

Balancing Risks

What Export Credit Agencies can
do for sustainable development

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ASCM	Agreement on Subsidies and Countervailing Measures
Atradius CI	Atradius Credit Insurance N.V.
Atradius DSB	Atradius Dutch State Business N.V.
CSO	Civil Society Organisation
CSR	Corporate Social Responsibility
DNB	De Nederlandsche Bank (Central Bank of the Netherlands)
EBRD	European Bank for Reconstruction and Development
ECA	Export Credit Agency
ECG	Working Party on Export Credits and Credit Guarantees (in the OECD)
EDC	Export Development Canada
EIA	Environmental Impact Assessment
EIS	Environmental Impact Statement
EU	European Union
HIPC	Heavily Indebted Poor Country
IFC	International Finance Corporation
ILO	International Labour Organisation
IMF	International Monetary Fund
JBIC	Japanese Bank for International Cooperation
MPR	Minimum Premium Rate
ODA	Official Development Assistance
OECD	Organisation for Economic Cooperation and Development
SDR	Special Drawing Right (IMF defined currency Standard; SDR 1.00 is around 1.15/US\$ 1.48)
SFO	Serious Fraud Office
UN	United Nations
UNCED	United Nations Conference on Environment and Development
UNECE	UNEconomic Commission for Europe
UNEP	United Nations Environment Programme
WTO	World Trade Organisation

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This publication is meant to provide an overview of additional steps ECAs could take to limit their negative social and environmental impacts, while at the same time exploring possibilities for ECAs to promote sustainable development. Since most ECAs are slightly different from each other, the policy recommendations formulated in Chapter 4 are primarily directed at the export credit policies of the Netherlands.

1

INTRODUCTION TO ECAs

1.1

MANDATE AND ROLE

Companies that export goods and services or make investments abroad face several risks, often different from those encountered in domestic business. Such risks may be related to specific uncertainties regarding the nature of the transaction, but also political uncertainties in foreign countries result in additional risks. In order to be able to go ahead with transactions in such circumstances, companies usually look for an insurance that would provide adequate protection against such risks. Export Credit Agencies (ECAs) provide such export credit insurances. Exports to, or investments in, developing countries often only materialise with the support of ECAs.

Many of the risks that are covered by ECAs are considered too big for private insurance companies. Since governments can act as last-resort lenders, most ECAs are official, government-supported agencies. A government supported ECA¹ can take more risks and offers backing for transactions that purportedly cannot find export credit support in private financial markets. Within the Arrangement on Officially Supported Export Credits of the Organisation for Economic Cooperation and Development (OECD), most ECAs of industrialised countries have agreed to common principles, which provide

them with a kind of level playing field. The OECD countries and ECAs participating in the Arrangement are cooperating in the Working Party on Export Credits and Credit Guarantees (ECG)². One of the principles of the OECD Arrangement is that the participants agree to charge a Minimum Premium Rate (MPR) for the cover provided to companies. The premium rates also “shall be risk-based, shall converge and shall not be too inadequate to cover long-term operating costs and losses³.” Within the European Union, this break-even requirement has been incorporated into EU law⁴.

ECAs provide at least three types of official export credit support:

- Direct credits
- Guarantees
- Insurances

ECAs always charge interest and/or a premium for the financial services they provide. In general, many non-OECD markets are considered risky, often too risky for private insurance companies. ECAs mainly provide their services for domestic corporations exporting to, or investing in, developing countries. Most officially supported export credits cover transactions with repayment terms of 2 years or more (medium and long-term).

The Agreement on Subsidies and Countervailing Measures (ASCM) >

¹While private ECAs are operating in the financial markets too, this publication only addresses issues relating to government supported, official, public ECAs.

²While the ECG is a formal OECD body, the group of Participants to the Arrangement is not.

³Arrangement on Officially Supported Export Credits - 2005 Revision (effective as of 1 December 2005), Article 23, OECD (TD/PG(2005)38/FINAL).

⁴Council Directive 98-29-EC, 7 May 1998.

> of the WTO⁵ provides the legally binding international framework for regulating government subsidies and other private sector support. It aims to minimize government support for private sector activities. The ASCM leaves a specific "carve-out" or "safe-haven" allowing government support to business through ECAs. In item (k) of Annex I to the ASCM, reference is made to the OECD Arrangement, stating that export credit support to corporations in compliance with this Arrangement shall not be considered an export subsidy forbidden by the ASCM. In other words, the partners in the OECD Arrangement are left to define what is permissible within the WTO with regard to export credits and subsidies. Developing countries that are signatories to the ASCM, therefore, are subjected to a set of provisions over which they have no immediate say.

ECAs collectively provide a large source of public financial support for foreign corporate investment in largescale industrial projects in the developing world. The table below presents the figures for the year 2004 of medium- and long-term transactions of ECAs from OECD countries.

VALUE OF ECA-SUPPORTED MEDIUM- AND LONG-TERM TRANSACTIONS FROM OECD COUNTRIES IN 2004	
Region	US \$ (millions)
Asia	31,666
Africa	4,108
Americas	13,277
Europe	13,308
Oceania	764
Various	2,142
World Wide Total	65,265

Source: OECD Statistics on Export Credit Activities, TD/ECG (2005) 13/FINAL

A total value of US\$ 65 billion of private transactions received medium- and long-term ECA support in 2004. By including also short-term transactions, the total cover provided by ECAs exceeds an amount of US\$ 100 billion. In the same year, the total amount of Official Development Assistance (ODA) was a little less than US\$ 80 billion⁶, which illustrates the significance of ECA-supported capital flows. ■

1.2

THE ECA OF THE NETHERLANDS: ATRADIUS DSB

The official Dutch ECA is Atradius Dutch State Business N.V. (Atradius DSB). Atradius DSB is a 100% subsidiary of Atradius Credit Insurance N.V. (Atradius CI), an international private export credit insurance company. Atradius DSB is charged with providing export credit insurances and guarantees to Dutch companies on behalf of the Dutch Government. Unlike the ECAs of some other countries, it does not provide direct credits.

While Atradius DSB is a private company, the Dutch government ensured a construction that allows the State under all circumstances to continue the provision of export credit insurances to Dutch companies⁷. In case Atradius DSB or Atradius CI would face serious financial problems, or in case the Nederlandsche Bank (DNB, the central bank) would prevent or limit Atradius DSB in offering public export credit insurances, Atradius CI will be forced to sell the shares of Atradius DSB to the Dutch State. Regarding the role of the ECA in the management of export credit debt, Atradius Provenuen⁸ B.V. should also be mentioned as a 100% subsidiary of Atradius DSB. Atradius Provenuen B.V. is in charge of the management of all claims of the official public export credit insurance facility.

In addition to Atradius DSB, three other government institutions are stakeholders in the Dutch export credit facility. The Ministry of Finance formulates the policies according to which Atradius DSB implements the official export credit insurance scheme. It is in charge of, and participates in, all international meetings and negotiations of official ECAs. The Ministry of Finance is also responsible

KEY DATA ATRADIUS DSB		
	2005	2004
Premium income	€ 46,000,000	€77,000,000
Claims	€ 39,000,000	€83,000,000
Recoveries	€ 549,000,000	€205,000,000
Number of applications	314	244
Number of promises and advices of cover issued	200	122
Number of policies issued	121	112
Value of promises and advices of cover issued	€ 6,900,000,000	€4,800,000,000
Value of policies issued	€ 2,500,000,000	€2,100,000,000

Source: Annual Review 2005, Atradius DSB

for the budget of the export credit insurance facility. It closely cooperates with the Ministry of Economic Affairs in shaping the oversight of the government. The central bank (DNB) has an advisory role, particularly regarding the risk management policies and the use of financial instruments.

