

KORPORACJA UBEZPIECZEŃ KREDYTÓW EKSPORTOWYCH



Founded in 1991, Poland's export credit agency KUKA (Korporacja Ubezpieczeń Kredytów Eksportowych/Export Credit Insurance Corporation Joint Stock Company) is a state-backed export insurer created in accordance with the Insurance Act from 11 September 2015 and the Act dated 7 July 1994 on Export Insurance Guaranteed by the State Treasury and its Statute. KUKA S.A. is completely state-owned and is supervised by the Minister of Entrepreneurship and Technology.

Poland's top exports are vehicle parts, cars, and furniture; total exports amounted to EUR 212 billion in 2018.¹ Similar to Poland's overall exports, KUKA's geographic structure of export turnover was dominated by EU countries (62.8%) as well as CIS countries (17.3%), specifically led by Germany (21.3%), Russia (8.2%) and the Czech Republic (6.4%).²

One Polish ECA recognized instead of the two

KUKA works together with Bank Gospodarstwa Krajowego (BGK), a state-owned bank whose mission is to support the development of Polish companies operating internationally. BGK is regulated by the Law of 14 March 2003 on Bank Gospodarstwa Krajowego and by the Regulation of the Minister of Development of 16 September 2016 on the statute of the Bank Gospodarstwa Krajowego. Among other things, BGK supports companies that operate under governmental frameworks—namely Financial Support for Export (Government Program for Exports Support)³ and Export Credit Facility (DOKE) (DOKE Exports Support)⁴ Programme. However, officially, KUKA is the only ECA in Poland, and its activities are annually reported to the European Commission under requirements of EU Regulation 1233/2011).

According to CSOs, the OECD Common Approaches should be applied not only by the Export Credit Corporation (KUKA), but also by the Bank Gospodarstwa Krajowego (BGK). The need for KUKA to implement the OECD Common Approaches is regulated by Resolution No. 20/2016 of KPUE from 29 July 2016 on the detailed rules for the operation of the Export Credit Corporation of the Joint Stock Company

for environmental and social procedures, (the so-called KPUE resolution). In this regard, there is no similar legal document formulating duties of BGK. However, responsible ministry stated that "All export credits granted by BGK under the government's "Financial Support for Export" and "Export Credit Facility Program" must be insured at KUKA S.A. within the framework of export insurance guaranteed by the State Treasury. Therefore, all the export credits covered by the recommendation (...), granted by BGK under these two programmes are in line with the OECD's recommendation."^{5,6}

Environmental and social screening of KUKA

According to its website, KUKA follows OECD recommendations regarding environmental protection and social rights as well as concerning issues of transparency.⁷ The team in charge of the initial screening consists of several people experienced in environmental and social assessment. The team also participates in meetings of ECA environmental practitioners.

The environmental assessment procedure is as follows⁸:

1. The applicant attaches to the application for credit insurance a completed Environmental Impact Assessment Questionnaire. The questionnaire makes it possible to select, or evaluate, whether the project is potentially subject to assessment under the Common Approaches. According to KUKA, at this stage most projects are assessed as not being subject to classification due to the type of export item not being related to a specific site (e.g. ships) or the amount of insurance being less than SDR 10 million. Selection is then carried out by KUKA employees.
2. During the classification process, data from the questionnaire is used. At this stage, KUKA uses an external expert support (in accordance with § 5 of the KPUE resolution) in order to verify the exporter's declaration on whether the project location is in a sensitive area using inventories and geospatial data. At this stage, the exporter may be asked to provide more detailed information than that in the questionnaire. According to

1. https://oec.world/en/visualize/tree_map/hs92/export/pol/all/show/2017/
2. <https://www.kuka.com.pl/en/about-kuka/annual-reports/Annual-Report-2017>
3. <https://www.en.bgk.pl/activities/government-programs/government-program-for-exports-support/>
4. <https://www.en.bgk.pl/activities/government-programs/doke-exports-support-program/>
5. Engel J., Wiśniewska M. 2017. Polskie kredyty eksportowe a wymagania Rekomendacji OECD i Konwencji z Aarhus. CEE Bankwatch Network/Polska Zielona Sieć/Fundacja Greenmind, Słoiński-Warszawa (see: p.10)
6. [http://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?doclanguage=en&cote=tad/ecg\(2016\)](http://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?doclanguage=en&cote=tad/ecg(2016))
7. <https://www.kuka.com.pl/en/about-kuka/international-and-domestic-regulations/environmental-protection/>
8. KUKA's environmental procedures have been analysed in 2017 by Greenmind Foundation on the basis of information obtained from KUKA's website, the content of the Environmental Impact Questionnaire that has to be filled in by credit insurance applicants, information provided to Greenmind Foundation at a meeting with KUKA representatives, and written information sent after the meeting.

