

21 January 2003
Members of the EPOC Committee
OECD
2, rue André Pascal
F-75775 Paris Cedex 16
France

**Re: Key Reforms Needed for Export Credit Agencies (ECAs)
Room Document - EPOC Dialogue with Stakeholder Partners**

Dear Members of the EPOC Committee:

Please find enclosed the European ECA Reform Campaign's views on the "Key Reforms Needed for Export Credit Agencies" that we will present to you at the EPOC Dialogue on November 25th. We look forward to discussing with you the role of the EPOC Committee in ensuring that ECAs contribute to their countries' commitments towards sustainable development. If you would have any questions regarding these demands, please contact me at the address above.

Best regards,

Emilie Thenard
Coordinator of the EU ECA Reform Campaign



FERN IS AN NGO WHICH AIMS TO IMPROVE EUROPEAN UNION ACTIVITIES IN ORDER TO ACHIEVE:
CONSERVATION AND SUSTAINABLE MANAGEMENT OF FORESTS; RESPECT FOR THE RIGHTS OF FOREST
PEOPLES; GREATER TRANSPARENCY IN EU AID TO TROPICAL FOREST COUNTRIES



Les Amis de la Terre, France * ARA (Working Group on Rainforests and Biodiversity), Germany * Baku Ceyhan Campaign, United Kingdom * Both ENDS, Netherlands * BUND-FoE Germany* Campagna per la riforma della Banca mondiale, Italy * Campaign Against Arms Trade, United Kingdom * The Cornerhouse, United Kingdom * Euronatura, Portugal * Fédération Internationale des Droits de l'Homme * Federation of Kurdish Associations, United Kingdom * FERN * Finnish ECA Reform Campaign, Finland * Forest Peoples Program, United Kingdom * Friends of the Earth (England, Wales and Northern Ireland) * FoE International * Friends of the Earth, Japan * Friends of the Earth, Netherlands * Germanwatch e.v., Germany * Greenpeace International * Halkevi Community Centre, United Kingdom * INKOTA-netzwerk, Germany * Jubilee Netherlands * Kurdish Community Centre, United Kingdom * Kurdistan Solidarity Committee, United Kingdom * Oikos, Netherlands* Peace in Kurdistan Campaign, United Kingdom * Pro REGENWALD, Germany * QUERCUS - Associação Nacional de Conservação da Natureza, Portugal * Rettet den Regenwald e. V., Germany * Society for International Development, Italy* Solidarität mit Brasilien e.V., Germany * Swedish Society for Nature Conservation, Sweden * Urgewald, Germany * War on Want, United Kingdom * World Development Movement, United Kingdom * World Economy, Ecology & Development, Germany * World Wildlife Fund International

**KEY REFORMS NEEDED
FOR EUROPEAN EXPORT CREDIT AGENCIES**
November 2002

To ensure that European, government-backed, Export Credit and Investment Insurance Agencies (ECAs) contribute to the fulfilment of their countries' legal obligations and commitments towards sustainable development¹ and in preparation for the fall 2003 OECD review, the EU Campaign for ECA Reform calls for the following reforms:

Preconditions to ECA involvement in projects:

1. Debt Impact Analysis and Loan Assessments

- That ECAs require, for any proposed project, an analysis of the financial liability incurred by any recipient country and of the debt impacts for that country in the context of its overall indebtedness and debt repayment capacity;
- That in their accounting, ECAs discount their loans and the value of their guarantees, according to country risks instead of considering them at their face value;
- That no ECA support be granted for unproductive expenditures² ;

2. Impact Assessments

- That ECAs require independent human rights, environmental and social impact assessments of all transactions that may have adverse impacts, to ensure that the approval of any export credit, credit guarantee or insurance contributes to the overall aim of sustainable development;
- That in considering applications for transactions, including the delivery of goods and services, ECAs avoid support where their direct or indirect involvement in a transaction that would result in cumulative or associated impacts that violate national or international law or standards, in particular in the human rights and environmental field;

3. Public Participation

- That ECAs ensure that affected communities, particularly indigenous peoples and other vulnerable minorities, as well as other interested parties are adequately and freely informed and consulted before the approval and throughout the life of the project that may result from a transaction;
- That all relevant documents (see § 5) be made public 60 days before consultations, in locally adequate language(s) and be accessible to all stakeholders;
- That ECAs only support transactions surrounding projects that enjoy the demonstrable free and prior informed consent of all affected communities;
- Finally, that no transaction be supported without the prior approval of the recipient country's national and sub-national parliaments;

Norms, Standards and Procedures:

4. Human Rights and Environment

- That ECAs adopt one set of *a priori*, binding, environmental, social, human rights and economic development rules and standards to be applied to all of their transactions;
- That these rules and standards be consistent with international human rights and environmental standards and procedures as defined by European legislation, international instruments³ and best

1. Communication from the Commission to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions. "Towards a Global Partnership for Sustainable Development".2002.

