.sk/en/english/about-us/intentions-of-eximbanka-sr.html?page_id=461
- 16 Annual Report 2016 (in parts referring to the Slovak Republic Statistical Office), see p.5f. https://www.eximbanka.sk/buxus/docs/Vyrocne_spravy/Vs-AR_2016_preview_version_LR.pdf
- 17 Territorial structure of non-marketable risk insurance exposure as on 31 Dec 2016: Azerbaijan 31.56%; Cuba 27.62%; Finland 9.00%; Russian Federation 7.40%; Belarus 7.38%; Kazakhstan 6.46%; Romania 5.22%; Georgia 1.84%; Ukraine 1.10%; Turkey 0.92% (Annual Report 2016, p.49)
- 18 Interview with Eximbanka SR practitioners on 4 April 2017
- 19 Act no. 80/1997 as amended, see article 26
- 20 Ibid., see article 29
- 21 https://www.eximbanka.sk/en/english/about-us/governing-bodies.html?page_id=462; Annual report 2016, p.10f. No further information is given on the website about the selection criteria for the non-Eximbanka employee.
- 22 Ibid.
- 23 https://www.eximbanka.sk/buxus/docs/Medzinarodne_vztahy/Smernice_OECD_pre_nadnarodne_spolocnosti.pdf
- 24 Interview with Eximbanka SR practitioners on 4 April 2017
- 25 Ibid.
- 26 Ibid.
- 27 Ibid.
- 28 Ibid.
- 29 Ibid.
- 30 Ibid.
- 31 Ibid.
- 32 E-mail communication with Eximbanka SR, 22.11.2017
- 33 Ibid.
- 34 Ibid.
- 35 Information on measures against bribery can be found online in English under: https://www.eximbanka.sk/en/english/international-relations/bribery.html?page_id=493, or more detailed in Slovakian: https://www.eximbanka.sk/slovenska-verzia/medzinarodne-vztahy/boj-proti-korupcii.html?page_id=108
- 36 Interview with Eximbanka SR practitioners on 4 April 2017
- 37 Ibid.
- 38 Ibid.
- 39 See https://www.eximbanka.sk/en/english/international-relations/enviromental-protection.html?page_id=490 and related links.
- 40 https://www.eximbanka.sk/en/english/international-relations/enviromental-protection/project-information-a-and-bmade-with-the-support-of-eximbanka-sr.html?page_id=492
- 41 https://www.eximbanka.sk/en/english/about-us/intentions-of-eximbanka-sr.html?page_id=461
- 42 Act No. 80/1997 Coll. on the Export-Import bank of the Slovak Republic
- 43 Interview with Eximbanka SR practitioners on 4 April 2017
- 44 https://www.eximbanka.sk/slovenska-verzia/produkty-eximbanky-sr/bankove-produkty/uver-na-podporu-vyvozu-do-dvochrokov.html?page_id=82592
- 45 Information request from People in Need Slovakia to Eximbanka SR, 4 September 2017
- 46 Interview with Eximbanka SR practitioners on 4 April 2017
- 47 Ibid. ; Email communication on 22 Nov 2017
- 48 Information published in the Slovak economic newspaper "Hospodárske Noviny" on 3 April and 24 August, 2017
- 49 350.org Japan et al. Letter to Bank of Tokyo – Mitsubishi UFJ, Ltd., 29 September 2017, http://1bps6437gg8c169i0y1drtgzwpengine.netdna-ssl.com/wp-content/uploads/2017/09/2017.09.29_Long-Phu-1-Bank-of-Tokyo-MUFJ-Letter.pdf
- 50 Information request from People in Need Slovakia to Eximbanka SR, 10 November 2017 and court decision on the same case, 18 January 2017
- 51 http://www.sourcewatch.org/index.php/Konya_Karap%C4%B1nar_power_station
- 52 "Comments presented to Montenegrin government on Pljevlja II project 07_2016" sent to Eximbanka SR management
- 53 Czech Export Bank baulks at backing Skoda Praha's Montenegrin contract <http://www.intellinews.com/czech-export-bank-baulks-atbacking-skoda-praha-s-montenegrin-contract-108954/>
- 54 http://old.eximbanka.ui42.sk/buxus/old/docs/Gamma_Social_Environmental_Study_Unit_6_Mariel.pdf p. 13, https://www.eximbanka.sk/buxus/docs/Medzinarodne_vztahy/Info_projekty_A_or_B_web_08_2017sk.pdf
- 55 https://www.eximbanka.sk/buxus/docs/Medzinarodne_vztahy/Info_projekty_A_or_B_web_08_2017sk.pdf https://www.eximbanka.sk/slovenska-verzia/o-nas/aktuality-a-udalosti/aktuality/ses-tlmace-s-podporou-eximbanky-sr-ziskali-nakube-kontrakt-v-hodnote-100-milionov-eur.html?page_id=79784
- 56 Analysis provided by Mark Chernaik, Ph.D, scientist of ELAW, 26 February 2017
- 57 <https://www.eximbanka.sk>

RESEARCH OUTCOMES

ECAs come in many different sizes, shapes and forms. What they all have in common is that by providing government-backed loans, guarantees, credits and insurance to private companies from their home country, they make it easier for those companies to do business abroad, particularly in the financially and politically risky developing world. But in doing so, they often also provide financial backing for risky projects in some of the most volatile, controversial and damaging industries on the planet and are a major source of national debt in developing countries.