The stated policy aim is that Atradius DSB obtains the authority to process and make decisions itself on a substantial percentage (70-80%) of all applications it receives, mostly transactions with a perceived limited risk. Determining factors for this mandate are the country risk classification of the host country for the transaction, as well as the size of the transaction for which the export credit insurance is requested. All transactions beyond the mandate of Atradius DSB are to be approved by a credit committee in which all four direct stakeholders of the export credit facility mentioned above have a seat. The Ministry of Finance has the final responsibility for and veto power over the support of individual transactions⁹. ■

1.3

ECAs AND SUSTAINABLE DEVELOPMENT

Multilateral development banks consider sustainable development and poverty reduction as part of their mandate. Since ECAs only aim to support domestic companies, sustainable development objectives are not part of their mandate. Often ECAs would rather provide funding for projects that multilateral banks, such as the World Bank, would not touch, for reasons of potential negative social and environmental impacts. This practice attracted the attention of several Civil Society Organisations (CSOs) and led to the establishment of the international ECA-Watch network¹⁰.

Project-affected community organisations and CSOs started to criticise ECA support of many projects because of substantial negative environmental and social impacts. While many multilateral development institutions had formulated elaborate safeguard policies to avoid such negative impacts, it was noted that ECAs had none of these. In contradiction to the commitments of their governments to ensure sustainable development, most ECAs did not take into consideration the impacts of their support for business transactions on the environment or on the rights of local communities.

Only in 1998 did the ECG issue its first statement of intent on Officially Supported Export Credits and the Environment¹¹. In this statement the desirability to strengthen environmental considerations in risk assessment practices of ECAs is acknowledged. However, it also acknowledged the differences in national systems of export credit support, and thus, no concrete measures were >

⁵See: http://www.wto.org/English/docs_e/legal_e/24-scm.pdf

⁶Global Development Finance 2006, World Bank, p. 80.

⁷Letter Minister of Finance to the Dutch Parliament, 17 January 2006, BFB 2006-0023M. The letter describes how the Dutch State ensured itself of all necessary legal rights over Atradius DSB.

⁸'Provenuen' is Dutch for 'Recoveries'.

⁹Letter Minister of Finance to the Dutch Parliament, 3 October 2005, BFB 2005-2155M. This letter introduces the innovations of the Dutch export credit facility, that became effective on 1 October 2005.

¹⁰See: <http://www.eca-watch.org/>

¹¹See: http://www.oecd.org/document/15/0,2340,en_2649_34181_1888847_1_1_1_1,00.html

> proposed at that time. The statement provided a kind of starting point for negotiations to overcome differences and achieve common approaches to officially supported export credits and the environment. In December 2001, a first “Draft Recommendation on Common Approaches on Environment and Officially Supported Export Credits: Revision 6” was published¹². In December 2003, these Common Approaches were revised, in 2005 updated¹³, and currently (2006) negotiations on another revision are underway.

CSOs have regularly called for much stricter environmental guidelines than those provided for in the Common Approaches. They have also argued for the inclusion of several other concerns of sustainable development into ECA-supported business transactions. For example, on transparency, bribery, community participation and debt. As an acknowledgement of a responsibility for avoiding contributing to the debt problems of many developing countries, the ECG adopted in 2001 a Statement of Principles on Official Export Credit Support to Heavily Indebted Poor Countries (HIPC)s¹⁴. This statement is meant to discourage ECA support for “unproductive expenditures” in such countries. Also, the ECG formulated measures to combat bribery in an Action Statement on Officially Supported Export Credits that was adopted in 2006¹⁵. To many CSOs these initial steps are hardly sufficient. ■

2

ECA POLICIES AND SUSTAINABLE DEVELOPMENT

The business of ECAs is to support the domestic private sector in promoting exports and international investments, often in developing countries. ECAs differ distinctly from development agencies that primarily aim to contribute to development abroad.

Although ECAs have no sustainable development mandate, many of the activities they support do impact sustainable development, especially within developing countries. As government-supported public agencies, however, they have a significant responsibility to minimise negative impacts on sustainable development efforts and prospects.

Sustainable development is generally defined as development that meets the needs and aspirations of the current generation without compromising the ability to meet those of future generations. The broad concept of sustainable development is closely identified to that of environmentally friendly development that does not overexploit natural resources. However, various other closely related dimensions of development are essential ingredients to facilitate sustainability. Several mutually related aspects of sustainable development are relevant to the activities of ECAs. ■

2.1

INFORMATION DISCLOSURE AND TRANSPARENCY

ECA-supported activities have, in many cases, inevitable and long lasting impacts on the environment and the people that live in the area where such activities are situated. These impacts may pose risks to the sustainability of the transactions that the ECA provides support for. In order to identify and map those risks beforehand, proper impact assessment studies are required before a decision on eventual ECA support is taken. The project sponsor generally commissions specific experts to conduct these impact assessments.

For reasons of commercial confidentiality, a project sponsor tends to prefer all documentation pertaining to the activity that ECA support is sought for, to remain outside the public arena. The sponsor does not want other competitors to be able to familiarise themselves with the business plans. Similarly, project sponsors prefer the general public not to be informed, so as to avoid community concerns and other possible complications hampering a swift implementation of the activities planned. While understanding these considerations, such a secretive approach causes local communities to remain unaware of the eventual risks they, and the environment they depend on, may

be exposed to. Their right of access to environmental information is not honoured, while at the same time the project sponsor will not obtain proper understanding of relevant local knowledge and information.

Whereas ECAs depend on public money to provide the requested support, one would expect that ECAs would require substantial transparency of the companies that request their services. Unfortunately, many activities that receive support of ECAs remain shrouded in secrecy. Only when pressured by CSOs which called for more transparency has a little more information on ECA-supported activities been gradually disclosed in recent years.

Improved transparency of ECA-supported activities has been a demand from CSOs for a number of reasons. Transparency is about:

- Improving the quality of due diligence through a broadened base of information, including local knowledge
- Reducing the risks of project failure as public comments may help identify risks the project sponsor has overlooked, or not shared with the ECA
- Reducing the reputational risk of ECAs
- Avoiding corruption through enhanced scrutiny
- Enhancing democracy as it allows participation in decision-making
- Enhancing the accountability of public entities towards the public in the 'host' country as well as the home country of ECAs.

Regarding the environmental dimension of information disclosure and transparency, reference has to be made to the Aarhus Convention. This convention was adopted at a ministerial conference of the UN Economic Commission for Europe (UNECE) held in 1998 in the Danish town of Aarhus. The then UN-Secretary

General Kofi Annan, said about the Aarhus Convention¹⁶:

“Although regional in scope, the significance of the Aarhus Convention is global. It is by far the most impressive elaboration of principle 10 of the Rio Declaration, which stresses the need for citizen's participation in environmental issues and for access to information on the environment held by public authorities. As such it is the most ambitious venture in the area of environmental democracy so far undertaken under the auspices of the United Nations.”

