

# The veil of secrecy shrouding export credit agencies in central and eastern Europe shows that the EU law on export credits must be strengthened



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This briefing highlights the lack of public scrutiny over export credit agencies (ECAs) in central and eastern Europe. The need for transparency has long been the basis for civil society requests to revise EU Regulation 1233/2011, which have been communicated to the European Commission and the European Parliament. In order to monitor the performance of European ECAs and ensure that they adhere to the EU's external action objectives and policies, effective tools need to be deployed. ECAs in Poland, Croatia, Hungary and the Czech Republic have been relentless in resisting civil society efforts to shine a light on how they use public money. Gaining access to information about ECAs' portfolios seems to be impossible in practice; lengthy and costly legal processes are the only way for civil

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society organisations to obtain elementary information about ECA projects. In such circumstances, there is no guarantee that ECAs will be held accountable for their responsibilities towards EU citizens.

## Introduction

ECAs are government-backed institutions that provide domestic companies with credits, guarantees or insurance against the risk of non-payment for business transactions abroad. All national ECAs combined provide **the largest source of publicly supported finance** for foreign business transactions of companies based in industrialised countries. At the national level, ECAs are subject to very little if any oversight by politicians and they are little known to the public at large.

Most ECAs in industrialised countries, including EU Member States, coordinate their policies within the framework of the OECD's Arrangement on Officially Supported Export Credits.<sup>1</sup> The arrangement applies to medium- and long-term official export credits with a repayment term of two years or more and excludes ECA support for military or agricultural goods. The contents of the arrangement are regularly revised and updated in accordance with the needs of its participants and the changing market circumstances. Apart from this overarching arrangement, the OECD further guides on environmental and social due diligence procedures. These rules are set apart in the OECD's 'Common Approaches'.<sup>2</sup> However, these are not binding; they are simply recommendations. They apply to only those operations falling under the arrangement; this is only a percentage of all ECA-backed operations.

Since trade and investment are an EU competency, the European Commission is participating in negotiations within the OECD regarding the arrangement on behalf of all EU Member States. To ensure that the arrangement is applied across the EU, it has been transposed in EU Regulation 1233/2011,<sup>3</sup> a delegated act revised and updated by the European Commission in accordance with changes applying to the arrangement. The preamble to this regulation reiterates that European ECAs are obliged to comply with the EU's external action objectives and obligations such as democracy, respect for human rights, policy coherence for development, and action against climate change. The Regulation requires that the European Commission produce an annual evaluation 'regarding the compliance of ECAs with Union objectives and obligations', specifically the 'external action' obligations set out in articles 3 and 21 of the Treaty of the European Union.

We have monitored the performance of Polish, Czech, Hungarian and Croatian ECAs for years and witnessed an enormous lack of transparency, which not only makes it impossible to verify the compliance of these institutions with EU objectives and obligations, but also actually puts it in question. **This lack of scrutiny over ECAs risks undermining the public policy commitments of the EU when it comes to principles such as transparency, protection of human rights, the fight against climate change and the promotion of democracy.**

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<sup>1</sup> OECD, [Arrangement on Officially Supported Export Credits](#), *OECD*, accessed 7 June 2022.

<sup>2</sup> OECD, [OECD Recommendation of the Council on Common Approaches for Officially Supported Export Credits and Environmental and Social Due Diligence](#), *OECD*, 7 April 2016.

<sup>3</sup> European Union, [Regulation \(EU\) No 1233/2011 of the European Parliament and of the Council of 16 November 2011 on the application of certain guidelines in the field of officially supported export credits and repealing Council Decisions 2001/76/EC and 2001/77/EC](#), *EUR-Lex*, 16 November 2011.

## The ineffectiveness of EU law at ensuring that ECAs comply with EU objectives and transparency

The European Commission argues that it is difficult to define a precise benchmark for measuring ‘compliance’ with EU law. Nonetheless, it has deemed Member States compliant on the basis that their ECAs screen projects against the standards laid down in the OECD’s Recommendation of the Council on Common Approaches for Officially Supported Export Credits and Environmental and Social Due Diligence (the ‘Common Approaches’).