According to Berne Union statistics¹ the public export and investment insurance by its ECA members totals approximately USD one trillion,² which makes global ECA-backed investments a multiple of all project volumes financed by multilateral development banks like the World Bank, African and Asian Development Banks combined, and shows the significant role that these financial institutions play globally. Against this backdrop, Central and Eastern European ECAs tend to see themselves as small players with limited environmental and social impacts. But while it is true that their project volume is comparatively small relative to some ECAs in larger economies, the details we found about the projects supported by ECAs in our research – ranging from negative impacts on the environment and human rights to scandals related to alleged financial mismanagement – show that increased scrutiny of these institutions is needed.

Our case studies of Central and Eastern European EU member states' ECAs indicate quite clearly where there are significant gaps within the normative and regulatory frameworks these ECAs adhere to and where there is a lack of policy coherence towards sustainable development or for example the European Union's general provisions on external action (e.g. consolidating democracy, respect for human rights and policy coherence for development, and the fight against climate change), as referred to in the EU ECA Regulation.

One of the biggest and most pressing issues is access to information per se. Considering that these financial institutions are working for national governments and with public money, there is overall very little possibility for the public to find out what kind of projects are supported and what internal guidelines are being followed.

Accessing data on ECA supported projects is extremely challenging and in many cases an impossible mission. ECAs are generally secretive about all their financial operations, including past and current project information, figures regarding guarantees issued, amounts recovered and outstanding claims, which are only reported on highly aggregate levels. ECAs adhere to a number of different national, EU-level and international norms and regulations when it comes to transparency concerning which kind of projects they support and they screen projects concerning their human rights, environmental and climate related impacts. Even so, there are hardly any legal sanctioning mechanisms built into these norms.

Also the reporting of EU Member States and the European Commission regarding their ECA activities cannot be considered best practice transparency. The lack of proper evaluation done by the Commission means that there is no meaningful mechanism that can test the quality of EU standards outside the EU, and that can identify problems and good practices, such as respecting and promoting the provisions of the Aarhus Convention.

ECAs are included in governments' obligations to comply with international treaties as well as their commitments to policy coherence with development. However, policy makers have so far been reluctant to flesh out the practical implications of their commitments to policy coherence on their ECAs. Due to loan terms and lack of sustainable development considerations, ECAs as state or quasi-state actors in many ways do not support the goals set by the international community within the SDG framework.³

Lack of social and environmental due diligence and of policy coherence with sustainable development

ECAs have so far fallen into a grey zone regarding EU development policy. Article 21 of the Treaty on the EU requires it to work to consolidate and support democracy, the rule of law, human rights and the principles of international law; foster the sustainable economic, social and environmental development of developing countries, with the primary aim of eradicating poverty; and help develop international measures to preserve and improve the quality of the environment and the sustainable management of global natural resources, in order to ensure sustainable development.⁴ ECAs have so far mainly been oriented towards boosting countries' exports. Neither national governments nor the EU have acted sufficiently to ensure their activities' coherence with Article 21 of the Treaty.

One example is the fight against corruption. All ECAs are supposed to adhere to the OECD Council Recommendation on Bribery. When exporters apply for an export guarantee they usually have to tick a box stating that no bribery has taken or will be taking place in connection with the export project. It is not clear that all ECAs assess companies in cases of suspicion of bribery activities. Companies that apply for an export guarantee at OeKB also have to sign an agreement that OeKB has the right to cancel a contract in cases of proven corruption connected to the export project. To our knowledge none of the other ECAs we looked at have such a sanctioning mechanism.

Another example is in the field of climate. The EU was active in helping to develop the Paris Agreement, but is much less active in ensuring that its ECAs act in line with it. Climate commitments do not seem to play any significant role in decision-making in any of the ECAs evaluated in this study. OeKB has evaluated its in-house climate footprint and reduced its own internal yearly CO₂ output drastically in the last ten years. However it appears that none of the ECAs we looked at have begun to think about a long term strategy to truly tackle the climate impacts of their investment portfolios, even less so to halt support for large industrial and infrastructure projects, which are the real drivers for climate change.