This “Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters” is a new kind of environmental agreement that links environmental and human rights. It acknowledges that we owe an obligation to future generations. It establishes that sustainable development can be achieved only through the involvement of all stakeholders. It links government accountability and environmental protection. It focuses on interactions between the public and public authorities in a democratic context, and it is forging a new process for public participation in the negotiation and implementation of international agreements. The subject of the Aarhus Convention goes to the heart of the relationship between people and governments. The Convention is not only an environmental agreement it is also a Convention about government accountability, transparency and responsiveness. The Aarhus Convention grants the public rights and imposes on parties and public authorities obligations regarding access to information, public participation and access to justice.

The first part of the Convention on access to information has been incorporated into EU law (Directive 2003/4/EC)¹⁷, which required >

¹²See: <http://www.oecd.org/dataoecd/2/32/2726700.pdf>

¹³See: OECD document TD/ECG(2005)3

¹⁴See: http://www.oecd.org/document/43/0,2340,en_2649_34179_2348715_1_1_1_1,00.html

¹⁵See: http://www.oecd.org/department/0,2688,en_2649_34177_1_1_1_1,00.html

¹⁶See: <http://www.unece.org/env/pp/welcome.html>

¹⁷Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information.

> transposition into national laws of the EU member states by 14 February 2005. All ECAs fall into the category of public authority, which means that all ECAs in EU member states are legally required to make environmental information that is held by them available to anyone asking for it. So far, ECAs themselves committed to limited disclosure of information in the Common Approaches agreed in the ECG of the OECD. They agreed to publish national environmental policy statements and principles as well as procedural guidance. In the Netherlands, this information is placed on the website of Atradius DSB¹⁸.

Under reference to limitations due to the competition between different ECAs and the constraints of business confidentiality, ECAs are required to share information with a view to seeking common positions on the environmental review of projects. The ECG annually publishes aggregated information that has been reported by the individual ECAs. Furthermore, ECAs are required to make environmental impact information (e.g. EIAs, or summaries thereof) publicly available at least 30 days before a final commitment to grant official support for projects likely to have significant adverse environmental impacts (Category A projects). ECAs are also expected to annually (at a minimum) make information on projects classified as environmentally sensitive available to the public.

Category A projects shelved by Atradius DSB after receiving public comments following the release of environmental information:

• **Tuticorin Port Trust: Setusamudram Shipping Channel Project (India)**

In January 2006, Atradius DSB decided not to approve the application for export credit insurance for the financing of the Setusamudram Shipping Channel Project, sponsored by the Tuticorin Port Trust (India). This project aimed to dredge a shipping canal through the shallow sea waters between India and Sri Lanka. The project would have serious environmental (and socio-political) consequences. For this reason, Atradius DSB classified the project as a Category A project, and made the Environmental Impact Assessment, as well as a more general project assessment available to the public for a period of 30 days before the scheduled decision. Both ENDS and NGOs in India and Sri Lanka expressed serious concerns about this project.

• **Dredging activities for the construction of oil pipelines in Varanday (Russia)**

In late October 2006, Atradius DSB decided to postpone a decision to support a dredging project in the Arctic sea off the northern Russian coast of Varanday. The plan was to dredge a trench of 18 km, for an oil pipeline to be laid one meter below the seabed. This 18 km pipeline is supposed to connect an on-shore oil pipeline with an oil-loading station to be reached by oil tankers off the Varanday coast. Due to shallow waters and regular icy conditions, such ships cannot come close to the coast. While the dredging itself might have limited site-specific environmental impacts (Category B project), Atradius shared the opinion that this 18 km pipeline is a shackle in a much wider programme of oil shipping from the Russian arctic coast. Serious environmental risks of oil transportation in arctic waters turn this case into a Category A project. Due to serious comments on the absence of an EIA study, Atradius decided to postpone the approval of this project. ■

2.2

ENVIRONMENT

The environmental impact of projects has been the first aspect of sustainable development that obtained the attention of ECAs. Increasing environmental awareness in recent decades resulted in a wide body of legislation to protect the natural environment against further destruction. Over-exploitation of natural resources and environmental pollution resulted far too often in irreversible damage. Mitigation efforts and compensation of victims led to huge costs. While initially these costs were left for the (local) public sector, environmental legislation more and more requires that those responsible for environmental damage should also be held liable for the expenses for adequate mitigation and compensation efforts. The polluter-pays principle became a commonly accepted standard. In this way, negative environmental impacts have become a risk of business that ECAs have to take into account in their risk assessments. In this respect, it is fairly surprising that the ECG did not issue statements on these issues before 1998.

Since then, the ECG has developed certain guidelines for ECAs to consider environmental concerns before they take decisions on officially supported export credits. The “Recommendation on Common Approaches on Environment and Officially Supported Export Credits” calls for evaluating environmental impacts of projects and exports of capital goods and services destined to projects, including the impacts on involuntary resettlement, indigenous peoples and cultural property. While these Common Approaches are currently (2006) under review within the ECG, the latest version dates from 2005¹⁹.

A key feature of the Common Approaches is that all applications for officially supported export credits for projects with a repayment term of two years or more should be screened on potentially adverse environmental impacts. The parties involved in the project – such as applicants and project sponsors – should provide all relevant information to carry out the screening. Based on the results, all projects in sensitive areas and all ECA-supported projects with a value of more than SDR 10 million are to be classified according to the potential environmental impact and the extent of the environmental review required:

- Category A: A project has the potential to have significant adverse environmental impacts. These impacts may affect an area broader than the site or facilities subject to physical works. Projects in sensitive sectors or located in or near sensitive areas are included (illustrative list is included in the Common Approaches as Annex I).
- Category B: Projects with potentially less adverse environmental impacts than Category A projects, mostly site-specific, and less irreversible.
- Category C: Projects likely to have minimal or no adverse environmental impacts.

Category A projects require an Environmental Impact Assessment (EIA) to be provided, while Category B projects only require an environmental review (Environmental Impact Statement or EIS). Category C projects require no further action. In performing environmental reviews, ECAs are required to benchmark projects against host country standards as well as relevant standards of other multilateral agencies (for example, the World Bank). ECAs are themselves responsible to ensure projects comply with these conditions, and they are required to report to the ECG on an annually basis on their implementation of the Common Approaches. ■

¹⁸See: <http://atradius.com/nl/dutch-statebusiness/overheid/milieu/>

¹⁹See OECD-Document TD/ECG(2005)3

2.3

BRIBERY AND CORRUPTION

Bribery and corruption in international business undermine good governance and contradict sustainable development. Bribes make projects more expensive, resulting in increased costs for people in the host countries. Within the OECD, a Convention on Combating Bribery of Foreign Public Officials in International Business Transactions – the Anti-Bribery Convention – was adopted in 1997²⁰. In the preamble of the Convention text, bribery is referred to as “a widespread phenomenon in international business transactions, including trade and investment, which raises serious moral and political concerns, undermines good governance and economic development, and distorts international competitive conditions”.

