



**COUNCIL OF
THE EUROPEAN UNION**

**Brussels, 5 November 2013
(OR. en)**

15691/13

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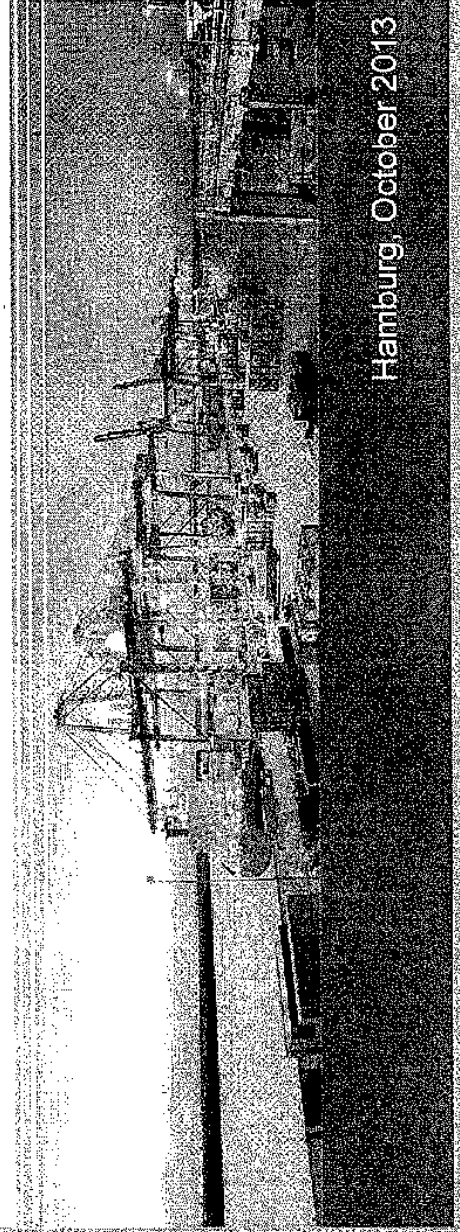
NOTE

From: The German delegation
To: The Export Credits Group
Subject: Questionnaire on Export Credits and Transparency
- an Analysis of the Answers by EU CWG members

Delegations will find in the Annex the presentation "Questionnaire on Export Credits and Transparency - An Analysis of the Answers by EU CWG members".

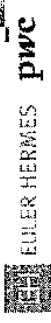
EXPORT CREDIT GUARANTEES OF THE
FEDERAL REPUBLIC OF GERMANY
Hermes Cover

Questionnaire on Export Credits and Transparency- An Analysis of the Answers by EU CWG members



Hamburg, October 2013

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Overview

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I. Background and Scope of Survey

Background

- Gain a better understanding of the discussion around Open Government in EU-member states and Export Credit Agencies
- Share perceived points of views of stakeholders in the context of Open Government
- Establish a broad basis of information for future decision-taking

Scope

- Questionnaire sent to members of EU Working Group on Export Credits
- 21 responses were received and analyzed by end of September 2013 (Euler Hermes, EKF, CESCE, EGAP, Eximbanka SR, Coface, SID Bank, Finnvera, ECIO, MEHIB, ODL, KUKE, COSEC, EKN, SEK, SACE, SIMEST, UKEF, EximBank Romania, ONDD, OeKB)

II. Analysis (1/11)

1. Which EU- and national legislation on public access to information (freedom of information acts) is relevant to your ECA? (1/2)

- Member States (MS) have translated or are in the process of implementing (Luxembourg, Spain) the following EU Directives into their national legislation:
 - Directive of the European Parliament and of the Council 2003/98/EC of 17th November 2003 on the Re-Use of Public Sector Information
 - Directive of the European Parliament and of the Council 2003/4/EC of 28th January 2003 on Public Access to Environmental Information (“The Aarhus Convention”)
- Many MS report to have a national Freedom of Information-Act or other legislation on access to public information in place.

