

## **Memorandum of ECA-Watch Concerning the OECD Export Credit Group's Lack of Coherence with OECD Goals and Objectives and Other Major Problems**

The OECD claims to provide a setting where governments compare policy experiences, seek answers to common problems, identify good practice and coordinate domestic and international policies.<sup>1</sup> It further claims that “Mutual examination by governments, multilateral surveillance and a peer review process through which the performance of individual countries is monitored by their peers, all carried out at committee-level, are at the heart of the OECD's effectiveness.”<sup>2</sup> The OECD commits to relations and consultations with its partners, among which it cites civil society.<sup>3</sup>

Despite these claims, the political will appears to be lacking within the OECD to achieve coherence between Members' US\$100 Billion in annual export credits and OECD environmental and social policies, including those international environmental agreements and conventions to which OECD Members subscribe.

The objectives of the Council's Common Approaches Recommendation embrace: coherence between export credit and environmental policies, equivalence among measures taken by Export Credit Working Party (ECG) Members, with a particular view to reducing trade distortion; promoting good environmental practice and consistent processes, with a view to achieving a high level of environmental protection; and promoting a level playing field among Member export credit agencies (ECAs).<sup>4</sup>

Despite these stated objectives, OECD Member ECAs continue to support projects that fail to meet the ‘Common Approaches’ standards, and have not achieved a level playing field.

We believe that the ECG forum in its current form fails to credibly and competently address a number of issues of major concern to the OECD and to the international community with respect to export credits of OECD Members - credits which total over US\$100 Billion per year. If not addressed, these issues pose a threat to the credibility of the OECD as a whole.

These issues include:

- \* Achieving progress in establishing coherence between OECD officially supported export credits and OECD Member international commitments on environment and sustainable development, development assistance, debt and economic sustainability
- \* Transparency and information disclosure of Member ECAs
- \* Common standards of credible consultation and participation of affected and interested stakeholders, both with respect to individual ECAs and in the deliberations of the ECG itself
- \* Combating corruption and bribery in ECAs in accordance with the OECD Anti-Bribery Convention
- \* Honouring WTO requirements for ECAs to break-even and to phase out subsidies through export credits
- \* Addressing internationally recognized and agreed on human and social rights in activities and projects supported by Member ECAs
- \* Promoting in Member ECAs international corporate social responsibility through the OECD Guidelines for Multinational Enterprises and
- \* Credible monitoring and compliance among Member ECAs of agreed upon Common Approaches and other OECD environmental, social, and development commitments

We summarize a number of our concerns below - concerns which despite extensive correspondence with the ECG, have met with little substantive response over the years:

<sup>1</sup> [http://www.oecd.org/pages/0,3417,en\\_36734052\\_36734103\\_1\\_1\\_1\\_1\\_1,00.html](http://www.oecd.org/pages/0,3417,en_36734052_36734103_1_1_1_1_1,00.html)

<sup>2</sup> [http://www.oecd.org/pages/0,3417,en\\_36734052\\_36761681\\_1\\_1\\_1\\_1\\_1,00.html](http://www.oecd.org/pages/0,3417,en_36734052_36761681_1_1_1_1_1,00.html)

<sup>3</sup> [http://www.oecd.org/pages/0,3417,en\\_36734052\\_36761800\\_1\\_1\\_1\\_1\\_1,00.html](http://www.oecd.org/pages/0,3417,en_36734052_36761800_1_1_1_1_1,00.html)

<sup>4</sup> [http://webdomino1.oecd.org/olis/2007doc.nsf/43bb6130e5e86e5fc12569fa005d004c/d4572f5ee6bc6d72c12572f800561d56/\\$FILE/JT03228987.PDF](http://webdomino1.oecd.org/olis/2007doc.nsf/43bb6130e5e86e5fc12569fa005d004c/d4572f5ee6bc6d72c12572f800561d56/$FILE/JT03228987.PDF)

**--The failure of the ECG to achieve even minimally effective monitoring and peer review regarding compliance with the 2003 Agreement on Common Approaches and the 2005 Statement on Export Credits and Hydro-power Projects.**

