



House of Commons  
Trade and Industry Committee

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# Implementation of ECGD's Business Principles

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**Ninth Report of Session 2004-05**

*Report, together with formal minutes*

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### Committee staff

The current staff of the Committee is Elizabeth Flood (Clerk), David Lees (Second Clerk), Philip Larkin (Committee Specialist), Grahame Allen (Inquiry Manager), Clare Genis (Committee Assistant) and Joanne Larcombe (Secretary).

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### Footnotes

In the footnotes of this Report, references to oral evidence are indicated by 'Q' followed by the question number. References to written evidence are indicated in the form 'App' followed by the Appendix number.

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## Summary

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### **ECGD's support for the BTC pipeline**

In our view, ECGD's decision making procedures in its consideration of the application from BP for underwriting support for the Baku-Tbilisi-Ceyhan pipeline construction project were consistent with its Business Principles. In line with its stated policy, the Department undertook a lengthy consultation procedure and considered the representations received from interested parties taking into account the advice of the independent expert consultants appointed by the Lenders Group of which it was part. The Business Principles Unit's review of the views expressed during consultation, which formed a significant part of the information put before the Department's Underwriting Committee before it took the decision to support the project, did represent those views in a balanced way, and the Department took that review into account when it attached a series of conditions to its support of the project as a result.

Where the Department fell short in its implementation of its Principles was in the transparency of its communication of its decision. For such a large and potentially controversial project as the pipeline, publishing a brief explanation of its decision as the Department did was not enough. In order to meet its commitment to openness in its business transactions, ECGD should in future produce a review of the environmental and social implications of all large scale projects, including a summary of the issues raised during consultations, a detailed explanation of how it has addressed them, and its plans for post-decision monitoring of the project. Such action would help allay the concerns expressed to us by interested parties that the Department had not taken due account of their concerns. It should be possible to produce such a document without betraying commercial or other confidences.

### **ECGD's anti-corruption measures**

While Ministers have re-affirmed their determination that the principles of ECGD's anti-corruption measures will not be compromise and although the Department has described the recent changes to its anti-corruption measures as clarifications of what it requires from customers applying for support, we are not at all convinced that such 'clarifications' will not seriously weaken the Department's ability to contribute to the Government's policies against bribery. Last year we welcomed the measures which ECGD sought to impose from 1 May 2004, but noted that their effectiveness would depend on the rigour with which they were to be implemented. We deeply regret that their effectiveness was never seriously tested.

# 1 Introduction

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1. The Export Credits Guarantee Department (ECGD) is the UK's official Export Credit Agency (ECA). It is a separate Government Department reporting to the Secretary of State for Trade and Industry and derives its powers from the 1991 Export and Investment Guarantees Act. Its 400 staff are based in London Docklands and in Cardiff. Its objective is to assist UK exporters of goods and services to win business, and UK firms to invest overseas, by providing guarantees, insurance and reinsurance against loss, taking into account the Government's wider international policy agenda. It provides them with insurance and/or backing for finance to protect against non-payment and currently operates on a break-even basis, charging exporters premium at levels that match the Department's<sup>1</sup> view of the risks and costs in each case. Established in 1919, ECGD was the world's first export credit agency. Now every industrialised nation has an ECA, although the status and method of working of each agency may differ.

2. The ECGD's 'Mission and Status Review 1999 – 2000', published in July 2000,<sup>2</sup> set out a new approach to the conduct of its business and the development of its relationship with its customers and others with an interest in its operations. Key elements of the new strategy included greater openness and transparency in ECGD's operations; a wider remit and membership for the Export Guarantees Advisory Council (EGAC); more focus on the needs of small and medium-sized exporters and investors; ensuring ECGD's policies and activities were consistent with the Government's objectives of promoting sustainable development, human rights, good governance and trade; and the transfer of ECGD's funding to a capitalised funding system i.e. a Government Trading Fund.

3. ECGD subsequently published a statement of Business Principles in December 2000 which addressed these and other issues identified by the Mission and Status Review.

4. Last year we inquired into the progress made by the ECGD since the publication of the Review, in advance of the Government's announcement of the future funding arrangements for the Department.<sup>3</sup> We set out to review the effect of the revision and implementation of ECGD's objectives and business principles; the relationship between ECGD, its customers and other Government organisations; the Department's role in the promotion of sustainable development; and its relationship with commercial banking and insurance companies, and the development of the private export credit and reinsurance sector.

5. During the course of that inquiry we received a significant body of evidence, written and oral, from Non-Governmental Organisations (NGOs) and individuals which focused on ECGD's support for the Baku-Tbilisi-Ceyhan (BTC) pipeline project undertaken by a business consortium of which BP was a leading member. These submissions raised questions about the Department's compliance with its own business principles as they related to the Government's objectives for sustainable development, environmental

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<sup>1</sup> In this Report the term 'Department' refers to the ECGD unless otherwise specified.

<sup>2</sup> The ECGD Mission and Status Review, Cm 4790, July 2000.

<sup>3</sup> Trade and Industry Committee, Sixth Report of Session 2003-04: *The Work of the Export Credits Guarantee Department*, HC 506-I, 15 June 2004

protection, the protection of human rights and the prevention of corruption. We decided that this evidence required further consideration and consultation with the witnesses involved, and would be the subject of a further Report.

6. We asked the ECGD to supply further written evidence in support of its contention that the Department has indeed acted in conformity with its working standards. We then invited those NGOs and individuals who had submitted memoranda critical of ECGD's actions in supporting the BTC pipeline project to comment on the Department's further justification of its actions. It had been our intention that this evidence would have given us sufficient material from which to draw conclusions on ECGD's support for its own Business Principles, using the BTC project as a case study.

7. However, on 5 November 2005 the Department announced that it was amending its anti-corruption proceedings, which it had introduced only on 1 May, in response to representations made by its customers. This announcement attracted criticism from anti-corruption campaigners on the grounds that they represented a marked relaxation of arrangements which had been well received by all but ECGD's customers. We decided to include consideration of the background to the Department's decision as part of this Report.

8. The Corner House, PLATFORM, the Baku Ceyhan Campaign, the Kurdish Human Rights Project, the Halkevi and Friends of the Earth (England, Wales and Northern Ireland), Mr Derek Mortimore, Dr John Leeds and Mr Michael Gillard submitted evidence on the BTC pipeline project; the Corner House, the Confederation of British Industry (CBI) and Transparency International (UK) provided comments on the changes to ECGD's anti-corruption measures; and ECGD officials contributed to both aspects of our inquiry. We are grateful to them all.

## 2 ECGD's stated business principles

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9. Since December 2000, ECGD has been committed to operating in accordance with four basic business principles:<sup>4</sup>

- The promotion of a responsible approach to business, ensuring that ECGD activities take into account the Government's international policies including those on sustainable development, environment, human rights, good governance and trade;
- The provision of a customer oriented, efficient and professional service and commitment to continuous review and improvement;
- Openness and honesty in all business transactions and the expectation of the same standards from others; and
- Wide consultation during the development of services, taking account of the legitimate requirements and expectations of ECGD's customers and other interested parties.

