

Corruption: European export credit agencies under scrutiny

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Fighting corruption in European ECAs - The UK's export credit agency, the ECGD (Export Credits Guarantee Department), recently made the headlines after watering down its anti-bribery rules (see box). Sadly, the lack of tough rules to stamp out corruption and bribery is characteristic of most European ECAs. In fact, the ECGD continues to be one of the leaders among European ECAs in combating corruption.

Public money continues to back corrupt companies

ECAs operate with public money and on behalf of governments and it is therefore essential that they comply with commitments made by governments to combat bribery and corruption, such as the OECD Convention on Bribery². Unfortunately, the opposite is true. The ECA approach seems to be to support domestic business at any cost in the fierce world of export competition, while turning a blind eye to large-scale bribery and corruption

by companies they support. In doing so they have wittingly, or unwittingly, been underwriting bribery. According to Transparency International, the ECAs' behaviour comes "close to complicity with a criminal offence"³. Why they do it? Because the best business opportunities are often found in countries with serious corruption problems. But by backing companies to operate in those countries without requiring extra due diligence to rule out bribery, ECAs could well be increasing corruption there.

Export credit agencies (ECAs) are governmental or quasi-governmental departments that use taxpayers' money to help companies to invest and export overseas. ECAs provide financial backing in the form of guarantees, insurance or direct loans to protect companies against the commercial and political risks of not being paid while operating abroad. They underwrite 10 per cent of global exports from large industrial countries.



The UK's ECGD has long been a leader in the field of combating bribery. In May 2004, it introduced new anti-bribery procedures to help detect and prevent bribery on transactions it supported.

However, following fierce opposition from businesses – led by Airbus, Rolls Royce, and BAE Systems – the rules were relaxed to meet the companies' objections. The UK's independent campaigning group The Corner House led a legal challenge against the UK's Secretary of State for Trade and Industry, Patricia Hewitt, claiming that she acted unlawfully in relaxing the ECGD's anti-bribery rules after hearing concerns of industry groups, but failing to consult with other stakeholders. The Corner House won an out-of-court settlement on 13 January 2005, just as a two-day hearing in the High Court was due to begin. The government agreed to instigate full public consultations on its changes to the ECGD's anti-corruption rules and pay the NGO's legal costs. A Financial Times article¹ commented: "The enforced U-turn is an embarrassment for the government, which has publicly championed support for anti-corruption measures while secretly backing business opposition to controls imposed last May by the Export Credits Guarantee Department".

How ECAs become complicit in corruption

Backing commission fees concealing bribes⁴: dubious fees as high as 10 to 20 percent of the overall project cost paid into an offshore account or secret trust have nothing to do with a legitimate commission⁵. ECAs underwriting commission payments, "constitutes an indirect encouragement to bribe"⁶

- Paying out insurance claims to companies where the host country government has cancelled their contract because of bribery allegations⁷. In some instances, ECAs even pressure governments to drop corruption investigations into companies they are backing⁸
- More indirect ways of backing corruption: ignoring the track-record of companies tainted with corruption scandals; failing to investigate corruption allegations; failing to implement sanctions against companies convicted of corrupt practices and fostering an institutional culture that tacitly accepts bribery as a means to win contracts abroad.

Efforts to improve "best practice" on ECAs and corruption

An international convention on combating bribery, ratified by all EU governments, came into force in February 1999⁹. In December 2000, the OECD also issued an Action Statement on Bribery¹⁰ recognising the important role ECAs play in tolerating and potentially combating corrupt practices. Although European ECAs have revised procedures to align them with the Action Statement's requirements, significant differences remain. An ECG survey in 2004¹¹ revealed that while most ECAs instituted the least demanding requirements (including ensuring companies sign an anti-bribery warranty), measures that would ensure a diligent enforcement of anti-bribery rules (like refusing cover for projects where there's sufficient evidence of corruption, or taking action against a company where bribery is proved) have been implemented less rigorously.

Amongst the most effective measures available to fight corporate bribery is debaring companies convicted of corrupt business practices for a set period of time from ECA support - recently advocated by the Commission for Africa: "Firms who bribe should be refused export credits"¹². The OECD also recommends debaring as an economic disincentive against corporate bribery¹³. However, only the ECAs of Belgium, Denmark, Greece, Hungary, Luxembourg and Switzerland use this tool¹⁴. For a ranking of European ECAs in good practice see the two illustrative examples in the annex.

Conclusion

Bribery causes immense economic and social damage. It undermines democratic accountability and diverts resources away from the public good and into private pockets. Governments from rich industrialised states must end the hypocrisy of demanding "good governance" from developing countries while tolerating their export credit agencies' negligence towards corruption. European ECAs must not support projects that involve corruption. In particular, they should:

- Dramatically improve disclosure requirements and due diligence procedures on agents' commission payments
- Implement a blacklisting system of companies convicted of corruption, debaring them for a set period of time from further ECA support
- Improve procedures for monitoring compliance with anti-bribery warranties
- Urgently work towards an enhanced Action Statement on combating bribery at the OECD¹⁵.