The Czech ECAs EGAP and ČEB, for example, have financed several projects which are not only environmentally but also financially problematic, including the Yunus Emre thermal power plant in northwest Turkey,⁵ the Krasavino power plant⁶ and the Poljarnaja gas-fired power plant in Russia.⁷ As another example, Slovak Eximbanka has recently supported two crude oil plants, Máximo Gómez Unit 6 and Ramón Pérez Unit 1, both in Cuba.

ECAs need to evaluate their overall (not only in-house) climate impact taking into account ALL projects they support via official export promotion. They should work strongly to

avoid undermining the positive effects from better insurance terms for renewable energy projects (see Sector Understandings) by simultaneously supporting fossil fuel projects such as oil pipelines or coal-fired power plants. Apart from energy generation projects, a key focus for CO2 reductions should also be on the transportation sector.

It is essential that climate aspects are incorporated directly into national legislation concerning ECAs. This would ideally mean a complete turn away from ALL energy sources with severe negative climate impacts, including for example also those coal and gas fired power plants still allowed under the Sector Understandings on coal-fired electricity generation projects, the current version of which is far from sufficient. State support for fossil-fuel power plants should be phased out as soon as is feasible, with the honest goal of completely eliminating support for such projects in the near future.

Climate relevance needs to become an inherent part of the screening process and be evaluated already as part of the environmental questionnaire for guarantee applicants during the project application process. The fact that ECAs collect data on the possible climate impact of their projects within the ECG is a positive step forward in terms of awareness raising on the topic. Nevertheless, this process will probably stretch over a number of years, and even if it leads to more climate specific recommendations, they will still be part of a Gentlemen's Agreement with no sanctioning mechanism for cases where the recommendations are ignored.

Agreements on the OECD level suggest the classification of sensitive and less sensitive projects but there are no explicit or binding exclusion lists. In Austria nuclear projects and weapons deals are not allowed under the Austrian export promotion law. To our knowledge none of the other countries we looked into have clear examples of project types they are legally not allowed to support. Some other monitored ECAs claim that they don't fund certain sectors, such as for example Slovakia with arms and military equipment including dual-use-products, but there does not appear to exist a legal and hence sanctionable basis for this.

Lack of transparency and public involvement

ECAs are generally secretive about all their financial operations, including past and current project information, figures regarding guarantees issued, amounts recovered and outstanding claims, which are only reported on aggregate levels.

For the majority of projects supported by ECAs the public does not know in the first place which applications are under consideration by the ECAs. And a number of freedom of information requests in the countries we looked at in our report were rejected using the argument of banking and insurance secrecy.

If the public does not know what projects are under consideration or being supported by ECAs, there is hardly any chance for civil society to request and assess further information on environmental, human rights and corruption-related questions. There should be no exceptions to publicizing projects in line with the Common Approaches. If a project is too sensitive to be shared with the public, it should probably not be supported in the first place.

The deficiencies we have observed in information disclosure include the following:

- Lack of information about projects under consideration: this effectively disables any public participation, but it also prevents a flow of useful information relevant for ECAs' decision-making. If the public – both in the ECA's home country and in the project country – does not have timely and sufficient information about projects under

consideration, they can not provide independent data that would allow ECAs to better assess risks involved in the transactions under consideration, and to reach the best decision reflecting the given situation (including the political, social, environmental and human rights contexts).

- Lack of information about already supported projects: this prevents any public scrutiny of policies and effectiveness of their implementation as an indication of the overall direction of ECAs. In this situation, taxpayers have no say in how public money and support schemes are being used and cannot raise concerns about a lack of policy coherence. Project-affected people or whistleblowers on corruption and malpractice also cannot raise concerns if they don't know that a certain ECA has financed the project in question.
- In most cases there is no recourse mechanism for affected people. In the few cases where there is (eg. EGAP), information about it is hard to access.

All OECD ECAs are supposed to publish all category A projects with a guarantee duration of more than two years ex-ante (before project approval) and to report all category A and B projects to the OECD Export Credit Group ex-post (after project approval). However, due to the lack of disclosure of complete project lists, our research was not able to confirm that even these minimum standards are met.

A large proportion (by far the majority of individual contracts) of state-backed finance goes for projects with repayment periods of under two years. There is no clear guidance from the OECD on transparency and due diligence procedures for this type of project. So even if a project would otherwise fall into categories A or B, the ECAs examined do not make public any project information.

In addition, none of the ECAs we assessed publishes (ex-post) a list of all projects they have supported. The argument for this is often “banking or insurance secrecy”, but the Dutch ECA Atradius Dutch State Business (ADSB) updates such lists on a monthly basis without this presenting any problem.⁸ The way, how the Dutch ECA handles this question of transparency would in fact be a useful practice also for other ECAs to increase comparability: Atradius provides lists of all projects they supported per given year (both of projects with credit terms over as well as under two years), including in most cases: name of exporter and importer, guarantee amount and time span, as well as the project categorization and a link to the ESIA, if available.