10. These principles are upheld by the development of policies which ECGD has grouped under several generic headings, of which the following are relevant to our inquiry:

### ECGD in business

11. ECGD aims to provide an efficient, flexible, and internationally competitive service for customers which focuses on solutions and innovation. It aims to service the widest possible range of markets and customers including smaller firms, whilst complementing, rather than competing with, the private sector. It is committed to the development of multilateral harmonisation of areas of export credit practice where significant differences between export credit agencies can cause distortion of competition, and it works to foster co-operation with export credit agencies and international finance institutions in order to help secure overseas investment and exports for UK based companies.<sup>5</sup>

### Sustainable development and human rights

12. The ECGD's statement of business principles commits the Department to consider the underlying quality of the project, including its environmental, social and human rights impacts, as well as the risks associated with repayment, when considering applications for support. In our previous inquiry we were told that, since January 2001, an impact analysis has been part of ECGD's case assessment process to ensure that the environmental, social and human rights aspects of projects ECGD supports are compatible with standards used by multinational financial institutions such as the World Bank. The Department used its own in-house expertise after consultation where necessary with other specialists, and consulting other interested Government departments on cases with significant project impacts.<sup>6</sup>

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<sup>4</sup> As set out at [www.ecgd.gov.uk/index/pi\\_home/pi\\_bp.htm](http://www.ecgd.gov.uk/index/pi_home/pi_bp.htm)

<sup>5</sup> As set out at [www.ecgd.gov.uk/index/pi\\_home/pi\\_bp/pi\\_ib.htm](http://www.ecgd.gov.uk/index/pi_home/pi_bp/pi_ib.htm)

<sup>6</sup> As set out at [www.ecgd.gov.uk/index/pi\\_home/pi\\_bp/pi\\_sdh.htm](http://www.ecgd.gov.uk/index/pi_home/pi_bp/pi_sdh.htm)



## Business integrity

13. The Department's stated objectives commit it to be objective, consistent, fair and honest in all dealings; to combat corrupt practices; to ensure, as far as is practicable, that its support for projects is predicated on compliance with applicable laws and regulations by all parties benefiting from that support; and to promote the implementation of the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions.<sup>7</sup>

## Transparency

14. ECGD has committed itself to consulting on major issues with all parties with a legitimate interest in its activities and being as open as possible in its operations, having regard to legitimate commercial and personal confidentiality. The Department has said that it will engage with all stakeholders to discuss ECGD's policies, products and practice, and expand the information it publishes regarding its financial performance, business activities and the application of its Business Principles.<sup>8</sup>

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<sup>7</sup> As set out at [www.ecgd.gov.uk/index/pi\\_home/pi\\_bp/pi\\_bi.htm](http://www.ecgd.gov.uk/index/pi_home/pi_bp/pi_bi.htm)

<sup>8</sup> As set out at [www.ecgd.gov.uk/index/pi\\_home/pi\\_bp/pi\\_transparency.htm](http://www.ecgd.gov.uk/index/pi_home/pi_bp/pi_transparency.htm)

## 3 ECGD support for the BTC pipeline project

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15. As part of its evidence to our inquiry into the work of the ECGD, the Department told us that since January 2001, an impact analysis had been part of ECGD's case assessment process to ensure that the environmental, social and human rights aspects of ECGD-supported projects were compatible with standards used by multinational financial institutions such as the World Bank and the European Bank for Reconstruction and Development (EBRD).<sup>9</sup> During the course of that inquiry we received a significant body of evidence, written and oral, from a number of witnesses which raised questions about ECGD's support for the Baku-Tbilisi-Ceyhan (BTC) pipeline project, as a junior partner of the Lenders Group of banks, export credit agencies and other financial institutions. ECGD had committed to provide cover of up to \$150 million for the project. The Department's critics had questioned compliance with its own business principles as they relate to the Government's objectives for sustainable development, environmental protection, the protection of human rights and the prevention of corruption. In their oral evidence ECGD officials disputed the claims made against the organisation, but could not respond in sufficient detail to some of those claims. We therefore asked ECGD to provide a written response to the complaints that we had received. We subsequently invited ECGD's critics to comment on the Department's response. What follows is a summary of the issues raised by witnesses at both stages of our inquiry and ECGD's defence of its actions and procedures.

16. ECGD responded to our request for supplementary evidence in two ways. Together with a number of documents already in the public domain and some which it was content to be made public, it supplied a copy of the Departmental Business Principles Unit's (BPU) review of the project, which provided a summary of the assessments made by or on behalf of ECGD and the rest of the BTC Lender Group of the environmental, social and human rights aspects of the project within the context of the legal framework of the host countries, and international law. We understand that this document constituted a major element of the information considered by the Department's Underwriting Committee prior to its decision to authorise support for the project. ECGD also supplied a copy of the executive summary of the Environmental and Social Review prepared by the independent consultants Mott MacDonald for the BTC Lender Group.

17. Unfortunately, ECGD insisted that the BPU's review of the project was a confidential document within the meaning of the 'Code of Practice on Access to Government Information.' In addition, the Department explained that it held the full Mott MacDonald report in confidence as part of the BTC Lenders Group and so could not supply us with the complete document. **We understood the difficulties involved in gaining the agreement of the whole Lenders Group to the release of the Mott MacDonald report, although we did not understand ECGD's reluctance to attempt to do this. We were more disturbed at the Department's reluctance to put its own BPU report into the public domain,**

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<sup>9</sup> HC 506-II, App 10, para 14

**particularly as this would have provided an essential insight into ECGD’s decision-making process and enhanced our ability to explain our scrutiny of its actions.**

18. For ECGD, Mr John Weiss<sup>10</sup> explained the Department’s insistence on confidentiality:

“This is because it was an element of our own internal decision-making which ultimately formed the basis of advice to Ministers when we recommended to them that they endorse the decision of the Underwriting Committee to support the BTC pipeline. Clearly the document was not written with an eye to subsequent publication and I think it does contain a few, but not perhaps very many, items which are sensitive in that they have got information about third parties or indeed comments by third parties and there might be some sensitivity about publishing that, particularly as those third parties may often be governments of the countries involved in the pipeline. The code of practice on access to information does provide for an exemption on disclosure for that sort of document.”<sup>11</sup>

