

## **Light at the end of the tunnel? Participation and Transparency in Export Credit Agencies' Cover Decisions**

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## 1 Introduction

Export Credit Agencies (ECAs) play a considerable role in international financing to developing countries, in monetary terms collectively exceeding in size the World Bank Group and outpacing official development assistance. As ECAs' activities are backed up by public resources, national governments have the power to set the guidelines for ECAs lending policies. Although the main function of ECAs is to promote exports by domestic firms, most governments also include social and environmental aspects in their ECA guidelines. In that respect, they affect investment projects' impacts on sustainable development and it is therefore important to understand their lending strategies. This article takes a closer look at the role of participation and transparency in ECAs' cover decisions.

In the past, civil society actors have criticised ECAs massively for their lack of transparency in decision making, accusing them of excessive secrecy. NGOs have repeatedly demanded that public information about supported projects and the decision process be made available, a claim that was rejected by most ECAs for a long time. NGOs gained considerable leverage over ECAs when they started to compile documentation of problematic projects and made them available internationally; this has particularly been the case for dams and large infrastructure projects, such as the Chinese Three Gorges Dam, the Ilisu Dam in Turkey, the Maheshwar and Tehri Dams in India or the San Roque Hydro and Irrigation Project in the Philippines. By making projects more transparent that were previously concealed from public scrutiny, they raised the stakes for ECAs that would continue to insist on keeping project information secret.

In this way, increased transparency has also emerged as a way of circumventing the discussion on appropriate and harmonised standards on which ECA's cover decisions should be based. This discussion is based on the assumption that stricter and internationally harmonised standards may be dispensable if there is a high level of transparency and stakeholder involvement. If this is given, transparency itself will provide for more rigorous project evaluation; even if relatively weak environmental standards are applied, civil society opposition to problematic projects will nonetheless be vocal. Following the same rationale, it can also be argued that increased transparency promotes better projects: project developers who know that their projects' Environmental Impact Assessments will be made public have an incentive to develop projects and assessments in such a way that NGO opposition is less likely.

This reliance on civil society, however, raises serious questions about the appropriate role and capacity of NGOs in monitoring ECA activity. This includes the issue of whether civil society has sufficient capacities to assume this function on a regular basis, and whether this may impact their independence. It also raises the question whether the presence of vocal, well-organised and well-informed civil society actors can safely be assumed in all regions, at all times and for all kinds of projects. And finally, it can be doubted whether the burden of proof should indeed be with civil society, or whether it should fall into the responsibility of project developers and ECAs to monitor the impacts their projects will have.

This article addresses the fundamental role of transparency and public participation in ECAs' activities, and discusses whether and how increased transparency by itself can have an impact on ECA's cover decisions. Furthermore, it will also delineate the international

negotiation process leading up to common, binding standards for ECAs at the OECD level, pointing out the difficulties in reaching a common position. With a view to the practical role and relevance of transparency, information disclosure and participation, the article will give insights from the national level, draw comparison of different national approaches and discuss their respective merits.<sup>1</sup>

## 2 Export Credit Agencies

Nearly all OECD governments assist their domestic economic interests through export credit agencies. In short, these agencies promote national exports by financing and insuring transactions in cases in which insurance from the private market is not available at reasonable cost, usually because of unacceptably high political or other risks. Thus, government-supported export credit finance and insurance is mainly directed at transactions or projects in developing regions and emerging-market economies. mean that private insurance is not available.

ECAs are an increasingly important source of financing for the private sector. From 1988 to 1996 export credits increased four-fold from US \$ 26 billion to \$ 105 billion per year (Rich, 1998). Currently, ECAs account for between US\$50-\$70 billion annually in support for large industrial and infrastructure projects in developing countries (Norlen et. al., 2002). In monetary terms ECAs collectively exceed in size the World Bank Group and outpace official development assistance (Goldzimer, 2002).

