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Ms. Nicole Bollen,
Chair
Export Credit Working Group
Organization for Economic Co-operation and Development
2, rue André Pascal
F-75775 Paris Cedex 16

9 November 2006

Dear Ms. Bollen,

Thank you for your letter of October 20 with the attached draft text of a revised Recommendation on Common Approaches on Environment and Officially Supported Export Credits.

We appreciate the opportunity to comment on these important standards and procedures, and to have received a draft copy of the text in advance of the final negotiations at the OECD next week. We also wish to note our appreciation for the efforts made in several national capitals to consult with civil society organizations about the text of this draft. We remain discouraged, however, that national consultations are not undertaken as a matter of course in all OECD countries.

As in past consultations and written presentations, we have endeavoured to provide constructive recommendations and critiques for the consideration of Members as they negotiate the final text in meetings facilitated by the ECG Secretariat. (see Annexes 1 & 2 to this letter below)

We do so, however, with a profound sense of concern that a number of OECD Member ECAs and governments are not approaching this important task in good faith to further the objectives of the Recommendation, namely to promote good environmental and social practice, in coherence with international agreements and conventions and national policies of OECD Member governments on the environment and sustainable development.

1) *Some countries oppose strengthening the text & seek to weaken certain provisions.*

There are a number of changes in the draft text which we support and are pleased to see, but we know that efforts are being made by some Members to have these changes removed from the final text. We understand that Germany, and to a lesser degree Spain and Italy, are blocking many changes that might strengthen the draft, and are looking to further water down an already weak text.

2) *Deviations undermine the credibility of the Common Approaches.*

Articles 12.3 and 18, allow any ECA at will to derogate from any standard, subject only to reporting such cases annually to the ECG - and indeed without any requirement that such cases be shared transparently or publicly outside the ECG. As currently worded, these provisions are unacceptable as they fundamentally undermine the Common Approaches objectives of coherence and establishing a level playing field.

We strongly urge that the new text reflect a requirement that projects comply with the referenced standards *in all material respects*. We also recommend that ECAs make public prior to financing, the impacts they have identified, the standards against which they have benchmarked the project and a summary of proposed environmental and social conditions.

3) *Application, monitoring and enforcement of the Common Approaches remain key shortcomings.*

In its revised form, the Common Approaches is intended to guide OECD member ECAs in making decisions about the provision of hundreds of billions of dollars worth of support for environmentally and socially sensitive projects. However, effective application of the Common Approaches still falls seriously short in a number of countries. This is made clear by the fact that, while the text for the revised Common Approaches is being negotiated, a number of OECD ECAs are actively considering support for projects such as the Ilisu and Yusefeli dams in Turkey, the Sakhalin II oil and gas project in eastern Russia and the Camisea II pipeline and Liquefied Natural Gas project in Peru.

The impact assessments of these projects clearly demonstrate that they contravene even the current Common Approach standards. Approval of these projects would undermine the credibility of the negotiation process, as well as that of the objectives of the Common Approaches.

Unless the above key issues are addressed, we believe that the current negotiations will be severely compromised, the final outcome deeply flawed, and the reputation of the OECD as an institution irreparably harmed.

Yours sincerely,



Bob Thomson,
Facilitator, ECA Watch

On behalf of:

- The Corner House - UK
- Environmental Defense - USA
- Pacific Environment - USA
- Les Amis de la Terre - France
- Urgewald - Germany
- WEED - Germany
- Centre for International Environmental Law - USA
- Both Ends - Netherlands
- International Rivers Network - USA
- Berne Declaration - Switzerland
- Campagna per la Riforma della Banca Mondiale - Italy
- Halifax Initiative - Canada
- Friends of the Earth - Japan
- FERN - Belgium
- Proyecto Gato - Belgium
- Projecto Eca-Iberia / Euronatura - Portugal
- ECA Watch - Austria
- Observatori del deute en la Globalitzacio - Spain

Annex 1- ECA Watch Comments and proposed changes to the Draft Common Approaches TD/ECG(2006)23 of 20 October 2006

In general, language such as “may” or “should” should be replaced by “will” or “are expected to”.

PREAMBLE

ECA-Watch endorses the changes throughout the text of “environmental impacts” to just “impacts”, and additional references to “social”, as it expands the understanding of the potential impacts of projects. We urge the ECG to use consistent language throughout the text to reflect this change.

Footnote 1 - ECA-Watch welcomes the inclusion of a clearer and more specific project definition. The new wording, however, could be interpreted to limit the scope considerably by defining projects only in terms of new/expanded commercial, industrial or infrastructure undertakings and could, for example, effectively eliminate the sale of manufactured goods such as aircraft from screening, despite their clear additional environmental impacts. In addition, the words “a project is” should be added after “For the purpose of the Recommendation,” to increase clarity.