19. The Department had published a ‘Note of Decision’ on its website.<sup>12</sup> This brief document describes in very general terms the factors which were taken into account in ECGD’s decision to support the BTC project, but falls a long way short of the assessment of the project produced by the BPU. Mr Weiss conceded that it might in future be possible to provide a more detailed justification for ECGD support than was published in this case.<sup>13</sup> **We found ECGD’s explanation for its reluctance to put its own assessment of the BTC project into the public domain unconvincing and unsatisfactory. Such reluctance has affected our ability to explain our own conclusions about ECGD’s involvement in the project. Much more importantly, it runs counter to the Department’s professed commitment to transparency in its business. It should have been possible for ECGD to demonstrate how it had considered all of the concerns raised during the consultation exercise on this project without betraying commercial and political confidences. We recommend that in future, at the same time as it announces a major funding decision, the Department publishes a detailed analysis of the issues raised during public consultation with a full explanation of how those issues have been addressed.**

## Criticism of ECGD’s actions

### *Assessment of the social and environmental impact of the project*

20. ECGD’s critics alleged that the Department had relied too heavily on information provided by the project sponsor, BP, during the Department’s evaluation of the project and in the decision-making process which led to its agreement to support the project as part of a consortium of export credit agencies, banks and other financial institutions. They felt that the Department was too ready to accept companies’ assurances that the necessary environmental and social standards were being observed, rather than undertake

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<sup>10</sup> Mr Weiss is Deputy Chief Executive, ECGD

<sup>11</sup> Q 2

<sup>12</sup> [www.ecgd.gov.uk](http://www.ecgd.gov.uk)

<sup>13</sup> Q 4

independent investigations to establish the accuracy of those assurances. BCC was particularly concerned:

“In practice, this can amount to an effective abdication of due diligence responsibilities and lead to an institutional culture under which project sponsors know they are unlikely to be held fully to account.”<sup>14</sup>

21. BCC suggested that while the project may have met international environmental and social standards on paper, its implementation in practice was inconsistent with international best practice<sup>15</sup>. BCC had alleged more than 170 violations of mandatory World Bank Safeguard Policies, EU directives and local law in the project’s Turkish Environmental Impact Assessment (EIA).<sup>16</sup> The NGO believed that it had identified 42 specific breaches of International Finance Corporation guidelines on consultation, six breaches of European Bank for Reconstruction and Development guidelines and four breaches of the EU Directive on Environmental Assessments, with which the project was legally required to comply.

22. BCC also raised concerns about the limited nature of the consultation process carried out in Turkey, where it was alleged that less than 2% per cent of the affected population was contacted,<sup>17</sup> the quality of information provided to those affected was poor, and there was misinformation about their legal rights.<sup>18</sup> BCC has produced extensive and comprehensive analysis in support of its allegations, all of which is in the public domain and which we do not reproduce in this Report. It is fair to say that the Campaign raised significant issues which ECGD needed to address before it made the decision to support the project.

### **Pipeline construction quality**

23. In his evidence to us Mr Derek Mortimore was critical about the selection procedure that the project sponsor, BP, had employed to decide upon the anti-corrosion coating to be used on the pipeline as part of the construction process. He felt that his views had been ignored by the company, which had selected what he considered to be an unsuitable coating for the pipeline, given the conditions under which it was to be applied. He also felt that his views had been given insufficient consideration by ECGD when he had voiced his concerns.<sup>19</sup> His evidence was supported by Dr John Leeds, who was also critical of BP with respect to its selection of the pipeline coating, as well as the quality assurance procedures that the company had put in place to ensure the integrity of the pipeline.<sup>20</sup>

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<sup>14</sup> HC 506-II, App 10

<sup>15</sup> *Ibid*

<sup>16</sup> These are set out by BCC at [http://www.baku.org.uk/eia\\_review.htm](http://www.baku.org.uk/eia_review.htm)

<sup>17</sup> *Review of the Environmental Impact Assessment for the Baku-Tbilisi-Ceyhan Pipeline (Turkey Section)*, BCC and others (2003)

<sup>18</sup> *Environmental and Human Rights Fact Finding Mission Baku-Tbilisi-Ceyhan Pipeline(Turkey Section)*, BCC and others (2003)

<sup>19</sup> App 4

<sup>20</sup> App 5

24. Contributions from Mr Michael Gillard and Mr John Alexander from E H Wood & Co, manufacturers of a pipeline coating which was not chosen by BP, also concentrated on what they felt were shortcomings in the company's selection process. Mr Gillard went further and alleged that BP executives had not demonstrated due diligence in the coating selection and in their supervision of the implementation of the project.<sup>21</sup>

### ***Assessment of the impact of the project on human rights in Turkey***

25. BCC and the Kurdish Human Rights Campaign (KHRC) complained that ECGD had taken insufficient account of the potential impact on human rights in the countries in which the project was being implemented (particularly in Turkey) and had not reacted appropriately to the instigation of legal proceedings in Turkey on this issue. On several occasions KHRC had complained about the Turkish authorities' treatment of a Turkish national who had protested against the construction of the pipeline, which the Campaign alleged had resulted in his imprisonment.<sup>22</sup>

26. For ECGD, John Weiss explained that the Department relied on advice from the Foreign and Commonwealth Office (FCO) when it assessed the merits of complaints such as these. On the basis of that advice, he was confident that ECGD had taken full account of the concerns expressed by the NGOs.<sup>23</sup> The FCO was also satisfied that the imprisonment of the anti-pipeline protester had no connection with the pipeline project itself.<sup>24</sup>

### **ECGD's response**

27. In its response to the allegations made against it, ECGD chose not to address each of the claims made by the other witnesses. The Department drew our attention to the scrutiny process adopted by all of the institutions involved in the Lender Group. The Department made the point that it had carried out an assessment of the financial, social, technical and environmental risks associated with the project prior to taking the decision to support the project. In arriving at its decision, ECGD had been advised by a number of independent experts and were not, as was alleged, over-reliant on information provided by the project sponsors. The Department explained that, as was its normal practice for projects of such a size, ECGD had, together with the other lenders, carried out a wide ranging consultation with NGOs and other stakeholders about BTC, including NGOs in the three host countries. John Weiss was emphatic:

“We have been transparent about our consideration of the application throughout, and our final decision took into account the information that was presented to us during the consultation.”<sup>25</sup>

28. Mr Weiss insisted that where NGOs raised specific issues ECGD had investigated them properly, taking advice from the independent consultants appointed by the Lenders Group to assess the project application and monitor the implementation of the project. The

<sup>21</sup> App 6

<sup>22</sup> App 7

<sup>23</sup> Qq 32-34

<sup>24</sup> App 8

<sup>25</sup> App 1

ECGD's Business Principles Adviser had conducted field visits covering much of the area to be affected by the pipeline in order to clarify specific issues and to verify the findings of the Department's consultants. The BPU's report to ECGD's Underwriting Committee reviewed the concerns expressed by the NGOs during the consultation process. Where he found those concerns to be justified, he recommended that ECGD support for the project should be conditional upon action being taken by the applicant to provide a remedy to the problem. These recommendations were accepted by the Department and ECGD support for the project was made subject to a number of conditions, compliance with which was monitored by the BPU and by ECGD's consultants.<sup>26</sup>

**29. Having reviewed the material supplied to us in confidence by ECGD, we are satisfied that the Department did take full account of the concerns expressed by those who contributed to its consultation exercise and that, in deciding to support the BTC pipeline, it acted in a manner consistent with its business principles.**

### *Supervision of project implementation*

30. Some witnesses drew our attention to what they saw as failures of quality control in the implementation of the pipeline construction project and what the Campaign interpreted as inadequate supervision by ECGD. PLATFORM alleged that the management and quality control of the construction of the pipeline fell some way short of the standards normally expected for such a project.<sup>27</sup> The organisation told us that it had subsequently drawn the attention of ECGD to allegations, from employees of the company building the pipeline in Turkey or its subcontractors, of major breaches of standard quality assurance practices, including inadequate record keeping, and evidence that faulty welding had been permitted to go unrepaired.<sup>28</sup> Both BCC and PLATFORM called into question ECGD's ability to effectively monitor the implementation of such a large project.