ECAs are national institutions and differ widely in their institutional set up but also in their mission and mandates and their instruments at hand. First, the organisational forms of ECAs are diverse and include forms, such as sections of ministries; government departments; independent government agencies or a semi-public joint stock companies or private institutions operating partly under an agreement with the government (OECD, 2001a). Also, ECAs differ in their mission and mandate. While the primary objective of most ECAs is to increase national exports, some include also other objectives, such as development goals. Next to export credit insurance and guarantees, some ECAs also handle export finance. All these differences impact the ECAs' capacity to influence environmental and social aspects of the projects they support. For example, providers of export finance and aid finance have more leverage over supported projects, as their stake in the projects is larger and as they are involved earlier on in the project development process. As a result, there is a large variety of standards and procedures in place making it difficult to introduce common international standards and procedures into ECAs' activities.

## 3 ECAs' and Civil Society

Given the massive environmental and social impacts of some ECA-supported projects, which include large dams, power plants, pipelines, mines, pulp and paper plants, and other

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<sup>1</sup> The article is based on the results of a project commissioned by the German development agency GTZ. The aim of the project, carried out by Ecologic in 2003, was to give a survey of environmental and social standards in the lending practices of export credit agencies (ECAs). For the final report of the project, see [http://www.ecologic.de/download/projekte/1800-1849/1809/1809wcd\\_ecas\\_en.pdf](http://www.ecologic.de/download/projekte/1800-1849/1809/1809wcd_ecas_en.pdf).

infrastructure projects, ECAs have been the targets of harsh criticism from civil society since the 1970s.

NGOs played a crucial role in putting environmental standards for ECAs on the political agenda. Environmental requirements for the American Export Import Bank (Ex-Im) can be attributed in part to effective NGO work on the issue. A coalition of U.S. NGOs succeeded in lobbying for a greening of the Ex-Im Bank, with the inclusion of the section on environmental requirements within the Export Enhancement Act of 1992.

In the late 1990s, U.S. NGOs took up the issue again and joined forces with the government in promoting international harmonisation of environmental standards for export credit agencies. In Europe, the Berne declaration first succeeded in the 1970s with its developmental critique of the Swiss ECA by broadening the scope of groups represented in ECA decisions making. The German ECA Hermes was also criticised predominantly from a developmental perspective throughout the 1980s. From 1983 on the German Greens equipped the NGO campaign with more voice from within the Bundestag but did not bring about major changes in Hermes activities until recently.

The international NGO campaign picked up impact when groups in the ECA-Watch network compiled detailed documentation on controversial projects. Network meetings in 1998 and 2000 in Mesum, Germany and Jakarta, Indonesia helped to fuse together campaign activists and facilitate exchange. The Jakarta declaration of June 2000 was adopted by more than 350 NGOs from 45 countries, and called for common and binding social, environmental and human right standards for ECAs that would match internationally recognised standards, such as those of the World Bank or the OECD Development Assistance Committee.<sup>2</sup> The concomitant compilation of problematic projects underlined the need for environmental standards and transparency in ECA operations. Specifically by making the activities of ECAs and their impacts visible, the NGOs placed transparency squarely on the ECA reform agenda.

## 4 Transparency and Information disclosure

Next to social and environmental standards themselves, transparency and participation in ECAs' operations were among the most controversially disputed topics.<sup>3</sup> Key demands by NGOs included more transparency, early information disclosure and effective public participation procedures in ECAs practices. These demands were often contentious, with NGOs accusing ECAs of excessive secrecy and demanding public information, given the fact that ECAs' activities are backed up by taxpayers' money.<sup>4</sup> At the same time, ECAs have argued that they and their customers operate in a highly competitive environment, and

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<sup>2</sup> See <http://www.eca-watch.org/goals/jakartadec.html>. Note that NGOs advocate the application of World Bank Group standards despite their own criticism of the Bank's operations. This may serve as an indicator for the low level of ECA's environmental performance.

<sup>3</sup> The central role of information disclosure is also underlined by the early adaptation of the OECD Agreement on Environmental Information Exchange for Larger Projects in 1999, well ahead of other negotiations in the field. Moreover, the agreement on the OECD Common Approaches was hindered not least by disagreements on the extent and timing of information disclosure.