ANNEX

Example I: due diligence in agency commissions

As outlined above, agency agreements can be used to conceal the payment of a bribe. It is therefore crucial to distinguish between a situation where a genuine agent is appointed for a legitimate purpose (and paid a reasonable fee for services provided) and a sham arrangement being used as conduits for bribes. The OECD's document on "Best practices"¹⁶, recommend that companies provide details of commissions that amount to more than five per cent of a project's costs to improve due diligence for agency arrangements¹⁷.

The Netherlands's Atradius is probably the most advanced in its procedures. It claims, as a general rule, not to cover commission payments above five per cent of a contract price¹⁸. Atradius further asks all applicants to disclose (inter alia) the name, address and function of the agent and verification of whether real and actual services are being performed. The ECGD is ahead of most ECAs, even after relaxing procedures on agents in the latest revision of its anti-bribery rules. Other European ECAs that require details of commissions at the time of application include: Czech Republic, Denmark, France, Greece, Hungary, Portugal and the Slovak Republic. Some export credit agencies only ask clients to disclose information about agents under certain circumstances¹⁹. These include ECAs of Austria, Belgium, Finland, Luxembourg, Norway, Spain and Switzerland. However, some ECAs in Europe do not require any details of agents' commissions at all. Among the least impressive performers with respect to agents are: Germany, Italy (which at least puts a cap on commissions), Poland and Sweden.

Example II: Sanctions against corporate bribery

A second area of significant difference between the policies and practices of the various ECAs, with regard to combating corruption, concerns the use of sanctions where there's a legal judgement of bribery. Debarring companies convicted of corrupt business practices, for a set period of time from future ECA support, is one of the most effective measures available against corporate bribery. The OECD also recommends debarring a company from export credit support as an economic disincentive against bribery.

However, out of all the European participants in the 2002 ECG survey only the ECAs of Belgium, Denmark, Greece, Hungary, Luxembourg and Switzerland state that they deny access to official support in the case of sufficient evidence or legal judgement of bribery. Curiously, some EU Member States, including Germany, Italy, The Netherlands, the Slovak Republic and the UK claim to be unable to debar companies under domestic legislation. However, the new EU directive on public procurement includes an obligation to exclude any company convicted of corruption from tendering for public contracts. There seems to be an urgent need for ECAs concerned to review legal interpretations within this area or ask governments to bring national legislation in line with the relevant aspects of EU law. Other European ECAs, however, are legally able to blacklist corrupt companies (at least for a limited period of time) but are unwilling to impose debarment. Those countries include France, Norway, Poland, Portugal, Spain and Sweden, with the latter claiming not to have had any experience with bribery in the past at all.



END NOTES

01. 14 January 2005.
02. OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, February 1999.
03. Dieter Frisch, 'Export Credit Insurance and the Fight Against International Corruption', Transparency International Working Paper, 26 February 2003.
04. Transparency International, Anti-corruption initiative in the Construction and Engineering Industry: The Prevention of Bribery through Agency Commissions, March 2004.
05. Scandals over large commission payments in the Middle East have led to most Middle Eastern countries introducing laws on disclosure or the phasing out of commission payments. See The Corner House, Briefing 30, 'Underwriting Bribery – Export Credit Agencies and Corruption', December 2003.
06. Dieter Frisch, op.cit.23.
07. In July 1998, Canada's export credit agency EDC, reimbursed a Canadian power generation company, BC Hydro, after the Pakistani government cancelled their contract for the Raiwand power plant project, alleging that bribes had been paid to officials of the previous government, The Toronto Star, 28 January 1999.
08. In Pakistan in 1998, various Western countries including Britain put pressure on the government to abandon investigations into the Hubco power plant, built in 1997 and backed by the ECAs of France, Italy and Japan. Taylor, A and Nicholson, M, 'Hubco seeks World Bank Intervention', Financial Times special report, 14 October 1998.
09. OECD Convention, op.cit.
10. Action Statement on Bribery and Officially Supported Export Credits, OECD Working Party on Export Credits and Credit Guarantees, December 2000.
11. OECD Working Party on Export Credits and Credit Guarantees, Responses to the 2002 survey on measures taken to combat bribery in officially supported export credits – as of 14 May 2004.
12. Report of the Commission for Africa, Our Common Interest, March 2005.
13. OECD Action Statement, op.cit..
14. ECG survey, op.cit, p.41.
15. For a full list of demands from the European ECA Reform Campaign: 'Key reforms needed for Export Credit Agencies', January 2003, available at www.fern.org.
16. Working Group on Export Credits, Best practices to deter and combat bribery in officially supported export credits, November 2003.
17. Experts in the field of bribery have long argued that five per cent is not a useful threshold to set because five per cent of a large contract is still a considerable amount of money. Details on agents' commission should be provided on all contracts, with enhanced due diligence applying above a certain set threshold of Euro five million.
18. ECG survey 2004, op.cit, p.41. Italy also claims to apply a ceiling at five per cent of the contract value.
19. Usually on a case-by-case basis if the commission is seen as high compared to industry norms or in case of suspicion of misconduct.

This briefing note is part of a series on European export credit agencies and their practices.

For more detailed information on export credits and corruption see Dr. Susan Hawley, The Corner House, Briefing 30: Underwriting Bribery – Export Credit Agencies and Corruption, December 2003.

For more briefing notes from the European ECA Reform Campaign visit www.fern.org , Contact: judith@fern.org