31. ECGD explained that the construction phase of the project was subject to regular inspection and monitoring by the Lenders Group's independent consultants, WorleyParsons, which was supplemented by less frequent site inspections by the BPU. The Department was satisfied that the regime of inspection and audit which had been put in place would be successful in maintaining best practice during the construction of the pipeline. ECGD's Business Principles Adviser, David Allwood, was satisfied that the construction defects identified by BCC had been remedied by the company, which had discovered the problem with defective welding during its own quality assurance procedures, and had rectified the fault before the engineering consultants had visited the site.<sup>29</sup>

**32. It is not surprising that quality assurance problems occur during major construction projects such as the BTC pipeline. What matters is that those problems are identified and addressed. We are satisfied that ECGD's monitoring of the pipeline's**

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<sup>26</sup> App 2

<sup>27</sup> App 9

<sup>28</sup> App 5, App 9

<sup>29</sup> Q 17

**construction, in cooperation with the other members of the Lenders Group, is proportionate and consistent with the Department's business principles.**

## 4 ECGD's anti-corruption measures

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33. On 1 April 2004, ECGD announced the implementation of improved procedures to reduce the risk of bribery and corruption.<sup>30</sup> Under the new arrangements, which came into force from 1 May 2004, ECGD extended the scope of the information it required from applicants to ensure that no improper agents' payments are being made to win contracts; would take greater power to inspect exporters' documents, particularly those relating to agents' payments; and required applicants to guarantee that they have not been involved in corrupt practices.<sup>31</sup> Witnesses to our general review of the work of the Department welcomed the strengthening of ECGD's anti-corruption policies,<sup>32</sup> although the CBI expressed unease at what it saw as an extra regulatory and administrative burden.<sup>33</sup>

34. On 5 November, ECGD published revised procedures which relaxed some of the new requirements as from 1 December.<sup>34</sup> The Department's critics reacted badly to what they see as a watering down of ECGD's standards, and the lack of public consultation prior to the revision. When we heard evidence from ECGD officials on 16 November, as part of our investigation of the Department's support for the BTC pipeline project, we took the opportunity to question the rationale for changes to the anti-corruption regime so soon after its introduction.

35. In summary, the explanation provided by ECGD officials was that the Department's major customers, their trade associations and banks had expressed serious concern that the new rules would be unworkable for them.<sup>35</sup> Some of its customers had told the Department that they were unable to apply for ECGD cover because they were so concerned by the new requirements placed on them by the new procedures. The banks feared that the risk of providing incorrect information to ECGD might prejudice the strength of the Department's guarantee.<sup>36</sup> It was explained that the revisions to the Department's anti-corruption measures had been made as a result of negotiations conducted over the period May to November between ECGD and industry representatives led by the CBI.<sup>37</sup> Although ECGD officials made no mention of Ministerial involvement in the process at the time they gave evidence, it had emerged that the discussions had been initiated by the intervention of the Secretary of State for Trade and Industry in response to representations from the CBI and the UK's three main aerospace companies—Airbus, Rolls-Royce and BAe Systems.

36. In view of the apparently sweeping nature of the changes to anti-corruption procedures which had been in effect for less than six months, we decided to inquire further into the background and to review the practical effect of the most recent changes. We decided to invite the Corner House and Transparency International (UK), which had commented in

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<sup>30</sup> ECGD Press release: <http://ecgd.gov.uk/print.news> 1 April 2004

<sup>31</sup> *Ibid*

<sup>32</sup> For example, HC 506-II, Q 73

<sup>33</sup> Q 27

<sup>34</sup> Letter from John Weiss to ECGD customers, 5 November 2004

<sup>35</sup> Q 57

<sup>36</sup> *Ibid*

<sup>37</sup> Q 61



detail on ECGD's anti-corruption procedures during our first inquiry, to submit comments on the effect of the Department's revisions to those measures. We agreed that we would also invite the CBI and the ECGD to provide an explanation of the need for the changes.

37. Our further inquiries were delayed by the application by the Corner House for Judicial Review of ECGD's decision to proceed with the changes without undertaking public consultation on its proposals. On 13 January, the first day of the court hearing, ECGD agreed to carry out the consultation demanded by the Corner House, and to pay all costs associated with the proceedings.<sup>38</sup> As a consequence of the agreement, ECGD published documents relating to its negotiations with industry representatives which began after the intervention of the Secretary of State for Trade and Industry to whom the CBI and others had complained. It also undertook to put its revised procedures to public consultation. The nature of some of the changes introduced by ECGD in December and the development of the ECGD-industry negotiations are discussed below.

### The revision of ECGD's anti-corruption procedures

38. It is clear from the documents put into the public domain after the conclusion of the Judicial Review proceedings that after the ECGD's announcement on 4 March of the introduction of enhanced anti-corruption measures the Department's biggest customers, Airbus, Rolls-Royce, and BAe Systems, quickly raised objections to the new rules to be introduced from 1 May. Their concerns were echoed by trade associations such as BExA, SBAC and the CBI. At the time, the CBI did not see any need for the ECGD's new rules, and told the Department:

“All exporters are aware of the obligation in your policies that they should comply with all laws applicable to the insured transactions. We believe that emphasising this fact is all that is necessary for you to do in connection with this issue.”<sup>39</sup>

39. The CBI's main concern seemed to be that the new procedures would have required exporters to provide detailed information on overseas agents and representatives—commercially sensitive information which, it claimed, if made public could seriously affect an exporter's competitive position. It was also concerned that compliance with the provisions of the May procedures with regard to monitoring the activities of a company's business associates and taking action against anyone found to have engaged in any corrupt activity could have put ECGD's customers in conflict with the offence of 'tipping off' under the Proceeds of Crime Act 2002.<sup>40</sup> On the last point, we find it difficult to believe that the act of informing a Government Department could be construed as an act of 'tipping off' a committer of corrupt activity under the Act.