The Regulation needs to change because it is outdated and fails to adequately reflect EU policy objectives. The willingness to revise ECA policies is visible globally. Last November, a number of EU Member States took the initiative to sign the COP26 Statement on International Public Support for the Clean Energy Transition and to end all international and direct public financing of fossil fuels. From both an environmental viewpoint and for the benefit of a level playing field, it is necessary that the European Union revises its policies and regulations regarding the ECAs of all its Member States.

In March 2022, the Council of the European Union adopted conclusions stressing the need to shift export finance from projects in the fossil fuel energy sector towards climate-neutral and climate-resilient projects.

Finally, the European Ombudsman suggested that ‘the involvement of the EU legislature appears necessary at this stage’ in order to strengthen the monitoring of European ECAs.

## The secret lives of export credit agencies in central and eastern Europe

Export credit agencies in Poland, Croatia, Hungary and the Czech Republic have been relentless in resisting civil society efforts to shine a light on how they use public money. Accessing information about their portfolios is extremely difficult, even though the institutions should publish information about risky projects.

### Hungarian secrets

The risk of ECA projects is categorised according to OECD standards. This means that ECAs are obliged to publicly disclose project information, including each project’s name, location and description (ESIA report, summary) as early as possible during the review process, but at least 30 calendar days before a final commitment to grant official support for category A projects (the riskiest ones). This process should also allow for comments from interested stakeholders within a clearly described procedure. For category B projects, the information has to be made public ex-post.

Eximbank Zrt., the Hungarian export credit agency, claims to fulfil its transparency and public participation obligations by pointing to the rules on its website.<sup>4</sup> It doesn’t publish any list of projects in category A or B and only refers to the OECD website<sup>5</sup> by stating: ‘...In this manner, this information is made available to the public in an aggregated form’. Eximbank Zrt. turned down a request for information on its tied aid loans by Friends of the Earth Hungary and appealed two court rulings. In 2019, the Supreme Court of Hungary accepted Eximbank

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<sup>4</sup> Exim, [Disclosure of information](#), Exim, accessed 7 June 2022.

<sup>5</sup> OECD, [Working Party on Export Credits and Credit Guarantees: INFORMATION ON CATEGORY A AND CATEGORY B PROJECTS](#), OECD, 4 August 2017.

Zrt.'s banking secrecy claim. But the Freedom of Information Act, which represents the public interest, should outweigh the secrecy of a state-owned bank. So, Friends of the Earth Hungary lodged a complaint with the Constitutional Court and the case is still pending.

### Ghost fossil fuels project: are Hungarian funds involved or not?

On 28 January 2019 at an event in Accra, Hungary's ambassador to Ghana unveiled a Hungarian investment in power generation worth USD 70 million for the first stage of the Bridge Power project.<sup>6</sup> Bridge Power, located within the thermal power complex in Tema, Ghana, is planned to be the biggest power plant in Ghana and should provide the country with a generating capacity of more than 400 megawatts of combined cycle power, fuelled by liquified petroleum gas, natural gas and diesel. At the event, Robert Ahomka-Lindsay, the Deputy Minister of Trade and Industry of Ghana, said: 'Hungary supported the Bridge Power project with financing through the Hungarian Export and Import Bank and would provide an additional investment of multi-million dollars' worth of equipment as part of the phase two of the project'.<sup>7</sup>

Friends of the Earth Hungary wrote an official letter to Eximbank Zrt. to clarify whether it is financing the Bridge Power project. In response, Eximbank Zrt. refused to provide any information, claiming the need for business and banking secrecy. In the same letter it claimed that: 'Eximbank applies environmental, social and human rights due diligence procedures in its lending activities, which have been developed in accordance with international obligations and agreements, in line with the principles of the OECD Council Recommendation on Common Environmental and Social Guidelines for Officially Supported Export Credits'.<sup>8</sup> Given the specifics, this would most probably be a category A project, which means it should be published on the website ex-ante to allow interested stakeholders to comment on it.