Since ECAs have a significant role in promoting international business, they also have an important role in combating bribery and corruption. The ECG acknowledges this responsibility in an Action Statement on Bribery and Officially Supported Export Credits. The latest version of this Action Statement was negotiated in the first half of 2006²¹. The Action Statement requires ECAs to take various measures to deter bribery in business transactions that they support. Applicants for ECA support have, amongst others, to declare that neither they, nor anyone acting on their behalf (agents), have been engaged or will engage in bribery. They are also required to disclose the amounts of commissions and fees to be paid in connection to a transaction. In case of previous involvement in corruption, enhanced due diligence is called for. ECAs are expected to establish procedures to promptly disclose to their law en-

forcement authorities instances of ‘credible evidence’²² of bribery. If enhanced due diligence concludes that bribery was involved in a transaction, the ECA has to refuse support.

The OECD Working Group on Bribery completed a review of the Netherlands’ enforcement of the Anti-Bribery Convention²³ in June 2006. The main conclusion is that the Netherlands needs to take a more proactive approach in investigating and prosecuting bribery offences. Given the size of the Dutch economy and the level of exports, the Working Group finds it surprising that no company or individual has been the subject of an investigation or prosecution since the ratification of the Convention in 2001.

The Working Group also looked into the practice of the Dutch ECA. It noted that Atradius DSB informs its clients that the payment of bribery is a crime under Dutch law. Atradius DSB requires applicants to declare in the application form that there is no involvement in bribery, and itself declares that it may report suspicions of bribery to the legal authorities. In cases where the commission reportedly paid for a contract exceeds 5% of the contract price or an amount of € 4,538,000, enhanced due diligence will automatically take place. While all such measures are quite good, the Working Group observes that Atradius DSB employees are not under any specific legal obligation to report instances of foreign bribery to investigative authorities. Also it notes that there are no sanctions for such employees failing to report cases of bribery.

It is pointed out that Atradius DSB does not perceive itself as an investigative agency and that it therefore does not investigate irregularities or suspicions of a criminal offence. In case of suspicions it will not report to legal authorities, but only to

the Ministry of Finance, who will decide whether or not to notify investigative authorities. The examiners of the Working Group recommend that efforts to detect bribery may be enhanced through improved information exchange on suspicions of bribery between Atradius DSB, the Ministry of Finance and Dutch missions in the countries where the companies operate with official export credit support.

NLNG plus (Nigeria)

Nigeria Liquefied Natural Gas Limited (NLNG) is a joint venture company owned by the Nigerian National Petroleum Corporation (49%), Shell (25.6%), Total LNG Nigeria Limited (15%) and ENI (10.4%). This company is operating a huge natural gas processing and shipment plant at Bonny Island, generally referred to as the largest foreign direct investment in Sub-Saharan Africa. NLNG plus was a project involving the expansion of the facilities with two extra units, generally referred to as trains. The total cost of this specific project is estimated at US\$ 2.1 billion. International bank loans for the project have been supported by Export Credit Agency (ECA) guarantees or insurances totalling US\$ 620 million with an eight-year maturity period. Atradius DSB provided cover for an amount of US\$ 125 million.

While the project is said to help reduce the problem of gas flaring in Nigeria's oil sector, the project has serious local and regional environmental impacts. The project has also been tainted by allegations of corruption by sub-contractors. To win substantial amounts of work from NLNG, including in the NLNG plus project, the American company Halliburton is said to have paid US\$ 170 million in bribes. In the United Kingdom, the Serious Fraud Office (SFO) launched investigations²⁴, while in France and the USA corruption allegations have been under scrutiny. Although Atradius DSB carries responsibility for this project, it is unknown whether official legal investigations have been launched from the Netherlands. ■

²⁰See: http://www.oecd.org/about/0,2337,en_2649_34859_1_1_1_1_1,00.html

²¹See: http://www.oecd.org/topic/0,2686,en_2649_34177_1_1_1_1_37431,00.html

²²Credible evidence is defined as evidence of a quality, which, after critical analysis, a court would find to be reasonable and sufficient grounds upon which to base a decision on the issue if not contrary evidence were submitted.

²³See: <http://www.oecd.org/data-oecd/14/49/36993012.pdf>

²⁴The Financial Times, August 7, 2006.

2.4

DEBT AND ECONOMIC SUSTAINABILITY

The support of an ECA means that a company exporting or investing abroad is insured against commercial and political risks involved in the transaction. In case the counterpart in the host country does not pay up, the ECA is required to compensate the company under the insurance scheme. In exchange, and on behalf of the government, the ECA takes over the claim against the counterpart buyer. In this way, the result of ECA support is that a private risk of a company may well become a public sector claim.

After a company has been compensated, the ECA will try to recover payment from the host country. A typical

feature is that the support of an ECA for an export or investment deal regularly includes a so-called sovereign counter guarantee from the host government, pledging payment in case of default by a buyer in that country. ECAs have specific debt collection departments that hold substantial leverage over governments of developing countries to negotiate and enforce repayment schemes for export credit debt. In the case of the Netherlands, Atradius Provenuen B.V. seems to be specifically established for this purpose. ECAs are thus able to shift the original private risk of a company to the governments of many developing countries. That is how ECAs have generated a substantial part of the total external official debt of developing countries. >

> As summarised in the table below, in 2002 some 34% of all external public debt of aid receiving (developing) countries originated from export credit support.

EXTERNAL PUBLIC DEBT STATISTICS 2002 (US\$ MILLIONS)	
Aid recipients (world wide)	
Multilateral	489,738 (46%)
Bilateral	206,477 (20%)
Export Credits	368,503 (34%)
Total	1,064,718 (100%)

Source: External Debt Statistics 1998-2002, ISBN 92-64-10621-9, OECD 2004

Most export credit debts are defaults from many years ago. In general, it is hard to obtain concrete data about ECA-supported projects that defaulted in the past, and thus have contributed to the export credit debt of a country. In the Netherlands, Both ENDS tried to obtain a list of such projects, but its request under the Dutch public information disclosure act was rejected in court. Because the government promised companies confidentiality in the past, the court ruled that it couldn't change this in retrospect.

Despite the fact that companies expressed approval of ex post publishing of summary data on individual export credit-supported transactions²⁵, much of the data remains confidential. Following the request of Both ENDS, the Dutch government decided to disclose (as of the 1st of July 2002) limited project information for new ECA backed projects. This policy, however, is not applied to projects approved before that date. It is too early to review eventual defaults amongst the ECA-supported transactions that were approved in the last four years.

Due to the lack of information on project data it is quite impossible to draw project-specific conclusions on the export credit debt accumulated from the past. One may safely assume, however, that most export credit debt originates from 15-30 years back. Thus, the amounts of debt increased tremendously due to interest accrual and fines for arrears. In light of the scale of the export credit debt problems of many countries, both the cancellation of this debt, as well as the introduction of measures to prevent new export credit debt, has become a matter of priority.

All export credit debt is classified as bilateral debt. Countries that cannot pay their bilateral debt and wish to obtain rescheduling and cancellation are forced to negotiate such arrangements with the Paris Club, which is an informal club of 19 creditor countries. In line with their responsibility for debt collection, representatives of ECAs are normally part of the delegations of creditor countries to such negotiations. Any heavily indebted country that needs a way out for its persistent bilateral debt problems is forced to negotiate such a solution with the Paris Club members. It is common practice that such negotiations take place behind closed doors. Obviously, all ECAs will do their utmost to ensure that indebted countries pay in full. They have substantial leverage to do so; for example, by blocking new exports and investments to indebted countries. Any settlement in the Paris Club, therefore, is the result of extensive political wheeling and dealing.