The French ECA BPI and the German EulerHermes also publish information on projects ex-post. While delayed and quite aggregated, this proves that more transparency is possible.⁹ Such lists should be made available from all ECAs in order to ensure transparency and comparability of initial categorization as well the possibility of raising questions concerning environmental, human rights, financial viability and corruption aspects of the projects supported by the respective ECA.

The decisions made by ECAs have significant implications for sustainable development and the environment. Unfortunately these appear to happen often without sufficient and up-to-date information. The public, mostly via civil society in the ECAs' home countries, as well as in the countries hosting the ECA-supported projects, possesses relevant information and needs to be able to access decision-making to bring forward such information.

For a few years, the Austrian ECA OeKB had system where it automatically informed a number of civil society organisations (ECA Watch Austria) by email when it had posted a new Cat. A or B project on its website. This mechanism has dwindled in recent years, but it would be a positive signal for any ECA to show willingness to allow civil society

engagement by offering such pro-active information. None of the other ECAs seem to have such a mechanism in place and no ECA in our sample pro-actively consults with relevant CSOs about sensitive project areas in the course of their screening process. Poland's KUKE, for example doesn't even have a procedure to deal with comments on projects from civil society as is required in Articles 39 and 40 of the Common Approaches.

The majority of the ECAs in the countries monitored do not seem to expect any public interest and engagement. Given how little publicly accessible information there is, it is also hardly surprising how little engagement there is.

However, as public institutions ECAs are bound by relevant legislation and other policies and need to behave in accordance with national freedom of information legislation, the Aarhus Convention and the EU ECA Regulation. Particularly the Aarhus Convention¹⁰ sets a clear obligation to parties requiring their public institutions to collect and disseminate environmental information in a timely manner. But due to the refusal to provide sufficient information, several requests for information submitted by Bankwatch's member and partner groups during 2015-2017 in the monitored countries resulted in appeals and court cases, with all subsequent rulings so far indicating a need for ECAs to open up their decision-making for greater public scrutiny.

Screening, classification and monitoring of projects

Many of the standards that the ECAs adhere to, are negotiated on the OECD level - mostly within the Export Credit Group itself. The so-called "Common Approaches" are more or less the minimum environmental and social standards for ECAs.

Currently the social and environmental screening of projects falls under the obligations within the Common Approaches. But there seem to be no set of (national or EU) legal requirements for this kind of detailed project screening. And – as the Common Approaches are non-binding – there is no legal sanctioning mechanism available, if there has been, for example, no Environmental and Social Impact Assessment (ESIA) undertaken. What is more, impact assessments are usually commissioned by the exporter or the project owner, and therefore often assess a project in favour of their business interest. This can lead to projects being supported even if they cause severe negative impacts for people and environment.

While there has been a notably stronger textual inclusion of human rights issues into the latest (2016) version of the Common Approaches, they are in principle still a „Gentlemen's Agreement“, so members only need to apply them as long as economic interests are not stronger. And even within these voluntary standards there are exemption clauses that allow less transparency towards the public (such as the publication of Category A projects before approval and Category A and B projects after approval), in which case only the ECG itself has to be informed (and not the public). Also, when publicised, it is only Category A projects that are placed on ECAs' websites before project approval. The 30-day requirement to do so is not nearly enough time for a proper assessment of an ESIA by stakeholders such as civil society.

Even though the OECD Common Approaches are set out to promote common ground for environmental and social screening, there appears to be no overall systematic approach throughout the different ECAs. The staff capacity for social and environmental screening differs in different countries. This, of course is in part due to the different amount of projects individual ECAs guarantee per year, but there is also a notable difference in staff capacity per project. While the Austrian ECA OeKB for example has a team of three full time staff for screening who can fall back on the assistance of up to another six staff if necessary, Eximbanka SK has one full time employee (sometimes requesting external expertise), carrying out environmental and social screening for all projects to be guaranteed by the ECA.

The process of screening itself also appears to be different and not entirely systematic in different countries. Online searches for project country specifics are used, sometimes external databases come into play, but often not, because of the cost factor. In some cases field visits happen before project approval, but other than Austria none of the countries evaluated in this report have established a post-project monitoring evaluation (including self-reporting, external review and/or post-project field visits by ECA staff) in order to assess long-term impact of projects and safeguard that agreed social and environmental standards stay in place also after the guarantee period has passed.

The overall lack of guidance from the OECD concerning projects with an under 2-years repayment period constitutes a major loophole for the screening practices concerning ECA-supported projects, in particular for ECAs from Central and Eastern European countries that have only a very small share in export insurance transactions relating to longer term projects. The example of EximBank Romania (see ECA profiles) for instance shows the most extreme case when an ECA basically does not issue - or has so far not issued - any export insurance over two years, yet refers to the environmental standards from the OECD Arrangement and Common Approaches as their benchmarks for environmental screening, which it has so far never had to apply.

