

**TRADE AND AGRICULTURE DIRECTORATE
TRADE COMMITTEE**

Working Party on Export Credits and Credit Guarantees

GUIDANCE NOTE

GOOD PRACTICE IN THE USE OF CONSULTANTS BY EXPORT CREDIT AGENCIES

This document contains a Guidance Note on Good Practice in the use of Consultants by Export Credit Agencies.

It has been prepared by, and is issued on the responsibility of, the Environmental and Social Practitioners from Export Credit Agencies of Members of the OECD Working Party on Export Credits and Credit Guarantees (ECG) within the framework of technical work relating to the application of the Recommendation of the Council on Common Approaches for Officially Supported Export Credits and Environmental and Social Due Diligence (the "Common Approaches") [TAD/ECG(2016)3].

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JT03404804

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The opinions and views expressed in this document are those of the Practitioners of the OECD Working Party on Export Credits and Credit Guarantees and do not necessarily reflect or represent the official views of individual Export Credit Agencies, of the OECD or of its member countries.

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GLOSSARY

E&S	Environmental and Social
ECA	Export Credit Agency
EHS Guidelines	Environmental, Health and Safety Guidelines of the World Bank Group
EP	Equator Principles
EPFI	Equator Principles Financial Institution
ESAP	Environmental and Social Action Plan
ESDD	Environmental and Social Due Diligence
ESIA	Environmental and Social Impact Assessment
ESMP	Environmental and Social Management Plan
IAIA	International Association for Impact Assessment
IESC	Independent Environmental and Social Consultant
IFC	International Finance Corporation of the World Bank Group
IFI	International Financial Institution
OECD	Organisation for Economic Co-operation and Development
Practitioner	Environmental and Social Practitioner employed by an Export Credit Agency
PS	Performance Standards of the IFC

GOOD PRACTICE IN THE USE OF CONSULTANTS BY EXPORT CREDIT AGENCIES

I. Introduction

This Guidance Note has been prepared by, and is issued on the responsibility of, the Environmental and Social (E&S) Practitioners from Export Credit Agencies (ECAs) of Members of the OECD Working Party on Export Credits and Credit Guarantees for guidance when ECAs choose to use environmental and social consultancy services.

This Guidance Note has been developed in the framework of technical work undertaken by Practitioners relating to the application of the *Recommendation of the Council on Common Approaches for Officially Supported Export Credits and Environmental and Social Due Diligence* [[C\(2016\)38](#)] (the “Common Approaches”); it may, however, be used by any ECA (or any party acting on an ECA's behalf) wishing to follow good practices when using environmental and social consultancy services.

The aim of this Guidance Note is to provide a compilation of good practices in the use of environmental and social consultancy services by ECAs. Its aim is not to replace, modify or supersede any relevant policies or processes that ECAs may have developed, or may develop in the future, for procuring and managing such services. Accordingly, this Guidance Note should not be considered as a standard or as a required action list, but as a tool to be used by ECAs as appropriate and at their own discretion. It is also important to note that other actions may be appropriate on a project-by-project and ECA-by-ECA basis. Related further information and references are provided in the list of additional resources at Annex A.

II. Roles of E&S consultants

(a) Overview

E&S consultants may play a variety of roles in the assessment, due diligence and monitoring of any commercial, industrial or infrastructure project and may work for various parties involved in the project, for example:

- Project sponsors may engage consultants to provide E&S advisory services, such as undertaking an ESIA and preparing the resulting reports (including but not limited to supplementary impact assessment reports, stakeholder engagement plans, resettlement action plans, mitigation and management plans, and human rights impact assessments), as part of the pre-construction development work. As such, these consultants work for, and on terms agreed with, project sponsors. The arrangements between project sponsors and their E&S consultants for these E&S advisory services are not the subject of this Guidance Note; however, if project sponsors know that the project financing may involve ECA participation, they should be encouraged to ensure that the work undertaken is both to project country standards, in order that the project might comply with local legislation and other relevant project country regulations, and with appropriate international standards, such as those of the World Bank Group, so as to facilitate ECA involvement. In this context, Annex II of the Common Approaches contains information on the typical items to be included in an ESIA report and which may be sufficient for ECAs to undertake their E&S review.
- E&S consultants may be engaged to work for or with other parties involved in a project, such as financial institutions, including ECAs, in order to assist with undertaking E&S reviews, for example, due diligence of the E&S information provided by the applicant and/or project sponsor, development of gap analyses, preparation of any necessary ESAPs or ESMPs, etc. as well as to

assist subsequently with monitoring work during project construction, operation, and/or decommissioning. Such E&S consultancy services are frequently paid by the project sponsor but the firms undertaking the work owe a duty of care to the financial institutions. As a result, there is a potential for a conflict of interest concerning this type of E&S consultancy: this Guidance Note attempts to provide some good practices that will help to limit such conflict and ensure that ECAs receive comprehensive, accurate and independent due diligence and/or monitoring advice.

