

NGO statement to OECD Consultation on Bribery and Export Credits

June 2004

Introduction

1. Corruption is now widely recognised to be a major factor in increasing poverty, aggravating inequality, damaging the legitimacy of fledgling democracies, and is extremely detrimental to development. Corruption is now recognised to play a large role in environmental degradation and in undermining the ability of people to access their basic human rights.
2. The majority of ECAs support agents' commissions and are therefore under a special obligation to do everything in their power to ensure that bribes are not paid under the guise of agents' commission, to play a proactive role in helping detect bribery by exporting companies, and to provide effective sanctions against bribery as recommended by the 1997 OECD Recommendations on Combating Bribery.
3. The majority of ECAs have now implemented the first two parts of the Action Statement, but that the evidence as to whether they are implementing the last two (refusing support where there is sufficient evidence of bribery; and taking action where bribery is proved after support has been given) is patchy.
4. So far only Australia, Canada, France, the UK and the US have taken any action with regard to suspicion, evidence or a legal judgement of bribery.
5. The few instances of action taken so far with regard to bribery may be because there have genuinely been few instances of bribery over the time period covered, but is just as likely to be due to an ongoing failure of ECAs to pick up credible signs of bribery, and take action on them.
6. Bribery is notoriously difficult to prove and because it can often take years for full evidence to emerge, early action on credible suspicions of bribery is crucial.
7. Many ECAs are not currently using the full range of actions and sanctions that they are legally entitled to use, according to the ECG Survey.
8. Some ECAs are moving well ahead of the rest in terms of their anti-corruption procedures. The ECGD in particular has taken important and clear steps towards improving its procedures.

NGO Demands:

1. NGOs call for a revised Action Statement on bribery and officially support export credits where Members agree to adopt emerging best practice as binding standards.
2. NGOs call for a revised Action Statement to incorporate the proposals laid out in the Best Practices paper. If a renewed Action Statement cannot be agreed, the Best Practices document should be changed to read "members shall" rather than "members should" to ensure that a harmonisation of standards will occur.
3. NGOs note with concern continuing weaknesses in the proposed best practice on scrutiny of agents' commission. It is well known that agents' commissions have often been a route through which bribes have been disguised, and therefore require careful due

diligence. We believe that in order to enhance due diligence in this area and to improve consistency among ECAs, ECAs should agree:

- a) To require details on agents' commission, including amounts paid, services rendered, purpose of commission and names of agents as a matter of routine procedure on ALL transactions and not just on those exceeding a threshold of 5%; and
- b) To develop a basic set of '*red flags*' on the use of agents which they will apply in their due diligence procedures to ensure a level playing field among ECAs on scrutiny of commission payments, and to require companies to provide copies of agency agreements with full invoices of services provided in exchange for commission payment as part of their due diligence procedures.

In accordance with this, Number 4 in the Best Practices paper should be adapted to read: Members should require full details of agents' commission on all transactions, including amount paid, services rendered, purpose of commission, name of agent, and place of payment (as done by ECGD among others); and should only give support for agents' commission where it is verified that the commission represents value for money on genuine services provided (as done by COFACE).

4. NGOs believe that debarment is an absolutely essential sanction that ought to be deployed by ECAs against companies convicted of bribery. It is very disappointing that despite the fact that the OECD Convention on Combating Bribery clearly calls for parties to the Convention to impose 'additional civil or administrative sanctions', including 'disqualification from participation in public procurement or from the practice of other commercial activities' (Article 3), and that the OECD Recommendation on Combating Bribery suggests that Member countries should look at denying 'public subsidies, licences, government procurement contracts or other public advantages' as a sanction for bribery, no ECAs currently appear to use this sanction in practice. We therefore call for Number 6 of the Best Practices paper to be adapted to read:

Members will withhold support where a company has been convicted of corruption by a competent jurisdiction and will require applicants to inform them immediately if they face any investigation or action as a result of corruption allegations by official authorities in any jurisdiction.

5. NGOs believe that ECAs must act on credible suspicions of bribery, and are concerned at the possibility of different interpretation emerging among ECAs of what the terms "suspicion" and "sufficient evidence" mean. These terms should be clearly defined. "Suspicion" should, for instance, include newspaper articles, and allegations without supporting documentation; "sufficient evidence" should include, among other things, allegations with appropriate supporting documentation, such as a money-laundering report.

6. NGOs call for ECAs to examine, as the ECGD has done, how they might be able to use their powers of audit, inspection and spot-checks to detect bribery, and whether they need to get additional training for their underwriters in detecting bribery.

7. NGOs welcome the proposal for ECAs to make adherence to OECD Guidelines for Multinational Enterprises a prerequisite for official support. The Guidelines commit companies among other things to adopting internal policies against bribery and extortion and to responsible use of agents, including making available to competent authorities a list of agents employed in connection with transactions. NGOs also welcome the proposal for Members to require that transactions are subject to transparent and competitive procurement processes, and believe that this would be an important tool in helping ensure both that there is less corruption and that projects are good value for money for developing countries.

8. NGOs urge ECAs to adopt full transparency with regard to their anti-corruption policies and procedures. In particular, we believe an additional paragraph to the Best Practices should read that: “Members will publish in their annual reports and on their websites, their anti-corruption policies and internal control mechanisms for dealing with corruption allegations, the number of allegations of corruption received and what actions were taken in response.”

9. NGOs believe that ECAs should require companies in the extractive sector to publish full details of all payments to governments made on contracts supported by ECAs in these sectors.

10. NGOs urge the OECD to consider once again the possibility of establishing a database of companies convicted of corruption that ECAs can consult.