

A CLEANER FUTURE?



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Since the mid-1990s, the OECD Working Party on Export Credits and Credit Guarantees (ECG) has been broadening its approach to export credits issues. Prior to this date, ECG members were chiefly concerned with exchanging information, including on their export credit systems' related financial results, and surveys and analyses of *ex post* transaction data. However, members have increasingly considered some good governance issues that have arisen around the provision of officially supported export credits.

A good governance framework

The first good governance issue to be addressed by the ECG was the potential environment impact of projects for which export credit support is provided; the second such issue was to ensure that these projects do not involve bribery or corruption. Lastly, members considered provisions to ensure that the support they provide is in line with the sustainable lending principles for Heavily Indebted Poor Countries (HIPCs), developed by the International Monetary Fund (IMF) and the World Bank (WB).

Progress in considering these good governance issue has followed a common pattern. In line with the mandate of the ECG to hold regular confrontations on the export credit policies pursued by the Governments of OECD member countries, members initiated information sharing on their policies, practices and experiences, as a result of which the ECG further followed its mandate by working out common guiding principles in the form of two OECD legal instruments, i.e. Recommendations, concerning environment review policies and anti-bribery measures, as well as a Statement of Principles about support for HIPCs. Taken together, these three agreements provide an overall good governance framework for the provision of officially supported export credits.

The impetus to develop this framework came from a variety of sources. Governments recognised that their official export credits programmes needed to operate in a manner consistent with wider government policies. Additionally, non-governmental organisations (NGOs) were extremely vocal in calling for official export credit agencies (ECAs) not to support projects that harm the environment or adversely affect local communities (for many years, the annual OECD consultations between ECG members and Civil Society Organisations were dominated by NGOs, such as ECA Watch, providing examples of what they perceived to be environmentally-harmful projects supported by ECAs). The result of all these pressures was an ECG Statement of Intent in 1998 and an Agreement on Environmental Information Exchange for Larger Projects in 1999. At that point, OECD Ministers at their annual Council Meeting (MCM) in May 1999 provided additional impetus by mandating the ECG to strengthen common approaches on the environment and export credits.

Similarly, for the anti-bribery rules, in the mid-1990s, OECD governments were negotiating rules to combat corruption - resulting in the 1997 OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions. At the same time, NGOs, in particular Transparency International, were advocating that the ECG adopt anti-bribery measures for export credits. The result was an ECG Action Plan and a Statement of Intent in 2000 and subsequently, in 2006, an OECD Recommendation.

The same method of approach can also be seen with regard to sustainable lending: pressure came from both governments and NGOs concerned about ECA debt to developing countries and the ability of such public borrowers to generate sufficient revenues to service their debt. The first step was agreement to a Statement of Principles in 2001 that urged caution in providing official export credits to the HIPC countries and discouraged ECAs from providing official export credits for unproductive expenditures. Based on experience with implementing this Statement, and in cooperation with the IMF and the WB, ECG members agreed the Principles and Guidelines to Promote Sustainable Lending to Low-Income Countries at the end of 2008 to ensure that the provision of official export credits to public or publicly-guaranteed buyers in IDA-Only countries should reflect sustainable lending practices.

Having described the events leading to the framework for good governance issues insofar as export credits is concerned, my focus below is on the environment issue – about which others have also written from their perspectives – which has, and continues to, subsume most of my professional energy!

Environment: Statement of Intent to OECD Recommendation

Following the impetus provided by the 1999 MCM, the ECG started negotiations for a set of rules, “common approaches”, on the environment and export credits. In this context, the first

agreement, a set of common approaches, was concluded in 2001; however, this was implemented on a unilateral and voluntary basis as not all members could agree its terms. In 2003, members re-negotiated the 2001 common approaches and these were unanimously adopted by the OECD Council in the form of a Recommendation. Since then, the 2003 Recommendation has been updated: in 2005, some minor technical amendments were made as a result of experience in implementing the common approaches and, in 2007, a more comprehensive review took place resulting in, for example, stronger transparency provisions and a wider use of international standards as a benchmark. The terms of the 2007 Recommendation call for a review of its terms in the light of experience in its implementation and this review is currently under way with the expectation of a new and expanded Recommendation in 2011.

Looking at the development of environmental measures adopted by the OECD export credit community since their first considerations in the mid-1990s, one of the main changes that stand out is the scope of the issues that have been addressed. The 2003 Recommendation focussed very much on reviewing the potential environmental impacts of the projects for which export credit support was provided: the word “social” appeared nowhere in the text. The only implicit reference to social impacts was in the recognition that OECD members should benchmark projects against the WB Safeguard Policies relating to involuntary resettlement, indigenous peoples and cultural property.

In the 2007 Recommendation there is an explicit reference to the potential impacts of a project encompassing all relevant environmental and social impacts addressed by the international standards applied to projects; and there is an expanded list of international standards to be used for benchmarking projects, encompassing either all ten WB Safeguard Policies or, where appropriate, all eight International Finance Corporation (IFC) Performance Standards. Although the word “social” is still not given the same prominence as the word “environmental”, it is clear that members accepted that social risks could not be ignored when reviewing projects where social impacts might be expected.

Current review of the environmental common approaches

Social impacts: With regard to the review of the common approaches that is now underway, there has been general agreement in the ECG that references to environmental impacts and risks should be expanded to include explicit references to social impacts and risks. At the same time, there is a growing consensus that the WB Safeguard Policies should be replaced by the new 2011 IFC Performance Standards as the main international standards for benchmarking projects. If these changes were to be agreed, the result would be a considerable increase in the scope of issues that should be addressed by ECAs when reviewing projects for their potential impacts. As an example, IFC Performance Standard No. 2 includes provisions on working conditions and

terms of employment, on non-discrimination and equal opportunity, on child and forced labour and on occupational health and safety.

