

Note of a meeting on Thursday 9 June 2005 with the CBI

Those present:

ECGD

John Weiss - Deputy Chief Executive
Nicholas Ridley – General Counsel
David Allwood – Business Principles Advisor
Roy Donovan – Senior Product and Support Advisor

Visitor

CBI - James Caldwell
Andy Scott
Sue Walton
Andy Simpson
Richard White

The CBI had requested a meeting to present its views to ECGD regarding the Department's consultation on changes to its anti-bribery and corruption procedures introduced in December 2004. The CBI confirmed its intention to subsequently provide a written representation. ECGD reminded the CBI of its intention to publish a note of the meeting in due course but the CBI will be given the opportunity to check the note for accuracy prior to publication.

Mr Weiss introduced the ECGD team.

The CBI introduced their team who were there representing the CBI and its various committees and were not there on behalf of the individual companies that they each work for or any other organisations that they might be members of. The CBI team said it was important to note this point that they were there on behalf of the CBI only.

ECGD explained that there was no set agenda for these consultation meetings. ECGD was there to listen to the representations that consultees' wished to make. It would try to answer relevant questions if any arise incidentally. In response to the CBI's question about the response to the consultation to date, ECGD confirmed that so far two oral representations had been made and one written representation received. The CBI asked whether anything more had emerged from these representations to date that ECGD felt it needed to clarify and/or add for the benefit of consultees'. ECGD said no.

The CBI said that it would like to start the meeting by mentioning two related matters. The first was to ask whether ECGD was preparing a response to (i) the recent Trade and Industry Committee report on ECGD and (ii) the Corner House complaint under the OECD Guidelines for Multinational Enterprises.

ECGD replied that the Minister had given the TIC an interim response but this did not include anything on bribery and corruption, as this would have to wait until the consultation was concluded. The CBI said that they would be happy to share industries views on the TIC report, which would be provided separately from its consultation representation and would be given after the consultation. ECGD said that the Corner House complaint would be dealt with by the UK's national contact point, as ECGD was not directly involved in this. On one final related issue, the CBI said that they had seen the Minister's response to the latest PQ on Phase 2 of the OECD report.

On the consultation itself the CBI said that it did not intend using the meeting in order to go through each point in the consultation document in detail. These would be provided in the written submission, which will be very thorough and detailed. Instead it intended to use the meeting to outline and summarise the CBI's position and to show how seriously the CBI is taking this whole issue. The CBI's written representation will reiterate the CBI's strong view that the May provisions were simply not workable whereas those introduced in December, although not ideal, were at least workable for Industry. The CBI's written representation will deal with affiliates, agents, audits and bank letter of undertaking and will stress that these principal changes are now workable and practicable which the May requirements were not. The December provisions take both Industry and ECGD forward on the issue of bribery and corruption and should not be gone back on. The CBI wanted to emphasise the fact that this was all taking place against the backdrop of an existing legal and regulatory framework that is probably the most vigorous in the world. Companies are operating within both UK and overseas law and in addition have their own strong corporate governance rules.

The CBI itself, in preparing its response, had consulted widely both with the "Solutions Group" and other members. Although this included aerospace companies, because they happen to be amongst ECGD's major customers, its own consultation has not just been limited to those companies but has also included banks, consultants and other CBI members who have dealings with ECGD. ECGD asked whether individual companies would also be making representations. The CBI replied that it had encouraged its members to do so.

ECGD asked whether there was anything in the consultation document that was unclear or needed clarifying. The CBI said no as it felt that it sufficiently identified the main changes. ECGD also asked whether the CBI would also be responding to the Regulatory Impact Assessment. The CBI confirmed that it would be sending a separate response to the RIA as well. It would state that the regulatory burden under the May provisions was much greater than under those introduced in December. ECGD confirmed that the RIA would be refined to take account of the consultation outcome so it would be helpful if the CBI response to the RIA separated against each change the extent of the increase/decrease in the administrative burden. CBI asked if they might have sight of the RIA that was undertaken by ECGD before the implementation of the May forms in order to inform their comments on the RIA for the December forms. ECGD advised that no RIA had been done for the May changes.

Industry's view remained that the May provisions were unworkable so the CBI wanted confirmation that if Industry were unable to use the May forms would this in itself be regarded as an additional administrative burden. ECGD confirmed that it would. Not being able to comply with ECGD's requirements would be regarded as an increase in the regulatory burden for the purposes of the RIA. The CBI said that it would make this point clear in its submission.

The CBI then asked about the date for the outcome of the consultation. Would this still be in September? ECGD explained that this would need to go through various internal clearances, including EGAC, EC and the Share Holder Executive before a submission could be made to Ministers. This meant that meeting the September deadline would be very challenging.

The CBI asked if consultees' would be given any other opportunity for further input before the final outcome was announced. It was concerned that if changes are made that Industry could not work with then it would be back in the May situation. If that were to be the case then it would prefer the chance to comment first to try and prevent this from happening. ECGD said that there were difficulties in checking potential options out with consultees' before these are submitted to Ministers. ECGD would check what the consultation guidelines say on this point but it was unlikely that anything would be circulated outside of HMG before going to Ministers. ECGD must be punctilious in who it consults further and when. If it did happen and anything further was made available then it was emphasised that this would be made available to all consultees'.

The CBI asked when all of the consultation documents would be made public. In particular it wanted to know whether there were any Freedom of Information implications prior to formal publication. ECGD said its understanding was that none of the documents would be made public until the consultation process was complete. There is an exemption in FoI for circumstances where HMG has already made it public that it intends publishing such documents.