### Czech secrets

The website of the Czech Export Guarantee and Insurance Corporation (EGAP) states that: 'All EGAP's procedures are in compliance with international rules in the area of environment protection, including the revised Recommendation of the OECD Council of 2016'.<sup>9</sup> EGAP underlines its concerns about due diligence relating to its operations. It also publishes information about category A and B projects in line with the standards.

However, recently the institution introduced a secrecy scheme called the COVID Plus programme. COVID Plus was intended for large producers, with the volume of guarantees ranging from 5 million to 2 billion Czech koruna (CZK), which is worth from EUR 0.2 million to EUR 80 million. It has supported multiple companies without standard due diligence, including steel company Liberty Ostrava, travel agency Kiwi and air carrier

<sup>6</sup> Embassy of Hungary in Accra, [Unveiling of \\$70 million-worth of power generation investment from Hungary for the Bridge Power Project](#), *Embassy of Hungary in Accra*, accessed 7 June 2022.

<sup>7</sup> BusinessGhana, [Government unveils 70 million-dollar turbines for bridge power project](#), *BusinessGhana*, 30 January 2019.

<sup>8</sup> Letter dated for 9 February 2022 in possession of Friends of the Earth Hungary.

<sup>9</sup> EGAP, [The impact of exports on the environment and social environment](#), *EGAP*, accessed 7 June 2022.

Smartwings. Those interventions added up to CZK 5 billion for just three companies. For comparison, in 2022 the Czech government has approved the same amount in COVID-19 support to cover all entrepreneurs in the country. Under standard conditions, EGAP would follow a set of OECD and EU rules and be supervised by the Czech National Bank. However, thanks to an approved special government decree (No. 215/2020), these rules did not apply to the COVID Plus programme and it was not subject to any regulation or state supervision. It was a special programme, different from the typical schemes of ECAs, but it exposed poor due diligence and non-transparent approaches, shedding light on EGAP's overall (in)ability to assess project impacts and client credibility.

### Corruption investigations, opaque accounting and EGAP's guarantee

In the summer of 2020, EGAP approved a guarantee of CZK 2 billion (around EUR 80 million) for Liberty Ostrava, a steel company located in Northern Moravia. This is one of the biggest polluters in the Czech Republic, owned by the GFG Alliance chaired by Sanjeev Gupta, whose finances have been on the radar of international financial institutions since 2016 (Credit Suisse bankers have placed Sanjeev Gupta's Liberty Commodities on an internal blacklist).<sup>10</sup> The loan covered by the EGAP guarantee was provided by Greensill Bank AG, which went bankrupt in March 2021. The global media had been writing about corruption cases associated with Greensill Bank and GFG Alliance before the guarantee was granted.<sup>11</sup> EGAP's decision to grant support to a company with dubious financing and a dubious owner was contested nationally.<sup>12</sup>

EGAP representatives informed the Centre for Transport and Energy (CDE) in mid-2021 that all the conditions of the COVID Plus programme set out in government decree No. 215/2020 had been met by the client. According to EGAP's interpretation, it was not possible to examine the environmental and social impacts of supported projects and to determine in detail how the borrower was financed. EGAP informed the CDE that according to its information, Liberty Ostrava used the loan for operational purposes. Later, there was a report in the media that EGAP<sup>13</sup> considered the guarantee invalid due to the breach of warranty conditions; the loan was allegedly not used for operational purposes.

Despite 17 requests for information concerning the guarantee for Liberty Ostrava, the CDE was not provided with any specific information or a confirmation that the guarantee had been cancelled.

<sup>10</sup> Finews.com, [Greensill: Credit Suisse Ignored Warnings](#), *finews.com*, 28 May 2021.

<sup>11</sup> BBC, [Sanjeev Gupta's Liberty Steel offices targeted in fraud investigation](#), *BBC*, 27 April 2022.

