

ECA Watch Proposal for a Peer Review System for the Revised Council Recommendation on Common Approaches on the Environment and Officially Supported Export Credits

In an effort to improve the process of stakeholder consultation and transparency of ECG Member implementation of the Common Approaches, ECA Watch proposes the development of a peer review system which draws on the experience of other peer review processes in the OECD, and which includes provision for substantive input from civil society representatives and communities affected by projects supported by OECD ECAs.

While the revised June 12, 2007 Recommendation on Common Approaches is somewhat improved over the 2003 Common Approaches concerning monitoring, reporting and transparency, it nevertheless falls far short of international good practice, as well as of good practice as found in the peer review processes in other OECD committees and working groups. There is a need to ensure credible monitoring and implementation of the June 12, 2007 OECD Revised Council Recommendation on Common Approaches on the Environment and Officially Supported Export Credits.

Since 2003 civil society organizations and NGOs in OECD countries have been deeply concerned by growing evidence of inconsistent and varying degrees of implementation of the Common Approaches among ECG ECAs. We believe this should be a matter of concern to all member governments of the OECD, not only from the perspective of the environment, but also because it threatens a basic underpinning of trade and competitiveness, namely a level playing field for export credits

In fact, financial support for one such project was approved by three ECG Member ECAs in early 2007 in the midst of the final negotiations for what was supposed to be a stronger, revised Common Approaches.¹ Some ECG members have been concerned about inconsistent and unequal implementation by other members of key environmental assessment procedures and criteria² required in both the 2003 and 2007 Common Approaches.

Our concern is that such examples unfortunately not only undermine the credibility of the Common Approaches, but also risk undermining the credibility of OECD Recommendations in general, and of the OECD as a forum where member states reach consensus and implement declared common commitments in good faith.

We believe that the revised June 12, 2007 Council Recommendation on ECAs and the environment provides a timely opportunity to address this issue. It calls upon Members to "Ensure, through appropriate measures and mechanisms, compliance with their policies and procedures pursuant to this Recommendation" and to "monitor and evaluate, over time, the experience with this Recommendation at a national level, and share experiences with the other Members" and to "continue to enhance and improve procedures at a national level to address the environmental impacts of projects, and to encourage their ECAs to allocate

1 In this case concerning the proposed Ilisu dam in Turkey, the three Member ECAs themselves acknowledged that the project violated numerous important World Bank/IFC Performance Standard requirements—many concerning major issues, such as the resettlement of 75,000 people in a politically volatile zone of ethnic conflict. Nevertheless the three ECAs in question proceeded to approve financing after questionable assurances by the project sponsor based on 150 proposed changes in project design and implementation, many of which are putatively to take place in the very midst of project construction. Moreover, NGOs have documented that, even if these 150 changes were to be implemented, the project would still fall substantially short of compliance with the Common Approaches.

2 For example screening categorizations.

appropriate resources for this purpose" (para. 21). Moreover, "the ECG shall, in the light of experience, review all elements of this Recommendation not later than the end of 2010 and report to Council" (para. 24).

We believe that the solution to these concerns, and a logical next step, building on the recommendations in paragraphs 21 and 24 of the June 12, 2007 Council Recommendation, would be for OECD Export Credit Group (ECG) members to adopt a peer review system for the implementation of the 2007 OECD Council Recommendation similar to, and drawing on the experience of, other peer review processes in the OECD. This could serve as a robust basis for the 2010 ECG review and report to the OECD Council on the implementation of the Recommendation.

The OECD in recent years has reiterated that "peer review lies at the heart of international cooperation in the OECD"³ and that "Peer review has been used at the OECD since the organization was created more than 40 years ago. It has evolved over time to take account of new developments, including the involvement of civil society and labor."⁴

Recognizing that there are ECG confidentiality constraints and business concerns, we have endeavored to find a way forward. We believe that a peer review mechanism like those that have been implemented for years by OECD committees and working groups dealing with issues of relevance to export credits, such as anti-bribery, development, and environmental performance (the Anti-Bribery Group, Development Assistance Committee, and Environmental Policy Committee), would provide a mechanism for OECD export credits to assure the level implementation and transparency needed to make the Common Approaches a more credible agreement.

A proposed peer review process in the OECD Export Credit Group for the Common Approaches would involve a framework and procedures that would be agreed on by the ECG Members themselves, while benefiting from the experiences of other OECD committees and working groups. OECD research has identified general elements and principles found in other OECD peer review processes which would be essential for the credibility of any peer review system that the ECG should adopt.⁵ One of the attractions of such a process is that it can be designed in a flexible, non-adversarial manner to reflect the special needs and functions of ECAs. In contrast to current arrangements in the ECG that solely involve self-reporting of some aspects of implementation of the Common Approaches, a peer review system would involve, in addition to self-reporting, some process of independent peer assessment of the implementation performance of each ECG ECA, and public disclosure of non-business confidential information on peer review findings, as occurs in other OECD peer review processes.