- ECAs may also engage E&S consultants for internal, or other, purposes, for example, to provide training or to supplement internal resources; however, such arrangements are not covered within the scope of this Guidance Note.

(b) E&S due diligence consultancy services for ECAs

In undertaking their E&S due diligence work, OECD ECAs have agreed to apply the Common Approaches. The current applicable version of the Common Approaches was adopted by the OECD Council on 6 April 2016 [[TAD/ECG\(2016\)3](#)].

Under the provisions of the Common Approaches, ECAs should undertake an E&S review for all projects classified as Category A or Category B¹. For Category A projects, ECAs should require an ESIA to be undertaken and the resulting report to be provided, together with other studies, reports or action plans covering the relevant aspects of the project. For Category B projects, the scope of a review may vary from project to project, so ECAs should require appropriate information to be provided that addresses the relevant E&S impacts of the project: such information may be contained in an ESIA or in other supporting documentation (see paragraph 19 of the Common Approaches).

On receipt of such information, ECAs will undertake a review of the project in accordance with the provisions in the Common Approaches, including by benchmarking project performance against the relevant aspects of international standards, to inform a decision on whether to decline or provide official support and, if support is to be provided, whether this should involve E&S conditions to fulfil prior to, or after, the final commitment for official support, for example:

- measures to prevent, minimise, mitigate or remedy potential adverse E&S impacts;
- E&S representations, warranties and covenants; and
- monitoring requirements.

Each ECA has varying capacity and expertise to undertake this work and, as such, may from time-to-time decide to procure E&S consultancy services, either on their own or in co-operation with other financial institutions involved in a project.

The actual role of E&S consultants providing assistance to ECAs is project-dependant and, in this context, will vary depending upon factors that may include, but may not be limited to:

¹ Paragraph 11 of the Common Approaches:

A project is classified as Category A if it has the potential to have significant adverse environmental and/or social impacts, which are diverse, irreversible and/or unprecedented. These impacts may affect an area broader than the sites or facilities subject to physical works. Category A, in principle, includes projects in sensitive sectors or located in or near sensitive areas. An illustrative list of Category A projects is set out in Annex I of the Common Approaches.

A project is classified as Category B if its potential environmental and/or social impacts are less adverse than those of Category A projects. Typically, these impacts are few in number, site-specific, few if any are irreversible, and mitigation measures are more readily available.

- the type of financial product and ECA support;
- the timing of an ECA's involvement in a transaction;
- the stage of the financial support (*e.g.* E&S due diligence or post-issue monitoring);
- the technical and financial complexity of the project;
- the quality, language and completeness of E&S information available for the project;
- the severity, nature and complexity of the potential impacts;
- the number and nature of other parties involved (*e.g.* multi-ECA or EPFIs);
- the requirement for and practicability of multi-party coordination between ECAs and other IFIs;
- the local language and legal framework operating at the project location(s);
- the specialist sector(s) or industry involved (*e.g.* nuclear power, information technology, etc.);
- the requirement for specialist areas of assessment or due diligence (*e.g.* biodiversity offsets, human rights, cultural heritage, etc.);
- ECA budgetary constraints;
- the availability, capacity, skills and experience of the Practitioners; and/or
- the need for on-going monitoring and implementation of action plans.

Poor quality advice from E&S consultants has the potential to result in both reputational risks and financial losses for ECAs, as well as to impact negatively on the E&S performance of a project. As a result, this Guidance Note has been developed to provide some good practices in the use of these consultancy services, with the aim of facilitating consistency and congruent application of relevant international standards.

This Guidance Note consists of the following sections:

- Consultancy appointment: independence and duty of care; and consultant capacity;
- Consultancy outputs: contents of consultancy reports;
- Annex A: reference list of additional resources; and
- Annex B: example template for an environmental and social action plan (ESAP).

CONSULTANCY APPOINTMENT

I. Independence and duty of care

The independence of consultants and the entity to which they owe a duty of care are factors for an ECA to consider. The following numbered notes provide some examples of good practice in managing independence and duty of care. The term ECA below can refer to a single ECA or to groups of ECAs involved in a transaction.