Nicola Slawson, [Timeline: David Cameron and Greensill Capital](#), *The Guardian*, 12 April 2021.

<sup>12</sup> Mediální odbor, [Piráti a Starostové chtějí zabránit vytunelování ostravské ocelárny. podají podnět na EGAP kvůli zmizelým dvěma miliardám](#), *Pirátská strana – Moravskoslezský kraj*, 3 May 2021.

Petr Zenkner, Martin Ťopek, [Z ostravské Liberty se stává poutní místo politiků. Kde jsou dvě miliardy, za které ručí stát, ale nikdo neví](#), *Hospodářské noviny*, 20 May 2021.

<sup>13</sup> Petr Lukáč, Petr Zenkner, [Státní záruka za dvoumiliardový úvěr pro Liberty je podle EGAP neplatná](#), *Hospodářské noviny*, 2 July 2021.



## Croatian secrets

By February 2021, Croatia's ECA – the Bank for Reconstruction and Development (HBOR) – had lost 37 times before the High Administrative Court in cases relating to access to information about its performance.<sup>14</sup> Since 2016, when Croatian NGO Green Istria started using the Right to Access Information Act to ask about HBOR's export credit portfolio, the High Administrative Court has made six judgments in favour of Green Istria, i.e. against HBOR's decisions to deny access to the requested information. In 2019, Green Istria requested that HBOR disclose its export credit projects undertaken from 2015 to 2018, as well as conclusions and the official documents from HBOR's board meetings relating to these projects, which HBOR is obliged to proactively publish on its website.<sup>15</sup> HBOR refused to grant access to this information. After a two-year legal battle, Green Istria managed to obtain all the requested information,<sup>16</sup> which after numerous similar judgments in the past again proved the High Administrative Court's position that HBOR spends public money and citizens have the fundamental right 'to exercise control over the holders of power and over the spending of public funds'.<sup>17</sup> But court cases cannot be the solution every time there is a request for information; regular scrutiny over HBOR is needed.

Unfortunately, HBOR continues to be opaque. It communicates different standards with European institutions than it does with Green Istria. HBOR has formally committed to adhering to the OECD's Common Approaches since 2013.<sup>18</sup> Green Istria also received checklists sent by Croatia to the European Commission annually, as required by EU Regulation 1233/2011 for the years 2016-20. For all these years, HBOR stated to the European Commission that it adhered to the OECD's Common Approaches. Surprisingly, Green Istria received a letter from HBOR on 17 February 2022 stating that: 'In its acting related to consideration of export insurance in the context of corporate social responsibility, HBOR regulated and harmonised with the OECD Recommendation of the Council on Common Approaches for Officially Supported Export Credits and Environmental and Social Due Diligence – The "Common Approaches" by an internal act that entered into force on April 6, 2021'.<sup>19</sup>

First, the question arises as to why there are differences in information regarding HBOR's adherence to the Common Approaches provided to the European Commission and to Green Istria. There are also differences in HBOR's reports, as in its 2016 Social Responsibility Report, HBOR claimed to have adhered to the Common Approaches since 2013, while in its 2020 Social Responsibility and Sustainability Report,<sup>20</sup> it said it would start adhering to Common Approaches from 2021. Secondly, there are still no category A or B projects listed on HBOR's website. This may be due to the small size and nature of HBOR's export guarantee projects, but this is

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<sup>14</sup> Dunja Mickov, [High administrative court rules in favor of Green Istria – Information Commissioner violated the Act on the right of access to information](#), *Green Istria*, 8 March 2021.

<sup>15</sup> [Act on the Right of Access to Information, Official Gazette 25/13 and 85/15, Article 10.1.12.](#): "Public authority bodies are obliged to publish the following information in an easily searchable and machine-readable format on their websites: ... 12) conclusions from official sessions of public authority bodies and the official documents enacted at these sessions..."

