

**An analysis of FINEXPO's and
Ducroire/ Nationale Delcredere-
dienst's support practices in
comparison to the EUODAD
principles on Responsible Financing**

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Introduction

In 2007, Belgian exports generated 89,3% of Belgium's gross domestic product.¹ The exports created employment as well as fiscal and para-fiscal revenues. Because of the importance that exporting holds in the Belgian economy, Belgium has several public instruments in place to encourage and support the export of goods and services. At the federal level, there are Ducroire/Nationale Delcredere dienst (ONDD), FINEXPO and the Belgian International Investment Company (BMI-SBI)². At the regional level, the most important are the Agence Wallonne à l'Exportation (AWEX) for Wallonia, Brussels Export for the Brussels region, and Flanders Investment and Trade for the Flanders Region.

This research paper looks specifically at the practices of the two most significant players at the federal level: FINEXPO and Ducroire/Nationale Delcredere dienst. FINEXPO provides advice to the Belgian government about five types of support measures: rent stabilisation mechanism, interest relief (with or without grants), pure grants and loans (tied and untied). Ducroire/Nationale Delcredere dienst provides insurances and financial guarantees against commercial and political risks. Annex 1 to this report lists and explains the various types of support. The paper will discuss the financial terms, legal terms and conditions in place when FINEXPO and Ducroire/Nationale Delcredere dienst provide support for Belgian exports.

In 2007, FINEXPO received 118 applications. Its budget to enter into legal commitments is 68 million euro. Ducroire/Nationale Delcredere dienst covered 19,9 billion euros in transactions in 2007 and is hereby the most important Belgian player in this area. ONDD's website states how valuable its services are for Belgian exports: "some of the projects guaranteed by ONDD would not take place without credit insurance. This is especially true the longer the credit term and the riskier the debtor country are. As a result, it is not unusual for ONDD to cover up to 40% (or even more) of exports to countries with the highest credit risk."³ The benefit provided by the Belgian public agencies is not the focus of this research.

Given that the support measures by FINEXPO and Ducroire/Nationale Delcredere dienst are governmental subsidies that could be used to subsidize commercial exports in order to gain an advantage on the private market, Belgium must respect applicable international frameworks that regulate such types of subsidies. An example is the *OECD Arrangement on Officially Supported Export Credit*. This particular framework from the OECD sets out the limitations on terms and conditions of a governmental intervention. The *Arrangement* does not entail specific environmental, social and human rights standards that should be met by those that receive support (apart from general standards that should be met when providing support for renewable energies and water sectors). It also does not stipulate any requirements on transparency, public participation and contract modalities. Excluding all of these important elements implies that Belgium is responsible for issuing its own regulations on these issues. This research study analyses those various procedures and standards in place.

The paper also looks into what extent FINEXPO's and Ducroire/Nationale Delcredere dienst's practices match the financial terms, legal terms and conditions which are set out in the EURODAD Charter on Responsible Financing. The principles in the Charter outline the essential components of a reasonable loan. Given that only FINEXPO provides loans, the principles in the Charter are only directly applicable to the provision of loans by FINEXPO. Despite this fact, the principles are still useful in determining whether the financial and insurance practices of all support measures by FINEXPO and those by Ducroire/Nationale Delcredere dienst are responsible support measures or not. EURODAD's principles represent a general framework for a tough but fair policy.

The study is divided into the following sections:

I. Presentation of FINEXPO and Ducroire/Nationale Delcredere dienst. This section will explore the mission and the decision-making process of FINEXPO and Ducroire/Nationale Delcredere dienst. The following questions receive particular attention: (a) What is their legal framework? (b) Which actors are actually involved in the process when it comes to decide whether an intervention should be provided? Legal texts and articles as well as interviews with relevant people constitute the main sources of this chapter.

II. The environmental and human rights policies of FINEXPO and Ducroire/Nationale Delcredere dienst. Are there any binding social or environmental procedures and standards that condition FINEXPO's or Ducroire/Nationale Delcredere dienst's decision to provide their support?

III. Policies which create debt.

IV. Comparison of FINEXPO and Ducroire/Nationale Delcredere dienst's financial or insurance practices with the terms and conditions as set out in the EURODAD principles on Responsible Financing. This section is based on legal texts and other applicable documents as well as interviews with relevant people.

V. Recommendations

¹ EVD Internationaal Ondernemen en Samenwerken, Online overzicht buitenlandse handel België, 26 August 2008.

² The Belgian International Investment Company is subject to private law, though the state has a controlling majority.

³ Website Ducroire/Nationale Delcredere dienst. http://www.ondd.be/webondd/Website.nsf/weben/Who+are+we_Credit+insurance+why?OpenDocument. Viewed on 9 December 2008.

I. Presentation of FINEXPO and Ducroire/Nationale Delcredere dienst

FINEXPO – “The Committee providing aid for Belgian exports”

Mission and decision-making process

FINEXPO was created by Royal Decree of 30 May 1997⁴ “to reinforce the Belgian instruments for financial support to export”⁵. FINEXPO is a governmental committee that provides advice to the Belgian government in two main areas:

- FINEXPO provides advice to the Belgian Council of Ministers⁶ on requests for financial support made by foreign countries or institutions to create and implement their development agenda. The financial support can include tied and untied loans.⁷
- It supports the export of Belgian goods to and services in non-European countries. The instruments that FINEXPO uses to achieve such a goal are: ensuring stable interest rates⁸, interest relief (with or without grants) and pure grants.⁹ Annex 1 to this report lists and explains the various types of support. FINEXPO’s advice is given to the Federal Minister who has Foreign Trade under its competence¹⁰ or to the Belgian Council of Ministers when the budget of support exceeds 25.000.000 euro.¹¹

The maximum budget of FINEXPO in 2007 to enter in legal commitments was:

- 37.394.000,00 euro for loans from State to State,
- 30.821.511,00 euro for the stabilisation of interest rates, interest credits and interest subsidies.¹²

The maximum budgets of FINEXPO in 2008 and 2009 to enter in legal commitments are:

- 37.400.000,00 euro for loans from State to State¹³,
- 37.052.000,00 euro for interest rates, interest credits and interest subsidies.¹⁴

The table below provides an overview of the public information on requested and approved interventions by FINEXPO in 2007.¹⁵

Table 1: Requested and approved interventions in 2007

Type of support measure	Number of new cases received / support measure	Number of countries / support measure	Total amount of credits of new cases requested	Number of Ministerial Decrees issued in 2007*	Total amount of credits/ loans approved by Ministerial Decrees issued in 2007
Stabilisation of interest rates	101	30	238.920.791,31 EUR	14, for 10 countries	55.561.714,68 EUR
Interest relief without grant	6	3	67.623.953,24 EUR	?	?
Interest relief with grant	4	3	29.798.559,76 EUR	?	?
Pure grants	1	1	2.085.893,00 EUR	?	?
Loan State to State, total**	6	6	**	6	34.727.248 EUR

*A Ministerial Decree often issues support for applications that were submitted in previous years. This is due to a yearly overrun of the maximum annual budget of the government allowing it to enter in legal commitments. Also, FINEXPO often receives applications for the export of goods and services during the negotiations of the applicant with a potential client. These negotiations can take many years.

** Loans State to State, tied aid: 3, loans State to State, untied aid: 1. The other 2 loans are mixed. The interventions on tied and untied loans must be seen in light of the objective of the members of the OECD’s Development Assistance Committee (DAC) of untying their bilateral official development assistance (ODA) to the Least Developed Countries (LDCs) and Highly Indebted Poor Countries (HIPC). See DAC Recommendation on Untying ODA to the Least Developed Countries and Heavily indebted Poor countries, 25 April 2001 and amended on 15 March 2006 and 25 July 2008.

⁴ Koninklijk Besluit van 30 mei 1997 houdende de versterking van de doeltreffendheid van de instrumenten voor financiële steun aan de export, Article 3.

⁵ *Ibid*, Articles 1 and 2.

⁶ Programme Law, Article 457, 24 December 2002.

⁷ *Ibid*, Article 1.

