

# Poland: Korporacja Ubezpieczeń Kredytów Eksportowych (KUKE)

## Quick facts<sup>2</sup>



**Korporacja Ubezpieczeń  
Kredytów Eksportowych (KUKE)<sup>1</sup>**

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00-121 Warsaw  
Phone +48 22 35 68 300  
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**Website:** [www.kuke.com.pl](http://www.kuke.com.pl)

### Number of employees (2016)

177

### Volume of business (2015)

PLN 30.7 billion / EUR 7.22 billion  
(Value of total insured turnover of KUKE S.A.)<sup>3</sup>

### Export insurance and guarantees covered by the Republic of Poland (2015)

- **Legal maximum volume of exposure**  
PLN 15 billion / EUR 3.5 billion<sup>4</sup>
- **Volume of commitment at the end of 2015**  
PLN 6.3 billion / EUR 1.5 billion<sup>5</sup>
- **New guarantee contracts issued in 2015**  
PLN 3 billion / EUR 0.7 billion<sup>6</sup>
- **Failure liabilities**  
PLN 145 million / EUR 34.1 million<sup>7</sup>

### Legal framework

- The Insurance Act dated 15 September 2015 (Journal of Laws of 2015 item 1884)
- The Act dated 7 July 1994 on Export Insurance Guaranteed by the State Treasury (Journal of Laws of 2017 item 826)
- The Statute of the Export Credit Insurance Corporation Joint Stock Company.<sup>8</sup>

### Political responsibility

Ministry of Development and Finance

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## Overview

Founded in 1991, Poland's export credit agency KUKE (Korporacja Ubezpieczeń Kredytów Eksportowych/Export Credit Insurance Corporation Joint Stock Company)<sup>9</sup> is a state-backed export insurer based on 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. KUKE S.A. is completely state-owned.

KUKE works together with the Bank Gospodarstwa Krajowego (BGK), a state bank whose strategic task 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 under the government's Export Promotion Programme,<sup>10</sup> which consists of "Financial Support for Export" and "Export Credit Facility (DOKE) Programme".

According to the BGK website, all loans granted under the first of the above programmes are insured at KUKE.<sup>11</sup> This is confirmed by a letter signed on behalf of the Minister for Development and Finance, which says: "All export credits granted by BGK under the government's "Financial Support for Export" and "Export Credit Facility Program" must be insured at KUKE 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."<sup>12</sup>

Poland's top exports are machinery and vehicle parts, ships and furniture. Total exports amounted to EUR 172.2 billion in 2015.<sup>13</sup> Similar to Poland's overall exports, KUKE's geographic structure of export turnover was dominated by EU countries (65.9%) as well as CIS countries (16.6%), specifically led by Germany (21.3%), Russia (8.3%) and the Czech Republic (5.7%)<sup>14</sup>

KUKE is supervised (the performance of duties and powers of the Minister) by the Minister of Development and Finance. According to art. 7 of the Act on Export Insurance Guaranteed by the State Treasury, KUKE's operations regarding export insurance guaranteed by the State Treasury and insurance guarantees are determined by the Committee on Export Insurance Policy (KPUE)<sup>15</sup>, which additionally provides guidance for export insurance and insurance guarantee orders. KUKE also provides insurance services on a commercial basis, regulated by the Act of 11 September 2015 on insurance and reinsurance business. 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 (vide Opinion of the Ombudsman of January 31, 2017).<sup>16</sup>

The OECD Common Approaches are applied not only by the Export Credit Corporation (KUKE) but also by the Bank Gospodarstwa Krajowego (BGK).<sup>17</sup> The need for KUKE 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).

## Corporate structure

63.31% of KUKE S.A.'s shares belong to the Polish State Treasury (represented by the Minister of Development), while 36.69% of shares are in the hands of BGK, which is also state-owned.<sup>18</sup>

KUKE's major facilities are: export credit insurance, including marketable and non-marketable risk cover for short, medium and long-term projects; supplier credit and buyer credit facilities; investment insurance; bonds and guarantees; and domestic credit insurance.<sup>19</sup> In 2014 its domestic insurance was worth three times as much as export trade insurance cover.<sup>20</sup>

KUKE has offices in Warsaw, Gdańsk, Katowice, Kraków, Poznań, and Wrocław.<sup>21</sup>

In November 2014, KUKE Finance JSC, a 100% subsidiary of KUKE started operations.<sup>22</sup> The institution's general objective is "to provide export and domestic factoring services in all available forms, particularly within the framework of non-recourse factoring i.e. where the factor assumes the risk of non-payment by his client's buyer."<sup>23</sup>

