

**Working Party on Export Credits and Credit Guarantees**  
**Responses to the 2002 Survey on Measures Taken to Combat**  
**Bribery in Officially Supported Export Credits**  
**An Analysis**

By

Kirstine Drew

UNICORN: Trade Union Anti-corruption Network

On Behalf of the Trade Union Advisory Committee to the OECD (TUAC)

Tuesday, 06 January 2004

**Public Services International Research Unit (PSIRU)**, School of Computing and Mathematical Sciences, University of Greenwich, Park Row, London SE10 9LS U.K.

*Email:* [psiru@psiru.org](mailto:psiru@psiru.org) *Website:* [www.psiru.org](http://www.psiru.org) *Tel:* +44-(0)208-331-9933 *Fax:* +44 (0)208-331-8665

**Director:** David Hall **Researchers:** Kate Bayliss, Steve Davies, Robin de la Motte, Kirstine Drew, Jane Lethbridge, Emanuele Lobina, Steve Thomas

PSIRU's research is centred around the maintenance of an extensive database of information on the economic, political, financial, social and technical experience with privatisation and restructuring of public services worldwide, and the multinational companies involved in these processes. This core database is financed by Public Services International (PSI - [www.world-psi.org](http://www.world-psi.org)), the worldwide confederation of public service trade unions. Nearly all of PSIRU's research is published on its website, [www.psiru.org](http://www.psiru.org).

<b>WORKING PARTY ON EXPORT CREDITS AND CREDIT GUARANTEES .....</b>	<b>1</b>
<b>RESPONSES TO THE 2002 SURVEY ON MEASURES TAKEN TO COMBAT BRIBERY IN OFFICIALLY SUPPORTED EXPORT CREDITS- AS OF 8<sup>TH</sup> OCTOBER 2003 .....</b>	<b>1</b>
<b>AN ANALYSIS .....</b>	<b>1</b>
<b>EXECUTIVE SUMMARY .....</b>	<b>3</b>
<b>1 INTRODUCTION.....</b>	<b>6</b>
1.1 AIMS AND AUDIENCE .....	6
1.2 EXPORT CREDIT AGENCIES AND BRIBERY .....	6
1.3 METHODOLOGY OF THE REPORT .....	6
1.4 STRUCTURE.....	7
<b>2 EXPORT CREDIT AGENCIES' ANTI-BRIBERY MEASURES.....</b>	<b>9</b>
2.1 SECTION I: MEASURES TO DETER BRIBERY .....	9
2.1.1 <i>Overall Performance</i> .....	11
2.1.2 <i>G7 Country ECA Performance</i> .....	11
2.1.3 <i>Using the Results</i> .....	11
2.2 SECTION II: APPROPRIATE ACTIONS .....	11
2.2.1 <i>Sanctions BEFORE Decision to Provide Support</i> .....	11
2.2.2 <i>After Decision to Provide Support</i> .....	11
2.2.3 <i>Comparing ECA Performance: Before and After Providing Support</i> .....	11
2.3 SECTION III: PAST EXPERIENCE .....	11
2.3.1 <i>Overall Assessment</i> .....	11
2.3.2 <i>Performance of G7 ECAs</i> .....	11
2.3.3 <i>Using the Results</i> .....	11
2.4 SECTION IV: FURTHER MEASURES/ACTIONS .....	11
2.4.1 <i>Overall Performance</i> .....	11
2.4.2 <i>Performance of the G7 Country ECAs</i> .....	11
2.4.3 <i>Using the Results</i> .....	11
<b>3 THE UNICORN ECA ANTI-BRIBERY INDEX .....</b>	<b>11</b>
3.1 CONSTRUCTING THE INDEX.....	11
3.1.1 <i>Section I: Measures to Deter Bribery</i> .....	11
3.1.2 <i>Section II: Actions Before and After the Granting of Official Support;</i> .....	11
3.1.3 <i>Section III: Past Experiences with Bribery</i> .....	11
3.1.4 <i>Section IV: Information Exchange</i> .....	11
3.2 THE ECA ANTI-BRIBERY INDEX .....	11

## Executive Summary

UNICORN is a donor funded Global Unions Anti-corruption network, sponsored by the Trade Union Advisory Committee to the OECD (TUAC), the International Confederation of Free Trade Unions (ICFTU) and Public Services International (PSI). Its mission is to assist and mobilise trade unions, and wider civil society groups, to share information and to better co-ordinate action to combat international corruption. To this end, UNICORN conducts public policy related research on corruption related issues, which should also be relevant for governments.

This report analyses the anti-bribery policies and practices of the Export Credit Agencies (ECAs) of the major industrialised countries. On this basis it makes policy recommendations for governments with ECAs, as well as trade unions and wider civil society campaign groups that are seeking to ensure that the activities of ECAs conform to their wider governmental commitments to criminalise bribery in international business transactions.

The report also presents the UNICORN *Export Credit Agency Anti-bribery Index*, which ranks ECAs on the basis of their *reported use* of anti-bribery measures.

## Export Credit Agencies and Bribery

ECAs are public agencies that provide government-backed loans, guarantees and insurance to domestic companies, seeking to do business overseas in economically and politically risky areas of the world. Today, they are “*collectively among the largest sources public financial support for foreign corporate involvement in industrial projects in the developing world.*”<sup>1</sup> Together, by value, they offer support for *one in eight* dollars of global trade. As primary supporters of international business, ECAs have a vital contribution to make to international efforts to stamp out bribery. ECAs are based in countries that have ratified the OECD Anti-bribery Convention. These governments are obliged to enact domestic legislation that criminalises the bribing of a foreign public official by home country corporations. It is reasonable to expect that the activities of ECAs as public agencies should conform in every way to meeting this obligation. However, as the report will show, much more needs to be done by governments to make this a reality.

## Methodology of the report

The analysis presented here uses the results of the 2002 OECD survey<sup>2</sup> on the anti-bribery measures of ECAs, as reported by the 8<sup>th</sup> October 2003, to evaluate the potential and actual use of anti-bribery measures. It distinguishes between the performance of the group as a whole, and the sub-group of G7 country ECAs: *Canada, France, Germany, Italy, Japan (JBIC, NEXI), the UK and the USA*, which are home to the most resourced, and therefore most influential, ECAs.

## Export Credit Agencies’ Anti-bribery Measures

The results show that many ECAs are, to differing degrees, *constrained* from using specific measures that would help combat bribery. They also highlight that there are a large number of cases where ECAs, which have the option, *choose* not to implement anti-bribery measures.

Those culpable governments should take unilateral remedial action immediately to correct these anomalies. Both the OECD Working Party on Export Credits and Credit Guarantees, and the OECD Working Group on

---

<sup>1</sup> [http://www.eca-watch.org/eca/ecas\\_explained.html#intro](http://www.eca-watch.org/eca/ecas_explained.html#intro)

<sup>2</sup> Documented in the report: *Responses to the 2002 Survey on Measures Taken to Combat Bribery in Officially Supported Exported Credit Agencies – As of 3<sup>rd</sup> October 2003* -

Bribery should take seriously their collective responsibility to exert peer pressure on non-conforming governments. Efforts should first focus on those ECAs that *choose* not to implement measures to deter and sanction bribery. These ECAs should be put under pressure to more fully meet their legal obligations to deter bribery. In the case of the second group, comprising ECAs that are *constrained* from adopting a particular sanction, there are likely to be synergies from using peer pressure to achieve changes in practice. Furthermore, the OECD Working Party could usefully commission research to collate information so as to identify possible factors of constraint/success.

Trade unions and other campaigning groups working for ECAs to adopt higher anti-bribery standards are also urged to differentiate between these two groups: for example, by setting up thematic working groups on issues such as black-listing or commercial confidentiality with a view to sharing information and developing strategies to tackle *common* problems.

## **The UNICORN Export Credit Agency Anti-bribery Index**

The UNICORN *ECA Anti-bribery Index* ranks ECAs according to their *use* of anti-bribery measures (*actual practice*) as reported in the OECD Working Party's 2002 survey. It does not analyse ECA practices in other areas, for example on their performance as regards the respect of core labour rights, or the environmental performance of recipient corporations. *Austria* is the best performing ECA, scoring 12 out of a possible 16.5. *Denmark* is in second place with a score of 11.33, followed closely by *Australia* in third place, with a score of 11.00. The group of G7 country ECAs performs poorly overall. *France* tops the group with a score of 8.83, but is 12<sup>th</sup> overall. *Germany* and *Italy* share last position, with a score of 6.67, 23<sup>rd</sup> overall.

COUNTRY	EXPORT CREDIT AGENCY	SCORE	RANKING
AUSTRIA	Oesterreichische Kontrollbank AG (OeKB)	12.00	1
DENMARK	Eksport Kredit Fonden (EKF)	11.33	2
AUSTRALIA	Export Finance and Insurance Corporation (EFIC)	11.00	3
NORWAY	Garanti-Instituttet for Eksportkreditt (GIEK)	10.83	4
GREECE	Export Credit Insurance Organization	10.67	5
NETHERLANDS	Nederlandsche Credietverzekering Maatschappij NV	10.50	6
NEW ZEALAND	Export Credit Office (ECO)	10.17	7
CZECH REPUBLIC	Export Guarantee and Insurance Corporation (EGAP)	9.83	8
BELGIUM	Office National du Dueroire/Nationale Delcrederedienst	9.33	9
FINLAND	Finnvera	9.33	9
LUXEMBOURG	Office du Dueroire	9.33	9
FRANCE	Compagnie française d'Assurance pour le commerce extérieur (COFACE)	8.83	12
HUNGARY (EXIMBANK)	Hungarian Export-Import Bank Ltd.	8.67	13
JAPAN (JBIC)	Japan Bank for International Cooperation	8.50	14
CANADA	Export Development Canada (EDC)	8.17	15
SPAIN	Compania Espanola de Seguros de Credito a la Exportacion (CESCE)	8.17	15
SLOVAK REPUBLIC	Export-Import Bank of the Slovak Republic	7.50	17
UNITED KINGDOM	Export Credits Guarantee Department	7.33	18
UNITED STATES	Export-Import Bank of the United States	7.17	19
HUNGARY (MEHIB)	Hungarian Export Credit Insurance Ltd (MEHIB)	7.00	20
JAPAN (NEXI)	Export-Import Insurance Department	7.00	20
SWEDEN	Exportkreditnämnden	7.00	20
GERMANY	Hermes Kreditversicherungs-AG (HERMES)	6.67	23
ITALY	Sezione Speciale per l'Assicurazione del Credito all'Esportazione (SACE)	6.67	23
MEXICO	Banco Nacional de Comercio Exterior, SNC	6.50	25
SWITZERLAND	Export Risk Guarantee (ERG)	6.17	26
KOREA (EXIMBANK)	The Export-Import Bank of Korea	6.00	27
POLAND	Export Credit Insurance Corporation (KUKI)	5.67	28
TURKEY	Export Credit Bank of Turkey	3.67	29
KOREA (KEIC)	Korea Export Insurance Corporation	2.67	30
PORTUGAL	Companhia de Seguro de Créditos, SA		NO RESPONSE

COUNTRY	EXPORT CREDIT AGENCY	SCORE	OVERALL RANKING	G7 RANKING
FRANCE	Compagnie française d'Assurance pour le commerce extérieur (COFACE)	8.83	12	1
JAPAN (JBIC)	Japan Bank for International Cooperation	8.50	14	2
CANADA	Export Development Canada (EDC)	8.17	15	3
UNITED KINGDOM	Export Credits Guarantee Department (ECGD)	7.33	18	4
UNITED STATES	Export-Import Bank of the United States (EX-IM)	7.17	19	5
JAPAN (NEXI)	Export-Import Insurance Department	7.00	20	6
GERMANY	Hermes Kreditversicherungs-AG (HERMES)	6.67	23	7
ITALY	Sezione Speciale per l'Assicurazione del Credito all'Esportazione (SACE)	6.67	23	7

# 1 Introduction

## 1.1 Aims and Audience

The report examines the anti-bribery policies and practices of the Export Credit Agencies (ECAs) of the major industrialised countries. It first provides an analysis of the measures used by ECAs to deter and sanction bribery, distinguishing between the group as a whole and the G7 country ECAs. It then makes a number of recommendations to governments to improve ECA performance in this area and identifies priority areas for further research/campaigning activity. Finally, it presents the UNICORN *ECA Anti-bribery Index*, which ranks ECAs on the basis of their *use* of anti-bribery measures.

It is hoped that the report will prove useful to all those involved in working for higher standards in the policies and practices of Export Credit Agencies: the OECD Working Party on Export Credits and Credit Guarantees, and the OECD Working Group on Bribery; as well as campaigning trade unions and NGOs.

## 1.2 Export Credit Agencies and Bribery

ECAs are public agencies that provide government-backed loans, guarantees and insurance to domestic companies, seeking to do business overseas in economically and politically risky areas of the world. Today, they are “*collectively among the largest sources public financial support for foreign corporate involvement in industrial projects in the developing world.*”<sup>3</sup>

As a result of the OECD Convention on Combating Bribery of Foreign Public Officials in International Business (1999), all OECD countries, as well as Argentina, Brazil, Bulgaria, Chile and the Slovak Republic, are required to enact domestic legislation that criminalises the act of bribing a foreign public official.

ECAs, as primary supporters of international business, have a vital role to play in international efforts to stamp out bribery. Under the OECD Convention, they are obliged to put in place measures to *deter and sanction* bribery in the international business transactions they support. The *OECD Working Group on Bribery* has the collective responsibility for the implementation of the Convention.

The *OECD Working Party on Export Credits and Credit Guarantees* is the body charged with coordinating this work. To date, its efforts have focused on compiling information through an on-going survey of its members’ anti-bribery practices and developing an agreed set of common commitments, set out in the 2000 Action Statement (see BOX 1). It is currently in the process of identifying best practice with a view to updating, and upgrading, the commitments set out in the 2000 Action Statement.

## 1.3 Methodology of the report

The report uses the results of the OECD Working Party’s 2002 survey<sup>4</sup> on the anti-bribery measures of member ECAs, as reported by the 8<sup>th</sup> October 2003. The survey generated 31 separate responses from 28 OECD member countries: 3 countries, *Hungary, Japan and Korea*, each provide official export insurance through two export credit agencies. Portugal reported that its systems were under review and did not therefore respond to the survey. Hence the following analysis is based on the responses of 30 ECAs (see *TABLE 1*).

