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Ms. Nicole Bollen,
OECD Export Credit Secretariat
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Dear Nicole,

We wish to thank the ECG for the opportunity to consult with ECAs on Monday 29 May 2006. While we believe this meeting was useful, we also wish to reiterate our disappointment at the lack of participation in the dialogue by the majority of ECG Members. At the same time, we wish to express our gratitude for Brendan Berne's professional chairing of the meeting in a fair and even handed manner, and for his persistent efforts to draw participants into discussion.

We are interested in a further opportunity for consultation on the 'Common Approaches' before the end of this year, and look forward to learning of the timing and form of this as noted in your letter of 8 June 2006. We expect that, in addition to presenting our views, we will benefit from hearing the perspectives of more ECG Members.

As requested by a number of parties during the 29 May meeting, we expect that a draft text of the revised 'Common Approaches' will be publicly disclosed at least 40 days ex ante the next consultation. ECA Watch commits to provide written recommendations and comments on the draft text of the revised 'Common Approaches', to be submitted as a room document at least one week prior to a scheduled consultation meeting.

In order to ensure that the meeting results in a more effective dialogue than we have experienced in the past, we would like to suggest that all ECG members provide their opinions on the ECA Watch submission during the next consultation in a specific round of at least 3 minutes each. ECA Watch members also suggest that ECG members provide, in writing, their specific reactions and comments on all of the concrete suggestions submitted in the room document from ECA Watch, and in particular, reasons for non-inclusion of issues and wording recommended by ECA Watch members. We believe that in this way, the next consultation will permit a more meaningful dialogue than we have experienced so

far. This would provide us with an opportunity to have a true dialogue about what is feasible and to have a better understanding of both the potential and the limits foreseen by ECAs in drafting a new Common Approaches Recommendation.

ECA Watch would also like to stress that the credibility of the Common Approaches rests on its impact on the actual implementation of specific projects. In this regard, we are distressed that, after years of consideration of certain projects, that some ECAs are still contemplating potential support for risky schemes, despite the clear demonstration of these projects' non-compliance with ECA policies, including the Common Approaches. Examples include the Ilisu dam in Turkey, the Goro Nickel project in New Caledonia and the Sakhalin II project in the Russian Far East. If financed by ECAs, these projects will destroy the credibility of the existing Common Approaches, as well as the current revision process.

Below, we are submitting suggestions for language to be considered in the draft revised Common Approaches concerning points of major concern to us. We trust that this language will be considered by the ECG for inclusion in the new draft Common Approaches.

We would appreciate your circulation of these suggestions to members of the ECG and look forward to their response.

Yours sincerely,

Bob Thomson

Bob Thomson
for ECA Watch

cc: Ms. Janet WEST, Head, Export Credits Division, OECD, Paris
Mr. Julian PAISEY, Export Credits Division, OECD, Paris
Mr. Brendan BERNE, Vice Chair, Working Party on Export Credits
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POINTS OF CONCERN AND LANGUAGE TO BE CONSIDERED FOR INCLUSION IN THE REVISION OF THE COMMON APPROACHES

On Transparency

All Members shall:

- Bring their disclosure policies in line with the public access to environmental information requirements now obliged by the Aarhus Convention¹ and advise prospective clients of these policies.
- Require the public disclosure of project information, environmental and social information (including environmental and social impact assessment documents, resettlement action plans, accident prevention and response plans, etc.) to project affected peoples, in their communities, as well as in the ECA's home country and on the Internet. When these documents exist in more than one language, all versions shall be disclosed.
- For category A projects, make environmental impact information and the ECA environmental review report, social, labour, human rights and development impact assessments publicly available at least 90 days before a decision is made regarding official support.
- Disclose to the public all investment contracts and revenues associated with ECA supported projects in the extractive sectors.
- Disclose ECA's project categorisation rationale and basis.
- Assess and disclose the potential climate impacts of their projects.
- Make the annual Category A and B reports to the ECG available to the public, in their entirety and not just in aggregate form.
- Publicly disclose all derogations from international best practices and the Common Approaches (as required under the current article 12.3).

On reporting and monitoring of environmental and social impacts of approved projects

All Members shall:

- Adopt detailed monitoring policies and provide the public and prospective clients with precise information on monitoring guidelines and practices (for example procedures and steps, criteria for independent and participatory monitoring, expected formal outcomes, such as reports, etc.).
- Apply monitoring policies to all projects for which the ECA's support has been conditioned on the implementation of environmental and social measures.
- Issue and make public a monitoring plan, at the project level, before a decision is made on support. This plan, in compliance with the ECA's general monitoring policy requirements, shall provide information on how a specific project will be monitored, as appropriate to the degree of follow up required, including the monitoring requirements expected of the sponsor.

¹ As EU ECG members, who constitute the majority of OECD ECG membership, are already required to do. In addition, in Japan, the Third Basic Environmental Plan adopted at Cabinet level, refers to the Aarhus Convention and calls for more effective use of public environmental information and for utilising the opinions of the public in decision-making.