<sup>4</sup> Although ECAs are legally held to operate cost-neutrally, the link to public expenditure is evident. Loans and contracts that are covered by ECAs are guaranteed by State Governments; therefore ECAs can offer much better conditions than private insurers could. Indeed, the rationale for ECAs is that they can offer insurance cover and promote exports where the private market would not supply coverage.

openness therefore has to be restricted to a degree where confidentiality is ensured and competitiveness is not jeopardised (Knigge et. al., 2003).<sup>5</sup>

It is widely acknowledged that public participation is crucial to ensure that environmental and social standards are adequately addressed in supported projects. However, effective participation of the affected stakeholders and civil society groups is only possible if transparency about ECAs' decisions prevails, and if sufficient information about decisions is disclosed at an early enough stage.

Operationally, transparency requires ensuring that the right to information (through a broad dissemination of activities to the general public and stakeholders, or through disclosure rules) are practised and respected. In the context of ECAs, transparency and information disclosure affect three different areas in particular:

- (a) information about ECAs' environmental and social standards and guidelines;
- (b) information about the environmental and social impacts of particular projects (ex-ante and ex-post);
- (c) information about the role of environmental and social considerations in the decision-making process for a particular project.

Looking at ECAs in several OECD countries,<sup>6</sup> it can be concluded that by and large the first aspect is generally covered very well. Information on environmental and social guidelines is available and easily accessible in most OECD countries via the ECAs' websites, with the Norwegian GIEK as the only exception.

Concerning the second aspect, relating to information on environmental and social impacts of supported projects, there is a remarkable overall trend towards better information disclosure – especially after the new OECD Common Approaches came into effect on January 1, 2004, establishing environmental screening and assessment procedures and standards for export credit agencies in OECD Member States. Prior to this, only a number of ECAs published the Environmental Impact Assessments (EIAs) for projects that were expected to have a significant potential impact on the environment (category A projects in the Impact Assessment terminology) prior to making a cover decision. Some ECAs made the Environmental Impact assessments available either on their website or mailed them on request. This approach was practised e.g. by the US Ex-Im-Bank, the Australian EFIC or the Japanese JBIC. Similarly, the Canadian EDC and the British ECGD did not publish EIAs due to legal reasons, but encouraged their exporters to make EIAs available on request. Other ECAs published only selected pieces of information, e.g. the German EULER HERMES or the Swiss ERG, which made a list of supported projects available online, identifying exporter, sponsor, duration and recipient country. The French COFACE presented a mix of both by publishing general project information as well as a brief summary of the EIA. Most ECAs, including the Norwegian GIEK, the German EULER HERMES or the Australian EFIC, addressed environmental and social impacts of supported projects in their annual reports.

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<sup>5</sup> Note that this position is not unanimous among ECAs: for example, the Australian EFIC states its view that information contained in Environmental Impact Assessments “would not normally be commercially sensitive”; see <http://www.efic.gov.au/environment/envirionstd.asp>.

<sup>6</sup> The following sections are based on a study that surveyed ECAs guidelines and lending practices in Australia, Canada, France, Japan, Norway, Switzerland, the UK and the USA.

Most of this information, however, was only made available after an ECA had granted support for a particular project.

The new Common Approaches require ECAs to make environmental project information available to the public at least 30 days prior to making a cover decision. Certain ECAs have moved forward in this respect prior to the establishment of this rule in the Common Approaches by providing information on applications before the final approval of an application, thereby responding to demands by NGOs who see their participation rights curtailed if they are only informed about decisions that have already been taken. The Australian EFIC, the Japanese JBIC, the British ECGD and the US Ex-Im Bank took a lead role in this respect, by making environmental information on pending projects available before final approval is granted. The Australian EFIC facilitates comments during a 45-day public consultation period, during which the EIA conducted by the project sponsor is available and open to comments through the EFIC website. Also, the British ECGD maintains a website for high potential impact cases on which EIAs can be found before decisions in regard to the project are made. In Japan, for Official Development Assistance (ODA) loans conducted via JBIC, an ex-ante evaluation is facilitated through the publication of Evaluation Reports after the loan contract has been signed (JBIC, 2002). For these loans, there is also extensive and well-documented ex-post evaluation. Similarly, the US Ex-Im Bank publishes a list of major projects, provides Environmental Assessments on request, and invites written comment on a list of other projects with potentially adverse effects.

