

## German government sued over climate change

### Briefing

*Legal action has started against the German government to force it to disclose the contribution to climate change made by projects supported by the German export credit agency Euler Hermes AG (“Hermes”). On 15 June 2004 Germanwatch and BUND (the German section of Friends of the Earth) started the action against the German Federal Ministry of Economics and Labour in the Administrative Court in Berlin.*

*Hermes is one of the leading financial backers of energy, mining and transport projects around the world on behalf of the German taxpayer. These projects give rise to greenhouse gas emissions that cause climate change. We consider that members of the public have the right to know how financial support made on their behalf is contributing to climate change.*

*This Briefing explains our case and places the lawsuit in its broader environmental and political context. It first presents our case, then gives some background on Hermes and its operations and then considers the climate-relevance of German exports in general.*

#### **1. Climate protection or export of greenhouse gases? Our case:**

In July 2003 Germanwatch and BUND requested various pieces of information from Hermes and the responsible Ministries, under the Environmental Information Act of the Federal Republic of Germany (Umweltinformationsgesetz des Bundes, UIG). We wanted to have an overview of which projects relevant for the global climate, i.e. which will produce greenhouse gas emissions, are supported by Hermes. We asked for a list of all projects, covering every aspect of energy production, for which export guarantees were granted by the Federal Republic of Germany since 1997 – the year in which the Kyoto Protocol was agreed. Details of our request are set out in the Box below.

In Germany, the export credit agencies, Hermes and PricewaterhouseCoopers, have the mandate to insure exports of German companies to developing countries and economies in transition through export guarantees. Their activity is supervised by the so-called inter-ministerial committee (Interministerieller Ausschuss, IMA), in which four Federal Ministries are represented (Ministry of Economics and Labour - BMWA, Ministry of Finances - BMF, Ministry of Foreign Affairs - AA, Ministry of economic cooperation and Development - BMZ), with the BMWA being the lead Ministry. This is why our law suit is directed against the BMWA. The information we request is available in principle to all of these Ministries in the IMA. But so far, our information request has been refused, and therefore we have to sue -

although the IMA decides on the use of public tax money to ensure the security of credits of the private sector for the export (so-called export guarantees).

### *Our original request and content of our law suit*

We requested:

1. A list containing all projects in the field of energy production, for which export guarantees were granted by the Federal Republic of Germany through Euler Hermes since 1997. "Projects", in this context, means the delivery/establishment/financing of plants and/or components. This list should be arranged according to the year of the guarantee and the kind of assigned sources of energy:  
a) coal; b) oil; c) gas; d) nuclear; e) sun ; f) water; g) terrestrial heat; h) wind.
2. The aggregated sum covered by the export guarantees for each item mentioned in the list of number 1. above.
3. For the projects mentioned in 1a-c (this means the projects that use fossil fuels, and for which export guarantees have been issued since the beginning of 1997) the indication of:  
a) the kind of fuel; b) the origin of the fuel; c) the fuel input per year in tons, with mixed combustion, if necessary classification by the kinds of fuel used and their origin,; d) the output in kilowatt-hours per year; e) the efficiency of the plant in percent (when necessary given new conditions); f) the installed capacity in megawatts; g) the degree of capacity utilization in percentages; h) the projected period of operation by the plant.
4. A list of the projects in accordance with number 1 (in appropriate arrangement), that have undergone an environmental check (see annual report 2002 - export credit warranties of the Federal Republic of Germany - Hermesdeckungen, there: p. 72f, i.e. in accordance to the guidelines for the consideration of ecological, social criteria and criteria related to development policy, April 2001).

On 14 August 2003, the Federal Ministry of Economics and Labour (BMWA) rejected our request, putting forward several reasons – none of which convinced us or our lawyers.

Firstly, the BMWA stated that certain information was already published and therefore our request was unnecessary. Regarding the information requested by us this is not the case - only selected projects are available on the internet and for these, only very vague data are published. The climate effects of Hermes activities remain entirely untransparent – no information on greenhouse gas emissions is publicly available.

Secondly, the BMWA was of the opinion that it is not subject to the Environmental Information Act as it does not fulfil any direct mandate of environmental protection. In our opinion, this is wrong. The European Court of Justice<sup>1</sup> has ruled on this issue several times: the legislation applies not only to Departments or Ministries of the Environment.

Thirdly, the BMWA hid behind the alleged protection of the federal criminal code. § 203 of the criminal code protects trade and business secrets and prohibits any "inadmissible" publication of business data. This argument is not convincing either. If the requested information is environmental information (which it is in our opinion, since they can inform us about the climate relevance of export projects) the release of this information is not prohibited under the criminal code.