- Release to the public, for each project approved, a document providing clear and detailed information on the environmental and social measures required by the ECA as a condition for its support. If the document is not the covenant itself, then it must provide information on the legal status of the conditions (e.g. are they part of any contractual document?) and shall clearly state that violations of the conditions will be automatically considered as a breach of contract, thus followed by sanctions. These compliance mechanisms shall clearly mention how the ECA will deal with cases of non-compliance with environmental and social conditions of the project, including information such as procedures to be followed and potential sanctions or penalties the client will face in the case of non-compliance. The document must remain available to the public on the website of the ECA throughout the life of the project.
- Ensure that monitoring reports include an evaluation of compliance with environmental and social conditions applied by the ECA, host country laws and regulations, and obligations under international treaties and agreements to which the project is subject.
- Release to the public each monitored project's regular reports that relate to the control and implementation of environmental and social conditions, laws and regulations, and international treaties and agreements.
- Where project monitoring identifies non-compliance with covenanted environmental and social commitments, laws and regulations, and international treaties and agreements, apply a transparent and independent compliance mechanism that sets out clear and specific sanctions.

On consultation and participation

All Members shall:

- Introduce procedures for consulting with stakeholders, including indigenous organizations and their representatives, nationally, on major policy issues.²
- Make public the results of such consultations.
- Ensure that affected communities have been consulted and fully informed of the impacts of projects, and have been actively involved in decision-making on environmental assessment and mitigation and resettlement planning.
- Ensure that consultation is participatory, iterative, and initiated early in the planning phase.
- At a minimum, undertake public consultation both at the time of scoping (identification of issues for the environmental and social assessment, action plans, resettlement plans etc.), and at the time when draft assessments, action plans, etc. are released.
- Require that all projects with major social and environmental impacts have demonstrable public acceptance / broad community support, as evidenced by, for example, negotiated agreements with the communities' representatives. Community representatives should be identified via existing, locally common systems of political representation and should be seen as legitimate spokespeople by community members.

² The Common Approaches currently lack a requirement for ECAs to consult with stakeholders. The value of full public participation in governmental policy formulation and decision-making has been recognized by OECD national governments, as reflected in the Aarhus Convention, the 1992 Rio Declaration, Agenda 21, the Johannesburg Plan of Action and other international agreements and statements. Many ECAs already have consultation procedures in place and also attest to the value of such consultation in building consensus, improving policy and enhancing due diligence procedures.

- In the case of projects affecting indigenous peoples, ensure that project proponents have the free, prior informed consent of affected communities, through the representative structures of such communities.³
- Undertake and make public, independent written assessments of the consultations and negotiated agreements with affected communities carried out by project developers.

On Extractive Sector Revenue and Contract Transparency

All Members shall:

- Disclose extractive sector revenues paid to host governments and any associated foreign investment contracts, in order to stem corruption, protect environmental and social laws, and promote the rule of law.⁴
- Require clients who are sponsoring or financing upstream oil, gas and mining projects to publicly disclose that project's subsequent material payments to host governments, including foreign investment contracts, royalties, taxes, profit sharing, signature bonuses and other payment streams.

On International Standards

All Members shall:

- Operate in accordance with the international legal commitments of their governments, with particular reference to international human rights and environmental treaties and conventions. ECA project reviews, monitoring and reporting processes shall assess project compliance with the international human rights, labour and environmental obligations of their governments.
- When undertaking environmental reviews, operate in accordance with current and improving best practices, including both generic standards and sector-specific standards. Examples of best practices shall be drawn from the European Union, multilateral development banks, the World Commission on Dams and the Extractive Industries Review, among others.

³ Where projects involve indigenous peoples, resettlement or impacts on cultural property, Paragraph 12.1 of the Common Approaches currently requires project developers to consult with affected communities and encourage their participation in planning. The World Bank safeguard / benchmark standards cited in Para 12.1 fall short of what is widely regarded now as "good environmental practice" and, in the case of indigenous peoples, the requirements of international law. In particular, international good practice has moved from merely requiring *consultation* with affected communities to requiring their *active participation* in project planning, leading to *negotiated agreements* reflecting their *demonstrable acceptance* of projects and, in the case of indigenous peoples, their *free, prior, informed consent*

⁴ Foreign investment contracts between extractive project sponsors and host governments (also known as host government agreements, concession agreements, production sharing agreements) contain the formulas necessary to calculate revenues paid to host governments. These contracts, which are often hidden from public view, can supersede host government environmental and social laws and regulations, and undermine the rule of law. Key terms include, *inter alia*: royalty rates, tax rates, tax exemptions, commodity based payments / purchase requirements, signing bonuses, pipeline tariff structures, guidelines for the operation of special funds, social development requirements, revenue distribution requirements, power purchase requirements, stabilization clauses (e.g. on taxation, environmental, social, labour rights regulations, etc.), economic equilibrium clauses, and dispute resolution mechanisms (e.g. international arbitration).