**Ilisu and Sakhalin II – Flagrant Examples of Common Approaches Violations**

The absolute failure of any credible, effective peer review and monitoring process of the ECG is manifested most blatantly in the approval in 2007 by three ECG Members of export credits of €550 million (\$660 million) for the Ilisu dam in Turkey. This project will forcibly displace and adversely impact between 50,000 and 78,000 people, and will have major international downstream impacts in Syria and Iraq. It so flagrantly breaches existing good practice in the environmental and social area (including five World Bank Safeguard policies) that the three ECG Member ECAs have had to impose some 150 conditions for their support, in a questionable attempt to claim to remedy the flagrant flaws in project design and assessment - even as their financing and project construction proceeds<sup>5</sup>. This violates both the spirit and letter of the World Bank safeguards, which are required conditions of project appraisal and design, and pre-conditions for project approval. This is a grotesque violation of the 2005 Statement on Export Credits and Hydro-power Projects<sup>6</sup>, as well as of any reasonable interpretation of both the 2003 and 2007 Common Approaches Recommendations.

Another example of disregard for the Common Approaches involves the decision in 2004 by UK ECA ECGD to approve legally binding conditional support for the Sakhalin II project in the Russian Far East before the necessary environmental assessments had been undertaken. This has led to court action against the ECGD by UK NGOs<sup>7</sup>. Meanwhile, the Japanese Bank for International Cooperation (JBIC), and the US Export-Import Bank (Ex-Im Bank) continue to consider financing for Sakhalin II, despite fundamental, severe, and irreversible violations of their policies which have been identified by these bank's own consultants, independent panels of experts, international non-governmental organizations and Russian authorities. In contrast, in 2006 the Belgian Export Credit Agency, ONDD, withdrew export credit insurance from a Sakhalin II project subcontractor. The subcontractor caused some very serious environmental damage, including an oil spill in 2004. Those events represent only a small fraction of the project's overall environmental damage, but were serious enough to lead ONDD to withdraw.<sup>8</sup> Sakhalin II's incessant environmental policy violations contributed to the European Bank for Reconstruction and Development's 2007 decision to withdraw its consideration of the project<sup>9</sup>. ECGD's, JBIC's and Ex-Im Bank's continued courting of Sakhalin II demonstrates an unwillingness to enforce their own policies and a blatant disregard for the Common Approaches.

**--The Failure of the ECG, Despite Repeated Requests by Civil Society, to Establish a Credible Consultation Process Reflecting International Good Practice**

The current OECD ECG 'consultation' process with civil society groups fails to meet basic minimal criteria for stakeholder involvement: the 'consultation' is limited to a two or three hour event every 18 months in which the substantive questions and issues of civil society groups never receive any meaningful response on the part of the ECG, either in the session itself nor in prior or subsequent correspondence. The 'consultation' consists of NGOs summarizing points made in substantive documents submitted earlier, in the face of what is mostly a wall of silence and a lack of engagement on the part of ECG members. Substantive feedback and discussion over the past ten years of interactions with the ECG and its predecessor have been largely absent. The negotiations in the ECG for both the 2003 and the 2007 Common Approaches Council Recommendation have largely ignored the carefully researched and presented comments and recommendations of civil society groups, which are based on accepted international best

<sup>5</sup> [http://www.eca-watch.org/problems/turkey/Ilisu/eca\\_ilisu\\_conditions\\_27sep07.html](http://www.eca-watch.org/problems/turkey/Ilisu/eca_ilisu_conditions_27sep07.html)

<sup>6</sup> [http://www.oecd.org/document/41/0,3343,en\\_2649\\_34181\\_35688937\\_1\\_1\\_1\\_1,00.html](http://www.oecd.org/document/41/0,3343,en_2649_34181_35688937_1_1_1_1,00.html)

<sup>7</sup> <http://www.thecornerhouse.org.uk/item.shtml?x=555976>

<sup>8</sup> [http://www.eca-watch.org/problems/eu\\_russ/russia/sakhalin/ONDD\\_rejects\\_Sakhalin\\_dredging\\_cover\\_28nov06.htm](http://www.eca-watch.org/problems/eu_russ/russia/sakhalin/ONDD_rejects_Sakhalin_dredging_cover_28nov06.htm)

<sup>9</sup> <http://www.iht.com/articles/ap/2007/08/07/business/EU-FIN-Russia-Gazprom.php>

practices - without communication on the part of the ECG and its Members on the rationale for its silent rejection of these recommendations.