## Decision-making structures

The highest decision-making body of KUKE is the General Meeting of the Shareholders (the Polish State Treasury represented by the Minister of Development and BGK).<sup>24</sup>

The Supervisory Board exercises permanent supervision over the agency's activities, although it has no right to issue binding instructions to the Management Board regarding the agency's affairs. Its Supervisory Board consists of a chairman and five additional members.<sup>25</sup> KUKE's Management Board manages its affairs and represents the agency, with four members plus the president.<sup>26</sup>

On the political level the Minister of Development and Finance is responsible for KUKE's activities.<sup>27</sup>

## Environmental and human rights screening

According to its website, KUKE follows OECD recommendations regarding environmental protection, social rights as well as concerning issues of transparency.<sup>28</sup>

KUKE's environmental procedures have been analysed by Greenmind foundation on the basis of information obtained from KUKE'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 KUKE representatives, and written information sent after the meeting.

The environmental assessment procedure is as follows:

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 KUKE, 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 KUKE employees.
2. During the classification process, data from the questionnaire is used. At this stage, KUKE uses an external expert support (in accordance with § 5 of the KPUE resolution) who, for example, can verify the exporter's declaration on whether the project location is in a sensitive area using, for example, inventories and geospatial data. At this stage, the exporter may be asked to provide more detailed information than that in the questionnaire. According to 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 the 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 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 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. 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.

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.

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.

## Anti-bribery

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.<sup>29</sup>

## **Exclusion lists**

There are no specific lists of no-go projects for KUKE.

## **Climate mitigation measures**

Apart from the OECD Common Approaches' environmental and social procedure, there is no additional assessment or policy related to climate mitigation.

## **Reporting and transparency**

Since 2007 KUKE has published its annual report online in Polish and English.<sup>30</sup> Its reports as well as its website enable the reader to differentiate between KUKE's commercial business and its state-backed activities.

Lists of its projects falling under the OECD Arrangement (more than two years' repayment period, category A projects ex-ante and category B projects ex-post) are published, although the list of the projects of category A or B includes some projects that were not in the end covered by the State Treasury guarantee, for example a duck farm in the Chernigiv region of Ukraine, and a project supplying mining equipment to the Amasra B Coal Mine in Turkey.<sup>31</sup> 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.<sup>32</sup>

The Ministry of Finance (currently Ministry of Development and Finance) reports annually to the European Commission Regulation (EU) 1233/2011.

## **Complaint mechanism**

According to KUKE's website complaints concerning KUKE's can be submitted directly to KUKE offices and KUKE's head office by telephone or in person, in writing or in electronic form by e-mail.

It states that "KUKE's responses to complaints will be provided in writing within a term of 30 days from their receipt. In the case of particularly complicated cases preventing the handling of a complaint and granting of a response within the deadline specified, KUKE will provide information with an explanation of the reason for the delay, detailing the circumstances that require clarification and settlement in order to successfully examine the case and will further specify the date of the foreseen response, which will be provided within a term of 60 days of the day of receipt of the claim or complaint. KUKE is subject to the supervision of the Polish Financial Supervision Authority."<sup>33</sup>

There appears to be no complaint body for KUKE activities independent from KUKE's management and no whistleblowing mechanism such as in some other ECAs looked at in this report.

# KUKE in focus: NGOs challenging non-transparency

*By Aleksandra Antonowicz-Cyglicka (Polish Green Network)*

Since 2015 a number of Polish NGOs have been trying to shed some light on the activities of Poland's state-supported export credit agency KUKE.

In 2015 Polish Green Network requested from KUKE a list of the projects the ECA supported in 2014 with state-backed guarantees as well as a list containing information about the value and subject of the projects.<sup>34</sup> The reason for asking for this information was to assess the ECA's contribution to the country's development objectives.

KUKE denied this information request twice, citing "insurance secrecy" under the Act on the Insurance and Reinsurance Business.<sup>35</sup> Polish Green Network appealed against KUKE's decision to the Administrative Court in Warsaw with the help of lawyers at Watchdog Polska Association. The court ruled in June 2016 and dismissed the complaint, arguing that insurance secrecy applies in this case<sup>36</sup>. Watchdog Polska appealed on Polish Green Network's behalf to the Supreme Court with the argument that the Administrative Court did not take into account the 'Act on Export Insurance Guaranteed by the State Treasury', Article 5, point 4, which excludes bodies such as KUKE from the Act on the Insurance and Reinsurance Business.