---

<sup>3</sup> [http://www.eca-watch.org/eca/ecas\\_explained.html#intro](http://www.eca-watch.org/eca/ecas_explained.html#intro)

<sup>4</sup> Documented in the report: *Responses to the 2002 Survey on Measures Taken to Combat Bribery in Officially Supported Exported Credit Agencies – As of 3<sup>rd</sup> October 2003* -

The analysis distinguishes between the group as a whole, and the sub-group of 8 G7 country ECAs: *Canada, France, Germany, Italy, Japan (JBIC, NEXI), the UK and the USA*. The G7<sup>5</sup> countries represent the most politically and economically powerful industrial democracies. As such they are home to the largest and most influential ECAs.

*The analysis does not introduce any additional information, nor seek to make any qualitative assessment of the effectiveness of the measures put in place. It does, however, identify and challenge any apparent inconsistencies or contradictions in the information provided.*

*BOX 1*

*ACTION STATEMENT ON BRIBERY AND OFFICIALLY SUPPORTED EXPORT CREDITS*

- all official export credit and export credit insurance providers shall inform applicants requesting support about the legal consequences of bribery in international business transactions under its national legal system including its national laws prohibiting such bribery;
- the applicant and/or the exporter, in accordance with the practices followed in each ECG Member's export credit system, shall be invited to provide an *undertaking/declaration that neither they, nor anyone acting on their behalf, have been engaged or will engage in bribery* in the transaction;
- the applicant and other parties receiving or benefiting from support remain fully responsible for the proper description of the international business transaction and the transparency of all relevant payments;
- the applicant and other parties involved in the transaction remain fully responsible for compliance with all applicable laws and regulations including national provisions for combating bribery of foreign public officials;
- if there is sufficient evidence that such bribery was involved in the award of the export contract, the official export credit or export credit insurance provided shall refuse to *approve credit, cover or other support*;
- if after credit, cover or other support has been approved, an involvement of a beneficiary in such bribery is proven, the official export credit or export credit insurance provider shall take appropriate action, such as *denial of payment or indemnification, refund of sums provided and/or referral of evidence of such bribery to the appropriate national authorities*.<sup>6</sup>

## 1.4 Structure

The remainder of this report is structured as follows:

- *Section 2* provides a detailed analysis of ECAs' anti-bribery measures, makes recommendations for improving performance and identifies priority areas for research/campaign activity;
- *Section 3* presents the *Export Credit Agency Anti-bribery Index*, which ranks member ECAs on the basis of their *use* of anti-bribery measures.

<sup>5</sup> The G7 became the G8 following the full participation of Russia in the 1998 Birmingham Summit. However, Russia is not a member of the OECD and is not a signatory to the OECD Anti-bribery Convention.

<sup>6</sup> Action Statement on Bribery and Officially Supported Export Credits  
<http://www.oecd.org/pdf/M00002000/M00002298.pdf>

TABLE 1: SURVEY PARTICIPANTS AND RESPONSES

COUNTRY	EXPORT CREDIT AGENCY	G7 ECAs	RESPONDED
Australia	<a href="#">Export Finance and Insurance Corporation (EFIC)</a>	X	✓
Austria	<a href="#">Oesterreichische Kontrollbank AG (OeKB)</a>	X	✓
Belgium	<a href="#">Ducroire / Delcredere (ONDD) -</a>	X	✓
Canada	<a href="#">Export Development Canada (EDC)</a>	✓	✓
Czech Republic	<a href="#">Export Guarantee and Insurance Corporation (EGAP)</a>	X	✓
Denmark	<a href="#">Eksport Kredit Fonden (EKF)</a>	X	✓
Finland	<a href="#">Finnvera (Oyj)</a>	X	✓
France	<a href="#">Coface</a>	✓	✓
Germany	<a href="#">Hermes</a>	✓	✓
Greece	<a href="#">Export Credit Insurance Organization</a>	X	✓
Hungary	<a href="#">Hungarian Export Credit Insurance Ltd (MEHIB)</a>	X	✓
Hungary	<a href="#">Eximbank</a>	X	✓
Italy	<a href="#">Sezione Speciale Per l'Assicurazione Del Credito All'Esportazione (SACE)</a>	✓	✓
Japan	<a href="#">Japan Bank for International Co-operation (JBIC)</a>	✓	✓
Japan	<a href="#">Nippon Export and Investment Insurance (NEXI)</a>	✓	✓
Korea	<a href="#">Korea Export Insurance Corporation (KEIC)</a>	X	✓
Korea	<a href="#">The Export-Import Bank of Korea</a>	X	✓
Luxembourg	<a href="#">Office du Ducroire</a>	X	✓
Mexico	<a href="#">Banco Nacional de Comercio Exterior</a>	X	✓
Netherlands	Nederlandsche Credietverzekering Maatschappij N.V.(NCM)	X	✓
New Zealand	<a href="#">Export Credit Office (ECO)</a>	X	✓
Norway	<a href="#">Garanti-Instituttet for Eksportkreditt (GIEK)</a>	X	✓
Poland	<a href="#">Export Credit Insurance Corporation (KUKE)</a>	X	✓
Portugal	Companhia de Seguro de Créditos, E.P.(COSEC)	X	Null
Slovak Republic	<a href="#">Export-Import Bank of the Slovak Republic</a>	X	✓
Spain	<a href="#">Compania Espanola de Seguros de Credito a la Exportacion (CESCE)</a>	X	✓
Sweden	<a href="#">Swedish Export Credits Guarantee Board, Export Kredit Namnden (EKN)</a>	X	✓
Switzerland	<a href="#">Export Risk Guarantee (ERG)</a>	X	✓
Turkey	<a href="#">Export Credit Bank of Turkey</a>	X	✓
UK	<a href="#">Export Credit Guarantee Department (ECGD)</a>	✓	✓
USA	<a href="#">EximBank</a>	✓	✓
<b>31</b>		<b>8</b>	<b>30</b>



## 2 Export Credit Agencies' Anti-bribery Measures

This section presents an analysis of the findings of the OECD Working Party's 2002 survey<sup>7</sup> on the anti-bribery measures of member ECAs, as reported by the 8<sup>th</sup> October 2003.

The OECD survey contained four sections:

- *Section I:* Measures to Deter Bribery;
- *Section II:* Potential Actions *Before* and *After* the Granting of Official Support;
- *Section III:* Past Experiences with Bribery;
- *Section IV:* Actions under Consideration.

The results for each section are presented in the sub-sections below.<sup>8</sup>

### 2.1 Section I: Measures to Deter Bribery

Section I of the questionnaire asked ECAs to indicate which of the following measures they use to deter bribery:

- inform applicants about the legal consequences of bribery (commitment of the 2000 Action Statement);
- invite the provision of a no-bribery undertaking/declaration (commitment of the 2000 Action Statement);
- require the provision of a no-bribery undertaking/declaration;
- require applicants to provide details of commissions;
- require applicants to provide details of agents;
- consider commissions to be eligible for support;
- apply ceilings to commissions;
- assess the level of commission against standard business practice;
- request the identification of the purpose of the commission.

The results for all members ECAs, as well as the group of 8 G7 country ECAs, are provided in *FIGURES 1-2*<sup>9</sup>. *TABLE 2* presents an overview of the ECAs' individual responses.

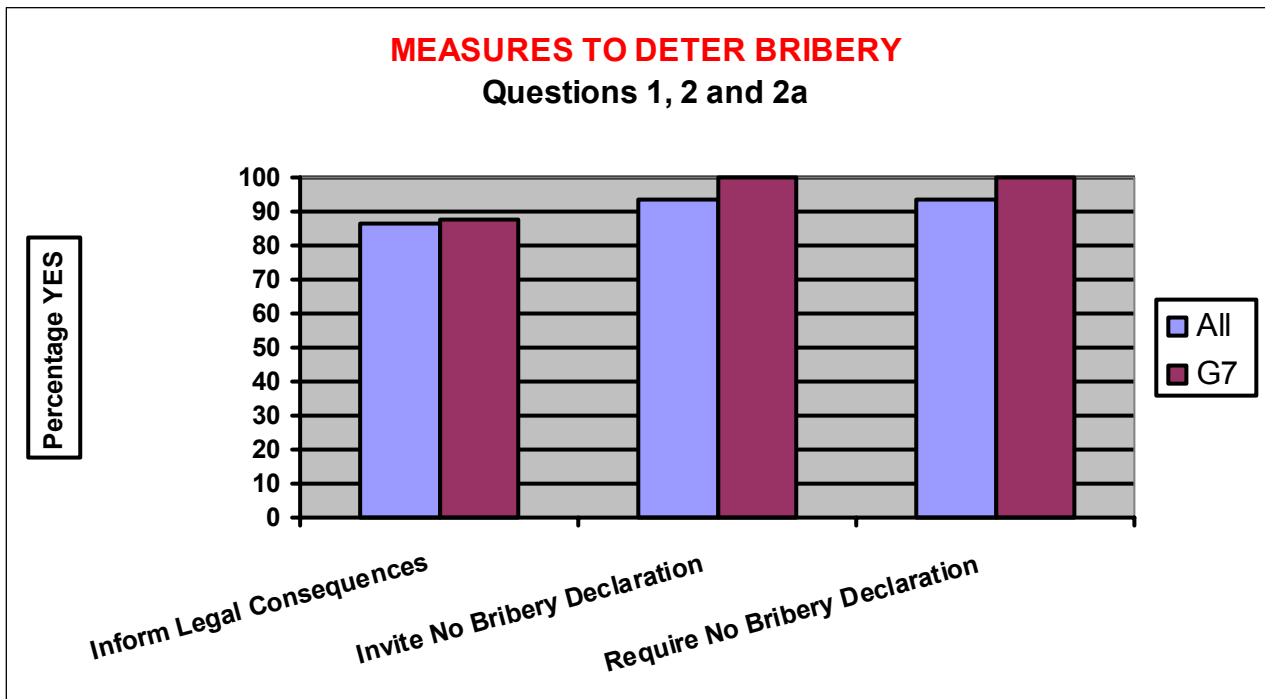
---

<sup>7</sup> Documented in the report: *Responses to the 2002 Survey on Measures Taken to Combat Bribery in Officially Supported Exported Credit Agencies – As of 3<sup>rd</sup> October 2003* -

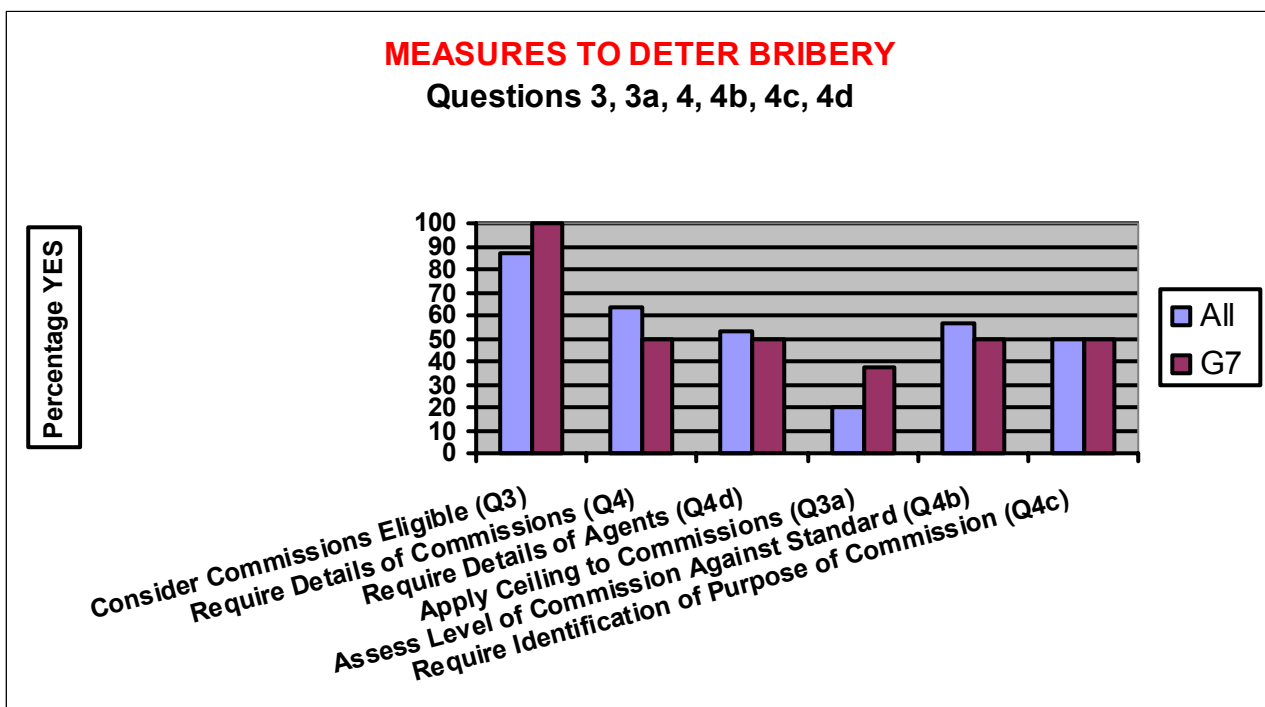
<sup>8</sup> The analysis is partial as it focuses only on those *questions which are quantifiable*.

