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Implementation of the ECG's Action Statement
of December 2000
on Export Credit Support:
Comments on Best Practices Proposals

Presentation to the ECG
by Michael H. Wiehen

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November 4, 2003

I would like to thank the Working Party on Export Credits and Credit Guarantees of the OECD for once again inviting Transparency International to present its comments and suggestions to this Group.

We very much welcome the proposals contained in the document of October 14, 2003 entitled "Best Practices to Deter and Combat Bribery in Officially Supported Export Credits". I would like to commend specifically the excellent quality of the staff work. The Best Practices proposals reflect to a large extent the proposals we had introduced at the April meeting and will, once adopted, go a long way to strengthen the contribution the ECAs can make in the global fight against corruption.

Building the Group's recommendations on what is already practice in some ECAs is a very good approach. It reminds me of the old Chinese proverb that says: "The people who say something cannot be done should get out of the way of the people already doing it". That so many innovative and constructive practices have been introduced and proven their usefulness clearly demonstrates the ability of ECAs to build up effective hurdles against corruption – provided the will is there.

We support the recommendations included in the Best Practices proposal, but would suggest a few changes and additions.

We would then also come back to one of our April recommendations which has not been addressed at all by the official proposal, and that is the general disclosure policy of ECAs.

Regarding Best Practices Proposal #4 on Agents' Commissions:

- (i) This item should be clarified by requiring explicitly that the amount of the commission must be listed separately, on all applications. I assume that is already implied in the present text, because you could not apply a threshold unless you have the quantitative information. Still, it deserves to be said explicitly.
- (ii) We would also recommend strongly that the relevant details on agents' commissions be required on all applications, not just in cases where the commission exceeds the threshold of 5%. Considering that middlemen and agents very often have been used as the instruments of bribery, the ECA should know in every case the amount paid, the services rendered or the purpose of the commission, the name of the agent and perhaps even the place of payment. On very large contracts, even a commission below 5% may indicate grounds for enhanced due diligence.
- (iii) We repeat that it would be preferable to have those details listed in the application, but they should be available at the latest before the decision on support is made.
- (iv) In cases where the commission exceeds the threshold, enhanced due diligence should apply – as is proposed in Proposal #6.
- (v) You could summarize the objective of these changes by adding at the end of the first sentence of #4 the words "...so that Members may be satisfied that commissions represent reasonable compensation for legitimate services".

(A redraft of #4 is attached)

Proposal # 6 on Debarment:

- (i) On the question of debarment on the ground of prior corrupt activity, we would support the proposal that any such information should lead to enhanced due diligence rather than automatic debarment.
- (ii) However, we would recommend that the information disclosure requirement be extended to the parent company and any subsidiaries of the applicant. The beginning of the sentence would thus read "Members should require applicants to advise whether they, or their parent company or any subsidiaries, have ever been...".
- (iii) In this context, I am sure it will interest the members of this Group that quite recently the European Commission has determined that both for its development assistance operations and its general operations, debarment of companies and individuals that have been involved in corrupt activities is possible regardless of whether the persons concerned have been convicted of these acts under a final court verdict or not.

Proposal # 10 on Suspending Support:

On the issue of Suspending Support in cases where there is "sufficient evidence" of bribery, we would strongly support proposal # 10. We do not share the caution mentioned in the "comment" section that some members may be unable to take these actions absent a legal decision. Considering the very broadly-supported prohibition of bribery of foreign officials through the OECD Convention it would appear far-fetched to argue that only a final legal conviction can be the basis for even suspending the processing of an application for export support.

We would also welcome it if, as is suggested in paragraph 6 under "Other Measures", members would make adherence to the OECD Guidelines for Multinational Enterprises a prerequisite for official support. We would also support a strong encouragement by the ECAs for applicants to have a Code of Conduct.

Finally, we would urge the Group to add to these proposals what is already excellent practice in several ECAs, namely the disclosure, by the ECA, of the name of applicants, the amount applied for, and the country into which the goods or services will flow. This information should definitely

be publicly available after the support has been approved, but we would argue strongly for making this disclosure already at the time of application. The internet offers an easy technical solution for such a practice.

Regarding Next Steps, we would strongly support the proposal to strengthen the Action Statement by adding at least the first three proposals. In fact – why not incorporate the Best Practices paper, once it has been agreed, into the Action Statement in full? Short of that we would urge you to formally adopt the Best Practices statement and to make it public.

And the most important step after that of course is to mainstream the anti-corruption work and to apply the new rules fully and systematically - so that the business community and the world at large knows that the ECAs are indeed determined and prepared to join the global fight against corruption.

Thank you.

Revised Proposal #4 as proposed by TI:

“Members should require that details on agents’ commissions be provided for all transactions, so that Members may be satisfied that commissions represent reasonable compensation for legitimate services. The details should include amounts paid, services rendered, the purposes of the commission, the names of the agents and the places of payment.”