Most rescheduling agreements include a partial cancellation of the unpayable debt, while the repayment terms for the remaining debt will be revised. Any cancellation of export credit debt will ultimately be booked by the ECA as an expense. Such 'expenses' are the only damages or

losses that ECAs incur. According to the requirements of the OECD Arrangement, these 'expenses' should, in the long run and in combination with the operation costs of ECAs, be covered by the premiums and arrear payments that they receive. Unfortunately, there is no standard accounting and reporting mechanism to verify and ensure that ECAs comply with this requirement²⁶. What's more, contrary to standard corporate accounting practice, they usually only monitor the net cash costs and benefits, not the full financial and operating costs.

With the exception of Norway, all creditor countries are reporting the cancellation of export credit debt as Official Development Assistance (ODA) because the Development Assistance Committee (DAC) of the OECD is allowing them to do so. Although debt cancellation may be beneficial to development efforts of countries in the South, the original export credit support that led to massive export credit debt was only provided to back up the companies of industrialised countries. The practice of reporting the cancellation of export credit debt as ODA, allows ECAs to evade their responsibility by avoiding covering the bill for the damages and losses they incurred.

Iraq and Nigeria

In recent years (2004 & 2005) these two important oil-producing countries concluded significant debt cancellation agreements with the Paris Club. The debts of both countries were mostly export credit debts originating from non-payments by dictatorial regimes (Saddam Hussain and General Abacha respectively). In the case of Iraq, the total debt to the Paris Club was estimated to be about US\$ 37 billion, and in the case of Nigeria some US\$ 30 billion. While Iraq was offered a cancellation of 80% (US\$ 30 billion), Nigeria was forced to accept a cancellation of only 60% (US\$ 18 billion). Iraq is left with a rescheduled debt of about US\$ 7 billion, while Nigeria had to pay its remaining debt of US\$ 12 billion upfront to its creditors.

For these countries alone, a total amount of US\$ 48 billion of export credit debt was cancelled. International agreements would require that this amount of damages for ECAs should be paid from premiums and arrear payments these agencies received in the past. However, nearly all these damages are reported as ODA contributions. The total annual ODA expenses of all OECD countries amount to about US\$ 80 billion. Hence, the export credit debt cancellations for Iraq and Nigeria contributed to a huge inflation of the aid budgets of industrialized countries. ■

²⁵ cf. Eindrapport Werkgroep Transparantie van de Rijkscommissie voor export-, import- en investeringsgaranties, December 2001, Ministry of Finance, EKI 2001-744

²⁶ The Dutch Minister of Finance wrote in early January to the Dutch Parliament, saying that no international agreements have been made about the way in which the break-even requirement of the export credit facility is calculated, nor about the way in which interest costs are assessed (Kamerstuk 2005-2006, 30300 V, nr. 99, Tweede Kamer).

2.5

HUMAN AND SOCIAL RIGHTS

In general, ECAs are aware that the projects and export transactions they support may have other, negative, sustainable-development related effects in addition to the purely environmental impacts. Issues such as the impact on involuntary resettlement, indigenous peoples and cultural property have been included in the general category of environmental impacts in the Common Approaches. The prevention and mitigation of such adverse impacts by ECAs is thus encouraged to be part of the environmental screening of projects.

Nevertheless, ECAs tend to perceive only a limited role for themselves in the field of the protection of human and social rights. Often it is stressed that such issues are a primary responsibility of host governments.

ECAs thus warn that they should stay away from interfering in policies and regulations regarding human and social rights of host countries. Also, ECAs regularly signal that their business is to support domestic corporations, not to police them. In all such cases, negative impacts on human and social rights are not considered to be serious risks for the business of the ECAs or their clients.

Such a position has been receiving quite a lot of criticism. Over the course of the years ECAs have, for example, provided support to many projects that resulted in involuntary resettlement of many thousands of people, leaving them without access to the natural resources they depended on for their livelihood. Often the support of ECAs has been a decisive factor to make sure that such projects went ahead. While it is true that governments have the primary >

> responsibility to promote and ensure respect and protection of human rights, the UN established that companies also have a responsibility to promote and secure the human rights set forth in the Universal Declaration of Human Rights²⁷. In such a context it is hard to understand how ECAs would not bear responsibility for the social and human rights impacts of the transactions they support.

The awareness that ECAs function as public institutions, and cannot be exempted from the legal obligations of the state they are representing, has grown over time. In this frame of thought, ECAs are obliged to pay attention to the protection of human and social rights. While governments have the public responsibility to promote human and social rights, it is a matter of policy coherence that ECAs also try to contribute, and try to ensure that they do not undermine such policy objectives. ECAs, therefore, should ensure that they introduce safeguard policies which explicitly address issues of human and social rights.

Many ECAs take some sort of middle position. They do not formulate explicit responsibilities for themselves, but rather stress the importance of the companies they support to comply with principles of corporate social responsibility (CSR). These ECAs may put, as a condition for their support, that companies make reference to the OECD Guidelines for Multinational Enterprises. They see it as part of their job to encourage these business principles amongst their clients, but they do not insist on them being complied with.

The Dutch ECA takes a similar position. Applicants of Dutch ECA support are required to declare that they are familiar with the OECD Guidelines, and that they will apply these Guidelines in their business

operations to the best of their ability. In case of investment insurance, applicants are also required to confirm that child labour or forced labour did not happen. No limitations to the right of association of workers, and the right to collective bargaining, should have occurred. Doubts about the commitment to fundamental labour norms²⁸ may serve as a ground for rejecting the application of support. So far, no evidence of such rejections actually happening has emerged, and no information on eventual screening activities of impacts on social and human rights is available. ■

2.6

CONSULTATION AND PARTICIPATION

Sustainable development requires the involvement of all relevant stakeholders. The Rio Declaration on Environment and Development (UNCED, 1992) stated that:

“Environmental issues are best handled with participation of all concerned citizens,.....” (Art 10)²⁹.

Sustainable development is about the interactions between the public and public authorities in a democratic context, and it is about the relationship between people and governments. Both governments and the private sector increasingly recognise that development projects require active support of those people that are directly affected. In the absence of such support, development projects are likely to fail in their goals, generating social conflict, undermining livelihoods and leaving the poor poorer. Consultations with, and participation of, project-affected communities, therefore, are important requirements to reduce the risk of failure of projects and activities supported by ECAs.

Consultation and participation are about the reduction of political, reputational as well as financial risks in projects. Effective consultation is not just about informing potentially affected people. It aims to involve those people in the planning of projects, in its implementation, its management, its monitoring and its evaluation. There is an emerging consensus that affected communities should be recognised as rights holders, whose consent for projects and programmes that directly impact upon their lives and livelihoods must be obtained through negotiated,

legally-binding agreements in which communities are able to secure outcomes that are acceptable to them³⁰.

Many development agencies and multilateral development banks have explicit policies to promote the involvement of civil society in one form or another in project planning and implementation. The social and environmental safeguard policies of the World Bank require project developers to consult with affected communities and to encourage their participation³¹. In addition, the International Finance Corporation (IFC), the private sector arm of the World Bank, expects its clients to engage with affected communities through disclosure of relevant project information, consultation and informed participation³². In cases affecting indigenous people, the IFC is expecting its clients to foster good faith negotiations with, and informed participation of, indigenous peoples when projects are to be located on their traditional or customary lands³³.

