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Corruption: Accord won't end bribery in export deals, NGO says

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An international watchdog has welcomed a decision by the 30-nation club of rich nations to try to deter **bribery** in export financing schemes, but criticized the agreement for not going further.

Members of the Organization for Economic Co-operation and Development (**OECD**) agreed last week "to step up efforts to avoid giving official support to export contracts that are tainted by **bribery**."

"Government-backed export credit agencies, commonly known as ECAs, provide about \$60 billion a year in loans, guarantees and insurance to corporations from their home country that seek to do business in developing countries and emerging markets. Most industrialized nations have at least one export credit agency. "We welcome the new agreement as a significant step towards bringing ECAs in line with new national anti-**bribery** laws brought in as a result of the **OECD Anti-bribery** Convention, and to honoring policy commitments made at the Gleneagles G8 Summit in July 2005," Bob Thomson, facilitator of the watchdog group ECA-Watch, told IPS.

"But ECA-Watch is disappointed that the new standards fall short of meeting internationally accepted best anti-**bribery** practices, missing an opportunity to close a number of loopholes and, in some areas, failing to meet the **OECD's** own best practice standards," Thomson said in an e-mail interview from Paris.

The agreement announced May 12 in Paris "replaces, and in many areas significantly strengthens, existing standards adopted in the ineffective action statement of 2000," Thomson said.

The agreement provides for much greater disclosure by exporters and applicants, who are required to inform the ECA if they are the subject of charges or past convictions for bribing a foreign public official in a five-year period preceding the application.

But under the agreement as worded now, though a company with a serial record of **bribery** convictions would be automatically subjected to "enhanced due diligence," it could still get taxpayer-funded export credit support if it could persuade the national ECA that it had implemented some sort of system, Thomson said.

"In the event that it (an exporter or applicant) is listed, or has disclosed violations of national anti-**bribery** laws, the ECA must undertake 'enhanced due diligence' before proceeding with its application. If before credit is approved there is

'credible evidence' of **bribery**, under the new measures, ECAs are required to suspend approval of the application while carrying out further investigations," explained the ECA-Watch facilitator.

"One case in point on this is Acres of Canada, who have been convicted of **bribery** in the Lesotho Water Scheme, have been debarred by the World Bank, but who have not been banned by Export Development Canada (EDC), who say they have revamped their administrative controls," Thomson said. He added: "To be fair, EDC has not yet however, to the best of my knowledge, approved any support for Acres. "It is of particular concern to ECA-Watch that the agreement requires exporters and applicants to disclose the identities of agents and the amount and purpose of commission on demand only. For many institutions, including some ECAs, such disclosure is mandatory. Disclosure of information on agents and commission is considered essential to carrying out basic due diligence.

ECA-Watch finds fault with the new agreement because it does not require exporters and applicants to disclose either the place of payment or the relationship between the agent and the buyer. Also, ECAs are only required to check whether exporters or applications currently appear on the publicly available debarment lists of the main international financial institutions (IFIs). The new agreement requires ECAs to take measures to verify that any exporter or applicant that has been debarred, charged or convicted for foreign **bribery** offenses has taken adequate remedial action, prior to approving credit or other support. However it only suggests measures that "could" be undertaken by ECAs: replacing individuals, adopting an appropriate anti-**bribery** management control system, and submitting to an audit. These are discretionary and, according to ECA-Watch, inadequately defined.

The new measures do not require ECAs to debar companies that have convictions for foreign **bribery** offenses, even in cases where the exporter or applicant appears on the publicly available list of the World Bank or other IFIs, has been debarred by a national court or by an equivalent administrative mechanism, or is the subject of multiple corruption convictions by final judgment.

"This is at odds with current trends. Cross-debarment is on the agenda of the IFIs, and Article 45 of the new European Commission's Public Procurement Directive requires EU member states to exclude companies that have been convicted by final judgment of corruption offenses," Thomson noted.

ECAs are only required to report credible evidence of **bribery** to their national law enforcement agencies. The agreement does not require ECAs to report suspicions of **bribery**. It is not clear why the reporting bar was set so high.

Nor does the new agreement require ECAs to put in place whistleblower procedures to enable either ECA employees or outsiders to report **bribery**.

The new agreement defines credible evidence 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 no contrary evidence were submitted.

"But the agreement does not specify who is to carry out this "critical analysis" and makes no provision for training of ECA staff in legal matters concerning court evidence. The new measures also do not provide for improved monitoring of ECAs' implementation, instead relying on collating and mapping information exchanged on developments in the national official export credit systems.

"We had hoped that the Group would adopt a system of mutual peer review as a means to ensure (functionally) equivalent implementation of the new anti-**bribery** standards, in view of the good practices developed by the **OECD** working group on **bribery**," Thomson said.

ECA-Watch also says that the new measures are presented in an action statement, and not as a recommendation, as anti-corruption campaigners had hoped. "A recommendation has to be signed by the **OECD** Council, not just the export credit group, and thus carries a higher level of political commitment," Thomson said.

He added: "We regret that governments did not show greater ambition and use this important opportunity to put in place a show-case recommendation based on a credible monitoring system that would ensure that ECAs were adequately equipped to deter, detect and sanction **bribery** in ECA-supported international business transactions."