It has to be noted that the leeway for information disclosure is generally limited by the legal provisions in the ECA's home country. Whereas some countries have a legal requirement for the disclosure of certain pieces of information<sup>7</sup>, other ECAs insist that publishing more information than already currently done would constitute a violation of national law, and that information disclosure generally has to take place voluntarily.<sup>8</sup> In other cases, more liberal information disclosure policies have only been possible in response to new legislation.<sup>9</sup>

The current Common Approaches provide for 30 day ex-ante transparency and thus represent a major NGO success. Responding to the new rules, a number of ECAs have changed their disclosure practices. The German Hermes for example now provides project information for pending cover decisions via the internet. However, the client's consent is required for publication. The Common Approaches provide for some flexibility enabling ECAs not to make environmental project information available on all category A projects, which potentially have major impacts on environmental and social issues. Since these guidelines have only been agreed on in December 2003 it remains to be seen what kind of effect these provisions will have on the policies of those ECAs which previously did not make environmental project information publicly available before making a cover decision. In addition to the Common Approaches, the Aarhus Convention and the corresponding EU Directive require revision of transparency provisions in the policies of a number of ECAs.

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<sup>7</sup> In the US, information disclosure policies are based on the Freedom of Information Act.

<sup>8</sup> See <http://www.exportkreditgarantien.de/publikat/einzelpr.html>.

<sup>9</sup> In Japan, JBIC's extensive disclosure policy has been influenced by the Public Information Act for the Japanese Governmental Agencies, approved in November 2001.

## 5 Public Participation

The participation of civil society and other stakeholders in the reform of ECAs' practices and their implementation is closely connected to the concept of transparency, and has been subject to similar dispute. Transparency is a precondition for successful public participation, but transparency alone does not ensure a constructive dialogue. Public participation can range from the relatively passive function of exchanging information, to providing consultation through working groups or meetings, to active involvement in analysis and agenda-setting. By contrast, a lack of participation leads to allegations of illegitimacy.

In recent years, there has been a trend to more proactive approaches in public participation in a number of ECAs. In some cases, stakeholder involvement is actively encouraged by ECAs rather than fended off with recourse to the confidentiality of business approaches. This trend is most pronounced in Japan and the US, but there are also interesting examples in the UK, France and Australia.

One reason for the increased openness to public participation is that the reputational risk of badly managed and communicated projects is now recognised as a serious threat by ECAs and their clients alike.<sup>10</sup> Reputational risk is also increasingly seen as an economic risk with the potential to seriously affect the profitability of exporters. Somewhat less prominent is the risk that projects may fail altogether due to public resistance, if environmental and social considerations are not given sufficient weight. This risk is generally less pronounced, as it poses a significant threat only for large-scale projects in very sensitive and controversial sectors, that attract sufficient attention.<sup>11</sup>

Public participation is possible in different forms and at different stages of a project:

- Before or after approval, or during the implementation phase of a project;
- During the designation of environmental guidelines;
- During the evaluation and monitoring of the project.

Likewise, there are different stakeholders to be addressed:

- Local groups that will be affected by the supported projects;
- NGOs in the ECA's home country;
- Firms that have to implement environmental standards (i.e. sponsors and exporters).

Of the three, participation by the affected local communities has to be regarded as a weak spot in the implementation of environmental and social guidelines in some ECAs. Although this point featured centrally e.g. in the final report of the World Commission on Dams, some room for improvements remains.

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<sup>10</sup> Note also that many ECAs are connected to firms that are active on the private insurance market, where they face competition themselves. For example, in the case of the French Coface and the German Euler Hermes, the officially supported export credit business is covered by subsidiaries of larger international insurance firms.

<sup>11</sup> Cf. the debate concerning the Ilisu dam, Turkey: partly due to public resistance, the British construction company Balfour Beatty and the Swiss bank UBS withdrew their application for cover. Although extensive impact assessments were carried out for the Ilisu dam, these were seen as insufficient by NGOs and external reviewers alike (cf. <http://www.ecgd.gov.uk/finalermreport.pdf>, [http://www.evb.ch/cm\\_data/EIAR%20Ilisu%20Dam.pdf](http://www.evb.ch/cm_data/EIAR%20Ilisu%20Dam.pdf)).