2. Defined in the OECD's Statement of Principles on Unproductive Expenditures in Heavily Indebted Poor Countries as "Transactions which are not consistent with their poverty reduction and debt sustainability and do not contribute to their social and economic development."

practice, as exemplified, among others, by the guidelines of the World Commission on Dams. Outside any economic considerations, all ECA home countries and all countries recipient of ECA support have the indisputable obligation to respect, protect, fulfill and promote the universal rights enshrined in the human rights conventions they have ratified and doing so does not interfere with the sovereignty of the government.

- That special attention be paid to vulnerable social groups, such as women, children, elderly, the poor, ethnic minorities, who are most likely to be affected by social and environmental impacts and may have little access to decision-making processes.

5. Information Disclosure and Transparency

Recognizing the added value that interested and well-informed members of the public, particularly locally affected people and non-governmental organizations in the host country, can bring to the environmental, social, cultural and economic impact assessment and monitoring processes,

- That all their social, environmental and anti-corruption policies and procedures be made public;
- That all environmental, social and human rights impact assessments, debt impact analyses, construction and off-take agreements⁴ and all project-related information that is relevant to informing people as to the project risks, along with the name and description of the project and transactions, be disclosed at least 120 days prior to decision making by the board of the ECA;
- That ECAs be required to publish a monthly summary of their operations, details of the name and location of all projects being considered for support including the name of the applicant company, the size and type of the ECA support, the environmental and social assessment category of the project and the planned dates for a decision on the application. This monthly summary should include notice of any new application for project transaction;
- That ECAs request a modification of confidentiality laws so as to provide transparency of their project portfolio (current and under application) and the results of internal investigations.

6. Corporate Social Responsibility

- That ECAs ensure – through a proper monitoring mechanism - that companies, in receipt of ECA support, comply with their host and home country laws on environmental, human rights and accountability issues;
- That they ensure that their client companies conform to the OECD Guidelines for Multinational Enterprises and that they demonstrate compliance through regular public reporting;
- That they require client companies to demonstrate that they have enforceable mechanisms in place to ensure the protection of relevant human rights international instruments and ILO Core Labour Standards, namely the right to freedom of association and the right to organize and bargain collectively (Conventions 87 and 98), freedom from forced labour (Conventions 29 and 105) and child labour (Conventions 138 and 182) and the right to work free from discrimination (Conventions 100 and 111);

3. Including conventions, decisions, treaties and other relevant instruments/documents for the protection of the environment and the Universal Declaration for Human Rights, the UN Covenant on Economic, Social and Cultural Rights, the UN Covenant on Civil and Political Rights, the UN Convention on the Rights of the Child, the five core ILO Conventions (on the elimination of forced labor, of child labor, on non-discrimination, on freedom of association, and the right to collective bargaining), the UN Convention on the Elimination of Discrimination Against Women, the 1986 UN Declaration on the Right to Development, relevant European texts such as the European Convention on Human Rights, the European Social Charter, the Charter of Fundamental Rights.

4. Including power purchase agreements, production sharing agreements, host country agreements, cutting licenses and concession maps among others.

7. Monitoring and Follow-up

- That ECAs bear the responsibility of monitoring and follow-up to ensure that the implementation of projects abides by their rules and standards as well as the mitigation measures developed during project preparation;
- That all monitoring reports be made public at least in the locally adequate language(s) to all stakeholders and particularly accessible to the affected peoples;
- That corrective measures be developed as needed with the participation of the stakeholders;
- That periodically independent external evaluations be performed;
- That extra costs of independent monitoring be born by the clients of ECA support;

8. Accountability and Compliance

That ECAs adopt a full-fledged accountability and compliance mechanism. Its objectives should include:

- Being an independent fact-finding organ to which local communities and other stakeholders can appeal in case of problems with an ECA-supported project;
- Ensuring that activities supported by the ECA abide by all human rights, social and environmental policies and, more generally, that the project respects the rights and environment of the affected peoples;
- Providing affected communities with effective remedy;
- Applying to client companies a range of sanctions, including suspension of support and blacklisting if any of the norms are not respected;

9. New Renewable Energy

- That ECAs apply a sustainable energy portfolio standard, requiring a phase out of support to fossil fuel and unsustainable energy technologies within two years and a target of 20% in support of sustainable energy;
- To achieve these targets, ECAs must immediately introduce institutional reforms and capacity building measures to support new sectoral arrangements and abolish preferential terms for fossil fuel and nuclear technology under the current OECD Arrangement on Export Credits;
- In parallel, that ECAs provide lowest interest rates and maximum repayment terms available under existing guidelines to support new renewable⁵, energy efficiency⁶ and conservation projects. These exclude energy production from large hydropower dams⁷ and unsustainable biomass.