40. In the face of these objections, ECGD indicated that the new measures would stand.<sup>41</sup> The CBI then lobbied the Secretary of State for Trade and Industry and requested that the new procedures be suspended until ECGD and its customers had resolved their

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<sup>38</sup> App 11

<sup>39</sup> Letter from CBI to ECGD, 19 May 2004

<sup>40</sup> App 12

<sup>41</sup> Letter from CBI to Chairman, Export Finance Committee, CBI

problems.<sup>42</sup> The CBI told us that she acknowledged that “some aspects of wording and some legal definitions may be able to be clarified” and invited the CBI to take on a co-ordinating role to represent the various customers and the banks, and to work with the ECGD to “get this right”. She made clear that the principles of ECGD’s anti-corruption measures were not for discussion, but the Department was willing to discuss specific issues where legal clarification was required.<sup>43</sup>

41. The CBI convened an ‘ECGD Solutions Group’ comprising representatives of the main trade associations and ECGD’s main customers (principally the aerospace companies), to negotiate with ECGD.<sup>44</sup> Negotiations between ECGD and the CBI Solutions Group continued through the summer. Whilst initially the Department rebutted criticism of its new procedures and refused to consider amending them, following the CBI’s appeal to the Secretary of State ECGD gradually conceded ground on the main elements of its new anti-corruption measures.

## The net result: principal changes to ECGD’s requirements

### *Buyer Credit Guarantee*

42. The major changes to ECGD’s procedures concerned the Application for Buyer Credit Guarantee. This form of Guarantee forms the bulk of ECGD’s business. Buyer Credits provide a 100% guarantee to a bank that all sums lent to an overseas buyer or borrower will be repaid. Once the contract and loan are effective the exporter can draw down sums to pay for their goods once they have been exported, or services, once these have been delivered.

43. Prior to tendering for a contract, an exporter obtains a commitment to provide cover from ECGD by completing the ‘Application for the Buyer Credit’. If the exporter is successful in winning the contract, ECGD enters into a loan guarantee commitment with the bank, and a ‘Premium and Recourse Agreement’ with the exporter. In Transparency International (UK)’s view, the information provided in the Application is vital to the prevention of corruption as it is submitted to ECGD prior to contractual commitment.<sup>45</sup>

### *Agents’ commissions*

44. The payment of commission to agents and consultants is generally recognised as the most common device for the payment of bribes in international business. From May 2004, ECGD required the exporter to disclose the identity and address of any agent or affiliate involved in the contract, their role(s), the amount of the commission and where it would be paid. There was no percentage or financial limit to the disclosure.

45. Rolls-Royce, Airbus and the SBAC objected to this new requirement, principally on grounds of commercial confidentiality. In registering its objection, Airbus told ECGD:

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<sup>42</sup> Letter from ECGD to Secretary of State for Trade and Industry, 23 June 2004

<sup>43</sup> Secretary of State letter to CBI, 9 July 2004

<sup>44</sup> App 13, para 9

<sup>45</sup> App 11, para 44

“...details of fees, if any, paid to consultants in connection with assistance or services they provide constitutes commercially sensitive information. We feel very strongly that our network of consultants is part of our competitive advantage and that it is therefore inappropriate, in our view, to disclose this information outside our organisation.”<sup>46</sup>

46. Following intensive negotiations, ECGD acceded to its customers’ demands. From December, the exporter was no longer required to provide any details of an agent where the agent’s commission was 5% or less of the contract price and where it was not to be covered by ECGD support. Exporters need not give the name and address of agents or affiliates if they were able to give reasons for not being able to do so.<sup>47</sup> ECGD confirmed to the CBI that ‘commercial confidentiality’ would be an acceptable excuse for withholding such information.<sup>48</sup>

47. TI(UK) and the Corner House identified these amendments as a significant weakening of ECGD’s anti-corruption procedures which limited the Department’s ability to detect bribery. They pointed out that payment of a commission of 5% (which could then be used as a bribe) would not be unusual in many parts of the world, but 5% of a large contract could amount to a significant sum. Payment of a commission out of funds not covered by ECGD, such as in cash or from a fund specifically set up to pay such fees, would not need to be declared to ECGD. In addition a commission of higher than 5% could also be free from disclosure if it was divided into instalments each of less than 5%.<sup>49</sup>

48. TI(UK) could not understand why it was no longer necessary for the applicant to give even just the name and address of any agent employed by an applicant. The NGO felt that it was “inconceivable the applicant would not have this information, without which it was easier to conceal the payment of bribes”.<sup>50</sup> It was concerned that if an applicant refused to disclose these details to ECGD, and ECGD allowed such non-disclosure and proceeded to support the project, ECGD and its officers might be criminally liable for aiding and abetting bribery (on the basis that they were wilfully blind) if the agency arrangements turned out to have concealed a bribe.<sup>51</sup>

49. In its submission to us the CBI defended these amendments simply on the grounds that the May procedures required exporters to provide sensitive information on overseas agents which would affect their competitive position if made public.<sup>52</sup> This suggested to us that the basis of the CBI’s objection was the concern that ECGD could not be trusted to respect the confidentiality of such information.

50. The Minister for Trade and Investment acknowledged that ECGD would in future require less information about agents and the commission to be paid to them, but rejected

<sup>46</sup> Airbus letter to ECGD, 7 April 2004

<sup>47</sup> ECGD revised Application form

<sup>48</sup> Letter from ECGD to CBI, 29 October

<sup>49</sup> App 10, paras 57-58, App 13 paras 29-30

<sup>50</sup> App 10, para 61

<sup>51</sup> *Ibid*, para 67

<sup>52</sup> App 11, para 13

the suggestion that this would reduce the effectiveness of the Department's anti-corruption measures:

“ECGD retains the right to make any further enquiry about agents or indeed anything else which it considers the circumstances merit. It remains the case that if corrupt activity is proved or admitted, the applicant is obliged to reimburse ECGD under a buyer credit and liable to have an insurance policy voided, and those liabilities are of course absolute.”<sup>53</sup>

**51. We are not persuaded by the arguments put forward by those ECGD customers that the Department had no right to information on the agents they use and the money to be paid to them. The payment of commission or fees to agents is generally recognised to be a common method of paying bribes, and in our view ECGD was right to attempt to get access to information on agents as part of the implementation of its anti-corruption policy. We have no doubt that its decision not to require such information in the future weakens that policy.**

### *Use of joint venture partners*

#### *Identification of JVs*

52. From May, ECGD required the provision of information about agents appointed by an applicant's affiliates in connection with the contract. For this purpose, “affiliate” was defined as “any company which is a member of the same group of companies or any other party to any joint venture or consortium or other similar arrangement with the applicant”.<sup>54</sup>

53. ECGD's customers objected to this requirement on the grounds that it required the provision of information about the use of agents which was entirely beyond the applicant's control. The Department reacted to their objections by revising its requirements. From December, an applicant was obliged only to provide details of agents “engaged by the applicant or any controlled company”.<sup>55</sup> Such a distinction would normally exclude joint venture or consortium partners.

