



Business and Industry Advisory Committee to the OECD

Comité Consultatif Economique et Industriel Auprès de l'OCDE

Paris, 29 October 2003

Dear Ms. Nygren,

First of all, let me congratulate you to next week's 100th meeting of the Export Credit Working Party. On behalf of business and industry let me express to you that the Working Party has done a tremendous work in creating a level-playing field for industry on export credits and credit guarantees. There are challenges ahead and I think we will continue our good relationship with a view to even increase transparent co-operation between the government experts of the Working Party and industry.

I am grateful that I have been given the opportunity to review the most recent version of the "revised draft OECD Draft Recommendation on Common Approaches on Environment and officially supported Export Credits: 2003 Review - Revised Version 1", dated 8 October 2003. Other BIAC members have also received the draft from their governments.

I have to say that many members of BIAC expressed concern about a text which seems to be overly ambitious given the short time the Common Approaches (Revision 6) have been provisionally applied by most members of the ECG. Although we do understand that members have given themselves the task to revise the Recommendation by the end of 2003, we think that more information on how companies are coping with the current version would be very useful indeed. We would suggest to the OECD Secretariat to put more analytical work into that part of the picture. While the OECD is engaging in a regulatory exercise we feel that it is a question of coherence to take into account the principles the OECD so strongly recommends to member governments in the area of regulatory reform and good governance: A thorough assessment of the regulatory impact of new proposed rules (RIA) is one of the cornerstone of the OECD's approach in this part of its work. I really believe that the level-playing field argument reaches its limit than it can not be profoundly demonstrated that urgent need for regulatory activity exists.

As to the specifics we have the following concerns and suggestions:

- The compromise reached in Rev.6 tried to carefully balance the need for not overburden industry with requirements on the one hand and filtering out the real sensitive projects on the other. This seems to be not the spirit of the new draft anymore. We ask ourselves what is the rationale behind increasing the numbers of category A, B and C projects? Are the ECAs really prepared to handle the resulting increases? Already in para. 1 we do not see why short term cover, if it is not regulated in the Approaches, should be included and we would need a definition of what "typically qualify for such terms" means. Para. 5 asks - although "encourage" is used - to extend screening requirement for projects below SDR 10 millions, again given up one of the "filters" we felt to be so essential in the past.

- We are very worried of newly introducing into the chapter on Environmental Review an explicit reference to "social aspects". We regard that as being outside the mandate of the exercise. We can certainly discuss this topic but it should be dealt with under a different instrument involving valuable work which has been done and the difficult compromises which have been reached for example by the CIME in the context of the OECD Guidelines for Multinational Enterprises. The mandate of the Working Group is not to re-negotiate an OECD instrument on social obligations of multinational enterprises. In this context we would regard it as utterly unrealistic to expect from companies to produce EIAs in the host country language as suggested in para. 11. Would that include regional dialects? I think this shows how dangerous it is to extend the scope of the recommendation into social issues where more analysis must be done and coherence with other OECD instruments must be guaranteed.
- I have to admit that I was shocked about the new language of para. 12 which as a result introduces World Bank Standards as the binding reference for any screening. The use of the term "benchmarking" in this paragraph seems not to be meant seriously.

Contrary to this, we in industry in fact strongly believe in a serious concept of "benchmarking". For us the term "benchmarking" implies a more modest but actual improvement on the existing environmental situation in many host countries for our investments and exports. This understanding must leave room for flexibility which the current paragraph prohibits. For us the question is not what are the strictest possible standards which could be applied, but what would actually help to remedy the situation in a given project. The recommendation must leave room for this approach.

- On the requirement of "Ex ante" notification in para. 17 which introduces a 60 days prior notification obligation let me reiterate that BIAC continues to oppose strongly ECAs publishing details of applications for export credits, including the companies involved and their EIAs *before* a decision on the application has been taken. To this respect we found the OECD's summary of "Members' procedures and practices regarding officially supported export credits and the environment" (TD/ECG(2003)3) extremely useful. It shows that ECAs handle the issue of transparency with great care taking fully into account business confidentiality requirements. In fact, companies are usually very concerned about their business data. In highly competitive markets even the information that a certain company has applied for an export credit for a certain project is regarded as detrimental to the competition interests of that company. Furthermore, in many jurisdictions, data protection laws do not allow administrations to release such data during an administrative procedure. Companies in a competitive bidding situation are, for very good business reasons, concerned about the confidentiality of their commercial information. The OECD's report shows that many ECAs are required by law to publish information only after approval of the applicant and after the final commitment.

Again, thank you for the opportunity to submit these comments and please let me know if you have any questions.

Sincerely,

Jens Berthelsen

Chairman
BIAC Task Force on Export Credits
and the Environment

Ms. Birgitta Nygren
Chair of the OECD's
Working Party on Export Credits
and Credit Guarantees