The means of classification also differs between countries. All countries use in principle the classification of A, B and C as recommended in the Common Approaches. But of the countries we assessed for this study, only Slovakia actually assesses all projects (above and below 2-years repayment period), whereas for example OeKB in some cases does not classify small export guarantees which it sees as socially and environmentally irrelevant (such as very small machinery components of low insurance value). It is not clear whether there is an overall systematic approach throughout the different countries how to classify A, B and C which means in practice that a project could very well be classified B in one country and therefore only publicized ex post while a different ECA classifies it as Category A and publicizes it ex-ante.

A lesson to be learned from the Ilisu dam project for all ECAs (see the case study on Austria) is that it is necessary to include social and environmental terms of reference into a guarantee contract and set up monitoring procedures through independent experts. The way the Committees of Experts were put together provides a good example of how this can be done in practice. However, to go ahead with a project on the basis of a “rolling plan” without already finalized impact measures such as resettlement and income restoration plans for affected people proved to be a recipe for non-compliance and should be avoided for all future projects.

In the case of Austria, projects with a guarantee value above EUR 500 million have to be pro forma assessed by an “Export Promotion Council”, (consisting of several ministries and other public stakeholders, see OeKB profile for details), which in theory adds a second layer of checking the economic, social and environmental feasibility of an official export guarantee. If such a council also had the possibility to truly discuss and in the worst case also block guarantee applications, this would constitute a useful addition to the screening process also for other ECAs.

Reporting

When the ECAs report back to their government - or rather the ministry in charge in each country - and in many cases this ministry also reports to the national parliament, this reporting usually only covers a very small fraction of the overall amount of ECA supported projects. This is because of the Common Approaches-based practice of publishing only Cat. A projects with a guarantee duration of more than two years ex ante and such Cat. B projects ex post.¹¹ Parliamentary scrutiny of ECAs is usually also rather loose and random in practice, reflecting an overall lack of knowledge of and policy coherence regarding export credit schemes.

In 2011, after a strong push by civil society and the European Parliament, the EU agreed on a regulation¹² that obliges the ECAs and EU member states to also comply with EU development policies. The regulation requires Member States to report annually on their ECAs' activities. However, regulations on key aspects such as tax matters and compliance with socio-economic standards are still missing, and the practice of reporting to the European Commission and the European Parliament has shown to be very superficial. In reality it has not shed significantly more light onto ECAs activities, and there has been little will to strengthen these reporting practices so far.

So although the EU Regulation appears to have increased the transparency of European ECAs' activities to an extent, in practice it does little to contribute to this goal. Based on current reporting practices within the EU, it is not possible to test whether EU standards are properly applied outside the EU. It is also not possible to determine whether Member States' ECAs are in line with EU foreign policy objectives, environmental risk management regulations, or with EU priorities on global environmental challenges such as climate change and the loss of biodiversity.

Conclusion

Following civil society scrutiny that sheds light on the harmful development impacts of ECAs,¹³ international guidelines have been put in place over the last decade to ensure that ECA supported projects at least do no harm to poor people in poor countries. Unfortunately, these standards are weak and lack key measures that are crucial to avoid harmful development and environment impacts. Not least, their monitoring and reporting mechanisms are insufficient to ensure proper implementation.

The new (2016) version of the Common Approaches includes more language concerning screening against potential human rights issues in projects to be supported by ECAs. This is a positive step forward. And it appears that there is also more overall awareness of environmental and social issues with ECA practitioners than there might have been in the past. Also the fact that the Common Approaches refer to the OECD guidelines on Multinational Enterprises is a step in the right direction. But in practice, companies only have to tick a box that they have knowledge of these guidelines (the same goes for the Council Recommendation on Bribery). If there are no sanction mechanisms (exit clauses) built into individual contracts, such guidelines will not be effective.

Since 2009 there has been a peer review process established within the ECG. This seems to be a useful step forward to providing individual countries with an incentive to adhere to the Common Approaches. Even so, such a process cannot substitute more binding (EU level) regulation, as there are no sanctions in case of misconduct.

Governments and private actors might fear that strong guidelines protecting the environment, human rights and equitable development may harm business by creating a comparative advantage for those ECAs from countries that do not adhere to such guidelines. The approach to creating a "level playing field" in frameworks such as the OECD is used to justify continuing with further developing non-binding guidelines, which appear to address core global problems but in reality rather create more of the cement that keeps the outdated practices in place. What policy makers need to do instead is to turn this trend on its head by creating a race to the top on responsible financing requirements for their ECAs.¹⁴

RECOMMENDATIONS

The issues raised in this report are international in nature. They require national, European Union and international action to make ECAs really reflect environmental, social and human rights standards in their conduct and decisions. ECAs may play a more positive role than they do today, for example by supporting progressive businesses, but this will only happen if they are willing to commit to improved transparency, environmental and human rights standards. The fact that not all ECAs are willing to do the same must not be an excuse for inaction.