The 2011 IFC Performance Standards also give more prominence to human rights and climate change, two issues that are also increasingly being discussed in the context of export credits.

Human rights: The move to consider in more detail the issue of human rights is, in some respects, a natural extension to addressing social issues such as living and working conditions or the potential impacts of projects on affected communities. It also comes at a time of increasing international prominence for this issue. Professor John Ruggie, the Special Representative on business and human rights, appointed by the United Nations Secretary-General, has recently published his March 2011 report “*Guiding Principles on business and Human Rights: Implementing the United Nations ‘Protect, Respect and Remedy’ Framework*” which were endorsed by the UN Human Rights Council in mid-June 2011. This Framework sets out the State’s duty to protect against human rights abuses by third parties (including business), the corporate responsibility to respect human rights and the need for greater access by victims to effective remedy – both judicial and non-judicial. This Framework has added impetus to the ECG discussions on human rights and the actions that businesses, including those supported by ECAs, should take to avoid infringing human rights. As a result, NGOs, notably Amnesty International, have been quick to call on ECAs to incorporate human rights issues in any revised OECD Recommendation.

Professor Ruggie’s Framework is also the basis for both the human rights elements of the 2011 IFC Performance Standards and the new human rights chapter in the 2011 OECD Guidelines for Multinational Enterprises (MNE Guidelines) – the latter has 42 participating countries and contains recommendations by governments covering all major areas of business ethics. These two reference points are supplemented by the Equator Principles – which are based on the IFC Performance Standards – and to which 72 financial institutions globally have signed up. As a result, banks and businesses worldwide are expected to take into account human rights in their commercial operations. Given these converging global views about the importance of respecting human rights and the fact that the ECG is made up of the same governments that are present at the UN, the IFC and the OECD Investment Committee (which negotiated the MNE Guidelines), from a policy coherence point of view, it is only natural that ECG members should consider how to encompass human rights in the OECD Recommendation on common approaches.

Climate change: There are also converging views when it comes to climate change; but for the OECD export credits committees this is not a new issue. In 2005, the Participants to the Arrangement on Officially Supported Export Credits agreed a Sector Understanding on Renewable Energies and Water Projects, with the express intention of encouraging a move to renewable technologies and away from the more traditional, carbon-intensive means of energy

production. This was to be achieved by special financial terms and conditions which provided, *inter alia*, maximum repayment terms of 15 years – to match those available for nuclear power plants. This Understanding was updated in 2009 (the maximum tenor was extended to 18 years to reflect the extension of such tenor for nuclear power plant) and, since then, the Participants have been discussing how to expand further the scope of the renewable energies and water agreement to include climate change mitigation sectors and technologies. In parallel, the ECG, in its current review of the 2007 Recommendation on environmental common approaches, has been considering various proposals relating to climate change. Whereas the Participants used the vehicle of a sector understanding to incentivise the use of greener energy, ECG members are considering measures to disincentivise greenhouse gas emissions, *via* additional provisions relating to accounting and reporting of such emissions.

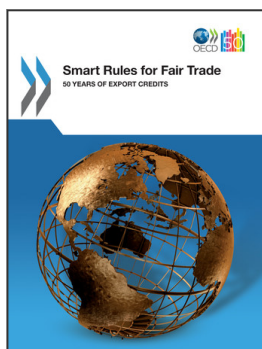
Additional impetus for the climate change discussions has come from both OECD governments and NGOs. OECD Governments have negotiated various multilateral agreements with a view to combating climate change; such measures include providing green funds for supporting climate change mitigation and adaptation initiatives, setting targets for reducing harmful emissions and a G20 mandate to phase out fossil fuel subsidies. And the OECD is at the heart of these measures, providing statistics, policy advice and a forum for promoting green growth for both OECD and non-OECD countries alike. The OECD Green Growth Strategy was launched at the May 2011 MCM to provide a practical framework for governments to boost economic growth and protect the environment. It is, therefore, only logical that the OECD export credits committees are considering what measures to take to support these initiatives. Additionally, NGOs have called for ECAs to respond to the global climate change crisis by phasing out official support for fossil fuel projects.

What next?

Of course, at the moment, it is still not clear to what extent ECG members will adapt the prevailing common approaches in the 2007 OECD Recommendation to address the newer issues of human rights and climate change. For some, any additional good governance measures will be seen as further constraints on their ECA-supported business, particularly given the emergence of competition from exporters in non-OECD countries whose ECAs are not obliged to apply the same disciplines. In addition, while arguments about policy coherence are valid, ECAs are not development agencies but trade-related institutions that exist to support exports and domestic employment. There are also questions about the extent to which the policies adopted by developed countries should be imposed on developing countries.

Whatever the result of the current negotiations for export credit environmental guidelines, it is clear that the scope of issues that members are considering has grown over the years and that these latest issues will not go away. Going forward, members may face pressure to consider

other similar issues, such as gender equality in their export credit agreements; these pressures may also provide impetus to re-visit the ECG's anti-bribery provisions and sustainable lending principles. Either way, the days when export credits discussions at the OECD focussed only on financial terms and conditions are long gone – we need to continue to ensure that the export credits rules at the OECD encourage clean, smart and responsible trade!



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