A particularly egregious example of the emptiness of the ECG process is its repeated refusal to discuss the technical aspects of individual projects in any way with civil society funded by ECG Members. Those projects which violate the Common Approaches raise serious issues concerning adherence to minimal standards of accepted international good practice. The ECA's categorical refusal to discuss examples of substantive environmental issues relating to specific projects with NGOs and civil society further diminishes the credibility of its stated objective to ensure even minimal monitoring and implementation of agreed upon common environmental approaches and guidelines.

Environmental guidelines and approaches around the world have been developed and improved precisely on the basis of the common experiences of different affected and involved constituencies regarding specific projects. The current approach of the Working Party has failed, and poses serious risks by weakening international support among stakeholders, and by undermining due diligence with respect to technical competence.

The request for a regularized, more transparent, substantive and frequent consultative process has been repeated in numerous NGO letters and presentations to the Working Party, starting with the 8 July 1997 letter from EURODAD to the Working Party (formerly Working Group) on behalf of numerous NGOs in 16 OECD countries. Our letter of 14 January 2000 and the letter of 25 October 1999 to the Working Party on behalf of 64 NGOs from 23 countries were among the earlier of numerous repeated requests.

Subsequent correspondence and presentations<sup>10</sup> over the past seven years have also pointed out the numerous references in other OECD fora to the need to open up proceedings and approaches to regular input and involvement of civil society and NGOs. An internal OECD "review a couple of years ago of practices across the Organisation showed that the [Export Credit] Working Party classified more documents as 'Confidential' than the institutional average."<sup>11</sup> The ECG does not regularly post its agendas on the OECD OLIS database and its minutes are notoriously cryptic and sometimes incomplete.<sup>12</sup>

Our communications have continued to reiterate, now a decade after the original EURODAD request, the need for improved, broader based, meaningful consultations in the ECG's deliberations, which would bring in other elements of the OECD as well as civil society in a more transparent and accountable negotiating process.

**--The failure of the ECG after some ten years of deliberations to achieve the most basic, minimal coherence on issues of major concern to other directorates and departments of the OECD, OECD Members, and the international community.**

These include:

- Coherence of export credits with respect to major commitments of OECD and EU nations regarding development assistance, sustainable development, and sustainable debt relief.
- Bribery and Corruption
- Monitoring and Peer Review of the OECD Arrangement and WTO Commitments to eliminate subsidies through Export Credits (the Break Even Requirement)
- Monitoring and Peer Review to Promote Adoption and Implementation of the OECD Guidelines for Multinational Enterprises

Our specific concerns with respect to these issues are outlined below.

**Coherence of export credits with respect to major commitments of OECD and EU nations regarding development assistance, sustainable development, and sustainable debt relief.**

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<sup>10</sup> See list of ECA Watch correspondence with the OECD ECGs since 1999

<sup>11</sup> [http://www.oecd.org/document/26/0,2340,en\\_2649\\_34495\\_33945946\\_1\\_1\\_1\\_1,00.html](http://www.oecd.org/document/26/0,2340,en_2649_34495_33945946_1_1_1_1,00.html)

<sup>12</sup> [http://www.eca-watch.org/WhatsNew/WNV6\\_2007/WhatsNewV6N8.html#6](http://www.eca-watch.org/WhatsNew/WNV6_2007/WhatsNewV6N8.html#6)

ECAs are not development agencies, but the investments they support must not directly contravene and/or undermine the goals and standards of both bilateral and multilateral official development assistance (ODA). Articles 177 and 178 of the 1997 Amsterdam Treaty<sup>13</sup> call for "coherence" between the development assistance policies of EU member states (which in almost all cases include policies to promote sustainable development and social and environmental assessment procedures) and their external activities as a whole, including export credit activities of member states. The Terms of Reference of the ECG recognize this need for coherence in requiring appropriate liaison with the OECD's Development Assistance Committee (DAC).<sup>14</sup>