Where the objective of ECAs is to support domestic companies doing business abroad, ECAs should stop arguing that they only follow the markets. This dominant paradigm only causes ECAs to place themselves at the lowest end of a race to the bottom. Increasing challenges to society, of which climate change is not the least, require ECAs to assume responsibility and incorporate external risks in their costs of doing business, rather than leaving these to the public sector of host countries where transactions are made.

Only strict and binding standards, transparent and engaging decision-making, and sound monitoring and reporting will lead to responsible financing for a better future. The following recommendations should be considered for appropriate action to ensure steps towards higher transparency and towards sustainable global development, sooner rather than later.

National level - governments, parliaments and ECAs

Governmental and parliamentary oversight: ECA reporting and accountability

- Governments need to take into account Article 21 of the EU Treaty and their own overseas development priorities in defining and monitoring the activities of their ECAs.
- Parliaments need to increase their oversight of the strategic priorities and projects of their respective ECAs and seek ways together with the relevant ministries to increase coherence between the ECAs' state-backed projects and the development priorities of the country and its climate change commitments.
- Reporting by ECAs in accordance with the EU ECA Regulation 1233/2011 on officially supported export credits should be more thorough, providing EU institutions, the European Commission, European Council and European Parliament, sufficient information to assess compliance with EU policies on climate, development and environment.
- Each ECA needs to have an independent complaint mechanism with clearly defined procedures. This needs to be clearly advertised on its website, including in English and the languages of the countries where the majority of the ECA's support is directed.

Project information disclosure and public consultation

- All ECAs need to formulate and adopt information disclosure and public participation policies fully reflecting the Aarhus Convention. Additionally, control mechanisms for enforcing the compliance with the Convention must be established, regardless of

whether the country to which the ECA backed export goes is a party to the Convention or not and regardless of the repayment period of the project.

- Information about all ECA-supported projects must be publicly available and displayed on the ECA web page.¹⁵
- In line with earlier official proposals from the Netherlands, all ECA-supported transactions should be subjected to screening under the Common Approaches. Disclosure must include projects of all sizes as projects with a repayment period of under two years can still have impacts on the environment and host communities. This is both a matter of principle - public money is at stake - and of accountability towards the affected communities. It would also allow public assessment of ECA's portfolio – whether or not it is in line with other public policies as applicable to a given country and within EU.
- Information about all projects under ECA consideration must be disclosed for consultation in a sufficient and timely manner to allow for sufficient scrutiny of a given project.
- A consultation period of 120 days - as is for example the case at the Asian Development Bank - for all Category A and Category B project transactions (meaning for projects with a high potential for negative social and environmental impacts) would be appropriate to allow relevant information to be provided by the public, irrespective of the repayment period. In many cases the public has relevant information that could prove vital for the ECA to make a balanced assessment of the project. Some of this information is difficult or impossible for ECAs to obtain within their assessment and due diligence because they are not well-connected to local networks and communities in the affected country. The quality of ECA decisions without such information can be significantly impaired.
- ECAs also need to consider pro-actively reaching out to civil society in countries where they support business transactions, to ensure effective participation of project-affected people, as well as of local CSOs in decision making processes.
- Information regarding Category A and B projects (including those with a repayment period of under 2 years) needs to be available in the language(s) of the country and community where the project will take place and in a format and location likely to be accessed by local people.
- Requests for information should be handled in a consistent, transparent and effective manner and all requested information should be provided unless there are well-founded and sufficiently presented arguments. Banking, insurance or commercial secret arguments must be applied restrictively and in most cases cannot be applied given the prevailing interest of public in receiving environmental information.
- When an ECA decides that it cannot disclose project information in response to a freedom of information request, the ECA should hold the burden of proving that the information is in fact business confidential information. Information that doesn't have to be disclosed should be limited and those limitations clearly explained. ECAs should be required to reasonably segregate disclosable information from non-disclosable information.

Due diligence and project selection

- Environmental, social and human rights due diligence within ECAs needs to improve and have sufficient resources dedicated to it, in order to increase ECAs' contributions to EU policy objectives.
- Due diligence of ECAs should be a genuine effort on the side of ECAs to seek and incorporate information from the public - both in the ECA home country as well as country of destination, including the affected community.

