

ECGD's Proposed Revisions to its "Business Principles"

Implications for Policies on Child and Forced Labour

Since 2003, Britain's Export Credits Guarantee Department (ECGD), which provides UK exporters with taxpayer-backed insurance against losses incurred abroad, has banned any support for projects that involve "harmful child labour" and forced labour.

That outright ban will be jettisoned if Lord Mandelson, the Secretary of State for Business, Innovation and Skills, approves new rules being floated by the ECGD.¹ In future, the ban would not apply at all to the ECGD's short-term business, an area which the government is seeking to increase, and would become discretionary for other projects.

The proposed weakening of the rules follows pressure from industry. In June 2009, the British Exporters Association, lobbied for the ECGD's environmental and social safeguard policies, known as the "Business Principles",² to be "modified, if not scrapped altogether".³

Parliament expressly called for a ban on child and forced labour

Until 2003, ECGD had no rules banning child labour. Its stated policy was to allow support for projects where children were exploited, but only under "exceptional circumstances".⁴

Support for projects involving bonded and forced labour was also permitted, although ECGD stated that it would be "difficult to imagine circumstances in which ECGD could provide cover to projects which involve forced labour."⁵

Following a parliamentary inquiry into the ECGD in 2003, the Environment Audit Committee called for an absolute ban on ECGD support for projects involving forced and child labour. The EAC was forthright: "There is no circumstance under which it would be acceptable for ECGD, using taxpayers' money, to support projects which exploit children or employ bonded or forced labour."⁶

Current Policy

In response to the EAC, the ECGD adopted an outright ban on "harmful child labour" and forced labour.⁷ The new policy was incorporated into ECGD's application forms, which now clearly state:

- "It is ECGD's policy not to provide support to projects that involve harmful child labour";⁸ and
- "It is ECGD's policy not to provide support to projects that involve bonded or forced labour."⁹

The current rules require *all* applications (with the exception of those under ECGD's recently introduced Letter of Credit Guarantee Scheme) be screened against the World Bank Group's Policy relating to harmful child and forced labour:¹⁰ support should not be given for projects which fall foul of this policy.¹¹

The Proposed Changes

Currently, the ECGD's policy on child and forced labour goes further than that of many competitor export credit agencies from countries that are members of the Organisation for Economic Cooperation and Development, the grouping of the world's richest countries.

Under pressure from UK exporters, the ECGD is therefore proposing that the rules be relaxed, along with other ECGD safeguard policies on the environment and human rights.

In future, ECGD would need only to comply with standards agreed internationally under the OECD's Recommendation on Common Approaches on the Environment and Officially Supported Export Credits.¹²

The effect of the proposed changes would be:

To exclude *all* ECGD support with a repayment period of two years or less from *any* screening for child and forced labour

The Common Approaches only applies to export credits with a repayment term of two years or more and a value above SDR 10 million. By contrast, the ECGD has historically applied its standards to all business irrespective of credit terms.¹³ The ECGD is currently being encouraged to expand its short-term credit business.

To release ECGD from its current commitment to screen projects with long-term repayment periods for child and forced labour

ECGD currently requires the projects it supports to comply "in all material respects with the relevant *safeguard policies, directives and environmental guidelines* of the World Bank Group."¹⁴ Under the Common Approaches, the scope is significantly narrower: ECGD would only be expected (not required) to screen against the ten safeguard policies of the World Bank.¹⁵ The safeguard policies referenced by the Common Approaches do not cover child or forced labour and make no mention of the only World Bank policy that does.¹⁶

ECGD could therefore abandon any screening for child and forced labour under the new rules.

To make any future screening for child and forced labour entirely discretionary

Under the Common Approaches the ECGD could, if it so chose, screen projects with a repayment over two years against the Performance Standards of the World

Bank's International Finance Corporation.¹⁷ The IFC is the World Bank's private sector lending arm and, unlike the World Bank's ten safeguard policies, the performance standards cover child and forced labour. However, the Common Approaches states that they should only be applied to projects being funded through project finance (a means of financing which is on the decline) and only "where appropriate".¹⁸ Their application would thus be entirely discretionary.

EU standards could also be applied if the ECGD so chose, but, again, the Common Approaches stipulates that this should only be "where appropriate".¹⁹ No definition is given of "where appropriate".

The ECGD would also have the option of going beyond World Bank Group standards²⁰ but it has signalled that it is unwilling to do so,²¹ clearly referencing World Bank Group standards as its ceiling. Moreover, even if it opted to go further, short-term credits would still be excluded from the new procedures.

Jettisoning Human Rights

If the new rules being proposed by ECGD are approved by Lord Mandelson, the effect will be to strip away the protection that ECGD currently provides against the abuse of children and bonded labourers in poorer countries.

Many of the projects which ECGD currently screens for labour abuses would be excluded from its screening processes; and the ECGD's current mandatory procedures could become entirely discretionary.