54. TI(UK) pointed out that joint venture or consortium business partners could appoint agents and pay commissions which could then be used as bribes. The NGO suggested that this would leave both ECGD and the applicant at risk of loss, legal proceedings and damage to reputation in the event that a contract was terminated as a result of the discovery of a bribe paid by joint venture and other partners.<sup>56</sup>

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<sup>53</sup> Q 85

<sup>54</sup> App 10

<sup>55</sup> App 12

<sup>56</sup> App 10, para 67

### ***Due diligence on JV or other business partners***

55. ECGD tried to ensure that an applicant undertook due diligence on those involved in the project for which support was required. From May, it made it a condition of support for a project that the applicant certified that:

“neither we nor to the best of our knowledge and belief any of our Affiliates nor anyone (including any of our or their employees) acting on our or their behalf with due authority or with our or their prior consent or subsequent acquiescence has engaged or will engage in any Corrupt Activity in connection with the Supply Contract or any related agreement, undertaking, consent, authorization or arrangement of any kind.”<sup>57</sup>

56. Consistent with its response to adverse customer reaction on the definition of affiliate, with effect from 1 December ECGD removed most of the applicant’s obligations in relation to joint venture, consortium and similar partners. The anti-bribery undertaking applied only to the applicant and its controlled company. The applicant’s responsibilities in relation to joint venture and other partners were much reduced in scope. ECGD introduced a new definition of “associate”, which was amended to “a party to any joint venture, consortium or other similar arrangement”. ECGD now obliges an applicant to notify the Department of corrupt activity by an associate if the company “becomes aware” of such activity. However, there was no obligation on the applicant to attempt to find out whether such activity is being carried out or to try to prevent it.

57. It was TI(UK)’s view that the amended procedures remove the need for due diligence, thereby running counter to ECGD’s ‘Business Principles for Countering Bribery’, part of which states:

“6.2.1.1: The enterprise should conduct due diligence before entering into a joint venture.

“6.2.1.2: The enterprise should ensure that subsidiaries and joint ventures over which it maintains effective control adopt its Programme. Where an enterprise does not have effective control it should make known its Programme and use its best efforts to monitor that the conduct of such subsidiaries and joint ventures is consistent with the Business Principles.”<sup>58</sup>

**58. The net result of the December changes to ECGD’s procedures is that companies receiving support from the public purse need make no checks on their business partners to ensure, to the best of their ability, that UK taxpayers’ money is not used by these partners to pay bribes. This is unacceptable, to say the least.**

### ***Due diligence on controlled companies***

59. As well as effectively confining an applicant’s responsibilities to itself and any controlled company, ECGD also reduced an applicant’s obligations on due diligence on controlled companies. From 1 December it has been necessary for an applicant to declare:

<sup>57</sup> ECGD Application form valid from 1 May to 30 November.

<sup>58</sup> App 11, p 15, para 72-75

“That neither we nor, to the best of our knowledge and belief, any Controlled Company or anyone (including any employees) acting on our, or that Controlled Company’s, behalf with due authority, or with our, or that Controlled Company’s, prior consent or subsequent acquiescence, shall have engaged, or shall engage, in any Corrupt Activity in connection with the Supply Contract.”<sup>59</sup>

60. This replaced ECGD’s original requirement in May that such a statement would relate to joint venture and other business partnerships as well as controlled companies. ECGD also originally intended that the definition of the phrase “*to the best of our knowledge and belief*” would remain unchanged from that adopted at the introduction of its Business Principles in 2000.<sup>60</sup> When lodging its objection to ECGD’s May Proposals, the CBI repeated its long-held objection to that definition, and the definition became a matter for renegotiation.

61. As a result of those discussions, the definition of the phrase “*to the best of our knowledge and belief*” has been clarified by ECGD and made explicit in the documentation which accompanies the application form. According to the Department’s definition:

- “knowledge” means “the actual knowledge of the person concerned at the time of making the statement”;
- “the best of” requires “the maker of the statement to review his or her then state of knowledge and report all that that review tells him or her”;
- however, this definition “does not require the person to make any enquiries or in any other way to seek to improve or augment his or her state of knowledge before making the statement”;
- the definition of “belief” has been limited by ECGD’s clarification that “there is no requirement to seek to verify or bolster a belief by enquiry, other than by a diligent search of the person’s own conscience.”<sup>61</sup>

62. In other words, applicants were required only to state what they thought at the time they completed the application form. They were not required to conduct enquiries to ensure that their statement was correct. TI(UK) poured scorn on the revised definition:

“The effect of the revised definition of “*to the best of our knowledge and belief*” is that it will be in the interest of the Applicant to have the Application signed by a representative who has as little knowledge as possible, and who has never made any enquiries.”<sup>62</sup>

63. In TI(UK)’s view, the change in definition runs counter to that part of the ECGD’s ‘Business Principles for Countering Bribery’ which states:

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<sup>59</sup> ECGD Application form valid from 1 December.

<sup>60</sup> Letter from ECGD to CBI, 19 May

<sup>61</sup> ECGD Application form valid from 1 December.

<sup>62</sup> App 2, para 77

“The enterprise should ensure that subsidiaries and joint ventures over which it maintains effective control adopt its [anti-corruption] Programme.”<sup>63</sup>

TI(UK) also felt that the revised definition was weaker than the English criminal law test under which “*wilful blindness*” is sufficient to result in criminal liability.<sup>64</sup>

64. The Minister of Trade and Investment and Mr Nick Ridley<sup>65</sup> explained that ECGD had not changed its understanding of the phrase since it was first set out in a letter from the Department to a customer in 2001.<sup>66</sup> Mr Ridley did not accept that the concerns expressed by TI(UK) were valid:

“The notes to the signatory clause say that, “In the case of an incorporated company, the application must be signed by a director or a person authorised by the company’s board of directors or an officer of the company, in accordance with the company’s articles of association or equivalent constitutional document, to sign this application or documents of the same nature as this application on behalf of the company”. It would, therefore, be our firm view that it would not be open, as I think the implication is in some of the memoranda before you, for directors of an applicant, who were themselves entertaining doubts about whether they could make declarations in the application form, to appoint somebody extremely junior who they knew would entertain no doubts because they would have no knowledge. I do not for one moment imagine that that would ever happen, but if it did, it would be an act of deception which we would say would vitiate contracts written on the basis of it.”<sup>67</sup>

**65. We are not convinced by ECGD’s defence of its definition of the meaning of the phrase “to the best of our knowledge and belief”. While its action may be perfectly defensible in legal terms we are concerned that the Department has chosen to interpret the phrase in a way which is inconsistent with the rules of common sense. It is a nonsense to suggest that the December rules will ensure that due diligence will be carried out on ‘controlled companies’.**

### **Statement of knowledge of blacklisting or convictions**

66. From May applicants were required to make the following declaration:

“We declare that to the best of our knowledge and belief neither we, nor any of our Affiliates nor any of our or their directors or employees:

“5.1 appears on any list of contractors or individuals debarred from tendering for or participating in any project funded by the World Bank or any other multilateral or bilateral aid agency, and

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<sup>63</sup> ECGD Business Principles.