I. General Principles

We have no comments on this section

II. Screening and Classification of projects

Article 4 - The final part of this paragraph should not be deleted. It does not, in our view, eliminate a mere redundancy, but rather allows for additional information to be provided on components or equipment destined for a project (e.g. switchboard for a dam). This text should remain.

ECA-Watch appreciates the addition of Footnote 3, p.4, which seems to expand the definition of the scope for the review to include cumulative aspects. We recommend removing the text, "where appropriate" however, as in all cases the potential cumulative impacts for projects should be assessed.

Article 6 bis. - “Ensuring a level-playing field in the categorization of projects through reporting and review of such projects” is in keeping with one of the key objectives of the Common Approaches, and we therefore endorse the inclusion of this article. For the same reason, we also endorse the additions to article 19.

III. Environmental Review

Article 7 - Consultation with affected parties and stakeholders is at the heart of the EIA process, and has been international good practice for decades. The current text is unacceptably deficient and unclear on this critical issue.

The current text, notably in articles 7 and 13 and in Annex II, makes reference to consultations with affected parties, but only states, in paragraph 13, that Members will "evaluate information resulting from screening and review [including where relevant the results of consultations with affected people]...". Annex II, outlining the content of an environmental impact assessment report, provides for a record of consultation with affected people, without stating when and under what conditions this is to take place. The ambiguity and laxness of this language does not meet minimal international good practice, nor does it further the goals of coherence, clarity, and a level playing field. This situation is compounded by paragraph 12.3, which allows any ECA at will to derogate from any standard, subject only to reporting such cases annually to the ECG and not publicly.

In contrast, the July 2006 Equator Principles, while referencing the IFC's eight environmental and social Performance Standards, nonetheless has a separate section on Consultation and Disclosure, Principle 5. Principle 5 requires that "For all Category A projects, and Category B projects as appropriate, located in non-OECD and non-high income countries, the government, borrower or third party expert has consulted with project affected communities in a structured and culturally appropriate manner. For projects with significant adverse impacts on affected communities the process will ensure their free, prior and informed consultation and facilitate their informed participation...."

A note (footnote 5) further defines consultation: "Consultation should be 'free' (free of external manipulation, interference or coercion, and intimidation), *and apply to the entire project process and not to the early stages of the project alone.* [Emphasis added] The borrower will tailor its consultation process to the language preferences of the affected communities, their decision-making processes, and the needs of disadvantaged or vulnerable groups. Consultation with Indigenous Peoples must conform to specific and detailed requirements as found in [IFC] performance Standard 7."

Bullet 3 of Article 7 of the revised Recommendation should therefore state, that "ECAs will require for all Category A projects, and for Category B projects where appropriate, that the government, borrower or third party expert has consulted with project affected communities in a structured and culturally appropriate manner.

We also urge that as a minimum, to ensure the most basic coherence with the current practice of leading private commercial banks and the IFC, footnote 5 from the Equator Principles be added as a footnote to the text. Footnote 5 is a restatement of IFC criteria for credible consultation.

We further note that the current standard of minimal good practice for consultation as defined by the IFC in its Performance Standards and Sustainability Policy is "Free prior informed consultation leading to broad community support."

While ECA-Watch advocates for the adoption of the highest possible standard with regard to the involvement of affected communities in project decision-making, we view the explicit inclusion of internationally recognized “minimal good practice for consultation” in the Common Approaches as an absolute minimum first step.

Article 11 - ECA-Watch wholly endorses the reference to EIAs being carried out AND reviewed independently. We would propose changing “or” to “and”. In addition, we would support inserting the words “of the project sponsor” after independently”. Independence is integral to any credible impact assessment. The new version of the Equator Principles expressly requires that there at least be a review of the EIA by an independent expert and the WB/IFC Safeguard Policy on Environmental Impact Assessments also required independence.

Article 12.1 - ECA Watch welcomes the inclusion of reference to all ten World Bank Safeguard Policies and the eight International Finance Corporation Performance Standards as benchmarks, the latter now being the standard benchmark for purely private sector finance of projects.

Paragraph 1: Since members are asked to benchmark projects against the relevant standards and guidelines, the additional references to “relevant aspects of” and “where appropriate” are redundant.

While the IFC Performance Standards were developed for private sector project finance and, for example, the Equator Principle banks have decided to reference only them, we see no reason the Performance Standards should not be benchmarked for all projects under the Common Approaches. This would provide clarity and consistency for OECD ECA clients.

The wording should be changed to: "Members should benchmark projects against host country standards and against the standards and guidelines published by the World Bank Group, including all ten World Bank Safeguard Policies (5) and for private sector limited or non-recourse project finance cases, the International Finance Corporation Performance Standards (6), as well as against any potentially higher standards of regional development banks and any other higher internationally recognized standards.