KUKE: “The questionnaire is therefore the beginning of an environmental procedure, in which an exporter often presents his idea for a transaction, which is then extended with additional information already during the transaction analysis. At the end of the process, KUKE and environmental expert have sufficient data to finally categorize the project.” The final result is to classify the project into categories A, B or C, as reflected in “the Project Classification Note “.

3. The assessment of a project classified as a category A or B is based on additional documentation provided by the applicant. As stated by KUKE: “At this point, specialised documents are required, containing information on the detailed terms of the Project, emissions, technical conditions, permits, etc. In the case of category A projects and in justified cases for category B projects, an Environmental and Social Impact Assessment (ESIA) Report is required.” A summary of the assessment is gathered in ‘the Environmental Impact Assessment Note,’ prepared by an environmental expert. It contains among others things recommendations for the acceptance (or rejection) of a project for insurance and possible additional conditions for granting insurance cover.
4. Information about category A and B projects is published on the KUKE S.A. website, although it should not be regarded as the full implementation of Art. 41 of the Common Approaches as it does not have sufficient content. Information about category A projects is published 30 days before the decision, ‘to gather comments from anyone environmentally concerned’ as is stated in its Environmental Procedure.

No procedures for proper public consultations in KUKE

However, the procedure for dealing with submitted comments is not specified, which makes it questionable how Art. 36 and 40 of the Common Approaches are being applied. There is also no place for these to be made public. So far, no comments on category A projects have been submitted, which KUKE cites as the reason why there’s no procedure to deal with them.

No human rights due diligence in KUKE

As for human rights screening, Art. 14 of the Common Approaches has not been properly implemented. There is no specific human rights due diligence procedure in cases where there is a high likelihood of severe project-related human rights impacts. What is more, it is not possible

to assess whether a proper assessment of the likelihood is going to be done, as the relevant information is not published.

Anti-bribery procedures of KUKE

In the light of Poland’s obligation to implement the principles and the solutions adopted by the ECG Group from the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, the Committee for Export Insurance Policy has introduced regulations aimed at preventing bribery into insurance procedures for export credit insurance with Treasury backing. KUKE is obliged to undertake the following actions:

- to require the exporter/financing institution to provide a statement confirming, among others, that neither they nor anyone acting on their behalf in connection with the transaction are currently under charge or, within a five-year period preceding the application have been convicted for violation of the law against bribery of foreign public officials and that they are not listed on the publicly available debarment lists of the international institutions;
- to require the exporter/financing institution to disclose, in justified cases, the identity of persons acting on their behalf in connection with export contract or credit agreement, as well as the amount and purpose of the commission paid;
- to verify, in justified cases, before making a final decision on providing insurance cover, whether internal corrective and preventative measures have been taken by an exporter/financing institution convicted of bribery of a foreign public official in the past.

Furthermore, KUKE encourages exporters and financing institutions to develop and apply management control systems, which would reflect transparency in their activities in relation to preventing bribery.

At the same time, the general conditions of export credit insurance with State Treasury backing include provisions resulting from the transposition of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and the OECD Recommendation into the Polish Criminal Code. These provisions allow the refusal to pay indemnity for receivables relating to export contracts – in case of supplier credit cover – or refusal to indemnify with respect to the agreement on financing the export contract if bribery has been committed in connection

with the contract. If – in case of buyer credit cover – after the insurance agreement has been concluded, it is proved that the export contract was concluded as a result of bribery of a foreign public official and the financing institution did not have any knowledge in this respect and could not have had this knowledge by undertaking due diligence, KUKE is entitled to indemnify the insured.

Under such circumstances however KUKE has recourse to the exporter in relation to the indemnity paid.⁹

KUKE is not Paris-proof

Apart from KUKE's environmental and social procedure (implementing the OECD Common Approaches'), there is no additional assessment or policy related to climate mitigation, meeting provisions of the Paris Agreement. There are no specific list of no-go projects that may exclude involvement of Polish investors from fossil fuels' projects around the world under the umbrella of KUKE. Moreover, this ECA confirms that there are no restrictions to support domestic companies' export operations and other activities coming from the Paris Agreement. On the contrary, KUKE – as one can find at its website¹⁰ or in media¹¹ – takes part, together with BGK, in investments in fossil fuels' infrastructure. It is not possible to assess the scale of backing – by KUKE (and BGK) – domestic investors and their operations and activities in fossil fuels, as there is no list of projects available on the website or in the annual reports, or even on request. What is more, KUKE denies access to information about the full list of projects on request, claiming this information is covered by rules on insurance secrecy.

KUKE is not afraid of supporting the Indonesian coal sector suspected of fraud of millions of dollars

KUKE provides insurance for RAFAKO company involvement in “Lombok Coal Fired Steam Plant”, located in the Republic of Indonesia. The subject of KUKE & BGK support is a delivery of power engineering equipment – boilers, steam power generators, electrostatic precipitator – to the new conventional power plant for Indonesian state-owned electricity company. In this case, it should also be remembered that the subject of support is an investment in the Indonesian coal sector, which is accused of moving millions of dollars abroad (instead of i.e. paying taxes fairly)¹².