⁸ Koninklijk Besluit van 30 mei 1997 houdende de versterking van de doeltreffendheid van de instrumenten voor financiële steun aan de export, Article 2.

⁹ *Ibid*. Programme Law, Article 457, 24 December 2002.

¹⁰ Annual Report, FINEXPO, 2007, page 3.

¹¹ *Ibid*.

¹² Annual Report, FINEXPO, 2007, pages 4 and 11.

¹³ The maximum budget of 2009 is provisional.

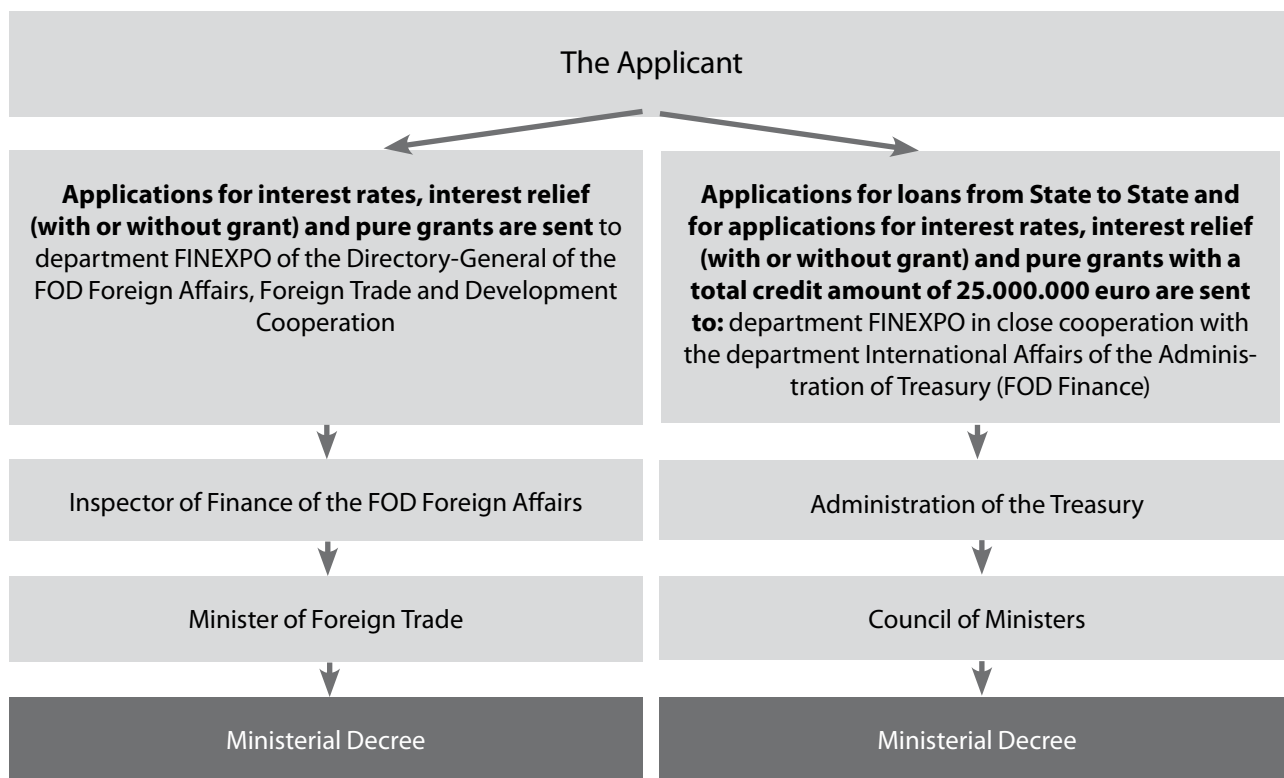
¹⁴ Jan Cappelle, questions to FINEXPO, 26 November 2008. Response on 28 November 2008.

¹⁵ Annual Report, FINEXPO, 2007. Jan Cappelle, questions to FINEXPO, 28 November 2008. Response on 1 December 2008.

The Royal Decree of 15 July 1997¹⁶ specifies the members of the FINEXPO - committee. The secretariat of the committee (one person from the Federal Department Finance and four persons from the Federal Department competent for Foreign Affairs, foreign trade, development cooperation (hereinafter: FOD Foreign Affairs) receives the applications, prepares the dossiers, provides advice to the committee and monitors the dossiers.¹⁷ The committee discusses the dossiers and gives advice to the minister of Foreign Trade or the Council of Ministers. The current composition of the committee is:

- One representative of the Federal Minister that has Foreign Trade under its competence,
- Two representatives of the Federal Minister of Finance,
- Two representatives of the Federal Minister of Foreign Affairs,
- One representative of the Federal Minister that has Economy under its competence,
- One representative of the Federal Minister that has Development Cooperation under its competence,
- One representative of the Federal Minister of Budget,
- One representative of the Federal Minister that has Small and Medium Enterprises under its competence,
- One representative of Ducroire/Nationale Delcredere dienst,
- Two representatives of the Flemish Government,
- Two representatives of the Walloon Government, and
- Two representatives of the government of the Brussels Capital Region.

The following diagram explains the procedures in detail.



From the applicant, FINEXPO requires the completion of an application form in order to assess the nature of the export-transaction and the financing. Additional information is asked about the environmental and social impacts, the relevance of the project and the importance of the project for the sustainable development of the beneficiary country.¹⁸ Details of the procedures are explained in chapters III and IV of this report. The procedures are less stringent for

¹⁶ Koninklijk besluit van 25 februari 2003 tot wijziging van het koninklijk besluit van 15 juli 1997 tot vaststelling van de samenstelling en de werkwijze van het Comité voor financiële steun aan de export voorgeschreven bij het koninklijk besluit van 30 mei 1997 houdende de versterking van de doeltreffendheid van de instrumenten voor financiële steun aan de export genomen met toepassing van artikel 3, § 1, 1° en 6°, van de wet van 26 juli 1996 strekkende tot realisatie van de budgettaire voorwaarden tot deelname van België aan de Europese Economische en Monetaire Unie, en tot vaststelling van een aantal nadere regels inzake het beheer van de koers en interestrisico's.

¹⁷ Koninklijk besluit (KB) van 15 juli 1997 tot vaststelling van de samenstelling en de werkwijze van het Comité voor financiële steun aan de export voorgeschreven bij het koninklijk besluit van 30 mei 1997 houdende de versterking van de doeltreffendheid van de instrumenten voor financiële steun aan de export genomen met toepassing van artikel 3, § 1, 1° en 6°, van de wet van 26 juli 1996 strekkende tot realisatie van de budgettaire voorwaarden tot deelname van België aan de Europese Economische en Monetaire Unie, en tot vaststelling van een aantal nadere regels inzake het beheer van de koers en interestrisico's. Article 3 of the KB lists the members: the Administrator-General of the Administration of Treasury of the Ministry of Finance, a representative of the Federal Minister of Budget, a representative of the Corps of the Inspection of Finance, the Administrator-Director-General of Foreign Economic Affairs of the Minister of Foreign Affairs, Foreign Trade and Development Cooperation, and a representative of a specialized public department.

¹⁸ Application form, documents I, IV and V.

the mechanism used to stabilise interest rates. For example, an applicant does not need to explain the relevance of the project and the interest of the applicant in it for the sustainable development of the recipient country. This is because FINEXPO's mechanism to stabilize interest rates is not a relief measure in the strict sense.

Ducroire/Nationale Delcredere dienst

Mission and decision-making process

Ducroire/Nationale Delcredere dienst was founded in 1921 by the Ministry of Economic Affairs "as a Ducroire/Delcredere Committee in charge of guaranteeing trouble-free export transactions."¹⁹ Only political risks could be insured.²⁰ In 1939, the government decided to make it a permanent body which was a financially and administratively autonomous institution and guaranteed by the government.²¹ Its interventions extended over the years and include in 2008:

- Insurance of supplier credits,
- Insurance of buyer credits,
- Insurance of buyer credits in local currency,
- Insurance of special cash transactions,
- Insurance of contract guarantees (bonds),
- Insurance of contracting equipment,
- Insurance of investments,
- Financial guarantee for working capital credits,
- Financial guarantee for investment credits,
- Financial guarantee for bond issues (private placements),
- Financial guarantee for bond credit facilities, and
- ONDD forfaiting product for supplier credits.²²

Annex 1 to this report lists and explains the various types of support.