Most ECAs encourage or require the participation of local affected population as part of an EIA for category A projects. Consultation with local communities is strongly recommended by the Australian EFIC or the US Ex-Im Bank, and is obligatory with the Canadian ECD or the Japanese JBIC as part of an EIA. However, ECD also concedes that participation may be difficult to achieve because of different cultural or legal backgrounds in recipient countries. JBIC further specifies the requirement for local participation, including demands that information must be provided to local residents in a language understandable to them, and that the outcomes of consultations must be documented. The German EULER HERMES encourages local participation to avoid opposition and complications at a later stage. In any case, participation of local affected groups is expected as part of the EIA for any large-scale project.

With regard to the participation of civil society actors in the ECA's home country, there are examples of co-operation or at least a constructive dialogue, e.g. between the Japanese JBIC and Friends of the Earth Japan, which is also reflected in JBIC's revised environmental guidelines, or between the US Ex-Im Bank and the Washington-based NGO Environmental Defense. The Australian EFIC publishes NGO's comments both on EFIC's environmental policies, and on specific projects, on their website along with responses to the points raised. In a similar fashion, the British ECGD has included NGO's comments on the ECGD Business Principles in its mission and status review (ECGD, 2000). Yet, NGO involvement does not necessarily result in "greener" policies. JBIC's consultation process with Japanese groups resulted in a set of standards that are considered comparatively weak in OECD comparison and proved to be a critical obstacle to agreeing on OECD-wide standards.

Concerning the dialogue with other stakeholders, a number of ECAs gathered comments on the guidelines from main sponsors, or organised workshops to communicate and discuss the guidelines and their practical implications. The French COFACE staged such discussions during the development of its sectoral environmental guidelines. Similar consultations were held in Australia, Canada, Japan or Switzerland. In addition, the Japanese JBIC and the Australian EFIC have documented the points of criticism brought forward by NGOs on their websites, in the case of EFIC along with the ECA's responses.<sup>12</sup> In the same spirit, the German EULER HERMES and the French COFACE have hosted UNEP workshops on the environmental and social reform processes, providing an informal discussion forum for ECA representatives, practitioners and main sponsors, as well as NGO representatives.<sup>13</sup>

Somewhat less can be said about the role that NGOs play in the selection and execution of projects. Speaking on the condition of anonymity, some ECA officials voiced their discontent about their perception that NGOs' main interest was not to change and improve projects, but rather to stop them altogether. Other ECAs maintain that the collection of NGOs' comments on applied projects, as well as any respective changes in the project design, fall under the responsibility of the project owner.

## 6 Trends and Developments at the International Level

In addition to domestic regulation, ECAs are subject to international regulation, such as the OECD Arrangement on Officially Supported Export Credits or the WTO Agreement on

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<sup>12</sup> See <http://www.efic.gov.au/environment/eficresponse.asp> and <http://www.sg-egl-jbic.org/>

<sup>13</sup> Personal communication with Ms Martina Otto, UNEP DTIE, 3 June 2003.



Subsidies and Countervailing Measures (Canas and Scharf, 1996). Until the mid-1990s, almost all international negotiations concerning ECAs aimed at harmonising financial issues – such as lending periods and interest rates – at the international level. At the time, very few ECAs had formalised standards or guidelines to take account of environmental and social concerns in their operations.

Negotiations on common environmental and social guidelines for export credits began in the mid-1990s in the OECD Working Party on Export Credits and Credit Guarantees (now Export Credit Group) and gained some momentum following the 1997 Denver G8 Summit, which concluded that “Governments should help promote sustainable practices by taking environmental factors into account when providing financing support for investment in infrastructure and equipment” (G8 1997), and urged progress on the issue in the framework of OECD negotiations. In late 1999, the OECD Working Party on Export Credits and Credit Guarantees agreed to a voluntary environmental information exchange on larger projects. The six point agreement includes exchanging environmental assessments on projects, sharing other information among ECAs and co-ordinating responses to exporters, lenders and other principle parties (Udall, 2000). One objective of this agreement was to avoid negative downward competition among ECAs, so that projects for which support had been declined on environmental grounds by one ECA would not receive support from another ECA. Building on this, the next challenge was to agree on a set of common approaches, in order to promote coherence among different ECA's practices on the incorporation of environmental considerations, while taking account of institutional and other differences among ECAs.