Germanwatch and BUND has now therefore instituted proceedings to oblige the Federal Government to give us access to the information we requested originally.

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<sup>1</sup> In the context of compliance with the EU Directive 90/313 on access to environmental information, which the Environmental Information Act transposes into German domestic law.

If we win our lawsuit, we will not have directly prevented greenhouse gas emissions. We will, however, have made a further important step in emphasising that such emissions are an important factor to be taken into account in the decision-making process (in this case concerning the granting of export guarantees).

More specifically, this lawsuit is important to us for four reasons:

- *We want to emphasise that Hermes and the responsible ministry are subject to the duty of supplying information under the environmental information law (Umweltinformationsgesetz) in view of the environmental relevance of the activities they undertake or oversee;*
- *We want to clarify the limits of business secrets: it must be made clear that Hermes, through its obligation towards the public and its indirect usage of tax money has to ensure transparency;*
- *We want to strengthen the environmental guidelines for Hermes' operation that were adopted by the Government in 2001. According to these guidelines, companies applying for export credits must evaluate their projects' impact on the environment (similar to an environmental impact assessment), but the so called "environment reports" are then declared secret and cannot be monitored - neither by the people or environmental organisations in the country where the project will be accomplished, nor in Germany.*
- *We want to create a "work basis" to be able to evaluate the relevance of German export credit operations on the global climate in detail. We want to know: How many tons of carbon dioxide released outside Germany is Hermes (or: the German Government) indirectly responsible for? Is there a trend? This is the only way that climatic politics of the Federal Government can be examined, evaluated and improved - also concerning its effect outside of Germany.*

**We do not know how long the proceedings will take.**

**But:**

- **We believe the information we requested should be available to anyone and that the court will find that the law is on our side.**
- **We believe that using the law for the purposes of climate protection is a civil duty.**
- **We are prepared to wait and engage in a legal discussion with the defendants as soon as possible.**

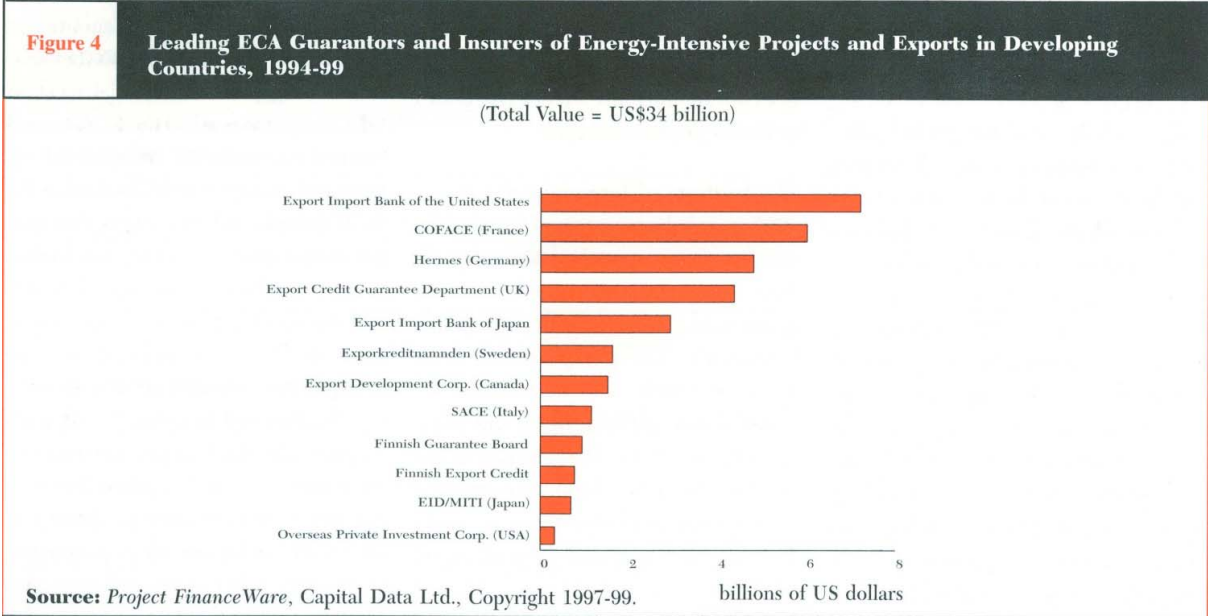
**Some background on Hermes and its climate-relevant activities:**

A great part of German climate-relevant exports are insured against various risks by public Hermes guarantees. The potential risks a German export is exposed to can be classified as economic, political, legal, environmental and technical risks. For all of these, insurance can be taken out, but Hermes guarantees mostly concern the economic and political risks, i.e. those risks that are vested in the countries of destination.