<sup>9</sup> *FIGURE 2* presents the findings in a different order from the questionnaire so as to group the measures in such a way as to better frame the discussion and the recommendations

**FIGURE 1: MEASURES TO DETER BRIBERY: QUESTIONS 1 AND 2**



**FIGURE 2: MEASURES TO DETER BRIBERY: QUESTIONS 3 AND 4**



**TABLE 2: SECTION 1 - MEASURES TO DETER BRIBERY: OVERVIEW OF RESPONSES**

COUNTRY	INFORM LEGAL CONSEQ.	INVITE NO BRIBERY	REQUIRE NO BRIBERY	COMMISS. INELIGIBLE	DETAILS OF COMMISS	DETAILS OF AGENTS	CEILINGS TO COMMISS.	COMPARE STANDARD	PURPOSE OF COMM.
AUSTRALIA	X	✓	✓	X	✓	✓	X	✓	✓
AUSTRIA	✓	✓	✓	X	✓	✓	X	✓	✓
BELGIUM	✓	✓	✓	X	✓	✓	X	✓	✓
CANADA	✓	✓	✓	X	X	✓	✓	✓	✓
CZECH REPUBLIC	✓	✓	✓	X	✓	✓	X	✓	✓
DENMARK	✓	✓	✓	X	✓	✓	X	✓	✓
FINLAND	✓	✓	✓	X	✓	✓	X	✓	✓
FRANCE	✓	✓	✓	X	✓	✓	X	X	✓
GERMANY	✓	✓	✓	X	X	X	X	X	X
GREECE	✓	✓	✓	✓	✓	X	X	✓	✓
HUNGARY (MEH)	✓	✓	✓	X	X	X	X	X	X
HUNGARY (EXIM)	✓	✓	✓	✓	X	X	X	X	X
ITALY	✓	✓	✓	X	X	X	✓	X	X
JAPAN (JBIC)	✓	✓	✓	X	✓	✓	X	✓	X
JAPAN (NEXI)	✓	✓	✓	X	X	X	X	X	X
KOREA (KEIC)	✓	X	X	X	X	X	X	X	X
KOREA (EXIM)	✓	✓	✓	X	X	X	X	X	X
LUXEMBOURG	✓	✓	✓	X	✓	✓	X	✓	✓
MEXICO	✓	✓	✓	X	X	X	X	X	X
NETHERLANDS	✓	✓	✓	X	✓	✓	X	✓	✓
N. ZEALAND	X	✓	✓	X	✓	✓	✓	✓	✓
NORWAY	✓	✓	✓	X	✓	✓	X	✓	X
POLAND	✓	✓	✓	✓	X	X	X	X	X
SLOVAK REPUBLIC	✓	✓	✓	X	✓	✓	✓	✓	✓
SPAIN	✓	✓	✓	X	✓	✓	✓	X	X
SWEDEN	✓	✓	✓	X	X	X	X	X	X
SWITZERLAND	✓	✓	✓	X	✓	X	X	✓	X
TURKEY	X	X	X	✓	✓	X	X	X	X
UK	X	✓	✓	X	✓	✓	X	✓	✓
USA	✓	✓	✓	X	✓	X	✓	✓	✓
<b>TOTAL</b>	<b>26</b>	<b>28</b>	<b>28</b>	<b>4</b>	<b>19</b>	<b>16</b>	<b>6</b>	<b>17</b>	<b>15</b>

### 2.1.1 Overall Performance

FIGURE 1 shows that the majority of, but not all, member ECAs' procedures comply with the first two recommendations of the OECD Action Statement:

- a high percentage, 86.7%, informs applicants about the legal consequences of bribery;
- most ECAs, 93%, *invites* and *requires* applicants to provide a no-bribery declaration.

FIGURE 2 shows that ECAs have been less active in taking measures to prevent the payment of commissions to agents being used as a vehicle for bribery.

The vast majority of ECAs, c87%, consider commissions paid to agents to be *eligible* for support, yet:

- around 63% of OECD ECAs require applicants to provide details of the *commissions paid to agents*;
- just over half (53%) require applicants to provide details of agents;
- 20% apply a ceiling to commissions;
- around 57% of ECAs assess the level of commission paid to agents against standard business practices;
- 50% of ECAs require the purpose of commissions to be identified.

Performance for the group improves if the analysis only takes account of the responses of the 26 ECAs that underwrite commissions - on the basis that those ECAs that consider commissions to be ineligible for support do not need to take steps to check out commissions:

- 73% require applicants to provide details of the commissions paid to agents;
- 62% require applicants to provide details of agents;
- around 23% apply a ceiling to the commissions;
- around 65% assess the level of commissions against standard business practices;
- around 58% require information on the purpose of the commission.

Of the four ECAs, *Greece, Hungary (Eximbank), Poland* and *Turkey*, which do not underwrite commissions:

- Greece reports that it undertakes due diligence measures on commissions despite ruling that commissions are ineligible for support. It takes the steps of *comparing commission payments to standard business practices* and *requiring applicants to identify the purpose of the commission*;
- Turkey, on the other hand, specifically states that as commissions are ineligible "...*such assessment is not made...*"
- Hungary's Eximbank takes the opposite position to MEHIB, which states that it "*considers agents' commissions as one of cost factors necessary to conclude and fulfil the export contract.*"<sup>10</sup>

---

<sup>10</sup> Annex 1- Responses to the 2002 Survey on Measures Taken to Combat Bribery in Officially Supported Export Credits – As of 8 October 2003: p.24

The ECAs that apply ceilings to commissions display a range of practice:

- Italy and Spain apply a ceiling of 5%;
- Canada applies a ceiling of 10%;
- The Slovak Republic notes that it applies a higher ceiling than is otherwise standard practice “*the payment of the commission which level in relation to the export contract is higher than it is a standard practice for relevant goods and country*”<sup>11</sup>.

The responses of New Zealand and the USA on their use of ceilings are not consistent/clear (see BOX 2).

*BOX 2  
APPLICATION OF CEILINGS*

- New Zealand’s ECO indicates that it applies a ceiling but then goes on to clarify that “*there are no specific rules in ECO, but it is our part of our underwriting to understand and accept the specifics of the transaction...*”;
- The USA similarly states that it applies a ceiling but then fails to specify, saying simply that: “*Exporters must certify that they have not paid any commissions except for regular commissions or fees to regular sales agents, brokers or representatives that are readily identifiable on the exporters’ books and records...*”
- The Netherlands indicates that it does not apply a ceiling but then explains that: “*All commissions have to be explained, but those which exceed 5% of the contract price or EUR 4.538.000 will be appraised more thoroughly. The background of this rule of thumb is in the longstanding practice of the Netherlands authorities to avoid becoming (even if indirectly) involved in practices which could be considered as bribery.*”

### 2.1.2 G7 Country ECA Performance

FIGURE 1 shows that the 8 G7 ECAs perform better than the group as a whole on all three measures.

The UK’s Export Credit Agency Guarantee Department (ECGD) is the only G7 country ECA that does not inform applicants about the legal consequences of bribery: “*Applicants are not informed of the general legal consequences. However, provisions are included in our policy documentation to make clear that if corruption is proven, insurance cover may be voided and that we may seek compensation for any loss incurred or which we may incur under supported finance facilities.*”

Its position contravenes the OECD Action Statement: “*all official export credit and export credit insurance providers shall inform applicants requesting support about the legal consequences of bribery in international business transactions under its national legal system, including its national laws prohibiting such bribery*” (see BOX 1).

FIGURE 2 shows that the G7 ECAs have done less, on the whole, to prevent and detect bribery in the area of commissions and agents:

- all G7 ECAs consider commissions *eligible* for support;
- only half the G7 ECAs *require details of commissions* to be provided, compared to c 63% overall;

<sup>11</sup> P.26: Annex 1 – Responses to the 2002 Survey on Measures Taken to Combat Bribery in Officially Supported Exported Credits – As of 8 October 2003

- only half require details of *agents* to be provided, compared to c53% overall;
- around 38 % of G7 ECAs, compared to 20% of all ECAs, apply a ceiling to commissions;
- half assesses commissions against standard business practices, compared to c57% overall;
- half requires the purpose of the commissions to be stated, which is the same rate as the group as a whole.

Canada is the only ECA that does not require applicants to provide information on commissions, but does request information on agents. This is because its procedures cover cases where applicants *voluntarily* provide information on commissions, “*details on the agent (s) are requested when the commissions are considered to be outside industry norms.*”<sup>12</sup>

### 2.1.3 Using the Results

The analysis points to the need for the *OECD Working Party on Export Credits and Credit Guarantees*, and its member governments, to take the following action:

- *informing applicants about the legal consequences of bribery* is a basic requirement of the *Action Statement on Bribery and Officially Supported Export Credits*. The OECD Working Party should ensure that *Australia, New Zealand, Turkey* and the *UK* introduce this basic step into their procedures;
- all ECAs should *require* – rather than simply *invite* – applicants to provide a *no-bribery* undertaking. The OECD Working Party should ensure that *Korea* and *Turkey* update their procedures accordingly;
- all ECAs, irrespective of whether they consider commissions to be eligible for support, should require applicants/exporters to provide *details of commissions and agents*. Currently 11 (9 of which under-write commissions) do not require applicants to provide details of commissions and 14 (10 of which underwrite commissions) do not require details of agents (see *TABLE 2*);
- all ECAs should apply a ceiling to commissions. Transparency International (TI) considers that any level above 5%<sup>13</sup> should “*raise a red flag and require the ECA to apply enhanced due diligence.*” Those that already apply ceilings should revise their thresholds in the light of this expert advice.

In addition, the OECD Working Party should:

- up-date the *Action Statement on Bribery and Officially Supported Export Credits*: change the wording of the second recommendation to: *the applicant and/or the exporter...shall be required to provide an undertaking...*” and extend the scope of the Action Statement to include recommendations on the treatment of commissions and agents. A possible reason for member ECAs’s poor performance in this area is the absence of any guidance;
- seek further clarification on member responses: it would be useful to understand why the 2 Hungarian ECAs have different positions on the eligibility of commissions and to clarify whether or not *New Zealand* and the *USA* apply ceilings to commissions. The information they provide is unclear.

<sup>12</sup> Annex 1- Responses to the 2002 Survey on Measures Taken to Combat Bribery in Officially Supported Export Credits – As of 8 October 2003: p.28

<sup>13</sup> Presentation to the ECG By Michael Wiehen, Member of the Board, Transparency International, 23rd April 2003

## 2.2 Section II: Appropriate Actions

Section II of the questionnaire gathered information on the potential and actual use of anti-bribery measures:

ECAs were asked to indicate whether a particular sanction was:

- *available (A)*: an ECA is *able* to use the sanction - i.e. there is no legal or technical impediment to prevent the ECA from using such a sanction;
- *required (R)*: an ECA is *required* to use a particular sanction by law;
- *actual practice (P)*: an ECA has adopted a particular sanction in practice either on a discretionary or non-discretionary basis.

Respondents were also asked to specify the grounds on which they could apply such sanctions: *suspicion of bribery*; *sufficient evidence of bribery*; *legal judgment*. The terms '*suspicion*' and '*sufficient evidence*' were not defined.

In designing the questionnaire, the *OECD Working Party* was careful to ensure that the results would distinguish between those ECAs that are "*are free to take a particular action but choose not to do so in practice*" and those that have "*no discretion to take the indicated action and therefore cannot apply it in practice*".

This issue of *discretion*, or *choice*, is critical for those working at national and international level to raise the standards of ECAs' anti-bribery practices. The following analysis provides a framework for action, based on an understanding of these distinctions.

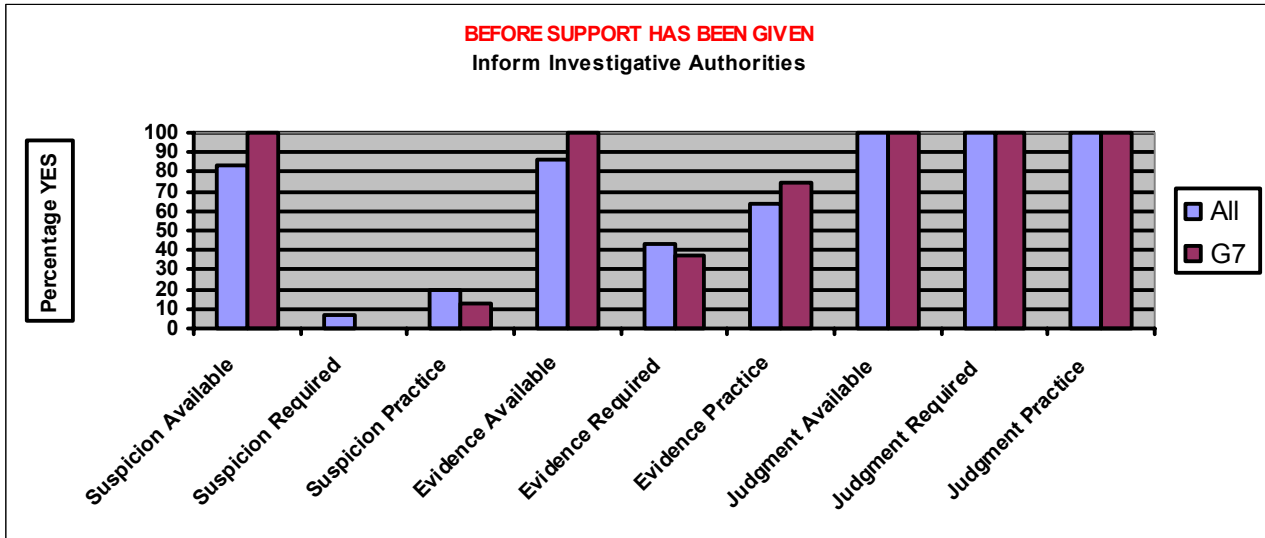
### 2.2.1 Sanctions BEFORE Decision to Provide Support

ECAs were asked to indicate the grounds (*suspicion, evidence or legal judgment*) on which the following sanctions were *available, required* and *practice* in the event of allegations of bribery *before* the decision to provide official export support has been made:

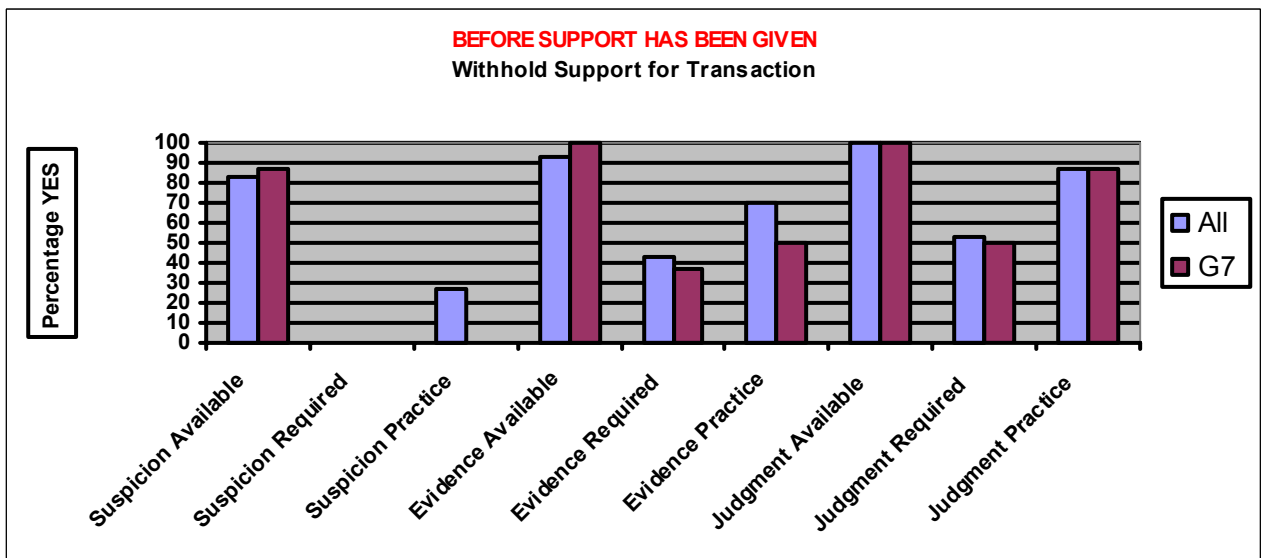
- inform investigative authorities;
- withhold support for transaction in question (commitment of the 2000 Action Statement);
- deny access to official support for *all* business.