Ducroire/Nationale Delcredere dienst can also carry out on behalf of the government any technical, financial or representation mission entrusted to it.²³ The commitments assumed by Ducroire/Nationale Delcredere dienst are guaranteed by the government.²⁴ When the intensity and the duration of risks exceed the government's technical capacities, Ducroire/Nationale Delcredere dienst has the ability to intervene directly on behalf of the government.²⁵ The applicable legislation does not explain detailed conditions and procedures and it leaves therefore room for interpretation and a discretionary approach.

In contrast to FINEXPO, Ducroire/Nationale Delcredere dienst does not provide much information in its latest annual report or on its website regarding the various activities undertaken by the institution. Ducroire/Nationale Delcredere dienst does present some gross figures from the 2007 financial year. There is no information available about the amount of dossiers received and approved. Some of the relevant gross figures from 2007 are:

- The amount insured comes to 19.866,00 million euros.²⁶
- The premiums²⁷ issued come to 165,8 million euros.²⁸
- The claims paid come to 30,7 million euros.
- The claims recovered come to 115,4 million euros.
- The result of the 2007 financial year comes to 114,1 million euros.

Included in these statistics are the amounts from Ducroire/Nationale Delcredere dienst and its subsidiaries (Ducroire

¹⁹ Website Ducroire/Nationale Delcredere dienst, http://www.ondd.be/webondd/Website.nsf/weben/Who+are+we_History?OpenDocument. Viewed on 1 December 2008.

²⁰ *Ibid.*

²¹ *Ibid.* Wet van 31 augustus 1939 op de Nationale Delcredere dienst.

²² Website Ducroire/Nationale Delcredere dienst <http://www.ondd.be/webondd/Website.nsf/weben/Products+and+services?OpenDocument>. Viewed on 1 December 2008.

²³ Wet van 31 augustus 1939 op de Nationale Delcredere dienst, Article 1, 2, 6.

²⁴ *Ibid.*, Article 3, paragraphs 1 and 3.

²⁵ Website Ducroire/Nationale Delcredere dienst, http://www.ondd.be/webondd/Website.nsf/weben/Who+are+we_Mission?OpenDocument. Viewed on 2 December 2008.

²⁶ Ducroire/Nationale Delcredere dienst, Annual Report 2007, page 3.

²⁷ The amount that a client agrees to pay to Ducroire/Nationale Delcredere dienst for an insurance policy.

²⁸ Ducroire/Nationale Delcredere dienst, Annual Report 2007, page 3.

Delcredere SA NV²⁹ and Garant Versicherungs-AG)^{30, 31}

The law of 1939 on Ducroire/Nationale Delcredere dienst³² specifies the members of the Executive Committee. Its current composition is:

- Chairman, vice-chairman and three members from circles that are closely associated with the promotion of foreign trade,
- One representative of the Federal Minister of Finance,
- One representative of the Federal Minister of Foreign Affairs,
- One representative of the Federal Minister that has Economy under its competence,
- One representative of the Federal Minister that has Foreign Trade under its competence,
- One representative of the Federal Minister that has Development Cooperation under its competence,
- One representative of the State Secretary/ Minister that has Public Enterprises under its competence,
- Two representatives of the Flemish Government,
- Two representatives of the Walloon Government,
- Two representatives of the government of the Brussels Capital Region,
- Each of the regions nominates one representative that comes from circles that are closely associated with the promotion of foreign trade.

The administrative power and power of decision rests with the Executive Committee.³³ The ministerial representatives inform the Executive Committee about the general policies.³⁴ The Federal ministerial competence of Ducroire/Nationale Delcredere dienst is within the scope of the ministers of Finance, Foreign Affairs and Enterprises.³⁵

The director-general of the institution and its two directors analyse the applications, prepare the dossiers and present their opinions to the Executive Committee.³⁶ As previously mentioned, the decision power rests with the Executive Committee. During deliberations, the ministerial representatives can suspend decisions that are in violation of the law, the procedures or the interest of the State.³⁷

Similar with the procedures of FINEXPO, Ducroire/Nationale Delcredere dienst requires an application from the applicant in order to assess the nature of the export-transaction, the financing, the environmental and social impacts and the relevance of the project.³⁸

²⁹ In 2004, Ducroire/ Nationale Delcredere dienst set up "Ducroire | Delcredere SA.NV" in order to provide short-term credit insurance (less than 2 years). It is "a public limited company under private law." Website Ducroire/Nationale Delcredere dienst, http://www.ondd.be/webondd/Website.nsf/weben/Who+are+we_History?OpenDocument. Viewed on 1 December 2008.

³⁰ In 2006, ONDD took a 50% stake in Garant. The remaining 50% is held by Ingosstrakh, one of the main insurance companies in Russia, with which a cooperation agreement has been signed. In accordance with this agreement, Belgian subsidiaries of companies in Russia will be able to obtain local cover and conversely, European subsidiaries of Russian companies will also be able to benefit from this solution. Through Garant, ONDD is also able to offer a greater capacity for insuring single risks. Source: Ducroire/Nationale Delcredere dienst, Annual Report 2007, page 11.

³¹ Ducroire/Nationale Delcredere dienst, Annual Report 2007, page 12.

³² Wet van 31 augustus 1939 op de Nationale Delcredere dienst, Article 12.

³³ *Ibid*, Article 13. Article 14 specifies the possibilities to grant the director-general or the directors some power of decision.

³⁴ *Ibid*, Article 16.

³⁵ Koninklijk besluit van 17 april 2008 tot vaststelling van bepaalde ministeriële bevoegdheden. Article 19.

³⁶ Koninklijk Besluit van 3 juli 1992 betreffende de organisatie van de Nationale Delcredere dienst, Article 7.

³⁷ Wet van van 31 augustus 1939 op de Nationale Delcredere dienst, Article 16.

³⁸ Application form, documents I, II and III.

II. The Environmental, Human Rights and Social Policies of FINEXPO and DuCroire/Nationale Delcrederedienst

There are three elements in the application form of FINEXPO and DuCroire/Nationale Delcrederedienst that require further attention: human rights, environmental protection and monitoring.

The application form stipulates that the applicant has to “observe the standards laid down by international criminal law (as described in the explanatory note) and by Belgian criminal law”. “In the knowledge that any infringement of international or Belgian criminal law means the exclusion of the right to indemnity under the insurance contract.” The explanatory note to the application form only refers to war crimes, genocides, and worst forms of child labour “as articles that can give rise to sanction under international criminal law”. This is however not in line with international criminal law and Belgian criminal law. In order to combat impunity against crimes under international law, certain international treaties imposes on all States parties³⁹ an obligation to establish jurisdiction over the crimes, even whether or not they are punishable under national law⁴⁰ and they are committed abroad⁴¹. The obligation concerns the prosecution of an individual for participating in or otherwise contributing significantly⁴² to a crime of genocide⁴³, crimes against humanity⁴⁴, torture⁴⁵ and forced disappearances⁴⁶ and war crimes⁴⁷.

Questions in the application form concern environmentally related human rights impacts (e.g. pollution of land, air, water), resettlement of people and the impact on people’s livelihoods. The formulations of the questions are very general and do not set a standard on the goals which should be met.

FINEXPO and DuCroire/Nationale Delcrederedienst refer on their websites to some standards established by the Organisation for Economic Co-operation and Development (OECD). This body has set out a list of “recommendations on common approaches on environment and officially supported export credits”. An important element with the OECD’s recommendations is that they are non-binding. The recommendations require that FINEXPO/ Nationale Delcrederedienst:

Should screen all applications⁴⁸ with a repayment term of two years or more. The screening should identify projects which require a review due to their potential adverse environmental impacts, and projects which are in sensitive sectors or located in or near sensitive areas. The parties involved in a project, such as applicants (exporters and lenders) and project sponsors, should provide all information necessary to carry out the screening. The screening should take place as early as possible in the risk assessment process, and, where appropriate, should also identify the overall project(s), if any, to which capital goods and/or services are related.