It is considered good practice that:

1. A finance party (for example, the lead or mandated arranger, bank, agent, or ECA) should be a contractual party (alongside the consultancy firm and project sponsor) on appointment contracts for E&S due diligence (ESDD) consultancy services. Where this is not possible, then the finance parties should try to ensure that the contract includes suitably robust clauses to clarify that the consultancy firm's duty of care is provided to the finance parties, including to the ECA, and/or that legal reliance on the consultant's professional skill and care is extended to them.
2. Contracts for ESDD consultancy services should include:
 - a. references to a suitable level of professional indemnity insurance;
 - b. a total liability limit set at a suitable level agreed by the ECA(s); and
 - c. a clear communication channel and methods for resolving disagreements between sponsors/consultants/financiers (alternatively, this might be included in the consultancy terms of reference).
3. In accordance with the Common Approaches, an ESIA should not be carried out and reviewed by the same party. Consequently, where an ECA chooses to utilise the output from a consultancy firm providing ESDD consultancy services, these services should not be provided by the same consultancy company as the firm engaged by the project sponsor to conduct the E&S advisory services relating to the same project.
4. In addition, such ESDD consultancy services should also be provided by a separate consultancy company to firms engaged to provide other due diligence work streams (*e.g.* legal, technical, marketing or commercial). Where this is not possible, then a wholly separate E&S advisory team must be made available within the consultancy company specifically to undertake the dedicated ESDD services on behalf of the finance parties, including the ECA. This team should have demonstrable experience and expertise commensurate with the E&S aspects of the project, and ideally be led and managed by in-house staff and not by sub-contract parties. Separate reporting of ESDD issues from other work streams is also recommended.
5. Outputs from ESDD consultancy services (for example draft ESDD reports) should be sent to the finance parties, including ECAs, prior to, or at the same time as, these outputs are sent to the project sponsor (for example, to consider factual accuracy). Findings should only be changed if additional information or evidence is provided to support such changes. Comments or requests from any party (project sponsor or financier) that compromise the consultant's professional opinion, or the output's comprehensiveness, accuracy or independence should not be considered.
6. Particular care should be taken in using ESDD consultancy outputs where a consultancy firm or an individual consultant have previously worked for the project sponsor and/or are based in a geography where there are limited other consultancy resources. Where this is the case, an ECA may consider undertaking checks of independence, either directly or where available *via* a finance party, during the ESDD process. In addition, the requirement for self-declaration of any potential conflicts of interest, including disclosure of any previous work for the project sponsor, by the consultancy firm and individual consultants prior to, or as part of, the tendering process is considered good practice.

II. Consultant capacity

Consultant capacity will directly affect their ability to provide appropriate advice to an ECA. Capacity constraints include the appointment of inappropriately experienced E&S consultants, inadequate or incomplete scopes of work, and consultants that lack the capacity to advise on an ECA's obligations.

The following are examples of good practice to respond to this:

7. To ensure adequate and appropriate engagement of consultancy services, Practitioners should be involved in the drafting, review and approval of the scope of work for relevant E&S consultancy contracts.
8. A scope of work for consultancy services for multiple financiers may include a description of the method of evaluation of the proposals (*e.g.* an evaluation table covering, for example, price, quality, timing and scoring). The method should be clearly defined in case the members of the evaluation committee have varying views on the weighting of the various factors to be evaluated.
9. In consideration of appropriate consultant quality, the experience of the specific persons proposed in the bid is generally considered as, or more, important than the broad experience of the consultancy firm. It is, therefore, considered good practice to determine the comparative contribution of the proposed team members, whether these are in-house or sub-contracted, and to obtain reasonable guarantees from the consultancy firm that these individual(s) will be dedicated to the project with sufficient time to assess fully and advise on these topics.
10. As a minimum, any staff changes in the consultancy team between submission of their offer of services and completion of the services should require notification and/or acceptance by the ECAs.
11. In choosing the appropriate consultant to undertake ESDD consultancy services, it is good practice to consider the prior experience of the consultancy firm and the proposed team members in:
 - a. E&S impact assessment and/or due diligence services provided to ECAs and other finance parties;
 - b. the industry, sector and geographic location of the project; and
 - c. practical, on-site application and project level implementation of IFC's Performance Standards and their associated Environmental Health and Safety Guidelines, or of other relevant internationally-recognised standards to be used to assess and manage the project.

12. In addition, on a project-by-project basis, it is good practice to consider the documented expertise of the consultancy firm and the proposed team members in:
 - a. Local language skills, and experience in the application of local, regional and/or national laws; in this context, in many circumstances, a combination of local and international experience is recommended, with flexibility and cost-effective availability of international and local staff in terms of geographic proximity with the project and to supporting ECAs; and
 - b. Any significant E&S impacts that are anticipated or known to exist and that relate to specialist areas (examples include but are not limited to: land acquisition, involuntary resettlement, worker conditions, human rights, biodiversity, indigenous peoples and cultural heritage).
13. A break clause is recommended within appointment terms that would allow the ECA(s) to reasonably request a change in consultancy firm during the provision of services, if there is evidence of inadequate performance of services or significant omissions. It is additionally recommended that a break clause specifies an opportunity to change consultancy firm at transaction financial close and prior to any post-issue E&S monitoring advisory services.