Hermes has in the past covered many projects of German companies that will undoubtedly generate greenhouse gas emissions. Some of these climate-relevant projects are:

- *Supplies for the building of Paiton 2, a disputed coal-fired power station in Indonesia*
- *Delivery of tubes into Turkey, to the BTC pipeline throughout Azerbaijan, Georgia and Turkey.*
- *Delivery of Airplanes by the airbus industry - be it into the USA, to Sweden or Saudi Arabia.*

The lack of transparency of Hermes’ activities makes it impossible to assess its contribution to climate change. According to one estimate published by the World Resources Institute (WRI) Hermes promoted between 1996 and 2001 fossil projects in developing countries to an extent of US \$2 billion – US \$1.5 billion of it for projects of energy production and about US \$500 million for oil and gas projects. On the other hand, the Table below shows Hermes supporting about US \$5 billion of energy-intensive projects in developing countries from 1994-99.



Source: WRI, 2000

Export credit guarantees for renewable energy technologies and projects through Hermes is still very small – mostly because of a lack of demand:

**Covered Businesses in Renewable Energies (*Gedekte Erneuerbaren Energien Geschäfte*) since 1998 (according to data of Hermes, 2004)**

Country	hydro-power <sup>2</sup>	wind
Algeria	5.4 M €	
Egypt	69.4 M €	
Ethiopia	31.4 M €	
China	107.7 M €	
Ghana	0.1 M €	
India	68.4 M €	12.5 M €
Malaysia	32.2 M €	
Pakistan	30.8 M €	
Turkey	7.0 M €	

**Some background on the relevance of German exports for the global climate**

German exports will play a role in determining how climate-friendly global energy- and transport infrastructure will be. This applies in particular to:

- *the mining industry. The share of German mining industry technology makes up almost third of the world market.*
- *power plant construction. German constructors and operators of coal-fired power stations are, among other things, internationally valued because their energy efficiency is in most cases high than that of their competitors - a consequence of German environmental policy.*
- *renewable energy. The new renewable energy law (EEG) has led Germany towards being one of the market leaders for renewable energies. The export business for such technologies is still in its infant stages, but there are signs for a higher export dynamic in this field. Inspired by the German example, several countries are introducing or discussing energy feed-in laws for renewable energy sources. Thus the investment security for renewable energies could increase clearly in these regions. Although the goal of developmental policy must be to enable developing countries to install and produce renewable energy technology and sources in their country, German exports, at least of certain construction units and parts, will undoubtedly profit from it.*
- *the export of planes, cars and means of public mass transport*

Regarding climate protection, Germany cannot only focus on its own country but must also consider its exports under a climate-policy point of view. Many questions are to be clarified in this connection: How can we ensure that the transferred or exported technologies support a socially, ecologically and economically sustainable development in the countries where the projects are carried out? How can we limit the global risks that originate from these exported technologies (as risks of the global climate change, but also the risks of nuclear and large

<sup>2</sup> We do not know which of the hydro-power projects would comply with the criteria set up by the World Commission on Dams. As far as we know, at least the Theri Project in India is not compatible with these criteria. In Regions with a high share of large hydro-power there are big controversies around the question whether large hydro-power dams should be counted as renewable energy at all - due to their consequences which are irreversible, at least for a long time.

hydro-electric power plants)? How can the combination of climate protection, export and technology transfer lead to a success story for both German exporting industries and initiatives on the local and regional level?

It is necessary to take many small steps in order to set up the necessary framework for climate-friendly exports:

- *On the one hand, appropriate political frameworks in the exporting states must be set up. If no incentives for climate protection are created there, the necessary techniques and methods will not be developed at all.*
- *On the other hand, the receiving states must establish investor friendly conditions to ensure the safety and security of climatic protection investments (energy efficiency, fuel switch and renewable energies). Only if this happens will climate-friendly exports increase to a considerable extent.*
- *It is also necessary to set up an international framework for climate-friendly exports. In view of the foreseeable weak greenhouse gas reduction goals for the European industry, at least till 2008, the Kyoto mechanisms for project-based emission trading (Joint Implementation for projects in industrialized countries, Clean Development Mechanism for projects in developing countries) only provide a limited incentive.*
- *In the context of trade policy it is necessary to develop global environmental and social standards for industries on the one hand; and on the other hand to abolish tariff obligations for renewable sources of energy.*
- *The World Bank as well as the multilateral and bilateral development and investment banks play a central role. The development of the portfolios, the introduction of energy efficiency and climate protection programs, as well as clear objectives for funding and investment policies can be crucial for global energy development.*

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