

“The Belgian Model” - A national response to enhancing corporate accountability

Background

In January 2004, the Belgian Socialist party introduced the “Proposition de Loi liant l’octroi d’aides publiques belges destinées à des investissements à l’étranger à des normes d’entreprise durable et responsable”, a bill that would provide some teeth to the issue of corporate social responsibility¹. The proposed bill came in the wake of public and Parliamentary opposition to Ducroire, the Belgian export credit agency (ECA), providing financial support to a controversial oil and gas pipeline in Peru, and an arms factory in Tanzania. Prior to Ducroire’s involvement in these projects, the Belgian ECA had few provisions in place for taking account of the environmental and social impacts of the projects it supported, and even less transparency.

What does the bill call for? Who does it apply to?

Consequently, the bill proposes to link any form of public financing by Ducroire for private companies (or their sub-contractors) through export (short term export and import credits) and project finance (long term loans, guarantees, political risk insurance, equity) to a set of standards.

The company receiving the funding is *obliged* to sign a declaration committing it to five standards:

- 1) Organization for Economic Cooperation and Development (OECD) Guidelines for Multinational Enterprises (MNEs);
- 2) International Labour Organization (ILO) core labour standards (ILO 29 and 105 on forced labour; ILO 87 on Freedom of Association; ILO 98 on collective bargaining; ILO 100 and 111 elimination of discrimination in respect of employment, occupation and wage; and ILO 138 and 182 on the abolition of child labour), all of which have been ratified by the Belgian government;
- 3) UN Norms on the responsibilities of transnational corporations and other business enterprises with regards to human rights;
- 4) OECD Convention Against Bribery of Foreign Public Officials in International Business Transactions, which Belgium ratified in 1999;
- 5) World Bank environmental and social operational policies and Pollution Prevention and Abatement Handbook.

As part of the declaration, the company also has to provide:

- a description of the type of investment for which it is seeking public financing;
- the location of the investment;
- an analysis of the debt implications;
- an analysis for the financial justification for the public support;
- an analysis of the impact of the investment on the immediate and neighbouring area, as well as the measures taken to mitigate any of these impacts as best as possible.
- the approval of the host country.

How would it work?

An Ethics Commission would be set up at the Government’s request or at the request of the House of Commons, to assess all complaints brought to it against companies perceived to be in violation of the terms of the declaration, and that had received support from the Belgian ECA. It would have the power to then audit the application of these policies by the company and to sanction companies for any infractions. The Commission would consist of twelve members, including a President and Vice-President. All participants are appointed by the King in consultation with Members of Cabinet. The Commission would consist of two union representatives, two business federation representatives, two representatives from development NGOs, two French and two Flemish academics who specialize in development and business ethics, and two representatives from environmental groups. Each member has a renewable term of four years, and the Commission is balanced equally among Flemish and French speaking representatives. The Commission reports to the Minister of Economic Affairs (equivalent to a combination of Industry and Natural Resources Canada) and its work and budget is supported through the Ministry of Economic Affairs.

¹ Doc 51 0648/001, Proposition de Loi, Chambre des représentants Belgique, 6 January, 2004. On-line at <http://www.dekamer.be/FLWB/pdf/51/0648/51K0648001.pdf>

Any person or organization can file a complaint to the Commission. The Commission collects information to determine whether there is reason to think the company has breached the terms of the declaration. At this point, the Commission can hear from all parties regarding the positive and negative actions of the company. If at the end of this initial inquiry (one month) a majority of the Commissioners believe there are sufficient indicators to suggest that the company didn't respect the terms of the declaration, a more in-depth investigation is conducted. The Commission appoints qualified organizations to conduct the investigation (pre-selected from a list of institutions (independent research organizations and consulting agencies) accredited to the Commission who are able to conduct the research).

At the end of the investigation, the Commission provides a final report to the company. The company then has fourteen days to respond to the report which it presents before the Commission. (Unless the Commission decides by a majority that it won't hear the company). Based on this hearing and the final report, the Commission gives its verdict, and a sanction that corresponds to the seriousness of the violation.

How would the Commission sanction companies?

Sanctions could involve publishing the final report in the Belgian Monitor (a document that publishes all new laws); an immediate suspension of all public support; the recall by the public agency of the financial support provided to the company; a fine; or blacklisting the company from receiving any form of public support for a certain number of years. If the Commission found the company to be in violation of the standards, the company would also be responsible for covering the costs of the audit. Every two years, the Commission would publish the findings of its work.

Where does the Bill stand?

The bill was introduced in January 2004 by the Socialists and in September 2005, there will likely be a discussion on it in the Parliamentary Foreign Affairs Committee. It will then proceed to the Senate. The Liberals (who have formed the government with the Socialists, but who occupy the key Ministerial level positions), however, are trying to block the proposal. But several NGOs, including Greenpeace Belgium and Proyecto Gato, plan to file a court case against Ducroire to force hearings in Parliament. The Christian Democrats on the right are supportive of the bill, but have introduced their own separate bill in the House (see below) which could tear support away from the Socialist bill unless the two parties can find a compromise. Whichever bill moves forward, there are likely to be a number of amendments.

Other bills that have been introduced

- The Christian Democrat bill², introduced in March 2005 in the House, proposes modifying the existing national law governing Ducroire. Among other things, Ducroire would be legally obliged to refuse support for companies whose project violates the OECD Guidelines for MNEs and the ILO Tripartite Declaration. A Consultative Ethics Committee on MNEs would be set up to review projects, and to provide a binding opinion to the ECA on projects it is considering funding. The Committee would also inform the public, Lower House, Senate and government about foreign investment in general; conduct research; and document and publish an annual report. The Committee would include two academics, three NGOs, three trade representatives, the OECD National Contact Point, and a representative from the Federal Centre for Conflict Prevention. The Economics Minister and a Minister from each region would have consultative status on the Committee. The bill would also add six members of civil society and academia to the Ducroire board, in addition to the existing six from the relevant government departments, and six from industry and trade. Each has a five year mandate. Companies whose project violates, or are later seen to violate, the Guidelines and Declaration would not receive support or have that support withdrawn. Repeat violators, or companies found guilty of corruption, would be debarred from public support for five years.
- A third bill³, introduced in the Senate by the Christian Democrats, largely builds on the above, but also requires the OECD National Contact Point to report on an annual basis before the Parliamentary Committee on International Investment and Multinational Enterprises, and create a web site, as a means of enhancing awareness of and the transparency of his findings. It also requires Ducroire to release an annual social and environmental report.

² Doc. 51 1677/001, Chambre des représentants de Belgique, 17 March 2005 On-line at <http://www.dekamer.be/FLWB/pdf/51/1677/51K1677001.pdf>

³ 3 – 649/1, Sénat de Belgique, 23 April 2004. On-line at <http://www.bollettino.be/nb/senaat/12/delcredere.pdf>