Footnotes 5 and 6 should be amalgamated, and the World Bank’s Pollution Prevention Handbook added.

Paragraph 2: With respect to benchmarking against sector-specific standards, ECA Watch suggests amending the current text to read “[, or against *any relevant* internationally recognized sector-specific standards *and guidance* that are stronger than those of the World Bank Group”

Article 12.2 – To ensure clarity and a level playing field in the Common Approaches, ECA Watch supports, at a minimum, the inclusion of “projects are expected to comply in all material aspects with such relevant international standards”.

Article 12.3 - As noted in our covering letter, our position is that this paragraph allows, in effect, deviations at will, untransparent to the public, from whatever standards the Common Approaches recommend. It is indefensible as currently drafted, and more than any other provision, blatantly undermines the whole purpose of the Common Approaches, which is to ensure a minimal level playing field and a minimal level at least of coherence with the development and environmental goals and financing of OECD Member countries

The wide discretion allowed under the existing Recommendation has the effect of undermining the confidence of affected communities in the undertakings made to them, since they are led to expect that specified standards will be met, only to see projects being backed that do not meet those standards.

As noted in our covering letter, our position is that this paragraph should be deleted and replaced by the following paragraph:

"The environmental information provided for a review will establish to the Member's satisfaction the project's overall compliance *in all material respects* with the relevant international standards. For Category A projects, Members will make public, in advance of a final decision on financing: (a) the environmental and social impacts that have been identified under Article 4, (b) the standards against which the project has been assessed, (c) the outcome of the assessment and (d) a summary of environmental and social conditions applied.

We note that the referenced language to compliance in all material respects is already used in the 2005 Statement on Export Credits and Hydropower Projects, (para. 1).

IV. Evaluation, Decision and Monitoring

Article 14. The last sentence should be modified by the addition of the words "and mitigate adverse impacts". That is, *In the case of non-compliance with the conditions of official support by applicants, the Member will take any action that it deems appropriate in order to restore compliance [and mitigate adverse impacts], in accordance with the terms of the contract for official support.*

Article 14. bis. ECA-Watch strongly endorses the public disclosure of ex post monitoring reports and related information. The text, however, should be revised to read: "Members will, for all category A and B projects, require as a condition of official export credit support, that sponsors make ex-post monitoring reports and related information publicly available." This provision simply brings the Common Approaches more into line with evolving international good practice.

V. Exchange and Disclosure of Information

Article 16 - ECA-Watch strongly endorses the reference to publicly disclosing information on Category A, B and C projects (name, location, description of project and reason for classification) following project classification. The words "and consent from applicants" should be deleted, since the earlier reference "subject to legal provisions" makes this redundant. Nevertheless, we find it astonishing that

five years after the first text was drafted, that this is not an integral part of all ECA practice.

We would propose tightening of the text:

- Insert “ex-ante” after “Disclose publicly”
- “following classification of the project” is also too loose: a time limit should be specified, e.g. “within 30 days of classification”

We note that the draft revisions do not include many important areas of public disclosure that ECA Watch has identified many times in previous correspondence and consultations. Other public finance institutions already require such disclosure.

We note, for example, that the International Monetary Fund, the European Bank for Reconstruction and Development, the IFC, and, since September 2006, the U.S. Overseas Private Investment Corporation, are explicitly committed to supporting, applying and advancing the Extractive Industries Transparency Initiative (EITI), which the G8 heads of state also committed to at the G8 Summits in 2005 and 2006.

The IFC requires in its Sustainability policy (para. 22) not only public transparency of revenue payments from extractive industry projects to host governments, but also the public release of relevant terms of public concern in foreign investment contracts, such as Host Government Agreements (HGA) and intergovernmental agreements. The IMF also supports disclosure of foreign investment contracts, while addressing concerns about the disclosure of business confidential information, stating, *“the contract terms are likely to be known within the industry soon after signing. Little by way of strategic advantage thus seems to be lost through publication of contracts.”* (IMF, Guide on Resource Revenue Transparency, June 7, 2005).

As a matter of basic coherence, the revised Common Approaches should expressly reference a commitment to require the disclosure of revenue payments from extractive project sponsors to host governments and of foreign investment contracts for extractive sector projects.

Both the Equator Principles and the new OPIC transparency initiative (for Category A Projects) specifically identify a commitment to make environmental and EIA information (or summaries thereof) available in the “relevant local language” (Equator Principle 5) or in a “local language translation” (OPIC), an important omission in the current working draft of the Recommendation which should be rectified. Also, OPIC now commits to make public the standard environmental and social covenants used in Category A Projects, Environmental Management and Monitoring Plans, and Environmental Remediation Plans. And the IFC requires disclosure of project Environmental Action Plans that evolve during the life of the project. The Asian Development Bank publicly discloses environmental and social monitoring reports. As a matter of basic coherence, ECAs could and should commit to these measures in the Common Approaches.