FIGURES 3-5 provide a comparison of the performance of the survey sample (30), with that of the 8 G7 country ECAs.

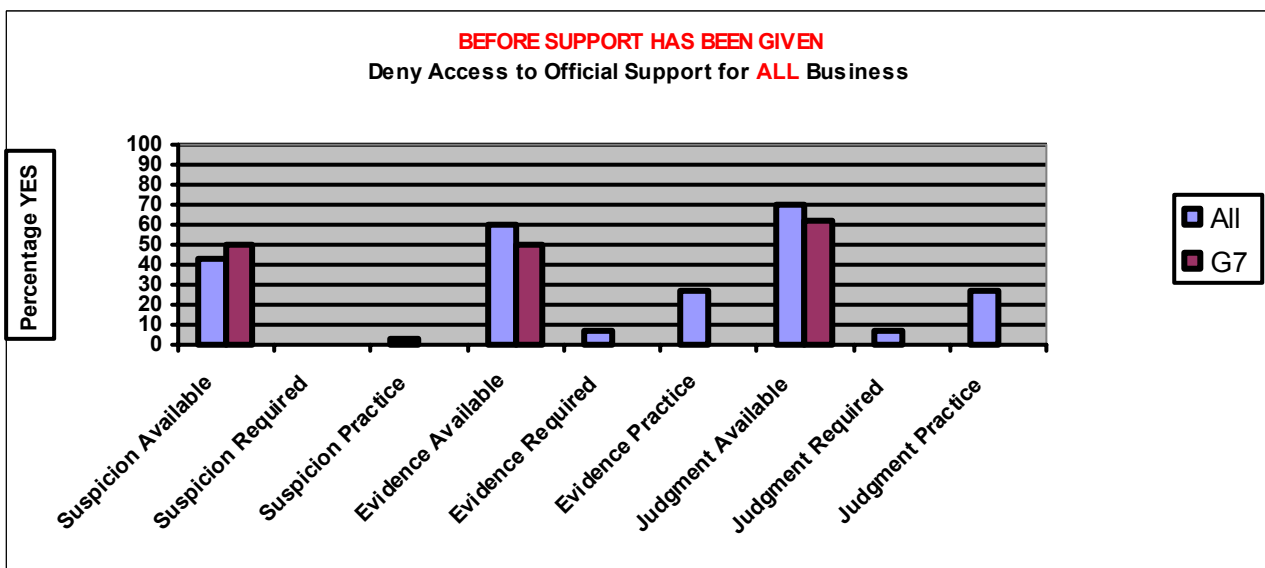
**FIGURE 3: INFORMING INVESTIGATIVE AUTHORITIES**



**FIGURE 4: WITHHOLDING SUPPORT FOR TRANSACTION**



**FIGURE 5: DENY ACCESS TO OFFICIAL SUPPORT**





### 2.2.1.1 Overall Assessment

FIGURES 3-5 show that ECAs are generally reluctant to act on the grounds of *suspicion* of bribery. Also, the number which *chooses not to* practice any specific measure is greater than the number actually *constrained* from doing so.

More specifically:

- a high percentage of ECAs have the option of *informing investigating authorities* on the grounds of *suspicion* (c83%) and *evidence* (c87%). In practice, 20% is prepared to act on the grounds of suspicion, whereas a much higher proportion (c63%)<sup>14</sup> would inform the authorities in the event of *sufficient evidence* of bribery;
- a high percentage of ECAs have the option of *withholding support for the transaction* on the grounds of *suspicion* (83%) and *evidence* (93%). Around 27% of ECAs would use this measure on the basis of suspicion and 70% in cases of sufficient evidence of bribery. The discrepancy between availability (100%) and practice (87%) is lower in the case of final judgment;
- around 43% of ECAs have the option of *denying access to all transactions* (debaring) on the basis of suspicion, 60% in the case of sufficient evidence and 70% on the basis of a legal judgment. However, this sanction is barely used in practice: just over 3% indicate that they would be willing to debar on the grounds of suspicion and c27% where there was either sufficient evidence, or a legal judgment. The statements in BOX 3 illustrate the range of positions held by ECAs on this issue.

#### BOX 3

##### POSITIONS ON DENYING SUPPORT TO ALL BUSINESS (DEBARRING)

Finland: “*Our anti-bribery policy is transaction specific and consequently we would not be in a position to deny access to official support for further transactions even if bribery would be suspected/proven in a certain case.*”<sup>15</sup>

France : “*Le Code de Procédure Pénale prescrit à toute autorité publique et à tout fonctionnaire, qui dans l'exercice de leurs fonctions acquièrent la connaissance d'un délit, d'en informer le Parquet et de lui transmettre tout renseignement qui y est relatif. Il n'existe pas de disposition juridique nous permettant de refuser systématiquement toute couverture à une entreprise donnée, mais des décisions de refus au cas par cas sont toujours possibles.*”<sup>16</sup>

Norway: (GIEK) “*may probably deny access to official support for all business for some time in case of violent and manifest breach of our bribery rules by one exporter, but then only for a limited time*” .<sup>17</sup>

UK: “*with regard to denying access to official support, it is not legally possible for ECGD under its powers to blacklist companies that have engaged in corrupt practises. However, this would be taken into account when considering new applications for support.*”<sup>18</sup>

<sup>14</sup> This figure includes New Zealand. In the survey New Zealand did not indicate that this was practice, but it did indicate that this was required and therefore the analysis has taken this to be practice.

<sup>15</sup> Annex 1- Responses to the 2002 Survey on Measures Taken to Combat Bribery in Officially Supported Export Credits – As of 8 October 2003: p.33

<sup>16</sup> Annex 1- Responses to the 2002 Survey on Measures Taken to Combat Bribery in Officially Supported Export Credits – As of 8 October 2003: p.33

<sup>17</sup> Annex 1- Responses to the 2002 Survey on Measures Taken to Combat Bribery in Officially Supported Export Credits – As of 8 October 2003: p.37

<sup>18</sup> Annex 1- Responses to the 2002 Survey on Measures Taken to Combat Bribery in Officially Supported Export Credits – As of 8 October 2003: p.39

### 2.2.1.2 Performance of the G7 Country ECAs

FIGURES 3-5 show mixed results with the 8 G7 ECAs more likely to inform the investigative authorities than the group as a whole, but less likely to use the powerful sanction of debarring:

- *informing investigating authorities*: all G7 country ECAs are able to use this sanction on all grounds. Only c12% indicate that they would inform the authorities of suspicions of bribery, compared with 20% overall. However, 75% state that they would inform the investigative authorities on the basis of sufficient evidence. This is higher than for the group as a whole (c63%);
- *with-holding support for transaction*: G7 country ECAs score better on availability, but worse in practice on the grounds of suspicion and evidence. However, performance is more or less equal in the case of a final judgment;
- *denying support to all business* (black-listing): no G7 country ECA reports using the sanction of blacklisting even though 50% have the option on the grounds of both *suspicion* and *evidence* and 62% on the basis of a *final judgment*. The USA's response is inconsistent as in practice it does operate a black-list.

### 2.2.1.3 Using the Results

TABLE 3 summarises the results:

- columns 1-3, 6-8 and 11-13 show the total number of ECAs for which a sanction is: available (A); required (R); and actual practice (P);
- columns 4, 9 and 14 give the total number of ECAs which do not use, but *are able* to use a particular sanction (*choice*);
- columns 5, 10 and 15 give the total number of ECAs which do not use, but are constrained from using a particular sanction (*no choice*).

TABLE 4 identifies those ECAs, which have *not* adopted sanctions, keeping the same distinction.

#### ECAs with Choice

The ECAs listed in this group are free to adopt the sanctions in question and are thus a primary target for the OECD Working Party, as well as national and international campaigners. Priorities include:

- the 19 ECAs which do not inform the investigative authorities of *suspicion* of bribery and the 7 ECAs, Canada, Finland, Germany, Korea (KEIC), Poland, Sweden and Switzerland, which do not pass on *evidence* of bribery to the authorities;
- the 7 ECAs, *Italy*, *Japan (JBIC)*, *Japan (NEXI)*, *Korea (KEIC)*, *Switzerland*, *Turkey* and the *UK*, which do not withhold support for a specific transaction in the event of having *sufficient evidence* of bribery and Korea (KEIC), Poland, Turkey and the UK, which similarly *choose not to* use this sanction in the event of a legal judgment. Their position contravenes the OECD *Action Statement*: “*if there is sufficient evidence such that bribery was involved in the award of the export contract, the official export credit or export credit insurance provided shall refuse to approve credit, cover or other support*”;
- the 13 ECAs (see TABLE 4) which choose not to debar in the case of a legal judgment.

**TABLE 3: USE OF SANCTIONS BEFORE SUPPORT IS GIVEN: SUMMARY OF RESULTS**

SAMPLE = 30	SUSPICION OF BRIBERY					SUFFICIENT EVIDENCE OF BRIBERY					LEGAL JUDGMENT				
	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
	A	R	P	CHOICE (A-P)	NO CHOICE (S-A)	A	R	P	CHOICE (A-P)	NO CHOICE (S-A)	A	R	P	CHOICE (A-P)	NO CHOICE (S-A)
INFORM INVESTIGATIVE AUTHORITIES	25	2	6	19	5	26	13	19	7	4	30	30	30	0	0
WITHHOLD SUPPORT FOR TRANSACTION IN QUESTION	25	0	8	17	5	28	13	21	7	2	30	16	26	4	0
DENY ACCESS TO ALL SUPPORT	13	0	1	12	17	18	2	8	10	12	21	2	8	13	9

**KEY:****S** Sample**A** Available**R** Required**P** Actual Practice**CHOICE (S-A)** “No discretion to take the indicated action and therefore cannot apply it in practice”<sup>19</sup>**NO CHOICE (A-P)** “Free to take a particular action but choose not to do so in practice”<sup>20</sup><sup>19</sup> Responses to the 2002 Survey on Measures Taken to Combat Bribery in Officially Supported Export Credits – As of 8<sup>th</sup> October 2003: p.3<sup>20</sup> Responses to the 2002 Survey on Measures Taken to Combat Bribery in Officially Supported Export Credits – As of 8<sup>th</sup> October 2003: p.3

TABLE 4: ECA'S NOT USING SANCTIONS: CHOICE AND NO CHOICE

	INFORM AUTHORITIES				WITHHOLD SUPPORT FOR TRANSACTION						DENY SUPPORT FOR ALL BUSINESS					
	SUSPICION		EVIDENCE		SUSPICION		EVIDENCE		LEG. JUDG		SUSPICION		EVIDENCE		LEG. JUD	
	CHOICE	NO CHOICE	CHOICE	NO CHOICE	CHOICE	NO CHOICE	CHOICE	NO CHOICE	CHOICE	NO CHOICE	CHOICE	NO CHOICE	CHOICE	NO CHOICE	CHOICE	NO CHOICE
Australia																
Austria					X							X		X		X
Belgium		X		X								X				
Canada	X		X		X						X		X		X	
Czech Repub.						X						X		X		X
Denmark	X										X					
Finland	X		X									X		X		X
France	X				X						X		X		X	
Germany	X		X			X						X		X		X
Greece		X										X				
Hungary (ME)	X				X						X					
Hungary (Ex)	X				X						X					
Italy	X				X		X					X		X		X
Japan (JBIC)	X				X		X				X		X		X	
Japan (NEXI)	X				X		X				X		X		X	
Korea (KEIC)		X	X			X	X		X			X	X		X	
Korea (Exim)	X				X						X		X		X	
Luxembourg		X		X								X				
Mexico	X				X						X		X		X	
Netherlands					X							X		X		X
N. Zealand	X										X					
Norway	X				X							X	X		X	
Poland	X		X			X		X	X			X		X	X	
Slovak Rep.	X			X		X		X				X		X		X
Spain					X							X		X		X
Sweden	X		X								X		X		X	
Switzerland	X		X		X		X				X		X		X	
Turkey		X		X	X		X		X			X		X	X	
UK					X		X		X			X		X		X
USA	X				X							X		X	X	
<b>TOTAL</b>	<b>19</b>	<b>5</b>	<b>7</b>	<b>4</b>	<b>17</b>	<b>5</b>	<b>7</b>	<b>2</b>	<b>4</b>	<b>0</b>	<b>12</b>	<b>17</b>	<b>10</b>	<b>12</b>	<b>13</b>	<b>9</b>

In addition, the OECD Working Party should up-date its Action Statement to require ECAs to inform the relevant authorities of *suspicious* or *evidence* of bribery, *before* and *after* support has been given. Currently the Action Statement only requires ECAs to inform the appropriate national authorities in the event of bribery being uncovered *after* support has been given (see *BOX 1*).

It should also seek to clarify the position of the *USA*, which contrary to what it reports in the survey, does in fact operate a black-list.

#### *ECAs Without Choice*

The second group comprises ECAs that are constrained from adopting a particular sanction. Here, there are likely to be synergies from adopting an issue-based approach and working across ECAs, so as to understand the source and nature of the constraints.

The OECD Working Party could usefully undertake research to collate information to identify possible factors of constraint/success.

Similarly, the civil society ECA campaign group (ECA-Watch) could set up thematic working groups on key issues such as black-listing or commercial confidentiality, with a view to sharing information and developing strategies to tackle common problems. Priorities include:

- the reasons for 5 ECAs being unable to inform the investigative authorities about *suspicious* of bribery: *Belgium, Greece, Korea (KEIC), Luxembourg and Turkey* and for 4 ECAs, *Belgium, Luxembourg, the Slovak Republic*<sup>21</sup> and *Turkey*, being unable to report *evidence* of bribery. This constraint appears to conflict with their legal obligations to support the implementation of national anti-bribery legislation, as required by the OECD Anti-bribery Convention;
- the specific constraints on Poland and the Slovak Republic that prevent them from *withholding support for a specific transaction* when there is *sufficient evidence* of bribery. Their position contravenes the OECD Action Statement;
- the legal constraints that prohibit 9 ECAs (listed in TABLE 4) from debarring companies found guilty of bribery. Debarring is a potentially powerful sanction. It imposes economic costs and introduces an economic disincentive. Advancing the case for, and challenging barriers to, debarring should be a key priority. ECA Watch could usefully set up a working group aimed at coordinating the sharing of information on this issue for the 9 ECAs concerned. The OECD Working Party could initiate a research programme aimed at identifying constraints and possible solutions.