- Based on this screening, FINEXPO/Nationale Delcrederedienst should classify projects in three categories: A, B and C. An Environmental Impact Assessment (EIA) is required for Category A projects. Those are projects that have “the potential to have significant adverse environmental impacts.” For category B projects (a project that is believed to have environmental impacts which are less adverse than Category A projects) the scope of the environmental review is different. “The review should examine the project’s potential negative and positive environmental impacts, including measures to prevent, minimise, mitigate, or compensate for adverse impacts and improve environmental performance.” This classification relates to projects in respect of which their share is above SDR 10 millions. Members should also use this classification and screening process for all projects in sensitive areas in respect of which their share is below SDR 10 millions. Annex II to the recommendations lists 26 sensitive areas.

³⁹ This is not only imposed on States parties to the relevant treaties but also on all States, on the basis of customary international law.

⁴⁰ International Law Commission, Draft Code of Crimes against the Peace and Security of Mankind (1996), article 2. The Commission adopted the draft Code with the following understanding: “with a view to reaching consensus, the Commission has considerably reduced the scope of the Code. On first reading in 1991, the draft Code comprised a list of 12 categories of crimes. Some members have expressed their regrets at the reduced scope of coverage of the Code. The Commission acted in response to the interest of adoption of the Code and of obtaining support by Governments. It is understood that the inclusion of certain crimes in the Code does not affect the status of other crimes under international law, and that the adoption of the Code does not in any way preclude the further development of this important area of law.” See [Yearbook of the International Law Commission, 1996, vol. II \(Part Two\)](#), para. 46.

⁴¹ O. Deschutter, Extraterritorial Jurisdiction as a tool for improving the Human Rights Accountability of Transnational Corporations*, December 2006. See also among others the essays collected in F. Coomans and M. Kamminga (eds), Extraterritorial of Human Rights Treaties, Intersentia, Antwerp-Oxford, 2004.

⁴² The prosecution relates to the commission of a crime, by complicity in a crime or by the attempt to commit a crime.

⁴³ Convention on the Prevention and Punishment of the Crime of Genocide (1948).

⁴⁴ Principles of international co-operation in the detection, arrest, extradition and punishment of persons guilty of war crimes and crimes against humanity (1973).

⁴⁵ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

⁴⁶ International Convention for the Protection of all Persons from Enforced Disappearance.

⁴⁷ Grave breaches of the Geneva Conventions of 12 August 1949, and other serious violations of the laws and customs applicable in international armed conflict, within the established framework of international law.

⁴⁸ This relates to the project and the exports of capital goods and services designated for the project.

The minimum standards for Category A projects are:

- FINEXPO and Ducroire/ Nationale Delcrederedienst “should benchmark projects against host country standards, against one or more relevant⁴⁹ environmental standards and guidelines published by the World Bank Group, the European Bank for Reconstruction and Development, the Asian Development Bank, the African Development Bank and the Inter-American Development Bank and against the safeguard policies published by the World Bank Group. Members may also benchmark against any higher internationally recognized environmental standards, such as European Community standards.”
- Projects should, “in all cases, comply with the standards of the host country and when the relevant international standards against which the project has been benchmarked are more stringent these standards would be applied.”
- If FINEXPO and Ducroire/ Nationale Delcrederedienst “finds it necessary to apply standards below the international standards against which the project has been benchmarked, it shall report and justify the standards applied on an annual *ex- post* basis” to the OECD working group on Export Credit and Credit Guarantees.

A typical contract between Ducroire/Nationale Delcrederedienst and its client stipulates that it will not compensate the client for its losses when caused by a violation of the legislation of the home (Belgium) or host country.⁵⁰ This is an important position. But, it does not imply that Ducroire/Nationale Delcrederedienst has binding procedures in place to ensure that the client respects applicable legislation.

Ducroire/Nationale Delcrederedienst also requires that the applicant provide all relevant information in order to determine the risks of the activities. This does not imply that Ducroire/ Nationale Delcrederedienst will approve the content of the documents. The applicant risks not being compensated for losses if it did not comply with its obligation to provide all relevant information or if it violated the legislation of the home and host country.⁵¹

FINEXPO does not have monitoring procedures on environmental, social and human rights issues. Ducroire/ Nationale Delcrederedienst explains on its website that “when the EIA of a project shows that mitigation measures need to be introduced and when ONDD includes conditions in its insurance policy, monitoring of the project is required, at least on an annual basis. By monitoring projects, the actual compliance with obligations and commitments can be checked. The monitoring task usually falls to the project sponsor or to independent consultants. In cases where project monitoring is required, ONDD asks the exporter to provide monitoring reports as often as possible.”⁵² FINEXPO and Ducroire/ Nationale Delcrederedienst are not legally obliged to monitor projects.⁵³ Consequently, monitoring by FINEXPO and Ducroire/Nationale Delcrederedienst happens mainly on an ad-hoc and discretionary basis.

⁴⁹ The recommendations provide the opportunity to choose among the various environmental standards and guidelines. Footnote added by the author.

⁵⁰ General Terms, Investment Insurance, Article 4. General Terms, Global Convention, Article 2.

⁵¹ Interview Jan Cappelle with Ducroire/Nationale Delcrederedienst, 9 December 2008.

⁵² Website Ducroire/ Nationale Delcrederedienst: [http://www.ondd.be/webondd/Website.nsf/AllWeb/DocumentsForms/\\$File/Environmental_policy.doc](http://www.ondd.be/webondd/Website.nsf/AllWeb/DocumentsForms/$File/Environmental_policy.doc). Viewed on 5 December 2008.

⁵³ This relates to the investment project of its client and to the destination of the project, which will receive the capital goods and services.

III. Policies which create debt

How FINEXPO and Ducroire/Nationale Delcredere Dienst create debt, is not the question of this research. There are however a few elements that need to be addressed regarding the outstanding claims that may be recovered from a debtor country to Ducroire/Nationale Delcredere Dienst. It is important to note here that there is a lack of public information on this issue, not only in Belgium but also in relation to the export credit and insurance agencies in other OECD countries. Annex II to this paper provides an overview of some of the most relevant documents on this issue.

In order to simplify the issue, this chapter will discuss one type of intervention supported by Ducroire/Nationale Delcredere Dienst. They provide Belgian exporters with the certainty of obtaining their anticipated revenues from their business ventures abroad by compensating the company if a business partner does not pay (commercial risk), or when a political or other event impacts the Belgian companies' activity. In other words, Ducroire/Nationale Delcredere Dienst takes over all the risks that the private company would otherwise hold. A third country can be held legally liable when the client's losses are due to a political act. Ducroire/Nationale Delcredere Dienst insures Belgian companies against the following political risks⁵⁴:

For investment Insurances ₁	For its other types of interventions
Expropriation and government action, expropriation or any other act ₂	When the public debtor is unable to honour his obligations or backs out of honouring them for no legitimate reason.
War, civil war, revolution, riots, coup d'état, civil disturbances and, generally, acts of violence or conflicts of an organised political nature in the host country or in which the host country is implicated.	Political happenings such as wars, revolutions or riots;
A general moratorium promulgated by public authorities in the host country entailing the impossibility for the insured to obtain transfer to Belgium of the funds available he is entitled to on account. ₃	Acts; decisions or default on the part of public authorities, which are deemed to constitute government intervention.
Breach of contract ₄	
Dispossession ₅	

¹ An investment may take the form of a cash contribution to the subscribed capital in return the insured receives stocks or shares, of a loan, or the establishment of a guarantee in favor of the local company.

² The statement covers different possibilities: the deprivation for the insured of his ownership without payment of an equitable compensatory indemnity; various measures of the public authorities, taken simultaneously or consecutively, the cumulative effect of which manifestly implies a confiscatory nature; failures and shortcomings of public authorities in the host country as regards their legal obligations vis-à-vis the investor or the local company in terms of legislation governing investments or infringement on the bilateral agreement on investment protection entered into by the host country and the Belgo-Luxembourg Economic Union; arbitrary or discriminatory legislative, regulatory or administrative measures taken by public authorities in the host country; measures taken by public authorities in good faith and having general application do not, however, constitute a cause for a covered claim, unless they assume the nature of confiscation measures.