5. Sustainable Renewable Energy production sources defined as:

- All forms of solar thermal and solar electricity power supply
- All forms of on-shore and off-shore wind energy supply
- All forms of geothermal heat and electricity energy supply
- All forms of marine energy supply
- All forms of small hydro power (up to 10 MW electric capacity and complying with the recommendations of the World Commission on Dams)
- All sustainable forms of traditional and modern biomass energy, including, efficient and improved use of traditional fuel wood, switch to biogas, multi-purpose agro-forestry, fuel wood from FSC certified-forests and agricultural systems, industrial and small-scale biomass co-generation and sustainable bio-fuels for transport.

6. End Use Energy Efficiency technology defined as:

- All technologies that improve/replace inefficient and highly polluting cooking and heating stoves or open in- and out-door wood, dung or charcoal fires for cooking and heating
- All domestic appliances such as efficient cooling appliances for all purposes including domestic, industrial and sanitation
- All efficient housing insulation technologies for roofs, walls, windows and heating systems
- All office and IT appliances such as efficient computers and other office equipment
- All super-efficient light bulbs
- All efficient industrial motor drives, pipes and co-generation systems.
- All efficient industrial and small scale process energy technologies
- Highly efficient and low polluting public transport systems.

7. Large Dams: According to the World Commission on Dams, a dam is considered large if it has a height of 15m from its foundation. If dams are 5-15m and have a reservoir volume of more than 3 million cubic meters, the International Commission on Large Dams also classifies them as large.

- For other measures, that ECAs set up a Renewable Energy Advisory Committee composed of representatives of the renewables industry, non-governmental organizations and relevant government officials to make a series of recommendations appropriate for each ECA.

10. Forest Sector

- That ECAs require third party independently verifiable certification with equal participation of all stakeholders in the process of setting environmental and social criteria.⁸

11. Involuntary Resettlement

- That all efforts be made to examine possible ways to avoid involuntary resettlement and loss of means of livelihood. When voluntary resettlement is unavoidable, effective legally binding, mutually agreed measures to minimize the impacts and compensate losses shall be negotiated and agreed with the parties concerned.
- That residents who are forced to relocate involuntarily or forfeit their means of livelihood be sufficiently compensated and supported by the project proponent for an appropriate duration of time. Sufficient compensation and support should not stop at preventing the deterioration of the quality of life, but improve it as well. Measures to achieve this purpose should include monetary and land compensation (to cover monetary and land losses), as well as support the means for alternative sustainable livelihood, the expenses necessary for relocations, and the re-establishment of community at relocation sites acceptable to both those being relocated and host communities;
- That all planning, implementation, and monitoring of resettlement and rehabilitation plans be achieved through mutually-agreed and negotiated decision-making processes in which all relevant stakeholders can freely participate;

Exclusion Criteria:

12. Debt Burden

- That ECA-supported projects not increase the debt burden of developing countries to unsustainable levels as a result of export credits or claims on guarantees and insurances;
- That, ECAs end the use of sovereign counter-guarantees from host countries;
- That ECAs, like commercial banks, constitute special loan-loss provisions to cover cases of default or illegitimate debts to balance the costs of the cancellation of unpayable debts;
- Further, that all ECA-related debts incurred through corruptly obtained or other illegitimate contracts be cancelled by ECAs themselves;
- That ECAs pay for these cancellations out of the premiums and interest rates that exporters pay for the guarantees and/or the export credit and not at the expense of Official Development Aid;
- That the collection of debt take place in conformity with the principles of maintaining sustainable debt relief;

13. Corruption

That, ECAs not support projects that involve corruption. To ensure this, they should implement the following measures:

- require ECA clients to declare that they are aware of national legislation that prohibits the bribery of overseas officials and that they are committed to complying with this legislation and require them to sign a warranty stating that neither the applicant nor anyone acting on its behalf has engaged or will engage in corrupt activity in connection with either the contract or investment for which support is requested;

8. See Suggested standards for banks' forest investment policies, prepared by WWF, Friends of the Earth etc. To obtain a copy, contact: Jpeck@wwf.org.uk. These standards must be performance-based, objective, comprehensive, independent, and measurable. See also May 2001 Joint NGO Statement "Basic Requirements for a Credible Certification Scheme."