NGOs challenging non-transparency of KUKE

Since 2007 KUKE has published its annual report online in Polish and English. Its reports as well

as its website enable the reader to differentiate between KUKE's commercial business and its state-backed activities.

List of its projects falling under the OECD Arrangement and relevant recommendations (more than two years' repayment period, category A projects ex-ante and category B projects ex-post) is available at KUKE's website, although it includes some projects that were not in the end covered by the State Treasury guarantee. This makes it impossible for stakeholders to properly understand the impact of KUKE's activities.

It is not possible to verify if the list is full, as there is no list of projects available on the website or in the annual reports, or even on request. KUKE denies access to information about the full list of projects on request, claiming this information is covered by rules on insurance secrecy. Unauthorised use of the concept of insurance secrecy has been criticised by the Polish Ombudsman, who clearly stated that KUKE cannot refuse to make public information regarding the projects supported, pursuant to Art. 5 sec. 1 of the Freedom of Information Act.¹³ BGK, when asked for the same, didn't even respond. Respective Ministry refused to disclose the list of BGK-backed projects by claiming banking secrecy. Polish courts asked by the Polish civil society have confirmed the insurance and banking secrecy of Polish ECAs standing above the right to know on where the public money goes via ECAs support.

KUKE S.A., although it fully belongs to the State Treasury, cannot be regarded as a “public authority” as per art. 2 sec. 2 of the Aarhus Convention. Nevertheless, there is no doubt that KUKE S.A. is subject to the Act on Access to Public Information.¹⁶ However, since 2015 a number of Polish NGOs (Polish Green Network, Watchdog Poland, Greenmind Foundation) have been trying to shed some light on the activities of Poland's state-supported export credit agency KUKE. Unfortunately, without any positive result. Also, Polish courts, that organisations have approached, issue judgments against disclosure of information.

It is clear that there is more need for transparency on ECA's end. The unauthorised use (see the statement of the Polish Ombudsman, above) of the concept of insurance secrecy significantly reduces the transparency of export credit agencies such as KUKE and BGK (the last one raises the question of banking secrecy while refusing access to information). High levels of transparency should be applied similarly by both KUKE and BGK as this bank fulfills ECA definition.

9. <https://www.kuke.com.pl/en/about-kuke/international-and-domestic-regulations/anti-bribery/>

10. <https://www.kuke.com.pl/en/about-kuke/international-and-domestic-regulations/environmental-protection/projects-notified-ex-post/>

11. <https://wysokienapiec.pl/8699-polska-wspiera-inwestycje-w-wegiel-na-drugim-koncu-swiata-zyska-rafako/>

12. <https://www.globalwitness.org/en/campaigns/oil-gas-and-mining/indonesias-shifting-coal-money/>

13. <https://www.rpo.gov.pl/pl/content/rpo-pyta-prezesa-zarzadu-korporacji-ubezpieczen-kredytow-eksportowych-o-nieudostepnienie-informacji>

Conclusion

Both KUKE, as officially recognised Polish ECA, as well as BGK, acting as the provider of state-backed export credit loans, should apply high levels of transparency, as they are both dealing with public money to provide export support for Polish business.

It is recommended that KUKE starts publishing a list of all projects that were supported per given year, as it is for example the case with the Netherlands' ECA Atradius.

KUKE's environmental and social procedure – with a few exceptions – is trying to be aligned with the Common Approaches but assessment of its practices is not possible due to the refusal to provide key information.

Information regarding category A and B projects, which are disclosed on the KUKE website, cannot be treated as environmental and social information in the sense of the definitions from the Common Approaches as the information provided is insufficient.

KUKE has so far not implemented any procedures for public consultation (dealing with the comments submitted) within the assessment of category A projects. According to KUKE this is because no one has ever submitted comments.

There is no specific human rights due diligence procedure in cases where the likelihood of severe project-related human rights impacts is high, which is a violation of Art. 14 of the Common Approaches.

It would be advisable for KUKE to start evaluating the long-term impact of projects that have been supported by state-backed export guarantees or insurance in the form of post project-monitoring, such as has been done for example in the past by Austrian ECA OeKB.

There is no specific exclusion list for harmful project types that KUKE will not support per se.

There are no specific climate mitigation measures, including mechanisms ensuring implementation of the Paris Agreement provisions, in place or being developed within KUKE. In the light of current international efforts to combat climate change and to foster global sustainable development it would be highly advisable if KUKE would start entering dialogue on such issues in line with the Paris Agreement and started adopting pro-active steps towards ecologically more sustainable policies.