Some 40 major privately owned commercial banks have signed on to the Equator Principles, a benchmark for the financial services industry to manage social and environmental issues in project finance. In their endorsement of the Equator Principles, they commit to follow the performance standards of the IFC, including the commitment to free, prior and informed consultation and the facilitation of informed participation of project-affected communities³⁴.

Unlike all these institutions, most ECAs do not yet have much reference to these issues in their policies. The Common Approaches do not mention the issue of "participation". With regard to affected communities, the word "consultation" is only brought up in the requirement of applicants for ECA-support having to report on the views of affected people in the

context of the environmental screening of projects. This falls well short of the requirement to facilitate participation, negotiation and free, prior and informed consent.

It is a requirement in the Common Approaches that the ECG and its members have an exchange of views on its substance with appropriate stakeholders on a regular basis³⁵. Unfortunately, these meetings have hardly been an exchange of views, but rather a place where stakeholders are expected to talk, whilst ECA representatives only listen. Proper consultation and participation procedures would likely result in the reduction of risks, and therefore should be considered key activities for ECAs. Hence, it would be recommendable that ECAs leave consultations with project affected communities not just to their clients, but rather would take on themselves a joint responsibility with their clients for full consultations to materialise in processes of participation, negotiation and free, prior and informed consent. Regular and publicly transparent reporting on the experiences in this field would contribute to enhancing a meaningful level playing field.

²⁷ Recognised in the Resolution on "Responsibilities of transnational corporations and other business enterprises with regard to human rights", adopted in the year 2003 in the Sub-Commission on the Promotion and Protection of Human Rights of the United Nations, E/CN.4/Sub.2/2003/12/Rev.1

²⁸ This refers to labour norms mentioned in the 1997 Declaration of the International Labour Organisation (ILO).

²⁹ See: <http://www.unep.org/>

³⁰ ECAs and the Licence to Finance: Consultation, Participation and the OECD's Recommendation on Common Approaches, 2006, The Corner House / ECA Watch.

³¹ The World Bank policy on indigenous peoples - OP/BP 4.10, Indigenous Peoples - underscores the need for Borrowers and Bank staff to identify indigenous peoples, consult with them, ensure that they participate in, and benefit from Bank-funded operations in a culturally appropriate way - and that adverse impacts on them are avoided, or where not feasible, minimized or mitigated.

³² Policy on Environmental and Social Sustainability, section 3, paragraph 10.

³³ Performance Standard 7 (Indigenous Peoples), objectives, para. 2.

³⁴ See Equator Principles, Principle 5: Consultation and Disclosure.

³⁵ See OECD-Dokument TD/ECG(2005)3, para. 17.

Local voices: Sakhalin Environment Watch on Sakhalin II (Russia)

Since 1994, Shell has been spearheading an oil and gas extraction project in Sakhalin Island, a far eastern Russian territory. This development will affect the world's last 100 or so western Pacific grey whales; it will destroy the marine environment; and it will threaten the livelihood of tens of thousands of fishermen.

Currently Shell, together with Mitsubishi, Mitsui and, recently, Gazprom, are expanding their environmental and social destruction of Sakhalin Island, with further potential support from international financial institutions and ECAs. They have started to build two pipelines in one of the most seismic regions in the world. They will destroy the key salmon fishing area off the island by dumping one million tons of waste into the sea. The permanent threat of a large oil spill in the Okhotsk and Japanese seas will be ensured by Shell's development. And, as has recently been discovered, the project's construction, involving a very large influx of foreign male workers to the island, is generating a harrowing rise in prostitution, HIV/AIDS and violence against women.

For this project Shell, together with Mitsui and Mitsubishi, established Sakhalin Energy Investment Company LTD, registered on Bermuda Island. In 1998 Shell embarked on the construction of the first phase of the Sakhalin II project, with financial support from the European Bank for Reconstruction and Development (EBRD) and the Japanese and US Export Credit Agencies. Not only was the Environmental Impact Assessment flawed, the company also failed to respect Russian legislation and refused to release environmental information. Since the construction of the platform there have been reports of a reduction in saffron cod fishing that is especially important for the island's indigenous communities.

Now the company is expanding its operation. They are constructing two new oil and gas platforms in the north of Sakhalin; two 800 km oil and gas pipelines running through the whole island; a Liquid Natural Gas production plant together with an oil and LNG terminal in Aniva Bay. The company is now negotiating with the EBRD, US Ex-Im Bank and the Japanese Bank for International Cooperation (JBIC) to secure the loan for the second phase. As the company so far refuses to have any meaningful dialogue with affected people about the need for changes in the project, there is increasing frustration across the island and many people are calling for the project to be stopped completely until required changes are implemented properly. So far the only change from the original plan was the rerouting of the undersea pipe-line to avoid the grey whale feeding ground. ■

Source: <http://www.sakhalin.environment.ru/en/>

2.7

MONITORING AND COMPLIANCE

To avoid negative impacts on sustainable development, it is important that ECAs have good policies on all of the above issues. Such policies obtain their true value only by them being fully implemented. For that purpose it is recommended that each ECA makes its own operational policies, clarifying how it will take all concerns relevant to sustainable development into account. Such operational policies provide guidance to the staff of ECAs to diminish undesirable negative impacts. By making these operational policies available to the public, ECAs would enhance their accountability as public institutions.

Operational policies provide reference for a systematic monitoring and evaluation of the performance of ECAs. Most multilateral financial institutions have substantial experience in this field and could serve as a source of inspiration to ECAs. Regular monitoring and evaluation allows lessons to be learned from past experiences. The public disclosure of evaluation reports will provide ECAs with a welcome opportunity to improve their oversight by political authorities and their reputation with the public at large. The results of evaluations will present welcome input to policy adjustments and enhanced performance targets.

Operational policies at an ECA are essential to improve accountability to project-affected communities as well. Affected communities are to be provided with an opportunity to file complaints to an ECA in formal complaint procedures. Some ECAs³⁶ already have a complaint mechanism, but all ECAs ought to follow this example. Complaint mechanisms for project-

affected communities ensure that experiences from eventual ineffective consultation efforts can be taken on board, and likely mistakes corrected.

In addition to complaint mechanisms, accountability mechanisms will greatly enhance the public governance of ECAs. In those cases where project-affected communities feel that their complaints do not result in improvements that mitigate their complaints, they have to be able to file formal allegations asserting how these complaints originate from ECAs not complying with their own operational policies. To enable compliance

investigations to be conducted in a satisfactory manner, ECAs are recommended to establish formal accountability mechanisms³⁷. Under such a mechanism the experts to investigate non-compliance complaints are to be independent of the management of the ECA. The mandate of these experts would be to establish actual non-compliance of the ECA with its operational policies, to establish the damages resulting thereof, and to issue recommendations for mitigation measures. To ensure its independence and credibility, the accountability mechanism has to report to the supervisory board of the ECA. ■

³⁶For example, the Japanese ECA (JBIC) or the Canadian Export Development Canada (EDC).

³⁷A good example of an accountability mechanism is the Compliance Review Panel of the Asian Development Bank, cf. <http://www.compliance.adb.org/>

³⁸Letter of Deputy Minister of Economic Affairs to the Dutch Parliament, 4 May 2001, BEB?BHI/FIB 01019100.

