



Mr. Didier Reynders

Commissioner for Justice
European Commission
Rue de la Loi 200
B - 1049 Brussels

Mrs. Vera Jourová

Commissioner for Values and Transparency
European Commission
Rue de la Loi 200
B - 1049 Brussels

25 November 2021

Regarding: The role of export credit agencies in the corporate governance legislative initiative

Dear Commissioner Reynders, dear Commissioner Jourová,

We very much welcome the launch of a legislative initiative on human rights and environmental due diligence. Our organisations actively monitor the social, environmental and human rights impacts of business transactions underwritten by government backed Export Credit Agencies (ECAs). Against this background we call for the proposed new regulation to become legally binding on the due diligence obligations of ECAs of member states, to make ECAs liable for its implementation and to implement export credit insurance as an enforcement mechanism for the legislation.

European export credit agencies (ECAs) actively support companies in their global business activities - especially in economically, but often also in regard to human rights, difficult countries. They issue guarantees worth many billions of euros every year. Due to their great importance, the UN Guiding Principles on Business and Human Rights (UNGP) explicitly mention ECAs as a key area of the state business nexus, in which governments have a special responsibility to encourage companies to exercise due diligence and ensure that human rights are respected. The UNGP emphasize that governments must take special care in the state business nexus not to become complicit in human rights abuses themselves.

However, past experience shows that export credit guarantees are repeatedly granted for projects with serious adverse human rights and environmental consequences.

An analysis of the ECA Watch network shows that the OECD "Common Approaches" currently used to assess the eligibility of a project for ECA support are not suitable to ensure compliance with the European acquis. A particular shortcoming of the current review procedures is that - unlike in the

area of corruption - the policies and prior experience of companies with regard to human rights and environmental protection in global business relationships are not included.

We would therefore like to encourage you to implement your proposal to explicitly include ECAs in the regulation of Sustainable Corporate Governance and ensure that companies that do not comply with fundamental human rights, environmental and climate due diligence obligations and the legislation currently being developed will temporarily be excluded from ECA support. Active obligations from ECAs in this regard will effectively encourage a significant number of companies to fulfil their due diligence obligations and ensure that also ECAs themselves effectively comply with the human rights and environmental obligations of the member states on whose behalf they operate. Moreover, in case of non-compliance with due diligence obligations or in case of harm caused by companies, it is crucial that those affected can hold companies liable before EU courts.

We are happy to provide further clarifications on the concerns we raise and look forward to your response.

With many thanks in advance and kind regards on behalf of all [ECA-watch](#) members,

Niels Hazekamp
Both ENDS, The Netherlands
n.hazekamp@bothends.org

Heike Drillisch
GegenStroemung-CounterCurrent, Germany
heike.drillisch@gegenstroemung.org