After appealing to the Supreme Court, Polish Green Network asked the Polish Ombudsman to join the case. The Ombudsman sent a letter to KUKE asking for the reasons for non-disclosure of the requested information and supporting

the argumentation from the appeal to the Supreme Court.<sup>37</sup> KUKE has yet to respond, and the final decision of the Ombudsman as well as the date of the Supreme Court hearing are pending.

In 2017, the Polish NGO Greenmind Foundation started an analysis of KUKE's and BGK's<sup>38</sup> compliance with the Aarhus Convention and OECD Common Approaches. Greenmind Foundation sent detailed requests for information to find out how KUKE assesses the environmental and social impact of the projects supported. None of the responses included information on concrete projects, and insurance secrecy was still used as an argument.

Nevertheless, Greenmind Foundation met with KUKE in April 2017 to talk about their standards. KUKE claims to be fully in line with OECD Common Approaches, although its assessment is not transparent and the information disclosed on its website (regarding category A and B projects) is not always valid.

It is clear that there is more need for transparency on KUKE'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. As well as KUKE, which is officially recognised as the Polish ECA, high levels of transparency should also be applied to BGK as a provider of state-backed export credit loans.

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## Conclusion

Both KUKE, as officially recognised Polish ECA, as well as BGK as 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 to start publishing a list of all projects that were supported per given year, as is for example the case with the Netherlands' ECA Atradius.

KUKE's environmental procedure – with a few exceptions – is theoretically 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 appear to be no specific lists exclusion lists for harmful project types that KUKE will not support per se. There also do not appear to be any specific climate mitigation measures 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 started entering dialogue on such issues with drivers of change and started adopting pro-active steps towards ecologically more sustainable policies.

