

Disclosure Policies – The EU-Directive 2003/4/EC

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Disclosure Policy Euler Hermes - basics

- **EU-Directive 2003/4/EG** – Umweltinformationsgesetz (since 14 February 2005)
- Common Approaches (e.g. ex ante-publication for Category A projects)
- National law: Freedom of Information Act – Informationsfreiheitsgesetz - (since 1 January 2006)
- other publications on voluntary basis (e.g. all transactions with final commitment > 15 Mio. EUR, annual report)

EU-Directive/Umweltinformationsgesetz – Essential Elements

- major change for Euler Hermes compared to antecedent EU-Directive: **expansion of the definition of public authorities**
 - all public administration/bodies performing administrative functions whether or not they have specific responsibilities for the environment
 - Euler Hermes is addressed by the new directive
- requires authorities to make available **environmental information** in its possession to **any inquirer**
- a request can be refused in specific and defined cases (e.g. confidentiality of commercial information, adverse effects on international relations) if public interest in disclosure does not prevail.
- Dissemination of environmental information (without request), e.g. environmental impact studies

Experience with requests: Lawsuit

Subject:

1. list of all covered power generation transactions since 1997 ordered by energy source (coal, oil, gas, nuclear, solar, hydro, geothermal, wind)
2. overall covered amount of each energy source
3. for the transactions with fossil energy sources detailed information on the project (origin of fuel, fuel input, output, efficiency factor, utilization ratio, estimated service life)
4. list of all transactions listed under no. 1 that have been assessed according to the national environmental guidelines

lawsuit – time lapse

- July 2003: request for information by NGOs
- August 2003: request rejected (based on old EU-Directive)
- June 2004: lawsuit filed at administration court

February 2005: national law based on new EU-Directive came into force

- January 2006: settlement reached (based on new legal position)

main disputable issues

- official export credit guarantees addressed?
 - question out-dated with new EU-Directive/new national law
- environmental information?
 - is an information on whether cover for an export transaction has been provided an „environmental information“?
- requested information available?
 - detailed information on approx 200 projects (with fossil fuels) not documented electronically would have to be compiled
 - unreasonable administrative burden?
- commercial confidentiality and/or international relation could be affected in some cases

provisional considerations of the court

- court indicated that information on transactions falling under the environmental assessment procedure (i.e. with repayment terms of > 2 years, above threshold) could be “environmental information”
- rather no environmental information when cover is provided for small portions of projects (no direct effect on the environment)
- proposal to limit information to transactions covered since 2003.
 - would limit administrative burden
 - would take into account that German ECA was not addressed by the old EU-Directive
- the court did not see commercial interest and/or international relations affected in general (would have to be substantiated in each case)

settlement reached

ECA only accepted the composition after consent of all exporters involved, since commercial interests could be affected

ECA provides information on

- transactions covered since 2003 above 15 Mio. EUR/ with repayment terms exceeding 2 years ordered by energy source (coal, oil, gas, nuclear, solar, hydro, geothermal, wind)
- overall covered amount of each energy source
- environmental category of each transaction
- for the transactions with fossil energy sources detailed information on the project (origin of fuel, fuel input, output, efficiency factor, utilization ratio, estimated service life) if available

Other requests (information provided)

Environmental Information

- national answer on OECD „Survey on Members Procedures and Practices Regarding Officially Supported Export Credits“
- national Reporting (2003/2004) according to the OECD-Recommendation
- Copy of an EIA for a hydropower plant (covered 2002)

Other Information (Freedom of Information Act)

- Information on cover for military goods

Federal Export Credit Guarantees

Hermes Cover

Thank you for your attention!

Further information is provided under

www.agaportal.de

www.exportkreditgarantien.de

Hotline: ++49 40-8834 9192

E-mail: info@exportkreditgarantien.de

Edna Schöne-Alaluf, Euler Hermes Kreditversicherungs-AG

E-mail: edna.schoene-alaluf@eulerhermes.com

Telephone: +49 40-8834 9021