CONSULTANCY OUTPUTS

I. Contents of consultancy reports

Consultants' reports, *i.e.* the delivery of ESDD (including ESAPs) and/or monitoring reports, are the key outputs for an ECA.

The following are examples of good practice for consultant outputs:

14. Where the appropriate international standards are not fully met at the time of an ECA's commitment to a project, an ESAP may be a key output from E&S due diligence consultancy services undertaken for the benefit of the ECA. It is good practice that ESAPs are as succinct as possible; however, they should include as a minimum:
 - a. sufficient detail to describe clearly the action(s) necessary to address any potential gaps in the project's current or future E&S performance;
 - b. a clear indicator of completion of the action(s) to meet ECA requirements;
 - c. the responsible party(ies) to complete the action(s); and
 - d. proposed and/or agreed timeframes for completion of the action(s).
15. It is additionally considered good practice for the consultant to indicate if, in their professional opinion, the dates provided are reasonably achievable and if shorter timeframes may be possible, and to describe the circumstances that would shorten these. A specific consideration of the development of the ESAP should be clarity on the practical implementation of the actions described, and the actions should build upon existing work conducted on corporate and/or project

specific E&S management systems and plans. An example of a template ESAP, which may satisfy ECA requirements, subject to project specific factors, is provided in Annex B.

16. ECAs recognise the work conducted by other organisations, notably the Equator Principles Financial Institutions (EPFIs) in their publication ‘Guidance for Consultants on the Contents of a Report for an Independent Environmental and Social Due Diligence Review’. Some aspects of that document are solely relevant to EPFIs; however, the suggested report content (including for example a clear definition of the Project and a Project Categorisation), structure and quality assurance statements are considered to be generally applicable to ESDD reports provided by consultants for or on behalf of ECAs under the scope and requirements of the Common Approaches. In addition, the example formats for a project gap analysis to international standards and the action plan template presented in the EPFIs’ document are also considered examples of good practice that may be referenced in consultant scopes of work.
17. Where the tenure of ECA support is long (for example, up to 18+ years), the consultant’s due diligence report(s) should clearly articulate their advice as to the adequacy of proposed E&S risk management throughout the period of tenure, specifically including the long term (> 5 years). This is to ensure that longer term risks (for example, but not limited to, risks related to climate change and labour issues during project operation) and proposed mitigation measures are given due consideration alongside short term construction and early operational risks.
18. Due diligence reports provided by consultants on behalf of ECAs should include a statement of their advisory nature and that advice made by the consultant does not necessarily constitute the position of the ECA, and should not be construed as such by the project sponsor unless confirmed by the ECA. Examples may include the consultant’s definition of Project, Area of Influence, Associated Facilities, and the E&S Categorisation of the Project.

ANNEX A: REFERENCE LIST OF ADDITIONAL RESOURCES

[“Recommendation of the Council on Common Approaches for Officially Supported Export Credits and Environmental and Social Due Diligence”](#) (the “Common Approaches”), 7 April 2016. OECD.

[“Performance Standards on Environmental and Social Sustainability”](#), 1 January 2012. IFC.

[“Environmental, Health and Safety Guidelines”](#), (currently being updated), IFC.

[“Guidance for consultants on the contents of a report for an independent environmental and social due diligence review”](#). March 2014. EP Association.

[“Principles of Environmental Impact Assessment Best Practice”](#), January 1999. IAIA.

IAIA series of [Best Practice Principles](#) covering a variety of impact assessment topical areas, IAIA.

**ANNEX B: EXAMPLE TEMPLATE FOR AN ENVIRONMENTAL AND
SOCIAL ACTION PLAN (ESAP)**

Action Item	Action description / Responsible party	Indicator of Completion / Evaluation criteria / Deliverables	Timetable for completion / Status
<i>[a unique and sequential number]</i>	<i>[a concise description of the gap against a specific local law / national law/ international standard (e.g. IFC PS paragraph number); the task(s) required to address this; and who takes responsibility to ensure the action(s) are completed]</i>	<i>[a concise description of documents and/or actions which will be provided in order to propose completion; how these will be evaluated by the finance parties; and the mechanism to agree completion]</i>	<i>[a specific timeframe against a milestone (e.g. 30 days prior to first debt drawdown], with a status indication (e.g. if pending or achieved) in order to facilitate tracking of progress]</i>