The documented failures in project appraisal and design in cases such as Ilisu and Sakhalin directly undermine such commitments. Moreover, a significant portion of OECD ECA export credits in developing countries supports investments that are sub-optimal from a development perspective or that have little demonstrable positive development impact - the main criteria for their approval being promotion of home country exports and ability to repay, usually secured through obtaining counter-guarantees from host governments. Approximately one third of LDC debt is the result of ECA supported projects according to the IMF.<sup>15</sup>

The statistics provided by ECG to monitor OECD ECA transactions with Highly Indebted Poor Countries (HIPC) have been characterized by inaccurate reporting – failing to include all HIPC countries and listing countries which are not qualified for HIPC.<sup>16</sup>

Equally disturbing is the widespread OECD practice of counting the write off of OECD ECA debt to developing countries as part of their development assistance budgets.<sup>17</sup> The written off debt is rarely calculated at real market value, but at its nominal value, further inflating the putative contribution to ODA. Much of this written off ECA debt, dubiously counted as ODA, has been incurred for export credits for developmentally, environmentally and socially sub-standard projects that no bilateral or multilateral aid agency would support.

Finally, OECD ECAs continue to actively promote new debt obligations of aid-receiving countries<sup>18</sup>, crowding out their capacity to borrow for developmentally sustainable investments that would more directly and effectively contribute to achieving internationally agreed upon development commitments such as the Millennium Development Goals. The IDA XIV Donors' Agreement expresses concern over this "free rider" issue, stating that "a mechanism will be devised whereby a country could cease to be eligible for grants if its government or other public sector entities contract or guarantee new loans from alternative sources of financing which threaten to defeat the debt sustainability objective that IDA grant are intended to help achieve."<sup>19</sup> (para. 74, p. 26)

Thus, the ECG has abjectly failed to promote a minimum of coherence among OECD Members with respect to export credits, development and sustainable debt. In fact, its negligence in addressing these issues, and in publicly engaging and communicating with the OECD Development Assistance Committee on these matters, as required by the ECG's terms of reference<sup>20</sup>, is a significant factor in contributing to the ongoing undermining of internationally agreed upon development objects.

### \* Bribery and Corruption

Over the past decade OECD ECAs have become the subject of international concern because of their role in underwriting projects tainted by bribery. The Gleneagles G8 Summit committed in 2005 to "strengthening anti-bribery requirements for those applying for export credits and credit guarantees,"<sup>21</sup> and the ECG, as part of its obligations in helping to carry out the OECD's commitments to combat corruption and bribery, especially the 1997 OECD Anti-Bribery Convention,

<sup>13</sup> <http://www.hrea.org/erc/Library/hrdocs/eu/Amsterdam-treaty.pdf>

<sup>14</sup> [http://webnet3.oecd.org/OECDgroups/Bodies.asp?body\\_id=937&lng=E](http://webnet3.oecd.org/OECDgroups/Bodies.asp?body_id=937&lng=E)

<sup>15</sup> IMF, Officially Supported Export Credits in a Changing World, 5 February 2005, Figure 3, p.13

<sup>16</sup> [http://www.eca-watch.org/problems/debt/ECAW\\_HIPC\\_2005\\_data\\_2sep06.htm](http://www.eca-watch.org/problems/debt/ECAW_HIPC_2005_data_2sep06.htm)

<sup>17</sup> [http://www.eurodad.org/uploadedFiles/Whats\\_New/News/Eurodad%20ECA\\_political\\_statement.pdf](http://www.eurodad.org/uploadedFiles/Whats_New/News/Eurodad%20ECA_political_statement.pdf)

<sup>18</sup> [http://www.eca-watch.org/problems/debt/ECAW\\_US\\_ExIm\\_Nigeria\\_29mar07.htm](http://www.eca-watch.org/problems/debt/ECAW_US_ExIm_Nigeria_29mar07.htm)

<sup>19</sup> [http://siteresources.worldbank.org/IDA/Resources/14th\\_Replenishment\\_Final.pdf](http://siteresources.worldbank.org/IDA/Resources/14th_Replenishment_Final.pdf)

<sup>20</sup> [http://webnet3.oecd.org/OECDgroups/Bodies.asp?body\\_id=937&lng=E](http://webnet3.oecd.org/OECDgroups/Bodies.asp?body_id=937&lng=E)