II. Analysis (2/11)

1. *Which EU- and national legislation on public access to information (freedom of information acts) is relevant to your ECA? (2/2)*

- ECA organized as commercial entities (EGAP, Coface, SEK, Sace, EH, OeKB) are not (directly) subject to legislation on public access to information. However, the MS' guarding authorities are in charge of dealing with information requests.
- EKF's business activities are currently explicitly exempted from the Danish Public Administration Files Act.
- In the context of transparency legislation most MS also refer to privacy, banking and commercial confidentiality exemptions as well as restrictions relating to the protection of foreign relations.

II. Analysis (3/11)

2. What type of procedures/mechanisms did your ECA establish to meet the requirements of this legislation?

- Some ECA (EGAP, Coface, ECIO, ODL, SEK, MEHIB, SID Bank, SIMEST) do not have specific guidelines as they are either not affected by transparency regulations or only receive few requests. These ECA mainly deal with requests on a case-by-case basis.
- Some ECA approved internal procedures, guidelines or policies to ensure compliance with legislation.
- SACE reports that the following organizational units play a role: compliance unit, CSR unit, environmental unit and internal audit unit.
- UKEF staffed a full time freedom of information officer and two part time information officer posts. It also set up a centralised email contact for transparency matters.
- At Euler Hermes trained lawyers in the sustainability department deal with information requests, though the government body to respond to these requests is the Federal Ministry of Economics and Technology.
- ONDD centralises requests with its Secretary-General.

II. Analysis (4/11)

3. *What information requests does your ECA face? Is there a specific interest for certain aspects, e.g. sectors, applicants, foreign buyers, sustainability issues? (1/2)*

- The majority of the requests received by ECA deal with sustainability issues (human rights, CSR aspects, environmental and social due diligence processes, coherence with national laws) and corruption/bribery.
- Many requests aim at statistical information regarding export credit support (i.e. claims paid for) and country cover policies.
- Fewer ECA are requested to release public procurement contracts and procedures, staff costs and expenditures and the ECA's financial data in general.
- Sectors of special interests are defense/military equipment, (nuclear) energy, pulp and paper, infrastructure, animal welfare, shipbuilding and surveillance technology.

II. Analysis (5/11)

3. *What information requests does your ECA face? Is there a specific interest for certain aspects, e.g. sectors, applicants, foreign buyers, sustainability issues? (2/2)*

- Few ECA are requested to reveal applicants' and buyers' names and other details on specific transactions.
- Some ECA only face few request so that it is not possible to determine a specific area of interest. Finnvera and COSEC point out that they have not faced an increase in requests. EKF reports a decrease of requests since the adoption of an openness policy.



II. Analysis (6/11)

4. *What type of stakeholders enquire information from your ECA?*

- The majority of information requests are submitted by:
 - national and international NGOs (often with environmental focus)
 - Members of Parliament
 - journalists/press/media
- Other stakeholders listed are law enforcement authorities and private individuals (e.g. students, competitors to national exporters, consultants, investors).

5. *Do you have experience with exporters that abuse the law in order to gain access to information on competitors?*

- Only Euler Hermes and EKN report cases of abuse. Both institutions argued with business confidentiality restrictions when responding to these types of information requests.

II. Analysis (7/11)

6. In general: what is your ECA's policy in regard to publishing information on individual transactions and internal decision making processes? Which information does your ECA provide proactively, on demand or not at all? (1/2)

- Most ECA report complying with the transparency requirements outlined in the OECD Common Approaches (Cat A and B projects).
- Some ECA proactively list basic project information of individual transactions over a certain amount (i.e. EUR 10/15 mil.) after final commitment.
- Other information proactively published is:
 - Press releases
 - Openness policies and decision-making guidelines
 - Annual reports on commitments, premium income, insured turnover etc.
 - CSR reports
 - General information