---

21 This seems to be a mistake. It seems unlikely that an ECA would have the option of informing the investigative authorities on the basis of suspicion of bribery and not on the basis of sufficient evidence. In an earlier version of the questionnaire the Slovak Republic indicated that this option was available but this was changed in the version of the 3rd October. This should be clarified.

## 2.2.2 After Decision to Provide Support

ECAs were asked to indicate the grounds (*suspicion, evidence or judgment*) on which the following sanctions were *available, required* and *practice* in the event of allegations of bribery, *after* the decision to provide official export support has been made:

- inform investigative authorities (commitment of the 2000 Action Statement);
- invalidate cover;
- deny claim indemnification (commitment of the 2000 Action Statement);
- interrupt loan disbursement (commitment of the 2000 Action Statement);
- seek recourse (commitment of the 2000 Action Statement);
- deny access to official support for all business.

### 2.2.2.1 Overall Assessment

FIGURES 6-11 show a significant discrepancy across all measures, and on all grounds, between *potential* and *actual* use of sanctions. There is also a striking reluctance on the part of ECAs to introduce sanctions on the basis of either *suspicion* or *sufficient evidence* of bribery:

- a high percentage of ECAs have the *option of informing investigative authorities* on the grounds of suspicion (80%) and evidence (93%), but only 20% indicated that they would use this measure in event of suspicion, and 60% on the grounds of sufficient evidence;
- a lower proportion has the option of *invalidating cover* on the basis of suspicion (c37%) and sufficient evidence (50%) of bribery. However, 80% are able to *invalidate cover* on the basis of a legal judgment. Few report that they would use this sanction in practice: c7% on the grounds of suspicion; 20% on the basis of sufficient evidence and 60% in the case of a legal judgment;
- only 40% and 57% are able to *deny claim indemnification* on the basis of suspicion and sufficient evidence of bribery respectively. Around 7% would act on the basis of suspicion and 30% on the grounds of sufficient evidence. In the case of a final judgment, 90% has the option of using this sanction, whereas c70% state that they would use this sanction in practice;
- around 37% of ECAs are able to use the sanction of *interrupting loan disbursement* on the basis of suspicion of bribery, although only 1 ECA, Australia, reports this to be actual practice. Half are able to use this sanction on the grounds of sufficient evidence of bribery, but only 20% are committed to using this in practice. In the case of a legal judgment, c63% have the option, but c43% indicated that they would use this measure in practice;
- a low proportion of ECAs report *seeking recourse* as actual practice. Australia is the only ECA which would act on the grounds of *suspicion*, despite c33% having the option to do so. Only c16% would act on the basis of *evidence* despite c53% having the option, and c47% would use this sanction in the event of a final judgment, compared to c73%, which are able to do so;
- 10% of ECAs (*Austria, Denmark and New Zealand*) report that they would use debarment as a sanction in the case of a legal judgment of bribery, whereas c43% has the option available. 30% and c37% are able to debar on the basis of suspicion or evidence of bribery respectively, but none has indicated that it would use this sanction in practice.