<sup>64</sup> App 11

<sup>65</sup> Mr Ridley is Legal Counsel to ECGD

<sup>66</sup> Qq 89-92

<sup>67</sup> Q 95



“5.2 has at any time freely admitted or been found by a court to have engaged in any Corrupt Activity.”

67. From December, the required declaration had been limited in scope to cover only the applicant and any controlled company. The scope of the second element of the declaration was further limited to offences committed within five years of the application for support. Applicants are therefore no longer required to disclose to ECGD whether any of its joint venture or other partners has been debarred or convicted for corruption.

68. Once again, TI(UK) felt that this represented a significant erosion of ECGD’s anti-corruption procedures:

“It is impossible to comprehend why an Applicant would be relieved by ECGD of an obligation to make any enquiry as to whether itself or its own subsidiary company or director had been debarred or convicted for corruption.”<sup>68</sup>

69. The CBI justified the changes on the basis that the broad definition of "affiliates" to include partners to any joint venture or consortium or similar arrangement required applicants to make a declaration in respect of companies/banks not within their control and on individuals on which they could not have the necessary information. The CBI pointed out that such a declaration would have had to include multinational organisations with thousands of employees.<sup>69</sup> The Minister for Trade and Investment told us that in making the changes ECGD had recognised the argument put forward by its customers that not all of the representations and warranties required in the May forms about behaviour beyond the applicant’s control were appropriate.<sup>70</sup> John Weiss had acknowledged earlier that ECGD had not taken proper account of the full implications of the Department’s request for information about affiliates.<sup>71</sup> ECGD had conceded that it was not realistic to expect applicants to be able to provide warranties about the behaviour of individuals or organisations for which they were not legally responsible.

**70. In our view, it should be possible to address the CBI’s concern about the extent to which their members should be knowledgeable about the activities of their partners’ employees by limiting the requirement to having knowledge of senior employees and defining that term to mean people with executive power in the company. This would cut down the extent of the information required considerably and maintain the need for some semblance of vigilance on the part of the applicant for ECGD’s assistance.**

### ***ECGD’s rights of audit***

71. When it introduced the procedures to be operative from 1 May, ECGD stated that it was expanding its rights of audit to enable it to monitor compliance with its new anti-corruption procedures.<sup>72</sup> The main point of the new procedures was to allow ECGD to

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<sup>68</sup> App 11, para 86

<sup>69</sup> App 12, paras 13-14

<sup>70</sup> Q 85

<sup>71</sup> Q 2

<sup>72</sup> Letter from ECGD to customers about new corruption procedures, 4 March 2004



conduct full audit checks, having given five days notice of its intention to do so. Its customers objected to this extension of its audit rights, principally on the grounds that ECGD auditors might become “aware of information that the supplier considers commercially sensitive.”<sup>73</sup>

72. Redrafting over the summer produced an audit clause which was acceptable to industry, but which limited ECGD’s powers of independent audit. In future, ECGD will be able to conduct a full audit of a company’s records only if it first confirms in writing to the company that it has reasonable grounds for suspecting that corrupt activity may have taken place; the Department will be allowed to audit those records only up to the date of the award of the contract; and ECGD will not be able to conduct a full audit using its own staff, but must use ‘an independent third party acceptable to the supplier and ECGD’.

73. The Corner House was concerned that ECGD was no longer able to conduct random audits, which might uncover evidence or signs of corruption or of non-compliance with anti-bribery warranties. It felt that the new audit clause ran counter to the Department’s stated policy of referring suspicion of corruption to the police, on the grounds that it would be impossible for ECGD to write to customers informing them of their suspicions without jeopardising a potential police investigation. The Corner House doubted that such restricted audit powers could ever be used effectively.<sup>74</sup>

74. The Minister pointed out that ECGD had no statutory powers to seize documentation. ECGD’s audit rights included in the May provisions the ability to audit documents relating to contractual award as well as performance. The rights regarding audit of contractual award remained, but were restricted in December to occasions when ECGD had reasonable grounds to suspect corrupt activity because the Department had accepted at the time it was not appropriate for it to have the right to audit papers without reason.<sup>75</sup> This explanation begs the question of how ECGD could find grounds to suspect corrupt activity if it was not allowed to look for it.

**75. In conceding its right of independent audit, ECGD weakened its ability to detect fraud or other corrupt activity. The Department may not have statutory powers of investigation, but it does have the responsibility to ensure that public funds are used appropriately. We saw nothing wrong in requiring an applicant to agree to audit and inspection by ECGD as a condition of receiving support from the public purse and we regret ECGD’s concession of the principle.**

## Response from ECGD’s customers

76. Under the terms of the agreement reached with the Corner House, the December procedures will remain in force while ECGD conducts a public consultation on these measures.<sup>76</sup> ECGD told us that, over the period May to December, seven of its customers felt able to transact business under the more stringent procedures in place during that

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<sup>73</sup> Aerospace Industry Note, “Bribery and Corruption Wording”, 30 July 2004

<sup>74</sup> App 13, paras 34-35

<sup>75</sup> Q 85

<sup>76</sup> Letter from the Secretary of State to the Financial Times, 17 January 2005

time.<sup>77</sup> £55 million worth of cover was transacted during that time.<sup>78</sup> ECGD told us that during the same period three of its industry customers and a number of banks had refused to use the new procedures.<sup>79</sup> Under what ECGD called its interim arrangements, approximately £900 million worth of business was conducted.<sup>80</sup> Of this, \$202.8 million went to Airbus,<sup>81</sup> which had been granted dispensation to use such arrangements on three occasions while negotiations with ECGD were taking place.<sup>82</sup> **We cannot understand why, if some of ECGD's customers could accept the Department's support under the more rigorous procedures effective from 1 May, others could not.**

### The role of the Export Guarantees Advisory Council

77. The Export Guarantees Advisory Council was established under Section 13 of the Export and Investment Guarantees Act 1991 (which provides the legal base for the ECGD's operations) to give advice to the Secretary of State, at his/her request, in respect of any matter relating to the exercise of his/her functions under the Act. It appears from EGAC minutes that, while the Council was alerted to the objections raised by industry and kept informed of progress with negotiations, it was not consulted about the consistency of the changes negotiated by industry with the Department's Business Principles.

78. It was clear from the minutes of EGAC's November meeting that some EGAC members were unhappy that they had not been involved in a review of the industry-inspired changes:

“6.2.2 It was questioned whether the Council had been able effectively to provide advice before the changes were introduced. Although the Council had provided advice on anti-corruption procedures to Ministers in January, specific advice had not been officially sought since discussions had commenced on the changes requested by customers. The Council had nevertheless been regularly updated at meetings. But it was agreed that there might have been a benefit for ECGD if the Council had been able properly to review the changes.