II. Analysis (8/11)

6. In general: what is your ECA's policy in regard to publishing information on individual transactions and internal decision making processes? Which information does your ECA provide proactively, on demand or not at all? (2/2)

- Many ECA only release information on individual transactions on demand and after a case-by-case analysis.
- All ECA report to take into account the confidentiality of commercial or industrial information, international relations and internal proceedings of public authorities.
- According to all ECA, information is only published with prior consent of involved stakeholders (i.e. exporter, buyer).
- Some ECA publish material on how decisions were made (SIMEST, EGAP), others (EH, OEKB) do not provide details on internal procedure. However, it did not become clear what kind of internal files (appraisal process or process of dealing with the requests) were meant.

II. Analysis (9/11)

7. Does your ECA have experience with remedies or legal disputes in this regard?

- Though various ECA report appeals by NGOs and journalists, only Euler Hermes, Finnvera, EKN, ONDD and UKEF have somewhat limited experience with legal disputes.
- In Portugal, an NGO requested a parliamentary commission to intervene at COSEC in order to provide information.
- In Belgium courts decided about the applicability and validity of the following legal exemptions:
 - Confidentiality of commercial or industrial information
 - Confidentiality of international relations
 - Confidentiality of the proceedings of public authorities

II. Analysis (10/11)

8. What challenges does your ECA encounter in complying with the freedom of information legislation? Regarding organizational procedures and processes? Public reputation? Confidentiality issues?

- Many ECA do not report any specific challenges in complying with relevant legislation.
- Public reputation seems to be the biggest concern for ECA.
- Some ECA are aware that national exporters are concerned about the impact of transparency legislations on their international competitiveness.
- So far no ECA seems to have been legally forced to disclose business information that an exporter wanted to keep confidential.
- ECA have adopted different approaches to third party involvement (i.e. with foreign buyers). These may include direct contact with foreign buyers, exporters, or banks, or discussion of confidentiality issues with their buyers/borrowers.

II. Analysis (11/11)

8. What challenges does your ECA encounter in complying with the freedom of information legislation? Regarding organizational procedures and processes? Public reputation? Confidentiality issues?

- Challenges commonly reported are:
 - Understanding requests and defining their scope
 - Lengthy and cumbersome assessment of legal exemptions
 - Meeting time-frames set by legislation
 - Additional workload and time constraints
- Some ECA meet regularly with NGO.

III. Summary of Analysis

Similarities	
▪	All ECA are facing the EU wide trend to freedom of information.
▪	Legal exemptions (i.e. privacy, commercial confidentiality) apply to the information of ECA.
▪	Requests are mainly made by Members of Parliament, NGO and media representatives; mainly on sustainability issues.
▪	Most ECA are hesitant to proactively publish information related to individual transactions beyond the requirements outlined in the OECD Common Approaches.
▪	In the face of FOI legislation, safeguarding public reputation and business confidentiality of contract parties is the ECA's major concern.
▪	The process to respond to information requests is lengthy and cumbersome.

Differences	
▪	Impact of freedom of information movement on ECA varies according to organizational structure and specific legislative provisions for ECA.
▪	Many ECA only have a limited number, others have a high and increasing number of requests. Therefore, ECA's organizational responses to information requests differ. While many ECA deal with requests on an ad hoc basis, others have developed procedures and organizational structures. However, following legal requirements, answers to requests are generally drafted on a case-by-case basis.
▪	The number of ECA reporting attempts to abuse FOI-requests in order to gain access to information on competitors is low. Same applies for ECA that have experience with legal disputes.

IV. Topics for Discussion

- Solving confidentiality issues concerning individual transactions and contract parties. Exchange on experiences and processes.
- Intensified NGO dialogues – an alternative to FOI requests?
- Publishing information proactively – does it lead to increasing or decreasing numbers of information requests?
- Confidentiality of files on how decisions were made – how are ECA dealing with requests targeting this type of documents?