3

SUSTAINABLE DEVELOPMENT AND EXPORT CREDIT POLICIES IN THE NETHERLANDS

After the OECD adopted the Guidelines for Multinational Enterprises in 2000, the Dutch government announced in May 2001 in a letter to Parliament the introduction of corporate social responsibility (CSR) concerns in its financial instruments to support Dutch companies doing business abroad³⁸. As the export credit facility is one of the leading financial instruments, this letter, describing the fundamental policy principles of the Dutch government, also applied to the export credit facility. Until today, these principles are determining the scope of the export credit policies and sustainable development.

The fundamental assumption underlying all policy innovations is that the business sector has to regulate itself. However, in foreign markets, especially in developing countries, it is noted that self-regulation does not suffice. The government aims to complement this deficiency by focusing its CSR requirements specifically on official support to business transactions in these countries. The policy principles require a corporate client to declare, in writing, that they are

familiar with the OECD Guidelines for Multinational Enterprises, and to apply these Guidelines in their business operations to the best of their ability. Each request for support will be screened on aspects of corruption, on environmental impacts, and on social conditions. Space is left for differentiation in applying such screens, depending on issues like: >

>

- 1 Leverage for policy influence, relating to the level of government involvement
- 2 Level of international competition (presence of level playing field)
- 3 Proportionality (administrative burden for companies in relation to total cost of project)

What these differences in the application of the said screens mean in reality, is not elaborated upon.

After 2001, the following specific screening requirements for export credit support were introduced:

- Corruption: Denial of support in case of suspicion of involvement in corruption due to too high commissions
- Environment: Promotion and implementation of OECD Common Approaches, introduction of environmental screening, and refusal of cover in case of high negative environmental impacts

Surprisingly, no screening on social conditions was introduced for export credit support. It was noted that exporters have “no formal responsibility” after their goods are sold. Though a responsibility is acknowledged in case of support for investments abroad, in the case of guarantees or insurances, no screening on ILO norms has been introduced. The 2001 introduction letter announced the presentation at a later stage of explicit screening criteria for social issues. Currently, the website of Atradius states that in cases of investment insurance, applicants are required to confirm in the application form that child labour and forced labour did not happen, and also the rights of association and collective bargaining of workers have not been limited. Another relevant norm in this field is that in the case of international sanctions against specific countries on the ground of violations

of human rights, transactions in such countries would be denied any export credit support.

The government deliberately did not assume a responsibility for the monitoring of, and compliance to, the policy requirements it announced. These responsibilities were given to the implementing agencies; in other words, in the case of export credit support to Atradius DSB.

Since the adoption of the OECD Common Approaches in 2003, the policies of Atradius further evolved on some details. The implementation of the Common Approaches is explained in a specific brochure of Atradius DSB, which is available on its website. Similarly, a screening form is published. Both documents are available in Dutch and English³⁹. Atradius DSB does the appraisal on the basis of information the applicant provides in the special screening form for environmental impacts. Environmental analysis of Atradius DSB is done parallel to the financial screening of the projects in order to avoid delays in overall project appraisal. A conditional promise of cover may be provided before the finalisation of the environmental analysis, but the issuing of a policy is not possible without the completion of the environmental screening.

Currently, the export credit facility of the Netherlands features the following measures relating to sustainable development:

1 OECD Guidelines for Multinational Corporations:

Applicants have to state in the application form that they are familiar with the OECD Guidelines and that they will apply these to the best of their ability.

2 Corruption:

Applicants have to provide data on the amounts paid for commission

to obtain the contract for the transaction, and they have to state in the application form that they are not involved in bribery while obtaining the contract. In case of corruption, policyholders will not be entitled to make claims under the insurance.

3 Environment:

All applications with a value exceeding € 10 million are required to fill out a form detailing environmental information of the transaction. Exemptions from this requirement are provided for:

- All applications below € 10 million (unless environmental impacts are obvious)
- All transactions that obtain a contribution from ODA sources, as the Netherlands Development Finance Company (FMO) providing the ODA support will already make an assessment of environmental impacts
- All military transactions
- All transactions involving aeroplanes
- All requests for exchange rate cover
- All requests for guarantee cover

All applications that included a filled out environmental information form will be appraised. The majority of applications are categorised as either Cat. A, Cat. B, or Cat. C, while several applications do not get a categorisation at all. For a Cat. B classification, an additional Environmental Impact Statement (EIS) will be requested from the applicant. Such an EIS needs to describe the environmental impacts, as well as the mitigation measures taken. In case of a Cat. A classification, a detailed Environmental Impact Assessment (EIA) will be requested. In such cases, the environmental information, or a summary thereof, will be made available to the public during a period of 30 days ex ante to the issuing of the insurance policy. In summary, with regard to environmental impacts, 5 categories

of ECA-supported transactions are distinguished:

- 1 Exempted from environmental screening
- 2 Environmentally screened, but no categorization
- 3 Cat. C (limited environmental impacts)
- 4 Cat. B (substantial environmental impacts)
- 5 Cat. A (major adverse environmental impacts)

The decisive question to categorise applications is whether balancing positive and negative factors results in the assessment of a negative environmental impact. The factors that Atradius DSB looks at are:

- Sector
- Location
- Technology applied
- Use of natural resources
- Energy consumption
- Emission of waste (air, water, soil)
- Management of waste flows
- Impacts on flora and fauna
- Resettlement
- Indigenous peoples
- Cultural heritage

N.B. The key aspects of Atradius DSB policies on the environment are explained in a special brochure, available on the Atradius DSB website.

4 Transparency:

Since 1 July 2002, Atradius DSB has published the following data on individual transactions, 30 days after insurance policies are issued:

- Country
- Name of exporter
- Investor or financier
- Name of buyer
- Name of eventual guarantor
- Description of transaction
- Maximum cover or investment amount
- Result of environmental screening
- Eventual additional ODA financing

All information is published on the website of Atradius DSB. ■

³⁹ See downloads on: <http://atradius.com/nl/dutchstatebusiness/overheid/milieu/> or <http://atradius.com/nl/en/dutchstate-business/government/milieu/>

4

RECOMMENDATIONS FOR ATRADIUS DSB TO AVOID NEGATIVE IMPACTS ON SUSTAINABLE DEVELOPMENT

From the overview of measures of Atradius DSB in relation to aspects of sustainable development, one may conclude that the Dutch export credit facility is in tune with the recommendations of the OECD Common Approaches. In other words, it is in harmony with the international standards of ECAs.

In reality, the record of most ECAs falls well short of the safeguard policies of most other international financial institutions. The Netherlands could make significant improvements in its policies to enhance the sustainable development impacts of ECA-supported transactions.

Recommendations:

- Atradius DSB formulates an overall sustainable development policy that contains quantified policy targets and outputs
- Atradius DSB produces an annual sustainability report that complements its annual report ■

4.1

INFORMATION DISCLOSURE AND TRANSPARENCY

Atradius DSB publishes limited information on individual transactions 30 days after issuing a policy. Also in the case of Cat. A projects, environmental information, or a summary thereof, is made available to the public during a period of 30 days ex ante to the issuance of the insurance policy. The website of Atradius DSB also provides the main points of its policies regarding CSR and environment. The release of this information seems to be mainly inspired by international agreements within the context of the OECD Common Approaches.