The impacts on the ground for poorer people in the South could be disastrous. To reiterate what parliament said in 2003: there should be no circumstances under which it would be acceptable for ECGD, using taxpayers' money, to support projects which exploit children or employ bonded or forced labour.²²

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January 2010

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- 1 The proposed new rules are available at: ECGD, "Public consultation on proposed revisions to ECGD's Business Principles and Ancillary Policies", December 2009, http://www.ecgd.gov.uk/business_principles_consultation_document.pdf.
 - 2 The "Business Principles" were introduced in 2000 by the then Secretary of State for Trade and Industry, Stephen Byers, in order to ensure that the ECGD took account of the government's wider policies on human rights, the environment and development. They are available at: <http://www.ecgd.gov.uk/ecgds-business-principles.pdf>.
 - 3 In 2009, BEXA, the British Exporters Association, argued that, "unless all [ECGD's] Business Principles – particularly those relating to bribery and corruption – are modified, if not scrapped altogether, existing medium/long-term business will move abroad and new customers seeking

short-term facilities from ECGD will find that they, too, cannot work with the Department. British industry and the employment it provides will suffer.”

See: BExA, “Consultation on the introduction of a product guaranteeing reimbursement of UK confirming banks under letter of credit arrangements”, para 29, 2009, available at http://www.ecgd.gov.uk/annex_b_-_all_consultation_responses_-_redacted.pdf.

- 4 ECGD, “Summary of Case Impact Procedures”, 2003, Annex 1, Guidance Notes, p.iv.

ECGD stated: “In common with most countries around the world, the UK has ratified the United Nations convention on the Rights of the Child and the International Labour Organisation conventions on the abolition of child labour. *There must, therefore be exceptional circumstances for ECGD to provide cover to projects which involve child labour*” (italics added)
- 5 ECGD, “Summary of Case Impact Procedures”, 2003, Annex 1, Guidance Notes, p.iv. On bonded and forced labour, ECGD stated: “In common with most countries around the world, the UK has ratified the International Labour Organisation Conventions on the elimination of forced or compulsory labour. *It is difficult to imagine circumstances in which ECGD could provide cover to projects which involve forced labour.*”
- 6 Environmental Audit Committee, “ECGD and Sustainable Development”, 2003, Recommendation 14, <http://www.publications.parliament.uk/pa/cm200203/cmselect/cmenvaud/689/689.pdf>.

The Committee stated: “There is no circumstance under which it would be acceptable for ECGD, using taxpayers’ money, to support projects which exploit children or employ bonded or forced labour.”
- 7 “Government Response to the Committee’s Seventh Report 2002-03 on ECGD and Sustainable Development”, Annex 1, available at <http://www.publications.parliament.uk/pa/cm200203/cmselect/cmenvaud/1238/1238.pdf>.
- 8 ECGD, “Summary of Case Impact Procedures”, 2007, Annex 1, Guidance Notes, p.iv, http://www.ecgd.gov.uk/impact_questionnaire_april_2007_-_final.doc.
- 9 ECGD, “Summary of Case Impact Procedures”, 2007, Annex 1, Guidance Notes, p.iv, http://www.ecgd.gov.uk/impact_questionnaire_april_2007_-_final.doc.
- 10 ECGD, “Summary of Case Impact Procedures”, 2003, Annex 1, Guidance Notes, p.iv.

ECGD states: “The World Bank Group has produced a Policy relating to harmful child and forced labour which is available from the IFC website at: <http://www.ifc.org/enviro/enviro/childlabor/child.htm>. ECGD uses this policy as the benchmark of good practice for projects involving child labour.”
- 11 In practice, such screening does not always appear to be conducted. Completed Impact Questionnaires obtained through Freedom of Information legislation reveal cases where the questions on social impacts have not been answered – despite ECGD requiring (on paper) that they should be. A case in point is the Impact Questionnaire “completed” by VAI/Siemens for a project in India for which no responses are given to the questions on child labour.
- 12 OECD, “Revised Recommendation on Common Approaches on the Environment and Officially Supported Export Credits”, Paris, 2007, [http://www.oilis.oecd.org/oilis/2007doc.nsf/LinkTo/NT00002B8E/\\$FILE/JT03228987.PDF](http://www.oilis.oecd.org/oilis/2007doc.nsf/LinkTo/NT00002B8E/$FILE/JT03228987.PDF).
- 13 ECGD, “Public consultation on proposed revisions to ECGD’s Business Principles and Ancillary Policies”, December 2009, http://www.ecgd.gov.uk/business_principles_consultation_document.pdf.

ECGD state (para 41): “. . . ECGD has historically assessed projects where the UK export value is less than SDR 10m (approximately equivalent to £10m) or where the repayment term is less than two years; under the proposed policy statements, it will not now do so unless and until the Common Approaches is revised to include such projects.”

The only exception, agreed in 2009, is the ECGD’s recent Letter of Credit Guarantee Scheme, which is not subject to any environmental or social screening.

- 14 ECGD, Business Principles Unit, “Case Impact Analysis Process”, May 2004, para 2.6, http://www.ecgd.gov.uk/ecgd_case_impact_analysis_process_-_may_2004-4-1-1-0.pdf.