In 2001, these negotiations resulted in “Draft Recommendation on Common Approaches on Environment and Officially Supported Export Credits (Revision 6)” – or commonly referred to as ‘Common Approaches’ or ‘Rev. 6’. These recommendations were supported by all members of the Export Credit Group, with the exception of the United States and Turkey. All other members voluntarily implemented Rev. 6 from 2002 on. The United States denied Rev. 6 support because it fell short of U.S. goals for binding standards and transparency. As a recipient country, Turkey opposed the agreement because it felt its interests were threatened by rules regarding ethnic minorities, cultural heritage, and protected lands.

Rev. 6 of the Common Approaches called for assessment and revision in 2003. The current Common Approaches were negotiated from September to November 2003 and were passed by the OECD Council in December. Since January 1, 2004, the current Common Approaches provide the basis for national standard-setting.

At their core, negotiations about these environmental standards addressed two related issues: common and binding standards for project evaluation, and ex-ante transparency of the environmental assessments. The publication of information on projects and their environmental impacts prior to granting cover is of central concern here, because this provision enables civil society actors to monitor decisions and actions by export credit agencies.

With regard to the environmental standards, controversy focused on whether entire projects or individual components needed to be evaluated, on the question, which standards would be applied, and how this could best be done. Rev. 6 required international standards such as the World Bank Group's Safeguard Policies and Pollution Abatement Handbook to be used as benchmarks, but did not provide binding standards. The new Common Approaches have

established international standards as minimum standards and allow for other standards to be applied if they exceed the international ones.

Prior to the new Common Approaches, some States allowed interested parties access to environmental assessments and consulted NGOs prior to granting cover (e.g. the U.S. Export-Import Bank), while other ECAs argued that this would not be possible, because it would infringe clients' business confidentiality. As mentioned before, the new Common Approaches require public access to environmental project information 30 days prior to making a coverage decision. At the same time, however, they provide for deviation from this rule on a case-by-case basis. The deviation clause is a result of opposition to the ex-ante transparency provision by some governments which considered such a provision to stand in conflict with domestic regulations and national interests. It remains to be seen to what extent states will fall back on the deviation clause when implementing the Common Approaches nationally. The flexibility with regard to ex-ante transparency is retained in the Common Approaches' paragraph 16: "In the case where environmental impact information cannot, for exceptional reasons, be made public Members shall explain the circumstances and report these in accordance with paragraph 19." Paragraph 19, in turn, specifies the procedure for annual ex-post reporting by ECAs to the OECD export credit group. The second sentence in paragraph 16 thus provides a major loophole for ECAs not to publicise environmental impact information for select projects.

In summer 2004, ECAs reported on their implementation of the Common Approaches to the OECD ECG secretariat. Results of this survey are available as an OECD document comparing national implementation (OECD 2004). In this compilation of national responses, a number of countries cite national confidentiality rules limiting their ability to make environmental impact information available. Of the countries that have already implemented the current Common Approaches, Norway makes no information available before a policy has been issued; Belgium, the Czech Republic, Germany, Greece, Hungary, and Luxemburg state that confidentiality rules limit their ability to make environmental impact information available without their clients' consent. The Czech Republic, France, and the UK require clients to make environmental impact information available to the public. Gerling NCM in the Netherlands and the U.S. Export-Import Bank, for example, require the client's consent to publication as a basis for issuing a policy.

The likely result of rules limiting ex-ante transparency based on clients' consent to publication without making such consent a pre-requisite for cover is a negative selection of environmental impact information available. Information for projects that are environmentally problematic is less likely to be publicised with the clients' consent than is that on non-problematic ones. Though the Swiss ERG, for example, claims in its response to the survey that "very few exporters refuse to give approval" (OECD 2004), there is a high possibility that exactly these few projects are the most problematic ones which are also of greatest interest to civil society. As long as ECA rules make it possible not to disclose information on select projects, civil society's capacity to monitor ECA operations is severely limited. The Dutch/U.S. example of establishing consent as a prerequisite for coverage seems to be the most promising approach for reconciling national legal limitations with the public's right to know.