³ This relates to the transfer of his contribution or liquidation of the local company; the allowance of an indemnity in counter value of a deprivation of his ownership; the allowance of an indemnity in counter value of war damage; the claims corresponding either to the reimbursement of a loan or to the earnings of the investment or to the reimbursement of guarantees after their calling-in insofar: the funds to repatriate correspond to certain, liquid and eligible claims and have been deposited with an appropriate institution in the host country; all steps necessary for converting and transferring this deposit have been taken within 30 days following the date of payment of the funds.

⁴ Under breach of contract, coverage of the claim concerning the expropriation and government action, expropriation or any other act is extended to the failure of public authorities in the host country to meet the specific commitments made to the local company. The claim shall arise directly and exclusively from a serious fault on the part of the authorities in the host country in complying with their specific commitments, which makes it impossible to perform on its project. The claim shall be total, thus causing the integral loss of the investment.

⁵ Dispossession is understood to mean the total or partial, but definitive loss of the investment, which arises under two possible conditions. First, when the insured is unable to exercise his rights attached to the investment, such as; gaining access to securities (stocks and shares), gaining access to sums acquired by him by sale or transfer of these securities, gaining access to the earnings on the investment and exercising powers of decision-making or voting rights attached to the investment. Second when the local company finds itself unable to exercise its rights such as, carrying out the project stated in the Special Terms, gaining access to its assets, pursuing its company business as described in the Special Terms and pursuing its business on a reasonable economic basis.

A contract between Ducroire/Nationale Delcredere Dienst and its client provides technical and legal procedures that should be followed by the client in order to receive compensation for its losses. Neither in its latest Annual Report nor on its website does Ducroire/Nationale Delcredere Dienst provide information of these outstanding claims.

Lastly, given that Ducroire/Nationale Delcredere Dienst is able to insure private sector projects in countries considered "risky", it could demand that the developing country government provides "sovereign counter-guarantees" for such deals. Or in other words, in cases of default, the Belgian company is reimbursed by Ducroire/Nationale Delcredere Dienst, which then tries to recover these sums from the developing country government. Unfortunately, there is no public information available about this practice.

⁵⁴ Global Terms, Investment Insurance, Article 3; Global Terms Global Convention, Article 3.

IV. Comparison of FINEXPO's and Ducroire/Nationale DelcredereDienst's export support practices with the EURODAD principles on Responsible Financing

This chapter looks in depth into what extent FINEXPO's and Ducroire/Nationale DelcredereDienst's practices match the financial terms, legal terms and conditions which are set out in the EURODAD Charter on Responsible Financing. The EURODAD Charter outlines the essential components of a reasonable loan. These aim to ensure that terms and conditions are fair, that the loan contraction process is transparent, that human rights and environments of recipient nations are respected and repayment difficulties or disputes are resolved fairly and efficiently. Given that only FINEXPO provides loans, the principles in the Charter are only directly applicable to the provision of loans by FINEXPO. Thus this chapter compares the policies of FINEXPO in its provision of a loan to a recipient State (tied and untied loans) with the different principles in the Charter.

Despite the fact that the principles in the Charter are only directly applicable to the provision of loans by FINEXPO, the principles are still useful in determining whether the financial and insurance practices of all (but not only the loans) support measures by FINEXPO and those by Ducroire/Nationale DelcredereDienst are responsible support measures or not. EURODAD's principles constitute a general framework of a tough policy. In order to complete this exercise, the technical terms, legal terms and conditions that are used in our analysis are a slightly different version of those in the EURODAD Charter.

Table 2: Comparison of FINEXPO's and Ducroire/Nationale DelcredereDienst's export support practices with the EURODAD principles on Responsible Financing.

I. Technical and legal terms and conditions	FINEXPO	Ducroire/ Nationale DelcredereDienst
<p>Purpose and amount: the agreement (FINEXPO)/contract (Ducroire) must state clearly the purpose, amount and beneficiaries.</p>	<p>The applicant needs to fill in an application form. The document forms part of the Ministerial Decree and includes all relevant information about the purpose and amount of the intervention.</p> <p>The nature of financing is included in the application form (Chapter I, Section 6). The information given refers to the portion thereof for which the applicant calls on FINEXPO. The document forms part of the Ministerial Decree.</p>	<p>The contract constitutes two parts: the general terms⁶ and the Special Terms. The Special Terms stipulate all relevant information about the purpose and amount of the intervention.⁷</p> <p>The terms and conditions are stipulated in the Special Terms.⁸</p>
<p>Compliance with relevant national and international laws: The third party must comply with relevant national laws and regulations in the host and home country.</p>	<p>See text on "Environmental and social policies"</p>	<p>See text on "Environmental and social policies"</p>

⁶ The General Terms are published on the site of Ducroire/ Nationale DelcredereDienst: http://www.ondd.be/webondd/Website.nsf/weben/Documentation_Contract+documents?OpenDocument. Viewed on 8 December 2008.

⁷ Interview Jan Cappelle with Ducroire/Nationale DelcredereDienst, 9 December 2008.

⁸ *Ibid.*

Legal authorisation to enter into the transaction: The agreement/contract must be signed by authorised representatives.

The authorised representatives from the Belgian side are:
For rent stabilisation, interest relief and pure grants, the Minister of Foreign Trade;
For loans from State to State, the agreement is signed by the ambassador or his chargé d'affaire. They need to be mandated by the Minister of Finance or Foreign affairs.⁹

The contract is signed by the directors of Ducroire/ Nationale Delcredere dienst and the authorized director of the company.¹¹

The authorised representatives in the recipient country are:
For interest relief: the bank signs the deal with the minister of finance.
For loans from State to State, the technical minister in charge or the public enterprise, after approval (by means of a guarantee) of their (local) Minister of Finance.¹⁰

Repayment assumptions (FINEXPO, loans): The borrower government and lender must make public the economic "assumptions" they have made in relation to how the loan is to be repaid, such as the financial position of the borrower and expected rate of return on activities financed.

FINEXPO "does not have a procedure on this issue. FINEXPO respects the procedures of the recipient party on how to organise a public debate on the intervention. FINEXPO does not intervene."¹²

Interest rates (FINEXPO, loans): The loan document must indicate clearly the type and level of interest rates charged (fixed or variable rates). If variable interest rates are chosen, rates must be given a reasonable and fair upper limit which must be stated in the contract. This offers more predictability and certainty to both parties to the contract. A reasonable upper limit would be 1% above the basic market rate in the lender nation.

The Ministerial Decree/ agreement stipulates the financial modalities. The interest rates for loans from State to State vary between 0 and 2%, depending on the BNP/ capita of the recipient country.¹³

⁹ Jan Cappelle, questions to FINEXPO, 2 December 2008. Response on 3 December 2008.

¹⁰ *Ibid.*

¹¹ Interview Jan Cappelle with Ducroire/Nationale Delcredere dienst, 9 December 2008.

¹² Interview Jan Cappelle with FOD Finance, 3 December 2008.

¹³ Website FINEXPO: <http://www.diplomatie.be/nl/policy/finexpo/finexpoDetail.asp?TEXTID=31373>. Viewed on 1 December 2008.

I. Technical and legal terms and conditions	FINEXPO	Ducroire/ Nationale DelcredereDienst
<p>Repayment profile (FINEXPO, loans): The contract must provide clear information on grace and maturity periods, and repayment profiles (date and amount of debt service).</p>	<p>The agreement or the commercial contract “contains a clause on the repayment of the advance when the contract is not carried out.”¹⁴</p> <p>FINEXPO “requires an assurance that the counterparty (in cases of a loan from State to State) can repay the loan.”¹⁵</p> <p>FINEXPO “urges the recipient country to pay when it fails to meet the loan repayment modalities. The Ministry of Finance discusses the repayment issues with the Paris Club after one year of communication with the recipient country on its repayment difficulties.”¹⁶</p>	

Penalties: There should be no usurious penalty premiums.

See above.