6.2.3 Council members felt that they had been unable to properly engage on this issue, whereas the role and benefit of EGAC was to give timely advice in such circumstances. This should be considered going forward, and the Council hoped that their view would be sought on any changes in policy.”<sup>83</sup>

79. The Minister acknowledged that there would be opportunity for lessons to be learned from the ECGD's handling of this issue,<sup>84</sup> and that :

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<sup>77</sup> Q129

<sup>78</sup> Q 136

<sup>79</sup> Q 129

<sup>80</sup> Q 138

<sup>81</sup> HC Deb, 397W, 26 January 2005

<sup>82</sup> HC Deb, 1242W, 27 October 2004

<sup>83</sup> Extract from the minutes of EGAC's 6<sup>th</sup> meeting of 2004, 17 November

<sup>84</sup> Q 141

“If there are opportunities in the future for the Export Guarantees Advisory Council to play a fuller role then the minutes will be reflected in our thinking”<sup>85</sup>

**80. We welcome ECGD’s acknowledgement that the introduction of new procedures could have been handled better. In the light of this experience, we would expect the Export Guarantees Advisory Council to be consulted on any proposal to amend ECGD’s procedures and that ECGD would seek its advice on the need for consultation with customers and other interested parties.**

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<sup>85</sup> Q 140

## 5 Conclusions and recommendations

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### Transparency

1. We understood the difficulties involved in gaining the agreement of the whole Lenders Group to the release of the Mott MacDonald report on environmental and social issues relating to the BTC pipeline, although we did not understand ECGD's reluctance to attempt to do this. We were more disturbed at the Department's reluctance to put its own Business Principles Unit's report into the public domain, particularly as this would have provided an essential insight into ECGD's decision-making process and enhanced our ability to explain our scrutiny of its actions. (Paragraph 17)
2. We found ECGD's explanation for its reluctance to put its own assessment of the BTC project into the public domain unconvincing and unsatisfactory. Such reluctance has affected our ability to explain our own conclusions about ECGD's involvement in the project. Much more importantly, it runs counter to the Department's professed commitment to transparency in its business. It should have been possible for ECGD to demonstrate how it had considered all of the concerns raised during the consultation exercise on this project without betraying commercial and political confidences. We recommend that in future, at the same time as it announces a major funding decision, the Department publishes a detailed analysis of the issues raised during public consultation with a full explanation of how those issues have been addressed. (Paragraph 19)

### ECGD support for the BTC pipeline

3. Having reviewed the material supplied to us in confidence by ECGD, we are satisfied that the Department did take full account of the concerns expressed by those who contributed to its consultation exercise and that, in deciding to support the BTC pipeline, it acted in a manner consistent with its business principles. (Paragraph 29)
4. It is not surprising that quality assurance problems occur during major construction projects such as the BTC pipeline. What matters is that those problems are identified and addressed. We are satisfied that ECGD's monitoring of the pipeline's construction, in cooperation with the other members of the Lenders Group, is proportionate and consistent with the Department's business principles. (Paragraph 32)

### ECGD's anti-corruption procedures

5. We are not persuaded by the arguments put forward by ECGD's customers that the Department had no right to information on the agents they use and the money to be paid to them. The payment of commission or fees to agents is generally recognised to be a common method of paying bribes, and in our view ECGD was right to attempt to get access to information on agents as part of the implementation of its anti-corruption policy. We have no doubt that its decision not to require such information in the future weakens that policy. (Paragraph 51)

6. The net result of the December changes to ECGD's procedures is that companies receiving support from the public purse need make no checks on their business partners to ensure, to the best of their ability, that UK taxpayers' money is not used by these partners to pay bribes. This is unacceptable, to say the least. (Paragraph 58)
7. We are not convinced by ECGD's defence of its definition of the meaning of the phrase "to the best of our knowledge and belief". While its action may be perfectly defensible in legal terms we are concerned that the Department has chosen to interpret the phrase in a way which is inconsistent with the rules of common sense. It is a nonsense to suggest that the December rules will ensure that due diligence will be carried out on 'controlled companies'. (Paragraph 65)
8. In our view, it should be possible to address the CBI's concern about the extent to which their members should be knowledgeable about the activities of their partners' employees by limiting the requirement to having knowledge of senior employees and defining that term to mean people with executive power in the company. This would cut down the extent of the information required considerably and maintain the need for some semblance of vigilance on the part of the applicant for ECGD's assistance. (Paragraph 70)
9. In conceding its right of independent audit, ECGD weakened its ability to detect fraud or other corrupt activity. The Department may not have statutory powers of investigation, but it does have the responsibility to ensure that public funds are used appropriately. We saw nothing wrong in requiring an applicant to agree to audit and inspection by ECGD as a condition of receiving support from the public purse and we regret ECGD's concession of the principle. (Paragraph 75)
10. We cannot understand why, if some of ECGD's customers could accept the Department's support under the more rigorous procedures effective from 1 May, others could not. (Paragraph 76)
11. We welcome ECGD's acknowledgement that the introduction of new procedures could have been handled better. In the light of this experience, we would expect the Export Guarantee Advisory Council to be consulted on any proposal to amend ECGD's procedures and that ECGD would seek its advice on the need for consultation with customers and other interested parties. (Paragraph 80)

# Formal minutes

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**Tuesday 8 March 2005**

Members present:

Mr Martin O'Neill, in the Chair

Mr Roger Berry

Mr Richard Burden

Judy Mallaber

Linda Perham

Sir Robert Smith

The Committee deliberated.

Draft Report (Implementation of ECGD's business principles), proposed by the Chairman, brought up and read.

*Ordered*, That the Chairman's draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 80 read and agreed to.

Summary read and agreed to.

*Resolved*, That the Report be the Ninth Report of the Committee to the House.

*Ordered*, That the Chairman do make the Report to the House.

Several papers were ordered to be appended to the Minutes of Evidence.

*Ordered*, That the Appendices to the Minutes of Evidence taken before the Committee be reported to the House.—(*The Chairman*)

[Adjourned till Tuesday 15 March at half past Nine o'clock.]

## Witnesses

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### Tuesday 16 November 2004

Mr John Weiss, Mr Roger Gotts and Mr David Allwood, **Export Credits Guarantee Department**

### Wednesday 23 February 2005

Mr Douglas Alexander MP, Minister of State for Trade and Investment, Mr John Weiss and Mr Nick Ridley, **Export Credits Guarantee Department**

## List of written evidence

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- 1 ECGD
- 2 ECGD WorleyParsons report
- 3 Baku Ceyhan Campaign
- 4 Derek Mortimore
- 5 Dr John Leeds
- 6 Michael Gillard
- 7 FCO–Kurdish Human Rights Project correspondence
- 8 PLATFORM
- 9 Campaign Against the Arms Trade
- 10 Transparency International (UK)
- 11 Confederation of British Industry
- 12 The Corner House
- 13 ECGD