<sup>16</sup> Judgements are available here: <https://drive.google.com/drive/folders/1G2vsY0zwIpdOeOzPEfDIM2lb5XvXpEJo?usp=sharing>

<sup>17</sup> [Act on the Right of Access to Information, Official Gazette 25/13 and 85/15, Article 16.3.](#): "Information on the disposal of public funds shall be available to the public without conducting the procedure referred to in paragraph 1 of this Article, with the exemption of classified information."

<sup>18</sup> HBOR, [IZVJEŠĆE O DRUŠTVENJOJ ODGOVORNOSTI 2016](#), HBOR, 19, June 2017.

<sup>19</sup> [Letter from HBOR dated 17 February 2022](#) in possession of Green Istria.

<sup>20</sup> HBOR, [IZVJEŠĆE O DRUŠTVENJOJ ODGOVORNOSTI I ODRŽIVOSTI 2020](#), HBOR, 26, August 2021.

not clear from the bank's annual reports and corporate social responsibility reports; access to information is tightly limited by the institution.

### Croatian investment in hydropower plant located in a conflict zone

As a result of one of the High Administrative Court judgements, Green Istria received information that in 2017, HBOR backed within its export credit insurance programme the delivery of two 56 megavolt-ampere (MVA) generators, generator excitation, assembly and PUP supervision, cost and freight delivery, special tools and devices, and spare parts from a Croatian business called Končar – Generators and Motors Inc. to Iran. The value of the export business, i.e. the insured amount, was 17 977 455 Croatian kuna (HRK) (around EUR 2.3 million).<sup>21</sup> Also, within the export bank's guarantees programme, HBOR supported Končar's delivery of two generators for Khoda Afarin Hydropower Plant in Iran to Slovenia, valued at HRK 17 747 587 (around EUR 2.3 million).<sup>22</sup>

Information about the project can be found on the investor's website:

KONČAR – Generators and Motors Inc. (GIM) has signed a contract with the Iranian company Farab Co. for the delivery of two new vertical generators and the corresponding auxiliary systems. The Khoda Afarin HPP is a new power plant that is being built on the Aras river, on the border of Iran and Azerbaijan, only a mile away from the world-famous 11th and 13th century bridges, known as the Khoda Afarin bridges. The bridges connect the territory of Iran with the Azerbaijan territory of Nagorno-Karabakh. This contract is of great importance not only for GIM and other companies within the KONČAR Group, but also for the Group as a whole, given that it reopens the Iranian market.<sup>23</sup>

As analysed by the Jamestown Foundation, the location of the project is highly controversial:

In early May 2020, media reports highlighted the construction of a large hydropower system composed of the Khudafarin and Qiz Qalasi (Maiden Tower) hydropower plants as well as hydro junctions and related facilities and bridges on the Aras River, which follows part of the border between Azerbaijan and Iran. The reporting included photographs of the construction sites apparently located on the territory of Azerbaijan's Armenian-occupied Jabrayil district.<sup>24</sup>

It is highly questionable whether sufficient due diligence was undertaken given the geopolitical nuances and potential human rights impacts of the project, as well as its impact on historical sites.

<sup>21</sup> [Document](#) provided by HBOR in possession of Green Istria.

<sup>22</sup> [Document](#) provided by HBOR in possession of Green Istria, lines 82 and 83.

<sup>23</sup> Končar, [Conclusion of the contract for the delivery of equipment for the Khoda Afarin HPP in Iran](#), *Končar*, 26 February 2018.

<sup>24</sup> Rahim Rahimov, [Iran Completes Controversial Hydropower Project on Aras River](#), *The Jamestown Foundation*, 24 June 2020.

## Polish secrets

A 2019 ruling by Poland's Supreme Administrative Court concluded a three-year-long effort by the Polish Green Network to reveal who receives support from Poland's export credit agency, KUKE S.A. Eventually, the court ruled in favour of KUKE S.A., which claimed insurance secrecy as a reason to reject the request for the complete list of the companies it had provided with publicly backed insurance.