- 15 OECD, “Revised Recommendation on Common Approaches on the Environment and Officially Supported Export Credits”, Paris, 2007, [http://www.oalis.oecd.org/olis/2007doc.nsf/LinkTo/NT00002B8E/\\$FILE/JT03228987.PDF](http://www.oalis.oecd.org/olis/2007doc.nsf/LinkTo/NT00002B8E/$FILE/JT03228987.PDF).

Para 12 bullet one states: “Members should benchmark against host country standards and . . . against the relevant aspects of all ten World Bank Safeguard Policies

The Common Approaches references the following World Bank safeguard policies: Environmental Assessment (OP 4.01); Natural Habitats (OP 4.04); Pest Management (OP 4.09); Indigenous Peoples (OP 4.10); Physical Cultural Resources (OP 4.11); Involuntary Resettlement (OP 4.12); Forests (OP 4.36); Safety of Dams (OP 4.37); International Waterways (OP 7.50); and Disputed Areas (OP 7.60.)

The World Bank safeguard policies are available at:

<http://web.worldbank.org/WBSITE/EXTERNAL/PROJECTS/EXTPOLICIES/EXTSAFEPOL/0,,menuPK:584441~pagePK:64168427~piPK:64168435~theSitePK:584435,00.html>.

- 16 The World Bank policy that deals with child and forced labour is the International Finance Corporation’s 1998 “Child and Forced Labour Policy Statement”. The IFC is the arm of the World Bank that provides loans to the private sector. The IFC policy is available at: [http://www.ifc.org/ifcext/sustainability.nsf/AttachmentsByTitle/pol_ChildLabor/\\$FILE/ChildForcedLabor.pdf](http://www.ifc.org/ifcext/sustainability.nsf/AttachmentsByTitle/pol_ChildLabor/$FILE/ChildForcedLabor.pdf).

- 17 OECD, “Revised Recommendation on Common Approaches on the Environment and Officially Supported Export Credits”, Paris, 2007, para 12 bullet one, [http://www.oalis.oecd.org/olis/2007doc.nsf/LinkTo/NT00002B8E/\\$FILE/JT03228987.PDF](http://www.oalis.oecd.org/olis/2007doc.nsf/LinkTo/NT00002B8E/$FILE/JT03228987.PDF).

Para 12 bullet one states: “Members should benchmark projects . . . *where appropriate* . . . for private sector *limited or non-recourse project finance* cases, against the relevant aspects of all eight International Finance Corporation Performance Standards” (emphasis added)

- 18 OECD, “Revised Recommendation on Common Approaches on the Environment and Officially Supported Export Credits”, Paris, 2007, para 12 bullet one, [http://www.oalis.oecd.org/olis/2007doc.nsf/LinkTo/NT00002B8E/\\$FILE/JT03228987.PDF](http://www.oalis.oecd.org/olis/2007doc.nsf/LinkTo/NT00002B8E/$FILE/JT03228987.PDF).

Para 12 and bullet one states: “Members should benchmark projects . . . *where appropriate* . . . for private sector *limited or non-recourse project finance* cases, against the relevant aspects of all eight International Finance Corporation Performance Standards” (emphasis added)

- 19 OECD, “Revised Recommendation on Common Approaches on the Environment and Officially Supported Export Credits”, Paris, 2007, para 12 bullet three, [http://www.oalis.oecd.org/olis/2007doc.nsf/LinkTo/NT00002B8E/\\$FILE/JT03228987.PDF](http://www.oalis.oecd.org/olis/2007doc.nsf/LinkTo/NT00002B8E/$FILE/JT03228987.PDF).

Para 12 and bullet 2 states: “Members should benchmark projects . . . *where appropriate* . . . against any relevant internationally recognised standards, such as European Community standards, that are more stringent than those standards referenced above”.

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- 20 OECD, “Revised Recommendation on Common Approaches on the Environment and Officially Supported Export Credits”, Paris, 2007, para 12 bullet four,
[http://www.oalis.oecd.org/oalis/2007doc.nsf/LinkTo/NT00002B8E/\\$FILE/JT03228987.PDF](http://www.oalis.oecd.org/oalis/2007doc.nsf/LinkTo/NT00002B8E/$FILE/JT03228987.PDF).

Para 12 tirt 2 states: “In addition, Members may also benchmark projects against the relevant aspects of any internationally recognised sector specific or issue specific standards that are not addressed by the World Bank Group.”

- 21 ECGD references World Bank Group *safeguard policies, directives and environmental guidelines* as the benchmark with which projects are expected to comply in all material respects.

See: ECGD, Business Principles Unit, Case Impact Analysis Process, May 2004, para 2.6,
http://www.ecgd.gov.uk/ecgd_case_impact_analysis_process_-_may_2004-4-1-1-0.pdf.

- 22 Environmental Audit Committee, “ECGD and Sustainable Development”, 2003, Recommendation 14: “There is no circumstance under which it would be acceptable for ECGD, using taxpayers’ money, to support projects which exploit children or employ bonded or forced labour.”