Below ECA Watch sets out some more specific elements of a possible peer review process for the Common Approaches in the ECG.

3 (Fabrizio Pagani, OECD Legal Advisor, "Peer Review: A Tool for Global Co-operation and Change, *OECD Observer*, January 2003, http://www.oecdobserver.org/news/fullstory.php/aid/881/Peer_review.html)

4 "Peer Review: A Tool for Co-operation and Change, OECD Policy Brief, January, 2007, <http://www.oecd.org/dataoecd/9/41/37922614.pdf>.

5 See (Fabrizio Pagani, OECD Legal Advisor, "Peer Review: A Tool for Global Co-operation and Change, An Analysis of an OECD Working Method, OECD, SG/LEG (2002)1. <http://www.oecd.org/dataoecd/33/16/1955285.pdf>

I. Frequency

Peer review processes in the OECD run in cycles ranging from 18 months to 5 to 7 years. Since the 2007 Council Recommendation on Common Approaches envisages "in the light of experience, a review of all elements" of the Recommendation "not later than the end of 2010 and [a] report to [the] Council," we believe an initial 30 month cycle for the peer review of all ECG Members could be envisaged, commencing in June or July of 2008.

This initial peer review cycle could be a pilot exercise on a modest scale, envisaging a more expanded cycle after 2010 similar to the full peer review processes in other OECD fora.

II. Common elements of Peer Review in the OECD

The OECD Directorate for Legal Affairs has published a study on the general elements found in OECD Peer Review Processes, summarized in shorter form in a 2007 Policy Brief on OECD Peer Review.

The elements identified in these papers provide a useful point of departure for more specific ideas about what a peer review process for the Common Approaches in the ECG might look like.

The four underlying elements mentioned in these papers are quite basic:

A. A basis for proceeding. In this case the basis is the Common Approaches agreement itself, and particularly the language in paragraphs 21 and 24 cited above, calling upon members to "ensure, through appropriate measures and mechanisms, compliance with their policies and procedures pursuant to this Recommendation" and to "monitor and evaluate, over time, the experience with this Recommendation at a national level, and share experiences with the other Members" and to "continue to enhance and improve procedures at a national level to address the environmental impacts of projects, and to encourage their ECAs to allocate appropriate resources for this purpose." The agreed upon commitment to review, in light of experience, all elements of the Recommendation and report to the Council by 2010 provides a further basis, and time frame, for a peer review process.

B. An agreed set of principles, benchmarks and standards against which to review performance.

The procedures and commitments set out in the Common Approaches would be the logical set of principles, benchmarks and standards for evaluating OECD Members' ECA performance. It should be noted again that there is an express commitment in paragraph 24 of the Recommendation "to review, in light of experience, all elements of the Recommendation" in the agreed upon 2010 report to the OECD Council.

Operationally, the key elements fall into seven major categories:

1. *Scope* (para. 1)—all officially supported export credits with repayment terms of two years or more.

2. Objectives (para. 2)—are coherence, common procedures and processes, equivalence, good environmental practices and consistent processes, commensurate administrative resources to achieve the stated environmental objectives, achieving a level playing field.

3. Screening and Classification (paras. 4—7) This has been, as mentioned above, an area of some concern for some members concerning equivalence of practices in screening and classification by member ECAs.

4. Environmental Review (paras 8—14) Here clear standards and benchmarks are set out concerning the information to be provided, for what information and process is expected in a Category A EIA (viz. the elements in Annex II of the Common Approaches), and for which environmental standards are to be applied. With respect to the standards chosen to be applied in specific projects, it would be appropriate for a peer review of the Common Approaches to include an evaluation of whether the standards were actually complied with, and the nature and extent of any deviations.

5. Evaluation and Monitoring (paras 15-17)

6. Exchange and Disclosure of Information (paras. 18—20)

7. Reporting and Monitoring of the Recommendation (paras. 21-20)

We would suggest that the specific elements set out in the Recommendation under Screening and Classification, Environmental Review, and Exchange and Disclosure of Information are the operational heart of the Common Approaches and that a peer review should foremost focus on consistent and equivalent implementation of the measures the Recommendation sets out under these categories. Based on this information, tentative evaluations could be reached in peer review reports concerning to what extent the goals listed under Objectives are being reached, and concerning what improvements might be needed to better achieve these goals.