So far, this information is only available in the Dutch language. This is in contrast to many other sections of the

website of Atradius DSB, which are available in English. Access to information is essential to enable all relevant stakeholders in processes of sustainable development to participate in decision making. In addition, access to information is critical for developing access to justice on issues of contention.

The OECD Common Approaches also require ECAs to, at least once per year, make available to the public information on projects that have been classified as environmentally sensitive. Apart from a few general sentences in its Annual Review, Atradius DSB does not make further information on environmentally sensitive projects available. Information on the monitoring and/or evaluation of the impacts of supported transactions is lacking.

Recommendations:

- Atradius DSB formulates an Information Disclosure Policy, which clarifies what information Atradius DSB will make available to the public. It should explain what kind of information Atradius DSB is keeping, and why specific information is either disclosed or not. For information that may be disclosed, it should indicate what information will be disclosed automatically on its website, and what information may be made available upon request only.
- Atradius DSB makes sure that stakeholders of the activities it supports abroad have access to its information. For that reason, all information relevant to sustainable development should be made available in appropriate (local) languages. ■

4.2

ENVIRONMENT

The policies of Atradius DSB regarding the environmental impacts of supported transactions are in line with the internationally agreed OECD Common Approaches. Since February 2005, additional requirements regarding access to environmental information following the Aarhus Convention are in force. Atradius DSB did not yet indicate what this implies for its obligations on the publishing of environmental information that it keeps. Under the Aarhus Convention there is a clear case for the publication of all information relating to the environmental screening of projects. So far, Atradius DSB does not screen the environmental impacts of transactions that request an exchange rate cover or a guarantee cover. It is hard to understand why such transactions should continue to be exempted. Also, it is unfortunate that Atradius does not specify how it exactly decides when adverse environmental impacts are absent, limited, substantial or major. The distinction of these categories determines the categorisation of transactions, and therefore the kind of environmental information that is requested from applicants.

Recommendations:

- Atradius DSB provides an overview of the environmental information that it keeps and indicates which information it may share with the public.
- Atradius DSB publishes the detailed procedures that determine the qualification of adverse environmental impacts and describes the indicators used for this.
- Atradius DSB decides that it will apply the environmental screening process for the complete project that the transaction for which support has been requested may be part of.
- Atradius DSB screens adverse environmental impacts of all transactions it receives applications for. ■

4.3

BRIBERY AND CORRUPTION

The policies of the Dutch export credit facility on issues of bribery and corruption are quite good, and better than those of most other ECAs. Atradius DSB requires details on commission eventually paid to obtain the contract for which export credit support is requested. Enhanced due diligence will automatically happen in all cases where the amount of commission reportedly paid for the contract exceeds 5% of the contract price or an amount of € 4,538,000. However, it is noted that in the case of suspicions of bribery, Atradius DSB employees are not required to report such instances to investigative authorities. Since Atradius DSB does not consider itself an investigating agency, cases of suspicions are only reported to the Ministry of Finance. No cases of investigation have become public. While the policies on bribery and corruption are good, their implementation might be strengthened.

Recommendations:

- Atradius DSB makes it a matter of policy that any suspicion of bribery is reported to relevant investigative authorities in the justice department.
- Atradius DSB announces any referral of cases of suspected bribery to the public at large in a press release.
- Atradius DSB annually reports on the results of enhanced due diligence investigations. ■

4.4

DEBT AND ECONOMIC SUSTAINABILITY

Persistent debt problems are a major obstacle for the sustainable development of many developing countries. A substantial part of the bilateral debt of developing countries originates from the default of export credit supported business transactions. The cancellation and prevention of such export credit debt is in the interest of developing countries. On the other hand, it is in the interest of the Dutch export credit facility – like any other ECA – to recover all claims, and to provide cover for as many new transactions as possible. In that way there is need for a fair balance between these sometimes opposing interests.

Recommendations:

- Atradius DSB introduces a transparent accounting mechanism that shows its compliance to the international break-even requirement, according to which income from premiums, interest and recoveries in the long run balance the costs and losses of the export credit facility.
- To avoid the cancellation of export credit debt to be paid from the ODA budget of the government, Atradius DSB reserves its income to account for future losses due to agreements to cancel bilateral debt.
- Atradius DSB formulates a transparent policy that balances the (increasing) demand for export credit support against the interest of developing countries to avoid building up new unpayable debts.
- Atradius DSB clarifies the role and function of its debt collection department and annually reports on the performance of Atradius Provenuen B.V. ■

4.5

HUMAN AND SOCIAL RIGHTS

Atradius DSB does not screen the social conditions in transactions for which export credit support is requested. Though in 2001 screening criteria for social issues were announced, such criteria were never introduced. Atradius DSB requires applicants to state that they are familiar with and will implement the OECD Guidelines on Multinational Enterprises to the best of their ability. Applicants for investment insurances also need to state in the application form that child labour and forced labour did not happen, and that no limitations have been imposed on the rights of workers to organise themselves and to engage in collective bargaining. International sanctions against specific countries for reason of structural violations of human rights will be followed. In addition, social issues mentioned in the OECD Common Approaches, such as impacts on involuntary resettlement, indigenous peoples and cultural property are taken into account. Though it is good that applicants have to respond to some questions on social issues, it would be better for Atradius to introduce a review of a social impact assessment to be submitted by the applicants. Such a review would complement the environmental screening process.

Recommendations:

- Atradius DSB develops a screening procedure for all social issues in which all its screening criteria are clarified.
- Atradius DSB annually reports on the results of the social screening procedures. ■

4.6

CONSULTATION AND PARTICIPATION

Atradius DSB has no policies regarding consultation and participation, despite these issues being critical aspects of sustainable development. Occasionally, consultations are organised with CSOs in the Netherlands, but these are not a structural element of the policy development process of the Dutch export credit facility itself. Atradius DSB does not require its applicants to consult with local stakeholders regarding eventual impacts of the planned transaction. Atradius DSB itself also does not include consultations with local stakeholders as regular part of its review activities.

Recommendations:

- Atradius DSB formulates a consultation and participation policy that facilitates access to decision-making for all relevant stakeholders.
- Atradius DSB requires applicants to report on consultations with local stakeholders in all transactions requiring an environmental appraisal.
- Atradius DSB promotes applicants to explore possibilities to negotiate legally binding agreements with affected communities.
- Atradius DSB includes stakeholder consultations as part of its monitoring and evaluation activities of supported projects. ■

4.7

MONITORING AND COMPLIANCE

Contrary to its mother company, Atradius DSB does not publish an annual report. It only publishes an annual review, which is available at its website. Atradius DSB does not publish monitoring and/or evaluation reports. Atradius DSB has no mechanism through which project-affected people could file complaints about transactions it supported.

Recommendations:

- Atradius DSB publishes annual reports in which it reports on its performance, both in terms of finances as well as in terms of impacts on sustainable development dimensions.
- Atradius DSB introduces and presents a manual describing all its operational policies.
- Atradius DSB annually presents an overview of its monitoring and/or evaluation reports on the impacts of supported transactions.
- Atradius DSB initiates a complaint mechanism for people affected by supported transactions.
- Atradius DSB introduces an accountability mechanism to address claims of project-affected communities of non-compliance with its operational policies. ■



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