- Exclusion lists need to be developed to prevent ECAs from supporting particularly environmentally or socially harmful categories of investment. These should include for example: projects with significant negative, irreversible impacts on natural habitats, primary forests, protected areas and Ramsar sites, projects with significant human rights violations, fossil fuel projects, nuclear power plants and weapons deals.
- ECAs should screen all applications for export credit insurance on the use by buyers or debtors of aggressive tax planning schemes.
- ECAs should require all multinational companies involved in export transactions for which it provides cover to apply country-by-country reporting on the taxes they pay.
- ECAs should exclude all business partners that make use of aggressive tax planning schemes from access to export credit insurances.
- All companies and financial institutions backed by ECA guarantees should disclose reliable annual information related to sales, employees, profits made and taxes paid in the country as well as information regarding the beneficial ownership of any legal structure directly or indirectly related to the company.
- Project applicants should be obliged to disclose to the ECA in their preliminary application form the amount of provisions paid to intermediary agents. In cases of bribery the liability has to be terminated and the company barred from future guarantee contracts.
- It must be ensured that a company complies with the OECD Guidelines for multinational enterprises. Companies that breach these guidelines (also in projects, that were not ECA-funded) must be barred from ECA support (for example with a time limit of ten years).
- Projects supported by ECAs need to be compatible with global commitments such as the Paris Agreement, including the following:
 - ECAs need to publicly report with clear and understandable information on all export credit insurance for transactions in carbon-intensive sectors (eg. transport, cement production, steelmaking), including their climate impact, and set clear targets to phase out these transactions. They need to report on their progress towards these targets.
- Only transactions that contribute to low-carbon and climate-resilient development should be considered for new export credit support.
- No new transactions should take place to provide export credit support for fossil fuel-related projects.
- For A and B category projects, site visits and public consultations in the affected community need to be organised and monitored by the ECA at a stage when all options are still open and no final decisions have been taken.
- In countries where such consultations will not be able to take place freely and without pressure, ECAs should avoid supporting investments in any category A or B projects as well as any investments in publicly-owned companies or other companies which will support the government.
- It should be obligatory for ALL sensitive projects to have conducted an ESIA beforehand. Exceptions should not be possible (as for example allowed under the OECD Common Approaches). An ESIA should follow the same clear and standardized procedures as would be the case for a project in that European Union country where the guarantee is coming from in order to ensure a high quality and comprehensive evaluation. Not only World Bank or IFC Performance standards should be used as benchmarks, but sector-specific standards if these are of a higher level.
- Projects must not be approved before all environmental and social due diligence is completed and realistic and workable mitigation measures are drawn up and publicly disclosed.

- If resettlement is necessary for a project, a resettlement plan and an income restoration plan (according to World Bank standards) must be available in their entirety BEFORE a contract is signed. Even with such plans in place, it cannot be guaranteed that in reality, project-affected people will not be expropriated in a way that threatens their livelihoods and existence. But without such plans in place, it is highly likely that projects will cause serious harm to those being resettled (as was the case for example in the Ilisu dam project - see the case study on Austria).
- For projects that take place in conflict regions or regions with suppression of political and civil rights the OECD guidelines for projects in conflict regions should apply.

Project monitoring

- Social and environmental conditions must be written into project contracts and, at least for category A and B projects, should be available to the public, along with information about monitoring plans and results.
- More participatory monitoring and evaluation procedures are needed. For example, for the duration of the project implementation and repayment period, regular local stakeholder meetings should be part of the monitoring protocols of ECA supported transactions.
- Non-compliance in effectively addressing adverse impacts of transactions underwritten by ECAs should result in a halt to ECA cover and the exclusion of the relevant company from further support.

For the European Commission and European Parliament

- At the EU level, functional and transparent mechanisms should be established to effectively monitor EU ECAs and effectively assess whether Member States' export credits are in line with EU foreign policy objectives or with applicable environmental risk management regulations, EU priorities on global environmental challenges such as climate change and loss of biodiversity. These mechanisms should enable citizens of the EU to provide input, but also they should contain a complaint mechanism. EU law requires reform in this area.
- In order to ensure that the provisions of the Aarhus Convention are applied in the export credits business, regardless of whether the target country is a party to the Convention or not, the ECAs should include Aarhus good practices in the decision making processes for individual projects. Control mechanisms should be established for enforcing investors' and target countries' compliance with the Convention – art. 5, 6 (or 7) and 9. The relevant rules could be introduced by the ECAs themselves. However, in order to ensure that these new standards are coherent and sufficiently ambitious, efforts should be undertaken by the relevant European Union institutions to move this forward.
- According to the ECA Regulation, the Commission shall produce an annual review for the European Parliament based on the reports from countries, including an evaluation regarding the compliance of ECAs with Union objectives and obligations. This needs to be done more in-depth with regard to issues such as human rights and the Paris Agreement and scrutinised more thoroughly by the European Parliament.
- Member States' reports submitted under the ECA Regulation should be systematically published, should go beyond the checklist format, and should be informative for non-specialised readers. The European Commission's reports should include an assessment of the information contained in the national reports, which would be annexed to the Commission document and would be made public in EUR-Lex.