C. Designated actors

In the case of the Common Approaches, there would be specific roles for: the ECG Secretariat, Member ECAs and representatives from associated government departments or ministries. Possible roles for these actors are identified in the discussion on peer review process and procedures below.

D. An agreed set of procedures for the peer review. Such a set of procedures, agreed upon in the ECG, would set out in more detail time lines, processes etc., as well as the elements mentioned above (the agreed upon benchmarks, designated actors and their roles in particular stages of the process, etc.). We discuss what such a process might look like in the following section.

III. Process and Procedures

Within the OECD, according to OECD Legal Advisor Pagani's 2003 paper, peer review processes generally consist of three phases: preparation, consultation and assessment.

A. Preparation

The preparation phase involves reporting and the generation of information principally by the entity or institution to be reviewed. In the case of the ECG Common Approaches, it would be a matter of self-reporting by the ECA to be reviewed, which could involve the help, as appropriate and/or needed, of relevant national government agencies such as the trade, finance, environment and foreign ministries, etc. Both the 2003 and the 2007 Common Approaches already require the generation and sharing with the public and other Members some relevant information on implementation of the Common Approaches by national ECAs.⁶ In fact, the information that Members are required under the 2007 Common Approaches to disclose to one another at least semi-annually on Category A and B projects may be a significant step towards generating the data that would be required for the preparation phase of a peer review of the Common Approaches. However, since this information, while shared among ECAs in the ECG, is currently not publicly disclosed, it is impossible to evaluate in this memorandum whether it is of the quality that would be acceptable for a prospective peer review process.

The preparation phase for a peer review would simply involve the provision of some additional information on implementation corresponding to the indicators and benchmarks which the ECG members would have agreed on.

In the preparation phase the ECG Secretariat would play the coordinating role in providing the agreed upon questionnaire and requirements for documentation to the ECA to be reviewed. This would merely be an extension of the role the Secretariat already plays in coordinating the information the Members already have agreed to generate and share under the 2007 Common Approaches.

Additional administrative burdens both for Member ECAs and for the Secretariat would be extremely small, since what would be required would be sharing of information that individual ECAs have already generated, or identification of areas where information is absent.

B. Consultation

The consultation phase, based on practice in other OECD fora,⁷ would typically involve the examiners, which in this case would be representatives of other ECG Members, typically (as in the peer review processes in the DAC and Anti-Bribery Working Party) involving, for each peer review, representatives from two members, and perhaps a representative from the ECG

6 Paragraph 19 of the 2007 Common Approaches states that Members should for Category A projects, "disclose publicly project information, including project name, location, description of project and details of where additional information may be obtained...." as well as to require that environmental impact information be made publicly available (e.g. EIA report, summary thereof)", as well as to "make available to the public at least annually, subject to legal provisions on public disclosure in Members' countries, information on projects classified in Category A and Category B, including environmental information, for which a Member has made a commitment with respect to providing official support." Paragraphs 21 and 22 call for a number of additional provisions for generation and sharing of information among ECG Members: Members are to **"monitor and evaluate, over time, the experience with this recommendation at a national level, and share experience with the other Members, including about standards...."** [for category A and B projects] Members are to "report to the ECG *ex post*" at least semi-annually, "in accordance with Annex III, all projects classified in Category A and B...." **"Annex III sets out in some detail a variety of issues for which Members are to generate information and share with other ECG Members, viz. the environmental standards and benchmarks applied, information on the ECA's evaluation of environmental information received (key environmental factors taken into consideration, outcome of evaluation, description of any environmental conditions for financial support, whether there as been *ex ante* disclosure of environmental information etc.)"**

7 See Pagani, op. cit.

Secretariat. Member environmental practitioners would be the most plausible choice for examiners. Starting with the information provided in the preparation phase by the authorities of the Member to be reviewed, the Examiners, together with the Secretariat, generate additional information, both from consultations with independent sources (academics, business, civil society groups, other government officials and parliamentarians) and in consultations with the Member ECA itself, with the goal of preparing a draft evaluation report. Typically this phase might involve a visit of the examiners to the host Member country ECA (with the opportunity to also consult with business, civil society groups, other government officials, etc.); and could involve a site visit to a recipient country to gather information on the implementation of a specific project. (The DAC and Anti-Bribery Group peer review processes both involve a site visit to the member country, and the DAC peer reviews typically involve site visits to recipient developing countries to evaluate specific projects and programs).