The full portfolio of the projects supported by KUKE S.A. remains secret, although information about category A and B projects is available on the website.<sup>25</sup> In 2022, KUKE S.A. for the first time disclosed on request an anonymised environmental questionnaire for one of its projects in Belarus. It was a biomass (wood) power plant<sup>26</sup> that received support in 2021.

In 2020, the Polish Green Network asked the Polish Ministry of Finance – which supervised KUKE S.A. at that time – about the implementation of the Paris Agreement. The response stated that KUKE S.A. works to realise the Paris Agreement by implementing the OECD's Arrangement on Officially Supported Export Credits.<sup>27</sup> There is not a single mention of climate change and the role export credits can play in mitigating this in the OECD Arrangement, so referring to it shows a lack of relevant policy and proper consideration both by the agency and the Member State.

## European Commission doing little to bring transparency to ECAs

Such a systemic failure of transparency raises questions about the approach and practices of these institutions and makes it impossible to assess their compliance with EU objectives. The basic problem is a lack of clarity about what the agencies support. The reporting formats sent annually by Member States to the European Commission give hardly any concrete information about the projects' ECA support. In these reports, Member States should describe how environmental risks, which can carry other relevant risks, are taken into account in the officially supported export credit activities of their ECAs. The European Commission should produce an annual review for the European Parliament based on this information, including an evaluation regarding the compliance of ECAs with EU objectives and obligations. Reports from the European Commission to the European Parliament covering [2017](#), [2018](#) and [2019](#) failed to contain such an evaluation. These vague reports, stating that '...the Commission considers that the information contained in the Annual Activity Reports provides strong evidence that ECAs are in compliance with Articles 3 and 21 TEU and does not provide evidence of non-compliance by any Member State' do not actually show any evidence of compliance with EU objectives and obligations, as required by EU Regulation 1233/2011.

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<sup>25</sup> KUKE, [Projekty notyfikowane ex post](#), KUKE, accessed 7 June 2022.

KUKE, [Projekty notyfikowane ex ante](#), accessed 7 June 2022.

<sup>26</sup> KUKE, [Projekty notyfikowane ex post](#).

<sup>27</sup> Ministry of Finance letter to Polish Green Network, 14 September 2020.



## Recommendations

The EU should start an effort to bring ECAs in line with the Treaty of the European Union, as well as the Paris Agreement. This entails improving transparency mechanisms and introducing the protection of human rights, the fight against climate change and the promotion of democracy. EU institutions as a whole should take a proactive stand and embark on a political process to design new EU legislation that ensures that all ECAs of EU Member States are fully governed by EU policy objectives – in particular those relating to the EU’s external action as defined in the treaties – and the Paris Agreement.

Within the European Parliament, the Committee on International Trade (INTA) leads the debate about the future of European trade policy and reviews European trade and investment agreements. INTA is also responsible for the policy framework guiding ECAs. Given the Commission’s opening on the definition of an EU strategy for export credits and the latest position taken by the Council of the EU, INTA should take a proactive stand and embark on a political process to design new EU legislation that ensures that all ECAs of EU Member States are fully governed by EU policy objectives and the Paris Agreement.

We urge the EU to take steps to revise Regulation 1233/2011 on officially supported export credits:

- The current delegated act status of EU Regulation 1233/2011 should be withdrawn;
- The EU should embark on a political process to replace EU Regulation 1233/2011 with new legislation that is based on transparency, human rights and environmental due diligence frameworks and standards;
- European institutions should ensure in the new legislation that European ECAs provide data (type of project, value, project owner and project description) in relation to all supported projects on each ECA’s website, publish detailed announcements of projects under consideration at the moment of receiving the application and publish due diligence reports and analyses;
- The EU must introduce a more effective reporting and accountability mechanism to ensure that European ECAs comply with policy and objectives, in particular those relating to the EU’s external action.

The secrecy shrouding ECAs needs to be removed in order to comply with standards regarding access to information and allow for effective public scrutiny of ECAs. Secrecy in business, banking and insurance cannot prevail over access to information in cases where public money is at stake.