<sup>21</sup> [http://www.fco.gov.uk/Files/kfile/PostG8\\_Gleneagles\\_Africa.0.pdf](http://www.fco.gov.uk/Files/kfile/PostG8_Gleneagles_Africa.0.pdf)

issued an Action Statement on Bribery and Officially Supported Export Credits in 2000, which was revised and strengthened in 2006 and issued as an OECD Recommendation.<sup>22</sup>

Yet over the past decade there appears to have been a disconnect between the OECD Finance Directorate's Working Group on Bribery and the ECG - such that even last year, as the ECG was discussing revisions to the Action Statement on Bribery, it was uninformed of extensive studies by the Anti-Bribery Working Group on Member countries' legislation and implementation of the OECD Anti-Bribery Convention which contained specific recommendations on how to bring Member ECAs into compliance. It was left to NGO ECA-Watch groups to forward a summary of these recommendations to the ECG<sup>23</sup>.

We have seen little evidence of a credible, transparent peer review or monitoring process in the ECG to ensure that the commitments of the Recommendation on Bribery are effectively carried out by all ECG members. Meanwhile, evidence of alleged corruption in projects underwritten by OECD ECAs continues to emerge - a case in point being the involvement of the UK ECGD in providing guarantees to BAE Systems for export transactions to Saudi Arabia. A letter from ECA-Watch on June 18, 2007 to the ECG Secretariat raising these issues has not received a response.<sup>24</sup>

### **\*Monitoring and Peer Review of OECD Arrangement and WTO Commitments to eliminate subsidies for Export Credits (the Break Even Requirement)**

Here again scrutiny reveals an ECG monitoring and reporting process that is completely inadequate.

The ECG serves as a focal point for peer review and monitoring of OECD ECAs with respect to commitments under the OECD Arrangement that OECD ECAs not be subsidized, i.e. that interest and premia charges "shall not be inadequate to cover long-term operating costs and losses." (Article 23 of the Arrangement) An identical provision is incorporated into the World Trade Organization's Agreement on Subsidies and Countervailing Measures, Annex I, Articles K and J.<sup>25</sup>

The ECG Secretariat publishes net annual operating cash flow statements for member ECAs to document progress toward the break-even requirement. However, there is no coherent, uniform accounting standard for these statements, nor is the ECG aware of which ECAs use full cost, cash or double entry accounting principles. While ECG ECAs purport to meet the WTO and Arrangement "break-even" requirements, it is quite clear that a significant number do not: the UK Treasury has acknowledged that the annual capital cost subsidy to ECGD is estimated at £150 million, or over \$300 million at current exchange rates.<sup>26</sup> The Dutch Ministry of Finance has admitted that Atradius' financial statements for official export credits are inadequate to monitor compliance with OECD Arrangement and WTO break-even requirements. Moreover, in 2006 the ECG Secretariat was not aware that in 2004, without explanation, JIBC restated its net cash flow to include additional revenues of US\$1.4 billion between 1999 and 2003<sup>27</sup>, an indication that serious peer review of break-even data is not carried out.

### **\* Monitoring and Peer Review to Ensure a Level Playing Field and Equivalence for Environmental and Social Standards Compatible with Good International Practice.**

ECA-Watch members have urged the ECG and its members to meet international good practice in this area in written and oral communications both prior to the 2003 Agreement and subsequent Recommendation on Common Approaches, and in the period leading up to the June 2007 Revised OECD Council Recommendation on Common Approaches on the Environment and Officially Supported Export Credits. The 2007 Recommendation unfortunately continues many of the same major deficiencies of the 2003 Agreement, including the preservation of a derogation clause that allows any ECA at will to opt out of applying standards recommended by the Recommendation, with no effective peer review and no public justification - only a requirement to

<sup>22</sup> [http://webdomino1.oecd.org/olis/2006doc.nsf/Linkto/td-ecg\(2006\)24](http://webdomino1.oecd.org/olis/2006doc.nsf/Linkto/td-ecg(2006)24)

<sup>23</sup> [http://www.eca-watch.org/problems/corruption/ECAW\\_bribery\\_update\\_23feb06.html](http://www.eca-watch.org/problems/corruption/ECAW_bribery_update_23feb06.html)