The examiners and the Secretariat work together to prepare a draft evaluation report, which "usually follows a standardized model comprising an analytic section, where the country performance is examined in detail and individual concerns are expressed, and an evaluation or summary section setting forth the conclusions and recommendations. The Secretariat, in most peer review processes, but not always, shares the report in draft with the examiners and with the review country and may make adjustments it considers justified before the draft is submitted to the members of the body responsible for the review."⁸

Administrative Burden in the Consulting Phase

The consulting phase is likely to raise questions for those not familiar with OECD peer review processes concerning the additional administrative burden involved for both the Members and the Secretariat. In reality, these fears are likely to be exaggerated, since the process can be designed to fit more modest administrative resources and not involve as large a time commitment or commitment of additional staff resources as might be imagined.

First, while a site visit to consult with the host country being reviewed is to be desired, examining countries, in addition to using their ECA environmental practitioners, can also use the resources of embassy staff in the country to be examined. For example, most OECD countries have environmental, science and technology officers in their embassies to other OECD countries, as well as trade and commerce attachés, and foreign service officers with specific related responsibilities such as international development. Environment ministries in the examiner countries would be logical sources of further technical and logistical assistance, as well as hired environmental consultants. The main prerequisite is that the examiners have demonstrated knowledge/experience/competency in environmental assessment.

Second, the preparation, with the help of other OECD committees, departments and working groups, of a standardized report format and model, would lighten the task of the examiners and the examinees considerably.

Third, in a number of OECD countries, civil society groups and academics would be of considerable assistance in providing independent information that could feed into the process, and should be consulted.

⁸ Pagani, op.cit., p. 11.

Fourth, as noted repeatedly above, the peer review process can be designed by the Members of the ECG, with advice from the experience of other OECD committees, working groups and secretariats, on how to make the process as efficient and effective as possible, with minimal administrative burden.

Fifth, one of the great benefits of the peer review process to ECG Members will be to generate best practice information on how Members can more efficiently implement the Common Approaches Recommendation and reduce in some cases their own national administrative burden for ensuring effective implementation.

If these considerations are followed, the payoff from a credible peer review process in ensuring a more level playing field and greater efficiency in implementation could more than pay for whatever additional minor administrative costs might be involved.

C. Assessment

Here, after consultation with both the Member being reviewed and the Examining Members, the draft report would be discussed in a plenary meeting of the ECG. A procedure would be agreed upon to incorporate additional comments or modifications in the report following the plenary discussion, as well as, if appropriate or regarded by the ECG as a whole as desirable, to include in the report statements of disagreement on fact or interpretation by the Member being reviewed, as well as to include papers or documents submitted by stakeholders in Member countries, viz. civil society, business, academics. The final peer review report typically is approved by consensus, in this case, in the ECG.

Critical to the process is, as in the case of other OECD peer review processes, making the final peer review report public, via the OECD web site, as well as through a summary press release of, in this case, the OECD ECG.

IV. Critical Requirements for Credibility

The peer review process can be designed by the ECG Members with considerable flexibility, taking into account the very specific characteristics and functions of OECD ECG ECAs. However, some basic conditions generally must be met to ensure the credibility of the process.

First, the Member being reviewed must be involved from beginning to end in order to ensure that the **Member** feels it has **ownership** of the report. The peer review process is a constructive, participatory, cooperative, non-adversarial process, based on mutual trust and a desire to identify good practice and ways to improved common implementation of the Common Approaches on a level playing field. The peer evaluation report should point out positive achievements and identify recommendations both for improvement within the Member examined, if necessary, and examples from the Member that other ECG Members might find worthy of emulation.

Second, the spirit in which the review is carried out, particularly with respect to the examiners, should be one of **independence**. The Member examiners represent the entire ECG with respect to their involvement in the consultation process and in the preparation of the draft report, and have a duty of substantive objectivity, rather than of defending national interests. They will be subject at some point to a similar review by other peer Members of

the ECG in turn, and would desire the same approach of objectivity and independence. In cases of disagreement between the Member examined and the Member examiners and/or the Secretariat, dialogue and compromise should be sought, but not at the expense of substantive accuracy.

The requirement of independence means that the examined Member does not have a veto over the content or release of the final peer report.

The **third** requirement is **public transparency**. The final peer report in its entirety must be made publicly available. Much of the effectiveness of the peer review process comes from peer *and* public pressure, and from the interest of all stakeholders in a level playing field. Not publicly releasing the peer report, or simply releasing an edited or summary version, defeats the purpose and the effectiveness of the whole process—and contradicts OECD practice in other fora.

Next Steps

ECAwatch members would propose that a working group be set up, consisting of ECG representatives and representatives of civil society, to take the above peer review process forward. ECAwatch would be willing to participate in such a working group.