The client’s failure to pay all or part of the premium or any sum owed by the insured “shall automatically entail the suspension of the obligations of ONDD. Any sums whatsoever owed to ONDD by the insured shall automatically and without formal notice bear post-maturity interest.”¹⁷ The rate is determined in the General Terms.

<p>Sale of loan on secondary market: To prevent aggressive actions by litigating creditors, the loan (FINEXPO), outstanding debt to a third country (FINEXPO, Ducroire) should restrict the creditor’s right to assign the debt to another party, i.e. the lender cannot unilaterally sell or assign the debt to other entities. The lender must first obtain the free and informed consent of the borrower/debtor.</p>	<p>No written procedures in place¹⁸</p>	<p>The insurance cover “may be transferred to a third party with the agreement of ONDD. This agreement shall take the form of an endorsement to the policy signed by ONDD, the insured and the transferee.”¹⁹</p> <p>Ducroire/Nationale DelcredereDienst “does not have a policy on transferring outstanding debt from a third country. This can be considered for the recovery of losses.”²⁰</p>
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¹⁴ Jan Cappelle, questions to FINEXPO, 2 December 2008. Response on 3 December 2008.

¹⁵ *Ibid.*

¹⁶ Interview Jan Cappelle with FOD Finance, 3 December 2008.

¹⁷ General Terms Investment Insurance, Article 19.2. General Terms; Global Convention, Article 12.

¹⁸ Meeting Jan Cappelle with the secretariat of FINEXPO, 25 November 2008.

¹⁹ General Terms Investment Insurance, Article 20. General Terms, Global Convention, Article 18.

²⁰ Interview Jan Cappelle with Ducroire/Nationale DelcredereDienst, 9 December 2008.

I. Technical and legal terms and conditions	FINEXPO	Ducroire/ Nationale Delcrederedienst
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<p>Aid effectiveness and poverty focus: the indebtedness of poor countries must not increase by projects that are not a priority for their economic development.</p>	<p>The application form contains a list of nine questions on the impact of the project on the sustainable development of the recipient country (not for rent stabilisation). The representative of the Federal Minister that has Development Cooperation under its competence “watches over the compliance with the principles of the Paris Declaration on Aid Effectiveness.”²¹</p>	<p>The website of Ducroire/ Nationale Delcrederedienst stipulates: “ONDD ensures the indebtedness of poor countries benefiting of the HIPC initiative (Highly Indebted Poor Countries) not to increase by not accepting projects on those countries unless they have priority for their economic development.</p> <p>This decision not only results from a specific commitment but also from an initiative of the credit insurers within the OECD concerning unproductive expenditure.”²²</p> <p>The General Terms and the application form do not stipulate any terms and procedures.</p>
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II. Protection of human rights and the environment		
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<p>Respect for human rights: Activities must not violate human rights and must not contribute to the violation of human rights. These rights are set out in the internationally recognised human rights treaties and conventions of the home and host country.</p>	<p>See text on “Environmental and social policies”.</p>	<p>See text on “Environmental and social policies”.</p>
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<p>Respect for internationally recognised social, labour and environmental standards: activities must not support any venture that contravenes internationally accepted minimum standards on social, labour and environmental protection.</p>	<p>See text on “Environmental and social policies”.</p>	<p>See text on “Environmental and social policies”.</p>
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²¹ Meeting Jan Cappelle with the secretariat of FINEXPO, 25 November 2008.

²² Website Ducroire/Nationale Delcrederedienst. http://www.ondd.be/webondd/Website.nsf/weben/Who+are+we_Ethics?OpenDocument. Viewed on 10 December 2008.

III. Public consent and transparency	FINEXPO	Ducroire/ Nationale Delcrederedienst
<p>Parliamentary and citizen participation: The contraction process must be transparent and participatory.</p>	<p>The consultation process with affected people (projects) is one of the elements that is included in the OECD Recommendations on Common Approaches. It stipulates that an environmental impact assessment should contain “the results of any public consultations on the project with relevant stakeholders.” The wording is vague given that it does not provide any modalities on how to organize a consultation process. The modalities are also not provided in the application form.</p> <p>FINEXPO has no procedures in place on transparent participatory of the parliament and/or citizens. FINEXPO “respects the procedures of the recipient party on how to organise a public debate on the intervention. FINEXPO does not intervene.”²³</p>	<p>The consultation process with affected people (projects) is one of the elements that is included in the OECD Recommendations on Common Approaches. It stipulates that an environmental impact assessment should contain “the results of any public consultations on the project with relevant stakeholders.” The wording is vague given that it does not provide any modalities on how to organize a consultation process. The modalities are also not provided in the application form.</p> <p>Ducroire/ Nationale Delcrederedienst “has no procedures in place on transparent participatory of the parliament and/or citizens in the country where the activities take place.”²⁴</p>

<p>Public disclosure of information: The agreement/ contract must be available to the public.</p>	<p>The untied loans from State to State “are published on the website of the OECD-DAC. FINEXPO does not provide pro-actively information about the tied loans, rate stabilisation, interest credits and interest subsidies are not available.”²⁵</p>	<p>The contract between both Ducroire/ Nationale Delcrederedienst and its client “is not publicly available, as provided in the Freedom of Information Law (1994). Recent discussions with NGOs have urged Ducroire/Nationale Delcrederedienst to motivate its position in not providing access to the contract. There is a growing trend in consulting the client about public consultation of the contract.”²⁶</p>
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<p>Language: The agreement/ contract must be understandable for all relevant parties.</p>	<p>The language of the agreement “is one of the agenda points during the negotiations. The language of the agreement is often in French or in English.”²⁷</p>	<p>The language of the contract “is this of the client, but is most likely in English, French or Dutch.”²⁸</p>
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²³ Interview Jan Cappelle with FOD Finance, 3 December 2008.

²⁴ Interview Jan Cappelle with Ducroire/Nationale Delcrederedienst, 9 December 2008.

²⁵ Meeting Jan Cappelle with the secretariat of FINEXPO, 25 November 2008.

²⁶ Interview Jan Cappelle with Ducroire/Nationale Delcrederedienst, 9 December 2008.

²⁷ Jan Cappelle, questions to FINEXPO, 2 December 2008. Response on 3 December 2008.

²⁸ Interview Jan Cappelle with Ducroire/Nationale Delcrederedienst, 9 December 2008.

III. Public consent and transparency	FINEXPO	Ducroire/ Nationale Delcrederedienst
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Progress reports and loan evaluation: For project, there should be regular (e.g. biannual or annual as appropriate) progress reports. There should be a clear timetable for completion of the project. There should be independent and timely evaluation and audits. Project reports and evaluations must be public.

Progress reports and support evaluations “are limited to an assessment of the invoices. FINEXPO does not have a procedure of monitoring the environmental, social and human rights issues on a periodic level.”²⁹

See text on “Environmental and social policies”.

IV. Procurement		
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Public procurement: The government procurement processes must be open and transparent.

In case of tied aid loans: “the inspector of Finance can issue an independent study of the price. This only relates to loans from State to State.”³⁰

In case of projects with untied aid loans: “FINEXPO respects the procedures of the recipient party on how to organise a public debate on the intervention. FINEXPO does not intervene this process.”³¹

Ducroire/Nationale Delcrederedienst “is not in a position to have an impact on the tendering process. They receive an application too late in the process”³²

Agreements between borrower and lender: the agreement/contract must contain details of any host government agreement, production-sharing agreement, power purchase agreement or any other similar accord.

No written procedures in place.³³

Any relevant agreement can be retrieved. It is included in the General Terms that it is up to the applicant to provide all relevant information in order to determine the risks of the activities. This “does not imply that Ducroire/ Nationale Delcrederedienst approves the content of the documents. The applicant risks not to be compensated for losses when it did not comply with its obligation to provide all relevant information.”³⁴

Immunity: to ensure that service providers are fully accountable, there should be no clauses in agreements/ contracts which give legal immunity for violations of the law in host or home country.