<sup>24</sup> [http://www.eca-watch.org/problems/corruption/ECA\\_Watch\\_letter\\_to\\_ECG\\_re\\_ECGD\\_18jun07.pdf](http://www.eca-watch.org/problems/corruption/ECA_Watch_letter_to_ECG_re_ECGD_18jun07.pdf)

<sup>25</sup> [http://www.wto.org/English/docs/e/legal/e/24-scm\\_03\\_e.htm#ann1](http://www.wto.org/English/docs/e/legal/e/24-scm_03_e.htm#ann1)

<sup>26</sup> <http://www.berr.gov.uk/files/file16384.pdf>

<sup>27</sup> [http://www.eca-watch.org/problems/fora/oecd/oecd\\_data\\_discrepancies\\_30oct06.htm](http://www.eca-watch.org/problems/fora/oecd/oecd_data_discrepancies_30oct06.htm)

report such cases semi-annually after they have been approved, internally, to the ECG. The 2007 revised Common Approaches again fails to meet minimum international good practice in terms of common standards for transparency, public access to information, human rights, monitoring, *inter alia*.

An OECD Financial and Enterprise Affairs Directorate survey of OECD ECAs in 2007 found that “transparency and accountability practices vary widely among the public programs surveyed”<sup>28</sup>, indicating that a level playing field is still far from being achieved in the 7 years since the first action statement on common approaches.

In fact, the Common Approaches have served in some cases to *pull down already existing standards of national ECAs*. Previously, both Australia's EFIC and the UK ECGD required that environmental assessments for Category A projects be made publicly available at least 45 days before a final commitment of export credits; both the 2003 and 2007 Common Approaches cite a disclosure period for environmental impact information 30 calendar days in advance. Subsequently, both EFID and the ECGD reduced their disclosure requirement to 30 days.

### **\*Monitoring and Peer Review to Promote Adoption and Implementation of the OECD Guidelines for Multinational Enterprises**

Once again the record of the ECG is one of disconnect and lack of coherence in ensuring a minimal adherence to OECD corporate social responsibility guidelines that have been in existence over a decade.

The revised OECD Guidelines on Multinational Enterprises<sup>29</sup> were approved in 2000 and represent the consensus of both OECD Member states and a growing number of non-OECD nations on desirable standards of corporate social responsibility in areas such as environment, transparency, labor rights, combating bribery and corruption, and consumer protection. In 2003 the ECG agreed to promote the MNE Guidelines by providing information to ECG Member ECA clients. The OECD Investment Division told ECA-Watch in December 2006 that almost half of the OECD ECG ECAs, “do not in any way link their export credits and other policies to the guidelines.”<sup>30</sup> Among the ECAs that do, only a few actually encourage their clients to adhere to them; most simply provide information to prospective clients on their existence, through a web link, or through references on application forms.

Submitted by Bob Thomson, ECA Watch, Paris  
on behalf of:

- Berne Declaration, Switzerland
- Both Ends, Netherlands
- CRBM, Italy
- ECA Watch Austria
- Environmental Defense, USA
- FERN, Belgium
- Friends of the Earth France
- Friends of the Earth Japan
- Halifax Initiative, Canada
- International Rivers Network, USA
- Observatori del Deute en la Globalitzacio, Barcelona
- Pacific Environment, USA
- The Corner House, UK
- urgewald, Germany
- WEED, Germany

<sup>28</sup> “Investment guarantees and political risk insurance: Institutions, incentives and development”, OECD Investment Committee Working Party, 14 September 2007, DAF/INV/WP/WD(2007)8

<sup>29</sup>[http://www.oecd.org/document/28/0,3343,en\\_2649\\_34889\\_2397532\\_1\\_1\\_1\\_1,00.html](http://www.oecd.org/document/28/0,3343,en_2649_34889_2397532_1_1_1_1,00.html)

<sup>30</sup>[http://www.eca-watch.org/problems/fora/oecd/OECD\\_ECAs\\_and\\_MNE\\_Guidelines\\_15dec06.htm](http://www.eca-watch.org/problems/fora/oecd/OECD_ECAs_and_MNE_Guidelines_15dec06.htm)