## Endnotes

- 1 Logo: <http://www.kuke.com.pl/szablony/kuke/images/logo.gif>, Picture: Streetview screenshot
- 2 The profile on KUKÉ is based in part on research conducted by the Greenmind Foundation for an analysis of KUKÉ's and BGK's compliance with the Aarhus Convention and OECD Common Approaches in Spring 2017. (Engel J., Wiśniewska M. 2017. Polskie kredyty eksportowe a wymagania Rekomendacji OECD i Konwencji z Aarhus. CEE Bankwatch Network/Polska Zielona Sieć/Fundacja Greenmind, Słóńsk-Warszawa.) We thank the authors for letting us use their materials for this report.
- 3 Information received from KUKÉ. Exchange rate from 12 September 2017 from the National Bank of Poland: 4,2511
- 4 Ibid.
- 5 Ibid.
- 6 Ibid.
- 7 Ibid.
- 8 Ibid.
- 9 <http://www.berneunion.org/wp-content/uploads/2015/12/Berne-Union-YearBook-2015.pdf> p. 150
- 10 [www.bgk.pl/files/public/Pliki/Przedsiębiorstwa/wsparcie\\_eksportu/Financjal\\_Support\\_for\\_Polish\\_Companies\\_-\\_Export\\_and\\_Expansion.pdf](http://www.bgk.pl/files/public/Pliki/Przedsiębiorstwa/wsparcie_eksportu/Financjal_Support_for_Polish_Companies_-_Export_and_Expansion.pdf)
- 11 [www.bgk.pl/przedsiębiorstwa/wsparcie-eksportu/program-rzadowy-finansowe-wspieranie-eksportu/](http://www.bgk.pl/przedsiębiorstwa/wsparcie-eksportu/program-rzadowy-finansowe-wspieranie-eksportu/)
- 12 Engel J., Wiśniewska M. 2017. Polskie kredyty eksportowe a wymagania Rekomendacji OECD i Konwencji z Aarhus. CEE Bankwatch Network/Polska Zielona Sieć/Fundacja Greenmind, Słóńsk-Warszawa, page 10.
- 13 The Observatory of Economic Complexity <http://atlas.media.mit.edu/en/profile/country/pol>. The data is provided by United Nations Statistical Division/UN COMTRADE (<https://comtrade.un.org>).
- 14 [http://www.kuke.com.pl/download/gfx/kuke/en/defaultlistaplikow/40/9/1/annual\\_report\\_2015.pdf](http://www.kuke.com.pl/download/gfx/kuke/en/defaultlistaplikow/40/9/1/annual_report_2015.pdf) p. 9
- 15 At the moment, the Committee on Export Insurance Policy (KPUE) consists of 2 representatives of the Ministry of Development and Finance, 2 representatives of the Ministry of Agriculture and Rural Development, 1 representative of Ministry of Foreign Affairs and 1 representative of the National Bank of Poland. The Minister of the Environment, responsible for the implementation of the Aarhus Convention in Poland, is not represented in the KPUE at all.
- 16 [www.rpo.gov.pl/sites/default/files/Wyst%C4%85pienie%20do%20Prezesa%20Zarz%C4%85du%20Korporacji%20Ubezpiecze%C5%84%20Kredyt%C3%B3w%20Eksportowych%20S.A.%20w%20sprawie%20nieudost%C4%99pniania%20informacji%20publicznej.pdf](http://www.rpo.gov.pl/sites/default/files/Wyst%C4%85pienie%20do%20Prezesa%20Zarz%C4%85du%20Korporacji%20Ubezpiecze%C5%84%20Kredyt%C3%B3w%20Eksportowych%20S.A.%20w%20sprawie%20nieudost%C4%99pniania%20informacji%20publicznej.pdf)
- 17 Analyzed by Greenmind Foundation.
- 18 <http://www.kuke.com.pl/en/about-kuke/shareholders>; [https://www.en.bgk.pl/files/public/en/files/investor\\_relations/annual\\_report/Annual\\_Report\\_2015.pdf](https://www.en.bgk.pl/files/public/en/files/investor_relations/annual_report/Annual_Report_2015.pdf), p. 10
- 19 <http://www.berneunion.org/wp-content/uploads/2015/12/Berne-Union-YearBook-2015.pdf> p.150
- 20 [http://www.kuke.com.pl/download/gfx/kuke/en/defaultlistaplikow/40/1/1/annual\\_report\\_2014.pdf](http://www.kuke.com.pl/download/gfx/kuke/en/defaultlistaplikow/40/1/1/annual_report_2014.pdf) p. 11
- 21 <http://www.kuke.com.pl/en/contact-us/>
- 22 <http://www.kuke-finance.pl/en/about-us/our-management>; [www.kuke-finance.pl](http://www.kuke-finance.pl)
- 23 [http://www.kuke.com.pl/download/gfx/kuke/en/defaultlistaplikow/40/1/1/annual\\_report\\_2014.pdf](http://www.kuke.com.pl/download/gfx/kuke/en/defaultlistaplikow/40/1/1/annual_report_2014.pdf) p. 3
- 24 <http://www.kuke.com.pl/en/about-kuke/shareholders>; [https://www.en.bgk.pl/files/public/en/files/investor\\_relations/annual\\_report/Annual\\_Report\\_2015.pdf](https://www.en.bgk.pl/files/public/en/files/investor_relations/annual_report/Annual_Report_2015.pdf), p. 10
- 25 As stated online 27.03.2017 <http://www.kuke.com.pl/en/about-kuke/supervisory-board/>
- 26 Currently (after 06.09.2017) no executive board president is listed. In accordance with the KUKÉ statute, if the fourth member of the Management Board is missing, there are 30 days to take steps in order to complete the Board. <http://www.kuke.com.pl/en/aboutkuke/management-board>
- 27 <http://www.kuke.com.pl/en/about-kuke/>
- 28 <http://www.kuke.com.pl/en/about-kuke/international-and-domestic-regulations/environmental-protection/>
- 29 <http://www.kuke.com.pl/en/about-kuke/international-and-domestic-regulations/anti-bribery/>
- 30 <http://www.kuke.com.pl/o-kuke/raporty-roczne/>; <http://www.kuke.com.pl/en/about-kuke/annual-reports/>
- 31 <http://www.kuke.com.pl/en/about-kuke/international-and-domestic-regulations/environmental-protection/projects-notified-exante/>
- 32 <https://www.rpo.gov.pl/pl/content/rpo-pyta-prezesa-zarzadu-korporacji-ubezpiechen-kredytow-eksportowych-onieudostepnienie-informacji>
- 33 <http://www.kuke.com.pl/en/about-kuke/international-and-domestic-regulations/complaints-mechanism/>
- 34 Electronic communication sent on 18 November, 2015.
- 35 Letters dated 23 December 2015 and 21 January 2016.
- 36 Ruling of the Administrative Court in Warsaw from 30 June 2016. Case no II SA/Wa 400/16.
- 37 Letter available at: <https://www.rpo.gov.pl/pl/content/rpo-pyta-prezesa-zarzadu-korporacji-ubezpiechen-kredytow-eksportowych-onieudostepnienie-informacji>
- 38 BGK (Bank Gospodarstwa Krajowego) is Poland's state development bank. In collaboration with other financial institutions, provides access to funding for Polish businesses. Inter alia, it supports Polish exporters by taking on part of the risk related to trading activities of Polish companies and provides state-backed export credit loans.