Endnotes

- 1 The Berne Union is the most important global association for ECAs export credit and investment insurers. Its members include mostly government-backed official export credit agencies as well as private credit insurance companies from 73 countries.
- 2 In 2012-2016 public export and investment insurance via ECAs totalled between USD 920 billion and 1.031 billion. See: Berne Union (3 July 2017): Aggregate Statistics - 2016 Year End, <https://www.berneunion.org/DataReports>
- 3 As is the case for instance with SDG 7 through 11 and 13 (SDG 7: Affordable and clean energy: Ensure access to affordable, reliable, sustainable and modern energy for all; SDG 8: Decent work and economic growth: Promote sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all; SDG 9: Industry, innovation and infrastructure: Build resilient infrastructure, promote inclusive and sustainable industrialization and foster innovation; SDG 10: Reduced inequalities: Reduce income inequality within and among different countries; SDG 11: Responsible consumption and production: Ensure sustainable consumption and production patterns; SDG 13: Climate action: Take urgent action to combat climate change and its impacts by regulating emissions and promoting developments in renewable energy) if one looks at ECAs' support for energy generating projects. ECAs (in terms of financial volume) mainly finance large, centralized fossil fuel projects, rather than decentralized renewables that best help to improve access to electricity.
- 4 <http://www.lisbon-treaty.org/wcm/the-lisbon-treaty/treaty-on-european-union-and-comments/title-5-general-provisions-on-the-unions-external-action-and-specific-provisions/chapter-1-general-provisions-on-the-unions-external-action/101-article-10a.html>
- 5 <http://www.radio.cz/en/section/business/hn-turkish-coup-attempt-could-lead-to-czk-12-billion-loss-for-cr>
- 6 see: <https://www.respekt.cz/politika/cesku-se-nedari-z-ruska-ziskat-zpet-utopene-miliardy-presto-tam-chce-poslat-dalsi> as well as https://ekonomika.idnes.cz/ceska-exportni-banka-uverovala-neuspesne-elektrarny-p0q-/ekonomika.aspx?c=A160205_201831_ekonomika_jvl
- 7 <http://www.powerengineeringint.com/articles/2015/09/czechs-forced-to-abandon-russian-gas-fired-power-project.html>
- 8 See: <https://atradiusdutchstatebusiness.nl/nl/publicaties/afgegeven-polissen.html>
- 9 France has a similar approach to the Netherlands. : <http://www.bpifrance.fr/Qui-sommes-nous/Nos-metiers/International2/Assurance-Export/Evaluation-Environnementale-et-Sociale>
Germany publishes at least aggregated data ex-post: <https://www.agaportal.de/main-navigation/exporte-exportkreditgarantien/praxis-exportkreditgarantien/projektinformationen-exportkreditgarantien>
- 10 Para 16 of its Preamble: "The Parties to this Convention, (...) Recognizing the importance of fully integrating environmental considerations in governmental decision-making and the consequent need for public authorities to be in possession of accurate, comprehensive and up-to-date environmental information,"
Art 5, 1: (a) Public authorities possess and update environmental information which is relevant to their functions; (b) Mandatory systems are established so that there is an adequate flow of information to public authorities about proposed and existing activities which may significantly affect the environment;"
- 11 Category A and B projects meaning projects with particularly high potential for negative social and environmental impact.
- 12 Regulation (EU) No 1233/2011 of the European Parliament and of the Council of 16 November 2011 on the application of certain guidelines in the field of officially supported export credits and repealing Council Decisions 2001/76/EC and 2001/77/EC
- 13 For concrete examples of "dodgy deals" western ECAs have facilitated in the past visit for instance <http://www.eca-watch.org/dodgy-deals> or see the report „Still Exporting Destruction. A civil society assessment of Export Credit Agencies' compliance with EU Regulation (PE-CONS 46/11)“ (<http://www.eca-watch.org/sites/eca-watch.org/files/shadow%20report.pdf>)
- 14 Proposals for drastically strengthening guidelines have been put forward by civil society for example in Eurodad's "Responsible Finance Charter" (2011): http://eurodad.org/files/const/responsible_finance.pdf
- 15 Atradius has started publishing lists of all projects supported in the previous year (both projects with credit terms over and under two years), including in most cases: name of exporter and importer, guarantee amount and time span, as well as the project categorization and a link to the ESIA, if available. France has a similar approach: <http://www.bpifrance.fr/Qui-sommes-nous/Nos-metiers/International2/Assurance-Export/Evaluation-Environnementale-et-Sociale>
Germany publishes at least aggregated data ex-post: <https://www.agaportal.de/main-navigation/exporte-exportkreditgarantien/praxis-exportkreditgarantien/projektinformationen-exportkreditgarantien>

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