FIGURE 6: INFORM INVESTIGATIVE AUTHORITIES

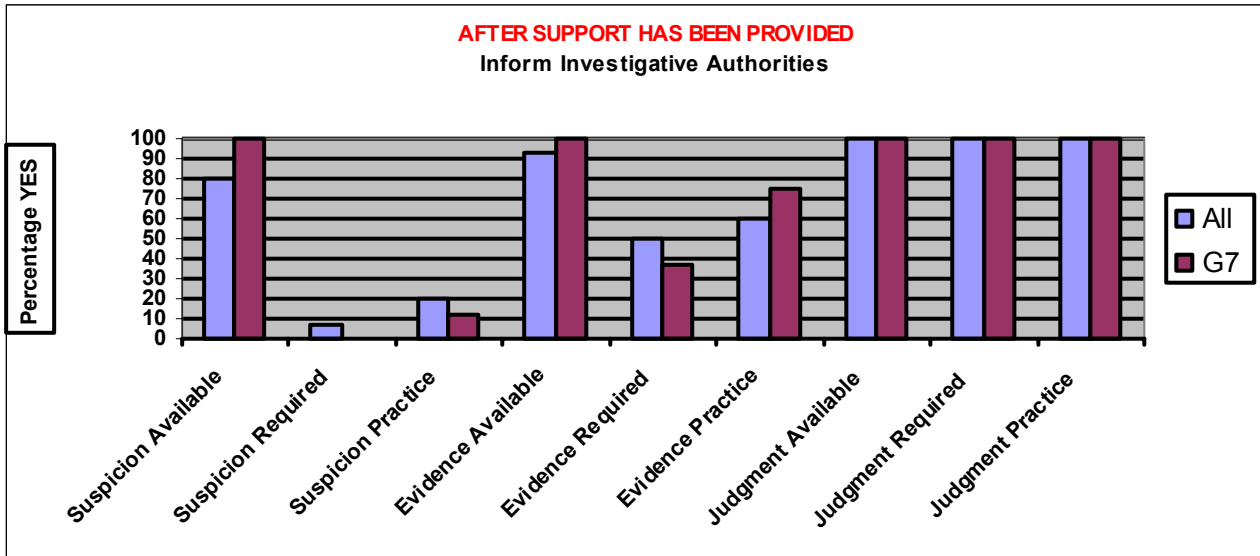


FIGURE 7: INVALIDATE COVER

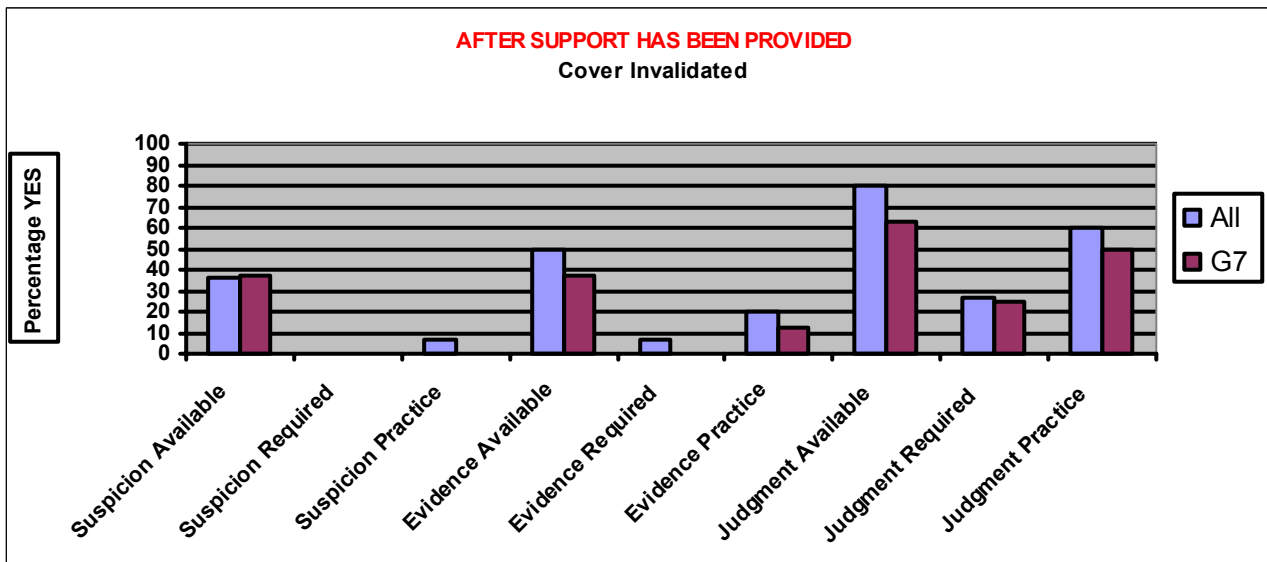


FIGURE 8: DENY CLAIM INDEMINIFICATION

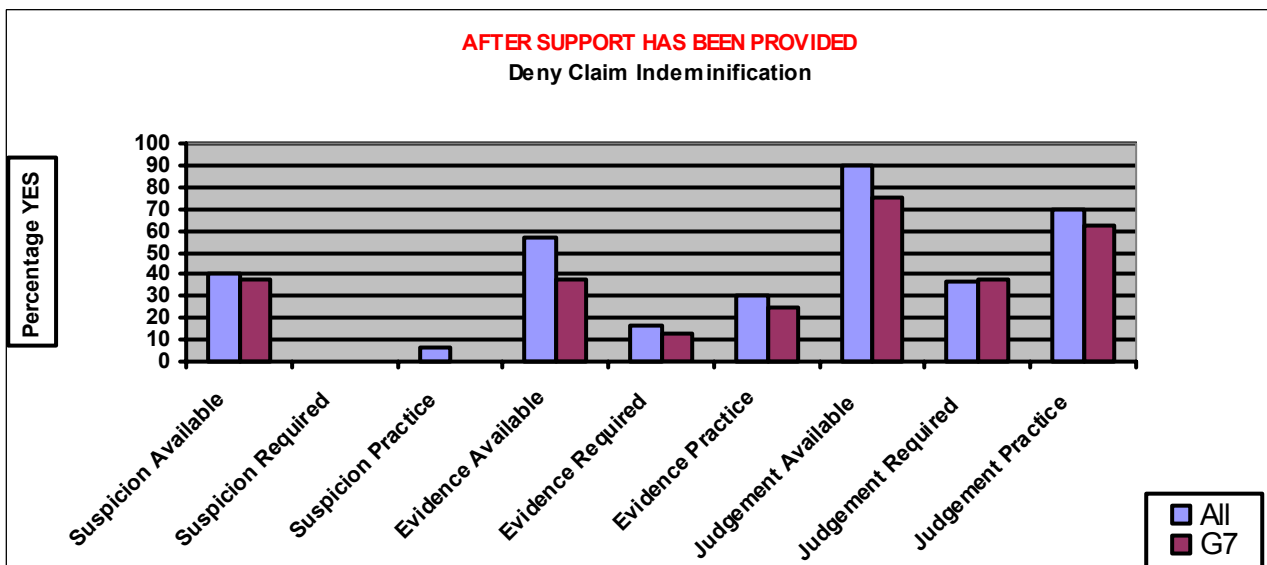


FIGURE 9: INTERRUPT LOAN DISBURSEMENT

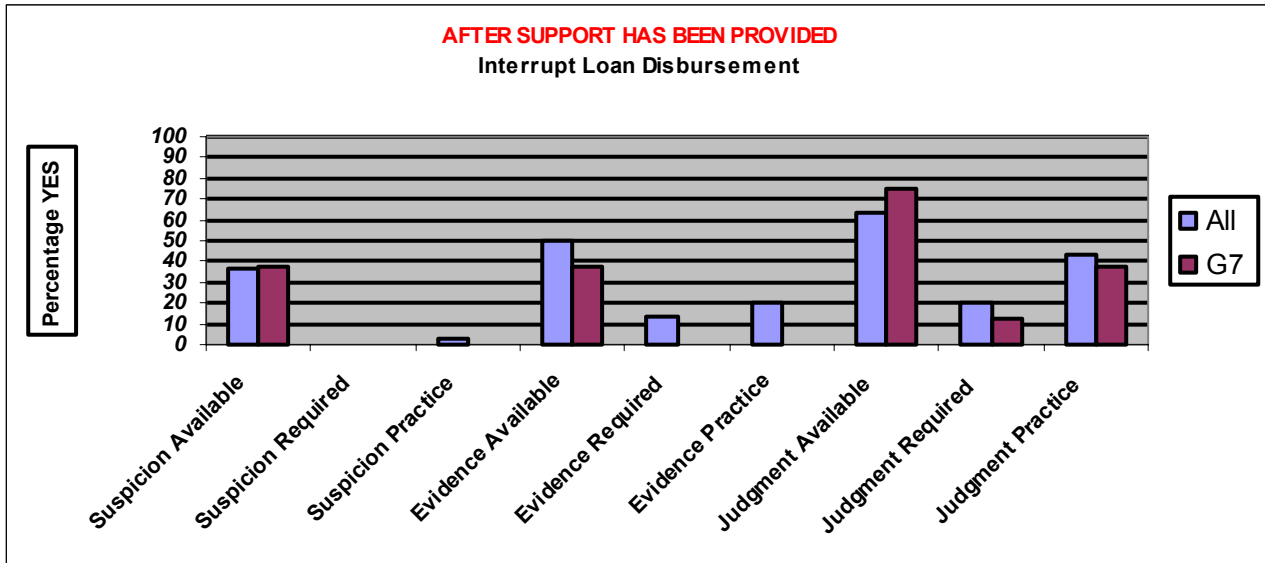


FIGURE 10: SEEK RECOURSE

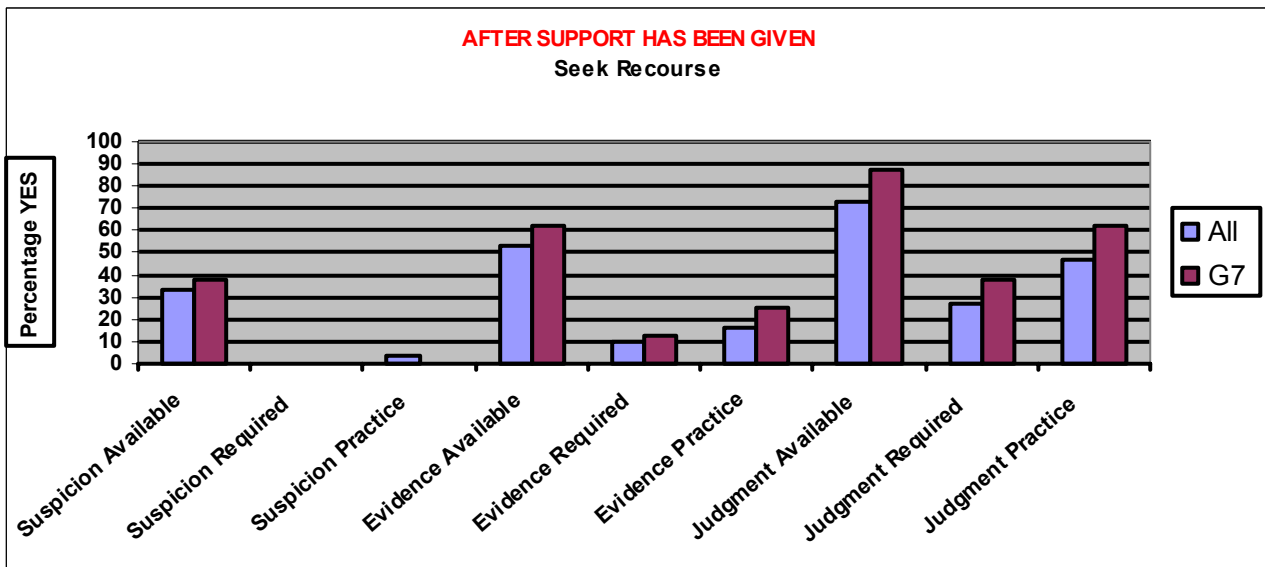
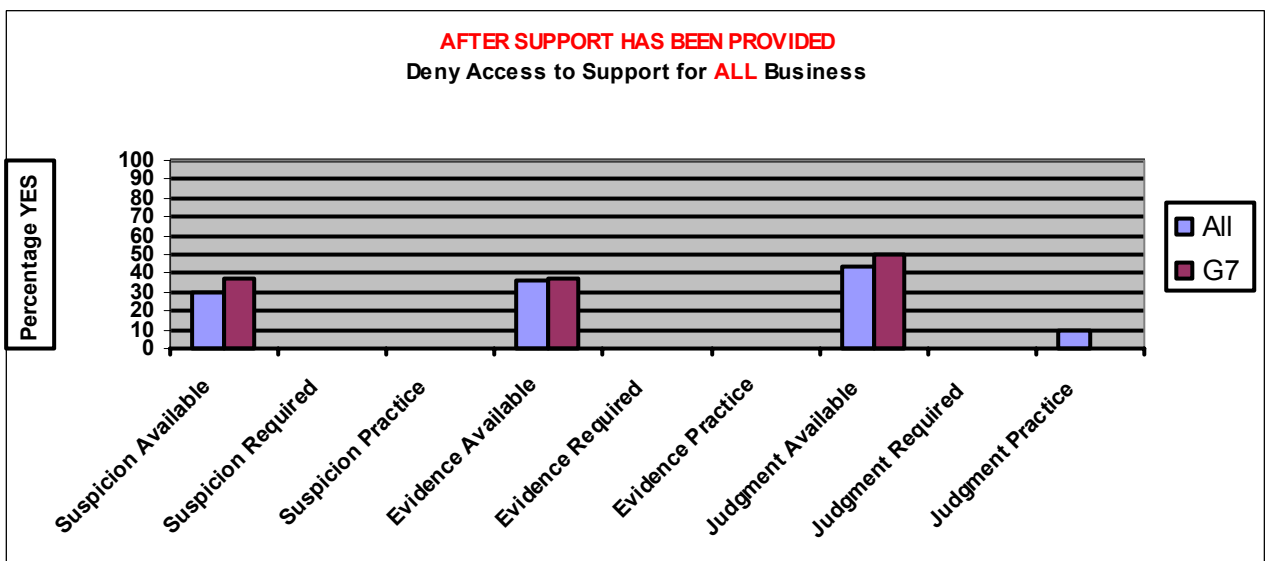


FIGURE 11: DENY ACCESS TO SUPPORT FOR ALL BUSINESS: BLACK-LIST





### 2.2.2.2 Performance of the G7 Country ECAs

Overall, the group of 8 G7 country ECAs lag behind the group as a whole:

- *informing investigating authorities*: all G7 ECAs are able to use this sanction on the grounds of *suspicion and sufficient evidence* but the UK is the only G7 ECA that would inform the authorities of suspicion of bribery. However, 75% of G7 ECAs would inform the authorities of evidence of bribery, compared to 60% of the group as a whole;
- *invalidating cover*: the G7 country ECAs are more constrained in using this sanction than the group overall: only c62%, compared to 80%, has the option of invalidating cover in the event of a legal judgment of bribery;
- *deny claim indemnification*: the G7 country ECAs perform less well on all grounds: 75%, compared to 90%, are able to deny claim indemnification on the basis of a legal judgment and c62% compared to 70%, indicated a commitment to using such a measure;
- *interrupt loan disbursement*: a higher proportion of G7 country ECAs, 75% compared to c63% of the group, has the option of using this sanction on the basis of a legal judgment, but only c38% report this to be actual practice, compared to c43% overall;
- *seek recourse*: overall, the G7 country ECAs out-perform the group: 25% report seeking recourse to be actual practice in cases of sufficient evidence of bribery, compared to c17% for the group and c62% in the case of a legal judgment, compared to 47%;
- *deny access to all business (black-listing)*: the G7 country ECAs have marginally greater scope for introducing black-listing on all grounds. None reports introducing black-listing in practice (although again the USA's position is contradictory as it does operate a black-list). *Austria, Denmark* and *New Zealand* are the only 3 (non-G7) ECAs to report that they would use this sanction in practice.

### 2.2.2.3 Using the Results

TABLE 5 summarises the results:

- columns 1-3, 6-8 and 11-13 show the total number of ECAs for which a sanction is: available (A); required (R); and actual practice (P);
- columns 4, 9 and 14 give the total number of ECAs which do not use, but *are able* to use a particular sanction (*choice*);
- columns 5, 10 and 15 give the total number of ECAs which do not use, but are constrained from using a particular sanction (*no choice*).

TABLE 6 identifies those ECAs, which have not adopted sanctions, keeping the same distinction.

**TABLE 5: OVERVIEW OF USE OF SANCTIONS AFTER SUPPORT IS GIVEN: SUMMARY OF RESULTS**

SAMPLE = 30	SUSPICION OF BRIBERY					SUFFICIENT EVIDENCE OF BRIBERY					LEGAL JUDGMENT				
	1 A	2 R	3 P	4 CHOICE (A-P)	5 NO CHOICE (S-A)	6 A	7 R	8 P	9 CHOICE (A-P)	10 NO CHOICE (S-A)	11 A	12 R	13 P	14 CHOICE (A-P)	15 NO CHOICE (S-A)
INFORM INVESTIGATIVE AUTHORITIES	24	2	6	18	6	28	15	18	10	2	30	30	30	0	0
COVER INVALIDATED	11	0	2	9	19	15	2	6	9	15	24	8	18	6	6
DENY CLAIM INDEMNIFICATION	12	0	2	10	18	17	5	9	8	13	27	11	21	6	3
INTERRUPT LOAN DISBURSEMENT	11	0	1	10	19	15	4	6	9	15	19	6	13	6	11
SEEK RECOURSE	10	0	1	9	20	16	3	5	11	14	22	8	14	8	8
DENY ACCESS TO OFFICIAL SUPPORT FOR ALL BUSINESS	9	0	0	9	21	11	0	0	11	19	13	0	3	10	17

**KEY:****A** Available**R** Required**P** Actual Practice**S** Sample**CHOICE (A-P)** “Free to take a particular action but choose not to do so in practice”<sup>22</sup>**NO CHOICE  
(S-A)** “No discretion to take the indicated action and therefore cannot apply it in practice”<sup>23</sup>22 Responses to the 2002 Survey on Measures Taken to Combat Bribery in Officially Supported Export Credits – As of 8<sup>th</sup> October 2003: p.323 Responses to the 2002 Survey on Measures Taken to Combat Bribery in Officially Supported Export Credits – As of 8<sup>th</sup> October 2003

**TABLE 6: ECA'S NOT USING SANCTIONS: CHOICE AND NO CHOICE**

	INFORM AUTHORITIES				COVER INVALIDATED						DENY CLAIM INDEMNIFICATION					
	SUSPICION		EVIDENCE		SUSPICION		EVIDENCE		LEG. JUD		SUSPICION		EVIDENCE		LEG. JUD	
	CHOICE	NO CHOICE	CHOICE	NO CHOICE	CHOICE	NO CHOICE	CHOICE	NO CHOICE	CHOICE	NO CHOICE	CHOICE	NO CHOICE	CHOICE	NO CHOICE	CHOICE	NO CHOICE
Australia																
Austria	X		X													
Belgium		X	X			X		X				X		X		
Canada	X		X		X						X					
Czech Repub.						X		X				X		X		
Denmark					X		X				X		X			
Finland	X		X			X		X				X		X		
France	X					X		X				X		X		
Germany	X		X			X		X		X		X				
Greece		X				X						X				
Hungary (MEHIB)	X				X			X				X				
Hungary (Exim)	X				X		X					X				
Italy	X				X		X					X		X		
Japan (JBIC)	X					X		X		X		X		X		X
Japan (NEXI)	X				X		X					X		X		
Korea (KEIC)		X	X			X		X		X		X		X		X
Korea (Exim)	X					X		X		X		X		X		X
Luxembourg		X	X			X		X				X		X		
Mexico	X					X		X		X		X		X		
Netherlands						X						X				
N. Zealand	X				X		X					X		X		
Norway	X					X						X				
Poland	X		X			X		X		X		X		X		X
Slovak Rep.		X		X		X		X		X		X		X		X
Spain						X		X		X		X		X		
Sweden	X		X			X		X				X		X		
Switzerland	X		X		X		X		X		X		X		X	
Turkey		X		X	X		X		X		X		X		X	
UK						X		X		X		X		X		X
USA	X					X		X		X		X		X		X
<b>TOTAL</b>	<b>18</b>	<b>6</b>	<b>10</b>	<b>2</b>	<b>9</b>	<b>19</b>	<b>9</b>	<b>15</b>	<b>6</b>	<b>6</b>	<b>10</b>	<b>18</b>	<b>8</b>	<b>13</b>	<b>6</b>	<b>3</b>

TABLE 6 CONT. ECA'S NOT USING SANCTIONS: CHOICE AND NO CHOICE

	INTERRUPT LOAN DISBURSEMENT						SEEK RECOURSE						DENY ACCESS TO ALL BUSINESS						
	SUSPICION		EVIDENCE		LEG. JUD		SUSPICION		EVIDENCE		LEG. JUD		SUSPICION		EVIDENCE		LEG. JUD		
	CHOICE	NO CHOICE	CHOICE	NO CHOICE	CHOICE	NO CHOICE	CHOICE	NO CHOICE	CHOICE	NO CHOICE	CHOICE	NO CHOICE	CHOICE	NO CHOICE	CHOICE	NO CHOICE	CHOICE	NO CHOICE	
Australia							X		X		X		X		X		X		X
Austria		X												X		X			
Belgium		X		X		X		X		X		X		X		X		X	
Canada	X		X		X		X		X		X		X		X		X		X
Czech Repub.		X						X		X		X		X		X		X	
Denmark	X		X				X		X				X		X				
Finland	X		X					X		X				X		X		X	
France		X		X	X			X		X		X	X		X		X		X
Germany		X		X		X		X						X		X		X	
Greece		X		X		X		X		X		X		X		X		X	
Hungary (MEHIB)		X		X		X	X		X					X		X		X	
Hungary (Exim)	X						X		X					X		X		X	
Italy		X		X				X		X					X		X		X
Japan (JBIC)	X		X				X		X					X		X		X	
Japan (NEXI)	X		X				X		X				X		X		X		X
Korea (KEIC)		X	X		X			X	X		X			X	X		X		
Korea (Exim)		X		X	X			X		X		X		X		X		X	
Luxembourg		X		X		X		X		X		X		X		X		X	
Mexico	X						X		X		X		X		X		X		X
Netherlands		X		X		X		X						X		X		X	
N. Zealand	X		X				X		X				X		X				
Norway		X						X						X	X		X		
Poland		X		X		X		X		X		X		X		X		X	
Slovak Rep.		X		X		X		X		X		X		X		X		X	
Spain		X		X		X		X		X		X		X		X		X	
Sweden	X		X					X	X					X		X		X	
Switzerland		X		X		X	X		X		X		X		X		X		X
Turkey	X		X		X			X		X		X	X		X		X		X
UK		X		X	X			X		X		X		X		X		X	
USA		X		X		X		X						X		X		X	
<b>TOTAL</b>	<b>10</b>	<b>19</b>	<b>9</b>	<b>15</b>	<b>6</b>	<b>11</b>	<b>9</b>	<b>20</b>	<b>11</b>	<b>14</b>	<b>8</b>	<b>8</b>	<b>9</b>	<b>21</b>	<b>11</b>	<b>19</b>	<b>10</b>	<b>17</b>	

ECAs With Choice

This group comprises ECAs, which so far have not incorporated sanctions into their standard operating practices, even though they are unconstrained from doing so. The following ECAs should be put under pressure to upgrade their procedures:

- the 18 ECAs which do not *inform the investigative authorities* of suspicions of bribery and the 10 ECAs which do not inform the investigative authorities of sufficient evidence of bribery (see *TABLE 6*);
- the 6 ECAs which do not *invalidate cover* or *deny claim indemnification* on the basis of a legal judgment of bribery: *Korea (KEIC), Korea (Eximbank), Poland, Switzerland, Turkey* and the *UK*;
- the 6 ECAs which do not use the sanction of interrupting loan disbursement in the case of legal judgment of bribery: *Canada, France, Korea (KEIC), Korea (Eximbank), Turkey* and the *UK*;
- the 8 ECAs which do not seek recourse in the event of a final judgment for bribery (see *TABLE 6*);
- the 10 ECAs which do not use the sanction of debarring companies in the event of a legal judgment (see *TABLE 6*);

ECAs With No Choice

In the case of the second group, there is a clear rationale for taking a thematic approach. Potential priorities for investigation are the:

- 6 ECAs that are unable to inform the investigative authorities about suspicions of bribery, *Belgium, Greece, Korea (KEIC), Luxembourg, Slovak Republic* and *Turkey*, and for 2 ECAs, the *Slovak Republic* and *Turkey*, being unable to pass on sufficient evidence of bribery to the relevant authorities. Their position contravenes the *OECD Action Statement*;
- 6 ECAs that are unable to invalidate cover, in the case of proven bribery: *Germany, Japan (JBIC), Mexico, Slovak Republic, Spain* and the *USA*. This contravenes the *OECD Action Statement*;
- 3 ECAs that are unable to deny claim indemnification in the event of proven bribery: *Japan (JBIC), the Slovak Republic* and the *USA*. Their position contravenes the *OECD Action Statement*;
- 11 ECAs (see *TABLE 6*) that are unable to interrupt loan disbursement in the event of proven bribery. Their position contravenes the *OECD Action Statement*;
- 8 ECAs that are unable to seek recourse in the event of a legal judgment of bribery;
- 17 ECAs that are prohibited from debarring companies found guilty of corruption.

**2.2.3 Comparing ECA Performance: Before and After Providing Support**

*TABLE 7* compares the performance of ECAs *before* and *after* the decision to provide support has been provided.

