



José Manuel Barroso  
President of the European Commission  
1049 Brussels, Belgium

cc: Baroness Catherine Ashton, Vice-President of the European Commission  
European Union

Karel De Gucht, Commissioner for Trade  
Štefan Füle, Commissioner for Enlargement  
Denis Redonnet, Head of Unit  
Paolo Garzotti, Deputy Head of Unit  
Werner Scholtz

Brussels, 6<sup>th</sup> August 2012

**RE: Compliance of Member States with Article 21 of the Lisbon Treaty**

**Dear President Barroso,**

As civil society groups active in the fields of environment, development and human rights, we are writing to request a meeting to discuss how the Commission intends to monitor Member State compliance with Article 21 of the Lisbon Treaty and how NGOs can be involved in the elaboration of an appropriate compliance framework.

We were greatly encouraged that Member States have agreed under Article 21 of the Lisbon Treaty to bind themselves when acting abroad to adhering to the principles of “democracy, the rule of law, the universality and indivisibility of human rights and fundamental freedoms, respect for human dignity, the principles of equality and solidarity, and respect for the principles of the United Nations Charter and international law”.

Now that the Lisbon Treaty had had time to “bed in” it is essential to ensure that a “piecemeal” approach is not taken to monitoring compliance with Article 21, as this would mean there was not a “level playing field” and likely result in unnecessary bureaucracy, and weak enforcement. We are eager to understand how the Commission intends to monitor Member States' compliance. We believe that any standards used to benchmark compliance should mirror those already commonly used

across the EU. This approach has many benefits including that they will be familiar to civil servants and government agencies; have been drawn up and agreed by all EU Member States; and clearly embody EU objectives and obligations. Specific standards to abide by include EU ratified international human rights and environmental treaties as well as relevant EU Directives and Regulations.

We are encouraged that European Union export credit agencies will shortly be reporting to the Commission on the compliance of their activities with EU objectives and obligations, a requirement which came about due to the recently adopted *Regulation approving the incorporation of the revised text of the OECD arrangement on officially supported export credits into EU law* (PE-CONS 46/11). We understand that this is the first time that Member States have sought to comply with the external action provisions of the Lisbon Treaty and whilst we strongly support the new Regulation, we also recognise its importance for setting precedents, both good and bad.

We are eager to understand how the Commission will monitor ECAs' compliance and to work with the Commission to elaborate an appropriate framework. We are encouraged that in its 2011 CSR Communication, the Commission committed to respect the UN Guiding Principles on Business and Human Rights. However, it is of concern that the ECAs of member states currently make no reference in their annual reports to compliance with EU objectives and obligations, such as coherence with development policies, or the need to consolidate democracy.

In order to assess ECAs' compliance with PE-CONS 46/11, we have undertaken a survey of EU ECAs. On the basis of the responses received to date, it would appear that the ECAs are intending to cite their adherence to the OECD Common Approaches as evidence of their compliance with EU objectives and obligations. This is highly misleading as the Common Approaches are an inappropriate benchmark for assessing compliance with the EU's external action provisions for the following reasons:

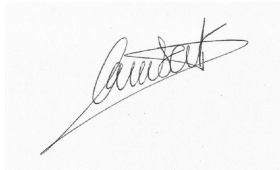
1. The OECD Common Approaches have not been drawn up by all EU Member States. Indeed, a number of EU member states are not even members of the OECD. As such, the Common Approaches cannot be held to reflect "EU objectives".
2. The Common Approaches do not reflect the EU's environmental and human rights objectives, as embodied in EU environmental directives and human rights undertakings. For example, the Common Approaches do not require a strategic environmental impact assessment (a key requirement of EU environmental assessment). Their treatment of human rights is extremely limited: there is no requirement for example to assess against the rights guaranteed under the Charter of the United Nations (which, by contrast, is specifically named in Article 21 of the Lisbon Treaty).
3. The Common Approaches are not legally-binding, have no status in EU law and, moreover, contain a clause that permits ECAs to derogate from CA's provisions in their entirety. No such derogations from the external action provisions are permitted under the Lisbon Treaty.

We are strongly of the view that the Commission should therefore consider an alternative, EU-legislated and endorsed set of benchmarks against which to assess compliance. We would propose the body of EU environmental Directives and

Regulations and the Charter of Fundamental Rights as core components of such an assessment framework. Not only would such benchmarks reflect EU policy objectives better than a “gentleman’s agreement” drawn up by the OECD, but, equally important, they would fit more easily into any future framework for evaluating compliance in other areas where Member States are bound by Article 21.

We would greatly appreciate the opportunity to discuss these concerns and our ideas for evolving a compliance framework with you.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Deborah Lambert Perez', written in a cursive style.

Deborah Lambert Perez, ECA Watch Europe coordinator

A handwritten signature in black ink, appearing to read 'Jérôme Chaplier', written in a cursive style.

Jérôme Chaplier, ECCJ Coordinator