No written procedures in place.³⁵

The General Terms stipulate that Ducroire/Nationale Delcrederedienst will not compensate the client for its losses when they are caused by a violation of the legislation of the home (Belgium) or host country.³⁶

²⁹ Meeting Jan Cappelle with the secretariat of FINEXPO, 25 November 2008.
³⁰ Jan Cappelle, questions to FINEXPO, 2 December 2008. Response on 3 December 2008.
³¹ Meeting Jan Cappelle with the secretariat of FINEXPO, 25 November 2008.
³² Interview Jan Cappelle with Ducroire/Nationale Delcrederedienst, 9 December 2008.
³³ Meeting Jan Cappelle with the secretariat of FINEXPO, 25 November 2008.
³⁴ Interview Jan Cappelle with Ducroire/Nationale Delcrederedienst, 9 December 2008.
³⁵ Meeting Jan Cappelle with the secretariat of FINEXPO, 25 November 2008.
³⁶ General Terms, Investment Insurance, Article 4. General Terms, Global Convention, Article 2.

Development loan tying (FINEXPO): development loan contracts should not be tied to the purchase of goods or services from the lender.

FINEXPO provides tied and untied loans. Loans for Least Developing Countries are untied.

V. Repayment difficulties or disputes

Change in circumstance: The agreement/ contract must recognise that there will be cases where a dramatic change in circumstances – beyond the will of the third party - means that the third party is no longer able to meet its financial obligations (loan repayment, payment of premiums). The agreement/ contract should state clearly what happens in such circumstances and should allow for a modification of the terms of the agreement/contract.

For loans from State to State, FINEXPO “urges the recipient country to pay when it fails to meet the loan repayment modalities. The Ministry of Finance discusses the repayment issues with the Paris Club after one year of communication with the recipient country on its repayment difficulties.”³⁷

Not applicable on the other types of interventions.

The General Terms stipulate that a contract will be terminated when the client fails to pay the premium.³⁸

Independent arbitration: The agreement/contract should provide a provision for an independent and transparent arbitration procedure in case of repayment difficulties (loan repayment, payment of premiums, payment of debt) or dispute.

No written procedures in place.

No written procedures in place (in case of disputes between Ducroire/ Nationale Delcrederedienst and its client and in case of Ducroire/Nationale Delcrederedienst and third country).³⁹

There will be a stay on debt repayments (FINEXPO and Ducroire) while negotiations are underway.

³⁷ Interview Jan Cappelle with FOD Finance, 3 December 2008.

³⁸ General Terms, Investment Insurance, Articles 12 and 19. General Terms, Global Convention, Articles 11 and 12.

³⁹ Interview Jan Cappelle with Ducroire/Nationale Delcrederedienst, 9 December 2008.

V. Repayment difficulties or disputes

FINEXPO

Ducroire/
Nationale Delcrederedienst

Termination of the agreement/ contract: There must be clear, fair grounds and requirements for nullification/termination of the agreement/contract.

FINEXPO can “terminate a contract when the stipulated modalities in an agreement are violated. This is not common practice. FINEXPO has specific procedures in place when the recipient country cannot meet its repayment modalities. FINEXPO does not monitor environmental and human rights issues, and isn’t aware of any specific problems. The application form – with the information on the environmental and human rights issues – is in annex with the Ministerial Decree/ agreement and does not constitute a direct element to the agreement.”⁴⁰

Conflicts or disagreements about the contract between both parties “can introduce a decision not to grant an intervention in the future.”⁴¹

The reasons of termination a contract is stipulated in the contract.⁴²

⁴⁰ Meeting Jan Cappelle with the secretariat of FINEXPO, 25 November 2008.

⁴¹ *Ibid.*

V. Recommendations

To FINEXPO and to Ducroire/ Nationale Delcredere dienst:

- To provide more detailed information about the received applications and the provided interventions. We recommend FINEXPO and Ducroire/ Nationale Delcredere dienst to elaborate the statistics in order to inform the public about the individual applications and interventions⁵⁵ and about the environmental, human rights, social and sustainable development related answers in the filled in application form that has been provided by the applicant.

To FINEXPO:

- To explore the legal possibilities to intervene in a public tendering process in a recipient country that introduced a request for a loan (untied) and to publish this analysis.
- To publish general repayment procedures (i.e. loans from State to State).

We recommend the ministers that have the competence of FINEXPO and Ducroire/ Nationale Delcredere dienst within its scope to elaborate:

- in general used technical and legal terms and conditions in an agreement/ contract. The terms and conditions should be included in the applicable legislation.
- detailed environmental, social and human rights policies that should be met by the applicant. The policies and procedures should be included in the applicable legislation. We recommend to apply:
 - the fundamental international human rights conventions, the fundamental and priority conventions of the International Labour Organisation and the most prominent environmental conventions (Ramsar Convention on Wetlands, the Convention on the Conservation of Migratory Species of Wild Animals and the Convention on Biological Diversity);
 - the national legislation of the host country;
 - the international and Belgian criminal law and
 - best international practices to ensure a minimum of environmental pollution.
- independent monitoring procedures of compliance with the environmental, social and human rights policies. The procedures should be included in the applicable legislation.
- legal procedures in order to avoid the sale of a loan (FINEXPO) and outstanding claims and debt on the secondary market. The procedures should be included in the applicable legislation.
- procedures on the termination of a contract when the applicant fails to respect the environmental, social and human rights policies or obstructs an independent audit. The procedures should be included in the applicable legislation.
- procedures on the ex-ante publication of the applications and the monitoring reports on an ex-post-basis. The procedures should be included in the applicable legislation.
- a provision for an independent and transparent arbitration procedure in case of repayment difficulties (loan repayment, payment of premiums, payment of debt) or dispute. There will be a stay on debt repayments while negotiations are underway. The procedures should be included in the applicable legislation.
- legal procedures to prevent that a loan (FINEXPO) and outstanding debt to a third country (FINEXPO, Ducroire/ Nationale Delcredere dienst) can be unilaterally sold or assigned to other entities. The lender must first obtain the free and informed consent of the borrower/debtor.

⁵⁵ FINEXPO and Ducroire/ Nationale Delcredere dienst should provide as a minimum the amount of each of the requested and approved interventions, the name of the recipient country or the country of the intervening bank and the name of the applicant.

Annex 1: Explanation notes

TYPE OF SUPPORT FINEXPO	DESCRIPTION
Mechanism to stabilize interest rates	<p>Belgian exporters of goods can ask a public intervention to stabilise interest rates. It is a purely commercial instrument.⁴³ The Belgian government stabilizes the interest rate of the credits granted to finance Belgian exportations. The Belgian exporter has to prove that it profits from this mechanism in order to compete with foreign exporters. The support is provided to the intervening bank.</p> <p>The support is a repayment by FINEXPO (thus the Belgian State) of the difference between the Commercial Interest Reference Rate (CIRR), this is the interest rate that has been guaranteed to the buyer and is based on a monthly index by the OECD, and the Euribor⁴⁴ or Libor⁴⁵ interest rates plus the bank commission. The Belgian government receives the difference when the Euribor or Libor interest rate plus bank commission exceeds the CIRR interest rates.</p>
Interest relief (with or without grants)	<p>Public intervention to lower the interest rates of the credits granted to finance Belgian exportations and to stabilise the interest of the term of repayment. The intervention reduces the interest rate (CIRR) to 0%.</p> <p>This intervention can be extended with a grant (interest relief with grant) in order to lower the term of repayment and the associated paid premium by Ducroire.</p>
Tied loans	<p>A loan made by the Belgian government to a third country on the condition that the loans are used to purchase goods and services from Belgian companies.</p>
Untied loans	<p>Loans that are not conditional on procurement of equipment and materials from Belgium. Companies can call on a tendering process that is organised by a third country. The third country introduces a request for an untied loan to FINEXPO.</p>

⁴² Global Convention, General terms, Article 12. Insurance Investment, General Terms, Article 19.

⁴³ Website Federal Department Foreign Affairs, Foreign Trade and Development Cooperation, Foreign Policy: Foreign Trade, Developments in Belgian foreign trade. Viewed on 26 January 2009.

⁴⁴ Euribor stands for Euro interbank offered rate. It is the rate at which euro interbank term deposits within the euro zone are offered by one prime bank to another prime bank.