The sanctions available to ECAs *before* and *after* may not wholly correspond. For example, the sanction ‘*withholding support for transaction*’ is relevant to all ECAs whether they provide loans, insurance or both.

On the other hand, the sanctions ‘*invalidating cover*’ and ‘*denying claim indemnification*’ may only be relevant to those providing insurance and the sanction interrupt loan disbursement only to those providing loans<sup>24</sup>. The comparison nonetheless provides useful insights:

- *informing investigating authorities*: these sanctions are equivalent. The Slovak Republic is the only ECA able to inform the investigative authorities on the basis of suspicion of bribery *before* support is provided, but not *after* support is provided. Contrastingly, Denmark is the only ECA that would inform the authorities of suspicion of bribery *after* support is given but not *before*. Only 2 ECAs, the Netherlands and Spain, are *required* to inform the authorities of suspicions of bribery both *before* and *after* support has been provided;
- *withholding support for transaction/invalidate cover/denying claim indemnification/interrupt loan disbursement*: whilst these sanctions may not be equivalent they show that ECAs are less able to act to sanction bribery *after* support has been given than *before*;
- *denying support to all business*: these sanctions are equivalent. *TABLE 7* shows that more ECAs are legally constrained from black-listing in the event of bribery being discovered *after* than *before* support has been given. In the case of *suspicion*, 12 ECAs choose not to debar and 17 ECAs are constrained from debarring *before* compared to 9 and 21 ECAs respectively, *after* the decision to provide support has been taken. In the case of sufficient evidence, 10 choose not to and 12 have no choice *before* compared to 11 and 19 after; and in the case of legal judgment 13 choose not to whereas 9 are constrained from blacklisting *before*, compared to *after* when only 10 have the choice and 17 are constrained.

### 2.2.3.1 Using the Results

It would be useful to clarify why the timing of the discovery of bribery affects whether:

- The Slovak Republic and Denmark have the option of informing the relevant authorities of *suspicious* of bribery;
- 12 ECAs have the option of using the sanction of debarring (see *TABLE 8*).

---

<sup>24</sup> The author was unable to obtain information on those ECAs for which a particular sanction was not available because it was not relevant to the type of support provided.

**TABLE 7: USE OF SANCTIONS BEFORE AND AFTER SUPPORT IS GIVEN**

CORRESPONDING SANCTIONS		SUSPICION OF BRIBERY					SUFFICIENT EVIDENCE OF BRIBERY					LEGAL JUDGMENT				
BEFORE	(AFTER)	A	R	P	CHOICE (A-P)	NO CHOICE (S-A)	A	R	P	CHOICE (A-P)	NO CHOICE (S-A)	A	R	P	CHOICE (A-P)	NO CHOICE (S-A)
INFORM INVESTIGATIVE AUTHORITIES	(INFORM INVESTIGATIVE AUTHORITIES)	25 (24)	2 (2)	5 (6)	20 (18)	5 (6)	26 (28)	13 (15)	19 (18)	7 (10)	4 (2)	30 (30)	30 (30)	30 (30)	0 (0)	0 (0)
WITHHOLD SUPPORT FOR TRANSACTION IN QUESTION	(COVER INVALIDATED)	25 (11)	0 (0)	8 (2)	17 (9)	5 (19)	28 (15)	13 (2)	21 (6)	7 (9)	2 (15)	30 (24)	16 (8)	26 (18)	4 (6)	0 (6)
	(DENY CLAIM INDEMNIFCAT.)	(12)	(0)	(2)	(10)	(18)	(17)	(5)	(9)	(8)	(13)	(27)	(11)	(21)	(6)	(3)
	(INTERRUPT LOAN DISBURSEMENT)	(11)	(0)	(1)	(10)	(19)	(15)	(4)	(6)	(9)	(15)	(19)	(6)	(13)	(6)	(11)
DENY ACCESS TO ALL SUPPORT	(DENY ACCESS TO OFFICIAL SUPPORT FOR ALL BUSINESS)	13 (9)	0 (0)	1 (0)	12 (9)	17 (21)	18 (11)	2 (0)	8 (0)	10 (11)	12 (19)	21 (13)	2 (0)	8 (3)	13 (10)	9 (17)

**KEY:****A** Available**R** Required**P** Practice**S** Sample**CHOICE (A-P)** "Free to take a particular action but choose not to do so in practice"**NO-CHOICE (S-A)** "No discretion to take the indicated action and therefore cannot apply it in practice"

**TABLE 8: DEBARRING BEFORE AND AFTER SUPPORT IS GIVEN**

	ECAS CONSTRAINED FROM DEBARRING					
	SUSPICION		EVIDENCE		LEG. JUD	
	BEFORE	AFTER	BEFORE	AFTER	BEFORE	AFTER
Australia		X		X		X
Austria	X	X	X	X	X	
Belgium	X	X		X		X
Canada						
Czech Repub.	X	X	X	X	X	X
Denmark						
Finland	X	X	X	X	X	X
France						
Germany	X	X	X	X	X	X
Greece	X	X		X		X
Hungary (MEHIB)		X		X		X
Hungary (Exim)		X		X		X
Italy	X	X	X	X	X	X
Japan (JBIC)		X		X		X
Japan (NEXI)						
Korea (KEIC)	X	X				
Korea (Exim)						
Luxembourg	X	X		X		X
Mexico						
Netherlands	X	X	X	X	X	X
N. Zealand						
Norway	X	X				
Poland	X	X	X	X		X
Slovak Rep.	X	X	X	X	X	X
Spain	X	X	X	X	X	X
Sweden		X		X		X
Switzerland						
Turkey	X		X			
UK	X	X	X	X	X	X
USA	X	X	X	X		
<b>TOTAL</b>	<b>17</b>	<b>21</b>	<b>12</b>	<b>19</b>	<b>9</b>	<b>17</b>



## 2.3 Section III: Past Experience

Section III of the questionnaire asked ECAs to indicate whether they had any experience of taking action/using sanctions in the event of *suspicion, evidence* or *legal judgment* of bribery.

### 2.3.1 Overall Assessment

Only *France*, the *UK* and the *USA* reported taking action in response to allegations of bribery. It is not clear whether the reported actions related to one or several cases.

France reported using the sanction of *withholding support for the specific transaction in question* in response to suspicion of bribery. This contradicts information provided elsewhere in the survey questionnaire, where France reports having the option of *withholding specific support for a transaction*, but not using it in practice.

The UK reported having notified the investigative authorities on the basis of *suspicion* of bribery.

The USA reported notifying the investigative authorities and *seeking recourse* on the basis of having *sufficient evidence* of bribery.

In addition, Australia reported that the suspicion of bribery led to “*exporters have been asked to clarify or explain the cause of the inconsistencies between declarations and payments*”.

Germany reported receiving information anonymously about possible acts of bribery in connection with covered transactions. However, it stated that “*the investigations on our part did not bring sufficient evidence to take any further measures against the policyholder.*”

Others, such as the EGAP of the Czech Republic, explained that the procedures are new and have not had the chance to be tested yet.

### 2.3.2 Performance of G7 ECAs

To date, all 3 ECAs which took action/used sanctions are G7 country ECAs: France, UK, and USA. In addition, of the 2 ECAs that have undertaken internal investigations, Germany is also a G7 country ECA.

There is no means to assess the performance of these investigations.

### 2.3.3 Using the Results

The OECD Working Party could usefully compile case studies, so that information may be shared and lessons learnt:

- when did the bribery come to light – before or after the decision to provide support was made?
- how did the bribery allegations come to light?
- what was the nature of the alleged bribery?
- were commissions and agents involved?
- what process did the ECA go through before taking action/imposing sanctions?

- did the ECA exchange information with: *law enforcement authorities; other national departments* (e.g. public procurement); other *ECAs*?
- what reasons were there for informing/not informing the investigative authorities?
- will the case influence the decision to support future applications?
- what lessons were learnt?

## 2.4 Section IV: Further Measures/Actions

ECAs were requested to provide information on any anti-bribery measures that were under consideration and to indicate whether they were prepared to exchange information with other member ECGs about suspected and/or proven instances of bribery related to specific officially supported export credit transactions.

### 2.4.1 Overall Performance

#### 2.4.1.1 Further measures to deter/sanction bribery

Four ECAs, *Australia*, the *Czech Republic*, *Turkey* and the *UK* are reviewing their anti-bribery measures.

Australia is currently undertaking a review of all its documents for medium and long term business.

The Czech Republic is gathering a sufficient body of experience and aims to review its measures at the end of 2003.

Turkey is currently developing a no-bribery affidavit for applicants to complete, although it is not clear whether or not this will be a pre-requisite for obtaining official support. Turkey is one of two ECAs that do not *request* a no-bribery affidavit, and one of three ECAs that do not *require* it.

The UK is currently reviewing “*procedures to see if they can be strengthened further.*” It has already upgraded its anti-bribery procedures during the period 31<sup>st</sup> March 2003 - 8th October and now: requires applicants to state the purpose of commissions and provide details of agents; and informs the investigative authorities of *suspensions* of bribery *before* and *after* support has been provided.

#### 2.4.1.2 Exchange of information

*FIGURE 12* shows that 70% of ECAs state that they are prepared to exchange information on the basis of suspicion of bribery and 83% where there are proven cases of bribery.

In a number of cases, ECAs qualify their answer (see *TABLE 9*), indicating that their readiness to exchange information may either be constrained by legal or commercial considerations (e.g. Finland, Turkey, UK) or limited to existing information exchange frameworks (e.g. Switzerland).

Hence, in reality, the ability of member ECAs to exchange information may not be as encouraging as these figures first suggest.

### 2.4.2 Performance of the G7 Country ECAs

The G7 country ECAs perform better than the group as whole.

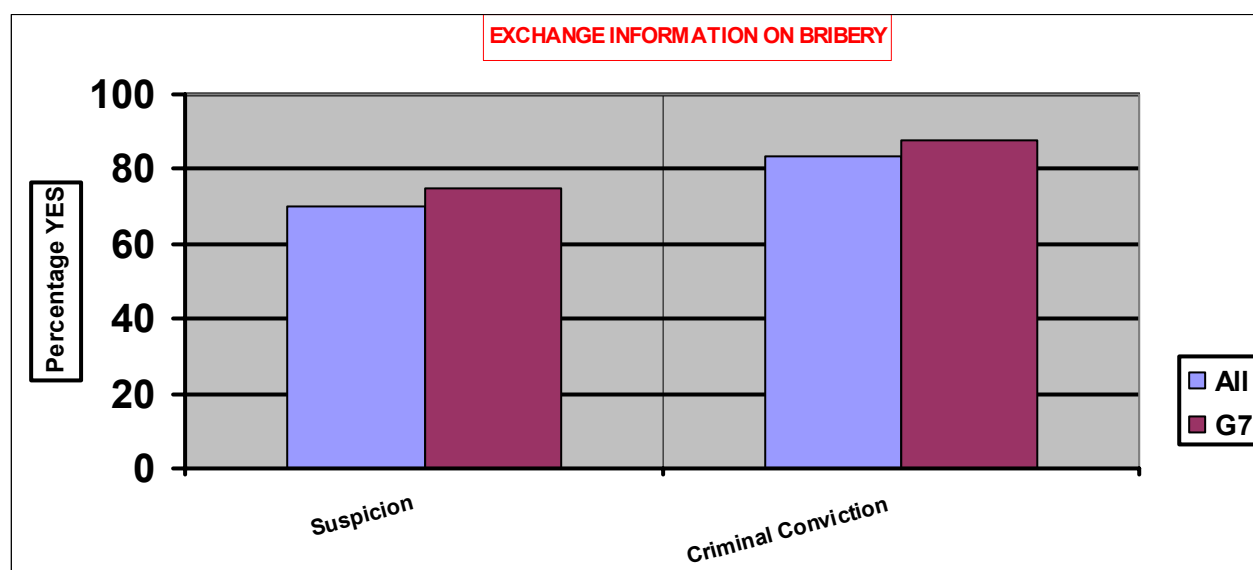
The USA is the only G7 ECA which is not prepared to exchange information, either on the grounds of suspicion or proven bribery.

Italy states that it is able to exchange information on the basis of a criminal conviction, but not on the grounds of suspicion.

Canada reports that it is willing to exchange information, but only if information is publicly available and there is no breach of its implied duty of confidentiality under domestic laws.

The UK is similarly ambiguous stating that “*provided we are legally able to do so and we have sufficient undertakings that any information is treated on a confidential basis.*”

**FIGURE 12: EXCHANGE INFORMATION ON BRIBERY**



### 2.4.3 Using the Results

Combating bribery in international business transactions depends on the existence of mechanisms for exchanging information between authorities and departments *within* and *between* countries.

In the context of fighting corruption in public procurement, the European Commission commissioned a study<sup>25</sup>, to look at the different ways Member States were able to exclude tenderers found guilty of corruption.

It found that there was “*no common approach to the holding, transmission, and correction of such data* and recommended that “*systems should be established to encourage a flow of information vertically (within Member States) and horizontally (between Member States)*”.

Similarly, it is essential that ECAs put in place *additional* mechanisms to secure information flows to *detect* and *deter* bribery in ECA supported transactions. It is not enough to rely on existing formal mechanisms of mutual legal assistance or other international agreements.

The OECD Working Party could usefully initiate a research programme, aimed at gaining a better understanding of the barriers facing ECAs to exchanging information and specifically:

<sup>25</sup> Procurement and Organised Crime: An EU-wide study, Edited by Simone White

- the legal constraints that require ECAs to report to national government agencies (*Hungary, Spain*) and which (by implication) restrict ECAs from engaging in information exchange internationally;
- the conflicts of commercial confidentiality/bank secrecy (*Australia, Canada, Finland, Turkey*).