- require customers to demonstrate that they have put in place a corporate compliance programme that provides adequate systems of internal controls for uncovering bribery and corruption. ECAs should require customers to demonstrate that their subsidiaries, intermediaries and agents have in place equivalent controls;
- require companies to demonstrate compliance with recommended international accounting practices;
- Commit to support only contracts won through open and transparent tender processes;
- Formally investigate all corruption allegations, automatically refer these allegations to the appropriate law enforcement agencies and suspend any claims pending investigation of corruption;
- When a claim is filed, require disclosure of all commissions, fees, and payments paid on a claimant's behalf in association with the export contract;
- When there is convincing evidence of bribery or when a company is debarred by other international or national institutions, impose sanctions including denial of claims or restitution of credits, disqualification from ECA support for ten years, and forfeiture of fees paid and publicly disclose the results of such bribery investigations;
- Adopt and promote whistle-blowing procedures both for employees and member of the public to report concerns and in the case of the former provide for protection from retaliation; and,
- Perform random investigations to ensure that best practices are observed and that no corruption is taking place.

14. Money Laundering

- That ECAs apply the EU Directive on Money Laundering⁹ to their operations;
- That they report to their judiciary on any activity they consider suspicious, based on information they have received;

15. Nuclear Energy

- That ECAs not fund new or expansion of old or delayed nuclear projects starting with nuclear reactors, uranium mining, nuclear waste and transport, as they do not constitute a source of sustainable energy;
- That ECAs may offer support to help decommission nuclear installations or improve the safety of a running nuclear power plant, but only if this safety improvement does not prolong the life of the plant;

16. Arms Trade

That ECAs stop financing or underwriting goods being purchased by overseas military or security forces, or armaments-manufacturing bodies, including for the construction of military bases. The EU should play a leading role in negotiating a multilateral agreement to abolish the provision of export credit loans, guarantees or insurance for military purpose investments, including military or dual-use¹⁰ equipment;

17. Categorical Prohibitions

That ECAs adopt categorical prohibitions proscribing their support of:

- Any projects that involve the significant conversion or degradation of critical natural habitats¹¹, impact primary forests, National Parks and other protected areas¹² and those protected by the Ramsar Convention;

9. Directive 2001/97/EC.

10. "Dual-use equipment" includes all those components that might be used both for civil and military purposes. For instance, equipment to repair aircrafts, which can fit both civil and military planes, or equipment destined for police forces, which can be also used by military and paramilitary forces.

11. as defined in the World Bank's safeguard policy OP 4.04 Annex.

- Any extractive or infrastructure project located in primary forests such as logging, mining, flooding, clearing, traversing with pipelines, transmission lines, roads in remaining primary forests.
- Any projects involving the construction of large dams¹³ that significantly and irreversibly: (A) disrupt natural ecosystems upstream or downstream of the dam, or (B) alter natural hydrology, or (C) inundate large land areas, or (D) impact biodiversity, or (E) require enforced displacement or (F) impact local inhabitants' ability to earn a livelihood.
- Projects involving the commercial manufacturing of ozone-depleting substances (ODS) or the production or use of persistent organic pollutants (POPS) that are banned or scheduled to be phased out of production and use by international agreement during the life of the project.
- Projects that require forcible evictions.
- Projects that in areas where infringements of freedom of expression and other civil and political rights deny affected communities the possibility of raising concerns about the project or of participating in its planning and implementation.
- Projects in areas where the local affected people cannot be adequately consulted particularly in conflict areas where they are not free to express their opinions on a project;
- Any projects supporting the illegal exploitation of natural resources.

For more information, contact:

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12. Protected areas defined in the following categories: a) Highly protected areas (IUCN categories I-IV, marine category I-V protected areas, UNESCO World Heritage sites, core areas of UNESCO biosphere reserves and in European Union countries also Natura 2000 sites); b) Proposed protected areas within priority conservation areas selected through eco-regional planning exercises; c) Areas containing the last remaining examples of particular ecosystems or species even if these lie outside protected areas; d) Places where supported activities threaten the well-being of communities including particularly local communities and indigenous peoples.
13. See definition in footnote 5.