⁴⁵ Libor stands for London interbank offered rate. It refers to interest rates compiled by the British Bankers Association. It is an interest rate at which banks can borrow funds from other banks in the London interbank market.

TYPE OF SUPPORT DUCROIRE/ NATIONALE DELCREDEREDIENST	DESCRIPTION	WHO IS ELIGIBLE FOR THESE KINDS OF SUPPORT MEASURES?
Insurance of supplier credits	<p>Under a supplier credit, the exporter grants the foreign buyer extended payment terms.</p> <p>As credit provider, the exporter normally requests Ducroire/Nationale Delcredere dienst cover against the risk of payment default by the foreign customer on the due date.</p> <p>Beside the payment risk, the exporter also incurs the risk of contract frustration by the buyer prior to delivery (cancellation risk) and the risk of unfair calling of bank guarantees, issued on the exporter's instructions. For these risks, the exporter can also apply for Ducroire/Nationale Delcredere dienst cover.</p>	Company
Insurance of buyer credits	<p>Because most exporters are not prepared to take on the responsibility of financing the deal, and thus do not want to grant supplier credits (see above), they will ask their banks to provide finance to their foreign customer.</p> <p>In the case of a buyer credit, the bank grants the loan directly to the customer at the request of the exporter. The exporter can draw on the loan and thus receive cash payment for the delivery of goods and services made under the commercial contract.</p> <p>Ducroire/Nationale Delcredere dienst covers the lending bank against the risk that the customer defaults in whole or in part on the buyer credit (principal and interest) or repays the debt late. Besides, Ducroire/Nationale Delcredere dienst also offers cover for political risk (= cover for force majeure).</p>	Bank
Insurance of buyer credits in local currency	<p>In the case of a buyer credit in local currency, banks grant the loan to the customers in their local currency.</p> <p>Generally, banks want to insure their exposure to the buyer's payment risk with Ducroire/Nationale Delcredere dienst. In other words, Ducroire/Nationale Delcredere dienst covers the banks against the risk of late repayment or against customer default in whole or in part.</p>	Bank

TYPE OF SUPPORT DUCROIRE/ NATIONALE DELCREDEREDIENST	DESCRIPTION	WHO IS ELIGIBLE FOR THESE KINDS OF SUPPORT MEASURES?
Insurance of special cash transactions	<p>Special transactions particularly relate to construction works, dredging operations, industrial projects and engineering contracts. These types of export transactions provide for payments as works progress.</p> <p>Exporters of capital goods and contract works normally request Ducroire/Nationale Delcrederedienst cover against the risk that the buyer/owner of the works terminates the export contract before delivery or refuses to pay.</p> <p>In addition to this cancellation risk, exporters also incur the risk that the buyer/client is unable to pay once the contract has been executed. Ducroire/Nationale Delcrederedienst will indemnify the exporter for non-payment of the sums that are due.</p> <p>Ducroire/Nationale Delcrederedienst does not just provide cover for cancellation and payment losses due to buyer's default, but also as a consequence of political and similar risks (= cover for force majeure).</p>	Company
Insurance of contract guarantees (bonds)	<p>Ducroire/Nationale Delcrederedienst offers the exporter protection against the risk of unfair calling of bonds, related to the export contracts.</p> <p>A bond issue is a form of long-term finance in which a company (= the issuer) issues bonds to raise funds, which are generally intended for carrying out investments. The bonds oblige the issuing company to repay the borrowed funds to the bondholder(s) at fixed intervals.</p>	Company
Insurance of contracting equipment	<p>Ducroire/Nationale Delcrederedienst protect the exporter/contractor against the risk of damage to or loss of possession of the equipment that is used for the works.</p> <p>The impossibility of removing the equipment from the country where the work has been done also falls under the insurance. Only losses of equipment due to political risks are covered.</p> <p>Where Ducroire/Nationale Delcrederedienst grants cover for the construction equipment that is to be used, it asks that the contractor first takes out the customary property insurance for this type of activity. This includes insurance policies for equipment used on land (non-marine equipment insurance) and for seagoing equipment (marine hull insurance). Ducroire/Nationale Delcrederedienst's policy is therefore supplementary to the property insurance policies, which are required to be taken out on the general policy market.</p>	Company

TYPE OF SUPPORT DUCROIRE/ NATIONALE DELCREDEREDIENST	DESCRIPTION	WHO IS ELIGIBLE FOR THESE KINDS OF SUPPORT MEASURES?
Insurance of investments	<p>Investments can take any one of a range of forms. The most common are: 1/ an equity participation in a foreign company; 2/ investment loans with long-term repayment tenors (from 3 to 15 years).</p> <p>The investor is indemnified for full or partial loss of the investment and for not being able to transfer the invested funds out of the host country, provided the losses are due to certain political events.</p>	Company
Financial guarantee for working capital credits	<p>Ducreire/Nationale Delcredere dienst acts as a partner for banks providing finance to Belgian businesses. The lending bank may receive a financial guarantee for credit facilities granted to any Belgian company with international operations, particularly SMEs. A credit (facility) is used to finance a business's product cycle. Ducreire/Nationale Delcredere dienst generally guarantees 50% of the credit sum. In certain cases, this can rise to 80%.</p>	Bank
Financial guarantee for investment credits	<p>An investment credit is a medium- and long-term credit that is used to finance investments in fixed assets such as buildings, machinery and equipment. An investment credit can also be used to fund a takeover or to set up a business in Belgium or abroad.</p> <p>The lending bank may receive a financial guarantee for investment credits granted to any Belgian company with international operations, particularly SMEs.</p>	Bank
Financial guarantee for bond issues (private placements)	<p>A bond issue is a form of long-term finance in which a company (= the issuer) issues bonds to raise funds, which are generally intended for carrying out investments. The bonds oblige the issuing company to repay the borrowed funds to the bondholder(s) at fixed intervals.</p> <p>Ducreire/Nationale Delcredere dienst gives an irrevocable, unconditional payment guarantee covering the issuer's payment obligations in favour of the bondholders or their trustee.</p>	company
Financial guarantee for bond credit facilities	<p>Ducreire/Nationale Delcredere dienst acts as the banks' partner by participating in the credit facilities they grant to Belgian companies for the issue of bonds.</p>	Bank
Ducreire forfaiting product for supplier credits	<p>Ducreire/Nationale Delcredere dienst acts as a refinancier for the exporter by offering cash payment as part of its special Ducreire/Nationale Delcredere dienst forfaiting product. Ducreire/Nationale Delcredere dienst purchases the foreign trade receivables from the exporter.</p>	company

Annex II: Important Background Documents on Debt

How export credit support for corporations indebts the world's poor (FERN, Brussels, June 2008) This briefing note by Both ENDS and FERN highlights the fairly hidden role of Export Credit Agencies (ECAs) in the debt problems of many developing countries. It explains how export credit debt comes about, and clarifies how the cancellation of export credit debt is written off with Official Development Assistance (ODA) money. It concludes with suggestions about how ECAs should change, in order to become coherent with international efforts to reduce poverty through sustainable development. Available at

http://www.fern.org/media/documents/document_4164_4165.pdf

Debt Aspects Related to Export Credit Agencies (Excerpt) 2002 By the Halifax Initiative. Available at:

<http://www.halifaxinitiative.org/index.php?article=ART3ef21a0a817d9>

Recommendations for the Export Credit Guarantee Department (ECGD) on Debt and Export Credits May 23, 2002 By Romilly Greenhill, Jubilee Research. Created for the UK Seminar on Export Credit Agency Reform - "Beyond Business Principles" House of Commons. Available at

http://www.eca-watch.org/problems/eu_russ/uk/debt_ecgd2002.html

Export Credits and Sustainable Development: How to Minimize Risks and Save Costs - April, 28 2003 By Helene Bal-lande, Amis de la Terre France - presentation to the OECD Forum 2003. Available at

<http://www.eca-watch.org/problems/fora/oecd/FOEFranceOECDPresentation2003.htm>

Debt-Creating Aspects of Export Credits August 1998 By Michiel Van Voorst, Eurodad. Available at

http://www.eca-watch.org/problems/debt/eurodad_vanvoorst_ondebt_1998.html