**TABLE 9: EXCHANGE INFORMATION ON BRIBERY: INDIVIDUAL RESULTS**

	SUSP	CONV	COMMENTS
AUSTRALIA	X	X	"EFIC is legally obliged to keep confidential third party information. In practice EFIC would more likely have suspicions than knowledge of the existence of improper conduct. It would, however, be legally unwise to communicate suspicions to third parties (other than law enforcement officers)".
AUSTRIA	✓	✓	
BELGIUM	✓	✓	
CANADA	✓	✓	"... EDC would be prepared to disclose such information if it was publicly available and provided that doing so would constitute a breach of its operating policy."
CZECH REP.	X	✓	"In cases of proven bribery related to the specific officially supported export credits."
DENMARK	✓	✓	
FINLAND	✓	✓	"...prepared to exchange information taking into consideration the bank secrecy legislation binding us."
FRANCE	✓	✓	<i>Ce type d'activité nous semble plutôt relever des obligations d'entraide judiciaire de la Convention OCDE. Nous serions prêts à envisager, sur une base bilatérale, des échanges d'informations avec d'autres assureurs-crédit sur les acheteurs / emprunteurs faisant l'objet de soupçons de corruption.</i>
GERMANY	✓	✓	
GREECE	✓	✓	
HUNGARY	X	X	"... prepared to provide information to certain governmental bodies only, according to Hungarian law". <sup>26</sup>
HUNGARY	X	X	" " "
ITALY	X	✓	"We would exchange information about proven instances of bribery. For suspected cases legal impediments could make any exchange impossible."
JAPAN	✓	✓	
JAPAN	✓	✓	
KOREA (KEIC)	✓	✓	
KOREA	✓	✓	
LUXEMB.	✓	✓	
MEXICO	X	✓	"We could only provide information about proven instances of bribery – and not any information related to a particular transaction."
NETHER.	X	✓	"only regarding proven bribery"
N. ZEALAND	✓	✓	
NORWAY	✓	✓	
POLAND	✓	✓	"...As to providing information - governmental institutions can provide foreign governmental bodies, with given information on their formal request, only when they obtained it performing their duties...foreign entities can obtain information concerning the offence commitment ongoing proceeding relating to the offence commitment by means of mutual legal assistance."
SLOVAK REP.	✓	✓	
SPAIN	X	X	"In such cases we would inform our investigative authorities. They would be the ones to decide the adequate procedures."
SWEDEN	✓	✓	"On a case-by-case – and on reciprocity basis"
SWITZ.	✓	✓	"Switzerland is prepared to cooperate in the framework of existing agreements on international legal assistance".
TURKEY	✓	✓	"As long as such exchange does not harm the commercial confidentiality".
UK	✓	✓	<i>"provided that we are legally able to do so and we have sufficient undertakings that any information is treated on a confidential basis.</i>
USA	X	X	
<b>TOTAL</b>	<b>21</b>	<b>25</b>	

26 Hungary (MEHIB and Eximbank) also report that "Since 1st January 2003 providing data or other information on the ECAs officially exported export credit activities should not be denied on the ground of referring to confidentiality or other business interest reason, upon request of the Ministry of Finance." It is not clear how this relates to exchange of information between ECAs.

### 3 The UNICORN ECA Anti-bribery Index

This section presents the UNICORN *ECA Anti-bribery Index*, which ranks ECAs according to their *use* of anti-bribery measures (*actual practice*). The index has been constructed by UNICORN on the basis of information submitted to the OECD *Working Party on Export Credits and Credit Guarantees* in the report “*Responses to the 2002 Survey on Measures Taken to Combat Bribery in Officially Supported Export Credits – As of 8 October 2003.*”

#### 3.1 Constructing the Index

The questions used to construct the index, together with the scoring method, are set out in the table overleaf (see *TABLE 10*). No attempt has been made to score questions for which qualitative information is provided (such as the text of an anti-bribery affidavit). The ranking wholly reflects the answers provided by the ECAs<sup>27</sup>.

##### 3.1.1 Section I: Measures to Deter Bribery

Section 1 addresses the measures taken to deter bribery. All the questions are scored equally, other than 3 questions relating to limiting and assessing the purpose and size of commissions – see *TABLE 10*.

The ECAs that consider commissions to be *ineligible* for support are able to score a minimum of 1.0. They can score an additional 2.0 if they require details of commissions and agents to be provided and an additional 0.5 if they also: *apply ceilings; benchmark against standard business practices; and require the purpose of the commission to be identified.* This makes a maximum of 3.5.

ECAs that consider commissions to be *eligible* for support can score a maximum of 2.5.

The scoring system has been devised in order to:

- reward the 4 ECAs that consider commissions to be *ineligible* for support;
- reflect the unique position of *Greece*, which reports that it considers commissions *ineligible* for support, and also undertakes due diligence measures (see Section 2.1.1.). *Greece appears to be demonstrating best practice;*
- *send the message* that ECAs should ask for the details of agents and commissions, regardless of the eligibility of commissions.

##### 3.1.2 Section II: Actions *Before* and *After* the Granting of Official Support;

*Section II* of the questionnaire gathered information on whether ECAs had the option of using, were required to use, or were actually committed to using a number of anti-bribery sanctions.

ECAs can only score points if they actually use, or are willing to use, a sanction. This was defined as *actual practice* in the *OECD Working Party questionnaire* (see *TABLES 3 and 6*).

---

<sup>27</sup> In the survey New Zealand did not indicate that it informed the relevant authorities of suspicions of bribery in practice but it did indicate that this was required and therefore the analysis has taken this to be practice. In the case of the USA some interpretation was required as the answers relating to commissions and agents were given in text form. Any mistakes in interpretation can be amended.

**TABLE 10: SCORING RESPONSES TO THE SURVEY**

SECTION AND QUESTIONS	RESP.	SCORE
<b>SECTION I</b>		
<b>Q1:</b> Do you inform all applicants requesting official export credit support about the legal consequences of bribery in international business transactions	Yes	1
<b>Q2:</b> Do you invite all applicants and/or exporters requesting official export credit support to provide an undertaking/ declaration that neither they, nor anyone acting on their behalf have been engaged or will engage in bribery in the transaction?	Yes	1
<b>Q2a)</b> Is the provision of an undertaking/ declaration by the applicant and/or exporter a pre-requisite for obtaining official support?	Yes	1
<b>Q3</b> Are agents' commissions (included in the export contract) eligible for official support?	No	1
<b>Q3a)</b> Do you apply a ceiling to agents' commissions for which official support is provided?	Yes	1/6
<b>Q4</b> Do you require that details be provided in respect of agents' commissions associated with the transaction?	Yes	1
<b>Q4 b)</b> Do you assess whether the level of commissions is consistent with standard business practice?	Yes	1/6
<b>Q4c)</b> Do you require the purpose of commissions to be clearly identified?	Yes	1/6
<b>Q4d)</b> Do you require that details be provided of the agent(s) to whom commissions are paid?	Yes	1
<b>SUB-TOTAL</b>		<b>MAX. 6.5</b>
<b>SECTION II</b>		
<b>Q5. Please indicate the actions/ sanctions which are actual practice <u>before</u> the decision to provide support has been made:</b>		
▪ <i>informing the investigative authorities on the basis of suspicion of bribery?</i>	Yes	0.33
▪ <i>informing the investigative authorities on the basis of evidence of bribery?</i>	Yes	0.33
▪ <i>informing the investigative authorities on the basis of legal judgment?</i>	Yes	0.33
▪ <i>withholding support for transaction in question on the basis of suspicion of bribery?</i>	Yes	0.33
▪ <i>withholding support for transaction in question on the basis of evidence of bribery?</i>	Yes	0.33
▪ <i>withholding support for transaction in question on the basis of legal judgment of bribery?</i>	Yes	0.33
▪ <i>denying access to official support for all business on the basis of suspicion of bribery?</i>	Yes	0.33
▪ <i>denying access to official support for all business on the basis of evidence of bribery?</i>	Yes	0.33
▪ <i>denying access to official support for all business on the basis of a legal judgment of bribery</i>	Yes	0.33
<b>SUB- TOTAL</b>		<b>MAX 3.0</b>
<b>Q6. Please indicate the actions/sanctions which are actual practice <u>after</u> support has been given:</b>		
▪ <i>informing the investigative authorities on the basis of suspicion of bribery?</i>	Yes	0.33
▪ <i>informing the investigative authorities on the basis of evidence of bribery?</i>	Yes	0.33
▪ <i>informing the investigative authorities on the basis of evidence of bribery?</i>	Yes	0.33
▪ <i>invalidating cover on the basis suspicion of bribery?</i>	Yes	0.33
▪ <i>invalidating cover on the basis of evidence of bribery?</i>	Yes	0.33
▪ <i>invalidating cover on the basis of legal judgment of bribery?</i>	Yes	0.33
▪ <i>denying claim indemnification on the basis of suspicion of bribery?</i>	Yes	0.33
▪ <i>denying claim indemnification on the basis of evidence of bribery?</i>	Yes	0.33
▪ <i>denying claim indemnification on the basis of legal judgment of bribery?</i>	Yes	0.33
▪ <i>interrupting loan disbursement on the basis of suspicion of bribery?</i>	Yes	0.33
▪ <i>interrupting loan disbursement on the basis of evidence of bribery?</i>	Yes	0.33
▪ <i>interrupting loan disbursement on the basis of legal judgment of bribery?</i>	Yes	0.33
▪ <i>seek recourse on the basis of suspicion of bribery?</i>	Yes	0.33
▪ <i>seek recourse on the basis of evidence of bribery?</i>	Yes	0.33
▪ <i>seek recourse on the basis of legal judgment of bribery?</i>	Yes	0.33
▪ <i>deny access to official support for all business on the basis of suspicion of bribery?</i>	Yes	0.33
▪ <i>deny access to official support for all business on the basis of evidence of bribery?</i>	Yes	0.33
▪ <i>deny access to official support for all business on the basis of legal judgment of bribery?</i>	Yes	0.33
<b>SUB-TOTAL</b>		<b>Max. 6</b>
<b>SECTION IV</b>		
<b>Q9</b> Would you be prepared to exchange information with other ECG members about suspected instances of bribery relating to specific export credit transactions?	Yes	0.5
<b>Q9</b> Would you be prepared to exchange information with other ECG members about proven instances of bribery relating to specific officially export credit transactions?	Yes	0.5
<b>SUB-TOTAL</b>		<b>Max. 1</b>
<b>MAXIMUM</b>		<b>16.5</b>

For any one sanction, an ECA can score a maximum of 1.0, if it is prepared to use the sanction on the grounds of: *suspicion, sufficient evidence* and *legal judgment*.

### 3.1.3 Section III: Past Experiences with Bribery

The anti-bribery index does not take account of whether or not ECAs have past experience with bribery.

### 3.1.4 Section IV: Information Exchange

A number of ECAs are able and willing to exchange information where bribery is proven, but **not** where it is suspected. The scoring system differentiates between these responses.

Those ECAs that are able to exchange information on the grounds of *both* proven bribery and suspicion of bribery, can score 1.0. Those which can only exchange information where bribery is proven can score a maximum of 0.5.

## 3.2 The ECA Anti-bribery Index

Austria is the best performing ECA in relation to its use of anti-bribery measures (see TABLE 11). It scores 12 out of a maximum of 16.5.

Denmark is in second place with a score of 11.33, followed closely by Australia in third place, with a score of 11.00.

The group of G7 country ECAs performs poorly overall (see TABLE 12). France tops the group with a score of 8.83 but is 12<sup>th</sup> overall. Germany and Italy share last position, with a score of 6.67, 23<sup>rd</sup> overall.



**TABLE 11: ECA RANKING ON THE BASIS OF RESULTS REPORTED 8<sup>th</sup> OCTOBER 2003**

COUNTRY	EXPORT CREDIT AGENCY	SCORE	RANKING
AUSTRIA	Oesterreichische Kontrollbank AG (OeKB)	12.00	1
DENMARK	Eksport Kredit Fonden (EKF)	11.33	2
AUSTRALIA	Export Finance and Insurance Corporation (EFIC)	11.00	3
NORWAY	Garanti-Instituttet for Eksportkreditt (GIEK)	10.83	4
GREECE	Export Credit Insurance Organization	10.67	5
NETHERLANDS	Nederlandsche Credietverzekering Maatschappij NV	10.50	6
NEW ZEALAND	Export Credit Office (ECO)	10.17	7
CZECH REPUBLIC	Export Guarantee and Insurance Corporation (EGAP)	9.83	8
BELGIUM	Office National du Ducroire/Nationale Delcrededienst	9.33	9
FINLAND	Finnvera	9.33	9
LUXEMBOURG	Office du Ducroire	9.33	9
FRANCE	Compagnie française d'Assurance pour le commerce extérieur (COFACE)	8.83	12
HUNGARY (EXIMBANK)	Hungarian Export-Import Bank Ltd.	8.67	13
JAPAN (JBIC)	Japan Bank for International Cooperation	8.50	14
CANADA	Export Development Canada (EDC)	8.17	15
SPAIN	Compania Espanola de Seguros de Credito a la Exportacion (CESCE)	8.17	15
SLOVAK REPUBLIC	Export-Import Bank of the Slovak Republic	7.50	17
UNITED KINGDOM	Export Credits Guarantee Department	7.33	18
UNITED STATES	Export-Import Bank of the United States	7.17	19
HUNGARY (MEHIB)	Hungarian Export Credit Insurance Ltd (MEHIB)	7.00	20
JAPAN (NEXI)	Export-Import Insurance Department	7.00	20
SWEDEN	Exportkreditnämnden	7.00	20
GERMANY	Hermes Kreditversicherungs-AG (HERMES)	6.67	23
ITALY	Sezione Speciale per l'Assicurazione del Credito all'Esportazione (SACE)	6.67	23
MEXICO	Banco Nacional de Comercio Exterior, SNC	6.50	25
SWITZERLAND	Export Risk Guarantee (ERG)	6.17	26
KOREA (EXIMBANK)	The Export-Import Bank of Korea	6.00	27
POLAND	Export Credit Insurance Corporation (KUKI)	5.67	28
TURKEY	Export Credit Bank of Turkey	3.67	29
KOREA (KEIC)	Korea Export Insurance Corporation	2.67	30
PORTUGAL	Companhia de Seguro de Créditos, SA		NO RESPONSE

**TABLE 12: G7 RANKINGS ON THE BASIS OF RESULTS REPORTED 8<sup>th</sup> OCTOBER 2003**

COUNTRY	EXPORT CREDIT AGENCY	SCORE	OVERALL RANKING	G7 RANKING
FRANCE	Compagnie française d'Assurance pour le commerce extérieur (COFACE)	8.83	12	1
JAPAN (JBIC)	Japan Bank for International Cooperation	8.50	14	2
CANADA	Export Development Canada (EDC)	8.17	15	3
UNITED KINGDOM	Export Credits Guarantee Department (ECGD)	7.33	18	4
UNITED STATES	Export-Import Bank of the United States (EX-IM)	7.17	19	5
JAPAN (NEXI)	Export-Import Insurance Department	7.00	20	6
GERMANY	Hermes Kreditversicherungs-AG (HERMES)	6.67	23	7
ITALY	Sezione Speciale per l'Assicurazione del Credito all'Esportazione (SACE)	6.67	23	7