The lack of required disclosure in these areas by ECAs undermines the objective of the Common Approaches to create a level playing field, shows a failure to keep up with emerging good practices, undermines efforts in the OECD and elsewhere to achieve coherence in international efforts to promote sustainable development, and neglects domestic laws and international obligations to respect citizens' rights to access information, especially for project-affected people.

Article 17. The word “aggregated” should be removed, in keeping with our recommendation below for adequate detail in Article 20.

VI. Reporting and Monitoring of the Recommendation

Article 18. The inclusion of language pertaining to new compliance “mechanisms” is welcome, since ECA-Watch maintains that inadequate measures to monitor and ensure compliance with the Common Approaches by member countries continues to be one of the most significant shortcomings of the policy itself, a shortcoming that undermines the key objective of creating a level playing field. To that end, ECG Members should agree on strengthening internal measures to ensure compliance and making annual reports on compliance publicly available. The Common Approaches should embody other good practice in this area already in effect on the part of some ECAs such as those of Japan and Canada, which have developed publicly accessible compliance mechanisms.

To maintain a minimal level of coherence with existing international practice, we recommend the inclusion of a new bullet or provision under Article 18 for a Grievance Mechanism. The following language from Principle 6 of the revised Equator Principles would meet this minimum level. Principle 6 commits the Equator Banks to require borrowers to establish a Grievance Mechanism "For all Category A projects, and, as appropriate, Category B projects located in non-OECD countries...to ensure that consultation, disclosure and community engagement continues throughout construction and operation of the project..." The grievance mechanism is to be incorporated in the project management system, is to be "scaled to the risks and adverse impacts of the project," and is to address "concerns promptly and transparently, in a culturally appropriate manner, and is readily accessible to all segments of the affected communities."

On a technical note, the words “in accordance with paragraph 19.” should be added at the end of the first bullet point.

Article 19, para 1 – More regular reporting, i.e. semi-annual, to the ECG is encouraged, in particular including a rationale for project classification. That said, ECA-Watch maintains that these reports should be made publicly available. Keeping these reports confidential within the confines of the ECG substantially undermines the utility, effectiveness, and credibility of the whole process. The constraints of business confidentiality cannot be credibly used as an argument against public disclosure of these reports, since their circulation among ECG members means competitors are potentially availed of their contents in any case. See our suggestion below for Article 20.

Article 19, para 2 - We welcome a more formal provision for peer review with this wording. Peer review has been effective in monitoring the implementation of the OECD Convention on Combating Bribery of Foreign Officials. Such peer review should include appraisal of categorisation as per Article 6 bis and also of impact assessment and compliance with benchmarked standards as per Article 12.

Article 20. The addition of the following text would significantly improve the accountability of ECAs to taxpayers, affected communities and other stakeholders: “Reports compiled by the OECD Secretariat will be made public and be sufficiently detailed as to provide stakeholders with adequate information to determine whether the General Principles of the Recommendation are being met.”

Annex I – Illustrative list of Category A projects

ECA-Watch endorses the inclusion of point 27, “projects involving the involuntary resettlement of affected people”, as currently written, in the illustrative list of Category A projects. This list should be further refined and expanded on the basis of the peer reviews proposed in Article 19. This peer review process may also help define a similar list for Category B projects.

Annex I (bis) – Potential impacts in the context of an environmental review of Category A and Category B projects

Annex I (bis) might more usefully be included as part of Annex II, in which details on environmental impact assessment reporting, content and format are summarized.

On the line “impact on surface and ground water quality”, the words “and quantity” should be added.

On the line “impact on indigenous people” the words “and other affected peoples” should be added.

On the line “impact on endangered species (biodiversity)” the words “and critical habitat” should be added.

A line stating “all cumulative as well as specific impacts” should be added.

Annex II – Environmental Impact Assessment Report (contents and format)

ECA Watch prefers the first version of this annex, with an expansion of point 8 as outlined in our comments above on consultation under Article 7.

Annex III A. – Reporting form, Category A projects

ECA-Watch maintains that these reports should be made publicly available.

Column 11 should be entitled “Precise or specific standards”

Annex III B. - Reporting form, Category B projects

ECA-Watch maintains that these reports should be made publicly available.

Column 11 should be entitled “Precise or specific standards”

Annex II of ECA Watch comments

In addition to our comments on the draft text in Annex I, we wish to remind ECG members that our letter of June 9, 2006 contains suggestions for wording for the Common Approaches which go well beyond the current draft, which we believe falls far short of the best practices that the OECD professes to be “the shining example” off, according to the Secretary General of the OECD.

This letter can be found on the OECD web site at:
<http://www.oecd.org/dataoecd/53/6/37022298.pdf>