As the discussion above indicates, there appears to exist wide-spread use of the deviation clause rendering the Common Approaches less effective regarding transparency. However,

only members' ex-post reporting to the Export Credit Group at the end of the calendar year will provide conclusive evidence on the extent of the deviation clause's application.

Overall, a trend towards increased transparency and more environmental information disclosure can be discerned. Implementation of the Aarhus Convention on Environmental Information and the corresponding EU directive can be expected to provide for a more conducive regulatory environment for granting public access to environmental information.

## 7 Conclusions

In the past, the approaches of ECAs to the issue of information disclosure were markedly different. While there is much concern for business confidentiality in Europe, more proactive approaches prevailed in Northern America, Japan, and Australia. Some arguments and experiences support the more proactive approach, in the sense that NGOs find out about critical projects anyway, and that proactive information dissemination can therefore be in the own best interest of ECAs. The latest agreement on the revision of the OECD Common Approaches has brought a move forward to more transparency through better and earlier information disclosure. However, the practical impact of this innovation remains to be seen. Increased transparency also facilitates compliance monitoring as ECAs can and do rely on NGOs in identifying instances in which rival ECAs violate their domestic standards' or the Common Approaches' provisions.

In many cases, participation is by now a well-established routine with ongoing exchange between ECAs' environmental practitioners and the involved NGO representatives. However, despite laudable initiatives in some countries or for some projects, on the whole, participation tends to be less self-understood and institutionalised in European ECAs. Yet, implementation of the new Common Approaches and the EU directive on environmental information disclosure appear to provide for movement even among those ECAs which were previously considered most resilient to change.

The real test will be the extent to which parties to the Common Approaches will make use of the deviation clause with regard to ex-ante transparency. Implementation of such rules means different things to different stakeholders. While activists may cherish them for improving accountability by governments, affected business may view them as detrimental for their competitive position. After all, ECAs were created to facilitate exports; a task that conflicts with liberal disclosure policies. Businesses which could potentially profit from ECA support may decide to take on risks themselves which would normally be borne by ECAs in order not to reveal project information that competitors may use against them.

Compliance monitoring by NGOs creates costs and extra work for them – efforts for which they are unlikely to be reimbursed. "Outsourcing" of compliance monitoring and enforcement is inherent in the ex-ante transparency provision of the Common Approaches. Can the existence and availability of critical and objective NGO review be taken for granted? Compensation is complicated even more by the fact that NGOs monitoring "their" domestic ECAs in fact provide services that are most valued by public entities abroad.

This form of monitoring also brings up accountability as a concern. NGOs monitoring state activity provide an important independent watchdog function where legitimacy and accountability is only of minor concern. However, if states start to rely on them to provide

such functions as services, one has to ask where the NGOs' authority and legitimacy for such tasks stems from.

The trend towards increasing transparency and environmental information disclosure may be interpreted by some as the application of an anglo-saxon straight jacket. Different institutional cultures prevail with regard to transparency policies with the idea of transparency and co-operation with civil society actors being more established in United States, Australia, and Canada. To states with a divergent institutional culture even the concept of making environmental impact statements publicly available constitutes a major challenges. Yet, the convergence on such regulatory norms as exemplified by the Aarhus Convention turns this into a trend that appears unavoidable and irreversible. Resistance may be futile.

Even more challenging is the regulation of public participation in the target states. Environmental Assessments and Impact Statements build on the very concept of stakeholder consultation and involvement. This already provides challenges for some ECAs at home. But mandating public participation within the borders of another sovereign state which may object to such practices raises serious challenges to the legitimacy of such rules.

What can transparency provisions as those discussed here provide for international agreements? From the empirical evidence and the discussion above it is clear that increased transparency exerts considerable pressure for honest implementation of agreements. Members of the negotiating parties to the Common Approaches have gone as far as claiming that rigorous transparency provisions would make strict and binding standards almost obsolete by providing NGOs with a tool to confront ECAs over problematic standards. Nevertheless, only the combination of unmistakable standards and transparency promises to be a potent tool in the hands of NGOs. Arguing from a moral perspective that a project is problematic is one thing, being able to back up this claim with a rule violation and supporting evidence turns this ethical argument into potential political damage.

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