



## **Annual Review of Member States' Annual Activity Reports on Export Credits in the sense of Regulation (EU) 1233/2011**

## **1. Introduction:**

Regulation (EU) No 1233/2011 of the European Parliament and of the Council of 16 November 2011 on the application of certain guidelines in the field of officially supported export credits and repealing Council Decisions 2001/76 EC and 2001/77/EC<sup>1</sup> foresees in its Annex I that Member States shall make available to the Commission an Annual Activity Report in order to step up transparency at Union level. The Commission shall produce an annual review for the European Parliament based on this information.

The present annual review covers the Annual Activity Reports received for the calendar year 2011. As regards the scope of this exercise, it concerns export credit activities in the sense of Regulation (EU) No 1233/2011, i.e. "medium and long term" transactions with a repayment period of 2 years or more. This review does not cover short term export credit transactions<sup>2</sup> nor activities carried out by certain Export Credit Agencies (ECAs) outside the field of export credits (such as insurance of investments). It also has to be noted that in the case of some Member States, the function of Export Credit Agency is performed by an insurance company operating under public mandate. In such cases, the managing of the public export credit program is strictly separated from the private sector activities (the latter are of course not subject of the present review).

## **2. Annual Activity Reports received for the calendar year 2011:**

Annual Activity Reports have been received from the following Member States, having active export credit programs in the sense of Regulation (EU) No 1233/2011 during the reporting period:

Austria, Belgium, Bulgaria, Czech Republic, Denmark, Finland, France, Germany, Hungary, Italy, Luxemburg, Netherlands, Poland, Portugal, Romania, Slovenia, Slovak Republic, Spain, Sweden, United Kingdom.

Cyprus, Estonia, Greece, Ireland, Latvia, Lithuania and Malta did not have active export credit programs in the sense of Regulation 1233/2011 during the reporting year.

Member States have used a similar template for their reporting ("checklist" format). While some Member States have chosen to link their Annual Activity Report with national level annual reports published for the same period, others have opted to describe extensively their activities directly in the reporting template.

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<sup>1</sup> OJ L 326, 8.12.2011, p. 45

<sup>2</sup> To such transactions, the Communication of the Commission pursuant to Article 93 (1) of the EC Treaty applying Articles 92 and 93 of the Treaty to short-term export-credit insurance, applies.

### **3. Analysis of the Annual Activity Reports:**

#### **a) General and financial information:**

The applicable regulatory framework (Reg. 1233/2011) focuses on rules for export credit transactions and programs, but leaves it to the individual Member State how to organise its respective Export Credit Agency. In some Member States, the ECA is a government department or agency. In others, an insurance company performs this function under a public mandate and under government supervision. It is not uncommon for Member States offering different categories of export credit support to have more than one ECA (e.g. one agency providing official support in the form of guarantee or insurance-style "pure cover" and a second one to provide interest rate support). Detailed information may be found in Section II of the reporting template used for the Annual Activity Reports. As regards the categories of export credit support offered during the reporting period, European ECAs have maintained their traditional focus on "pure cover" (export credit guarantee or insurance), although some Member States also offer "official financing support" (e.g. interest rate support schemes). Detailed information may be found in Section IV of the reporting template used for the Annual Activity Reports.

The Annual Activity Reports provide relevant financial information on the export credit programs in 2011. It however has to be stressed that according to Regulation 1233/2011, this reporting is done in accordance with the respective Member State's national legislative framework. This results in some differences in presentation. That being said, the Commission has no specific observations on the financial aspects of the Annual Activity Reports<sup>3</sup>.

The Annual Activity Reports of 5 Member States (Czech Republic, Denmark, Finland, Slovak Republic, and United Kingdom) mention contingent liabilities in reference to Paragraph 1/last phrase of Annex 1 of Regulation 1233/2011. There however seems to be a slight divergence in the precise interpretation of the term<sup>4</sup>. Some Member States seem to interpret the term "contingent liability" in the accounting sense of the term (i.e. the possibility of an obligation to pay certain sums dependent on future events), while some others seem to interpret "contingent liability" in the sense of who guarantees for any potential loss the export credit program might be making<sup>5</sup>.

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<sup>3</sup> According to Annex I, paragraph 1, the present reporting process is without prejudice to the prerogatives of the Member States' institutions exercising the supervision of the national export credit programs.

<sup>4</sup> Their statements in reference to the above-mentioned sentence in the Regulation ("Where contingent liabilities might arise from officially supported export credit activities, those activities shall be reported") are as follows: Czech Republic: "Bank Guarantees issued CZK 3,066 mil. (approx.. EUR 120.2 mil) reported under total off-balance commitments" Denmark: "With effect from 1 July 2006 up to and including 30 June 2011, EKF has entered into a swap agreement with the Dutch export credit agency Atradius, whereby EKF undertakes a guarantee liability of EUR 50 million on Indonesia, and relinquishes guarantee liabilities of 25 EUR 25 million on Vietnam and EUR 13.5 million on Jamaica respectively". Finland: "A. Export Credit Guarantees – State of Finland covers the possible deficit. B. Export Credit Financing – State of Finland covers the deficit and guarantees the funding. C. Interest Equalisation Scheme – responsibility of the State of Finland". Slovak Republic: "Bank guarantees issued in EUR million reported under total off-balance commitments (01.01.2011: EUR 70.79 mil. 31.12.2011: EUR 90.39 mil.", United Kingdom: (Refers to its Annual Report and Accounts, which contains on p.139 a full section with information on contingent liabilities for the business years ending 31 March 2011 and 31 March 2012) and indicates the total for 31 March 2012 as "£ 14,277.6 m – before reinsurance and £ 9,923.4 m – net of reinsurance".

<sup>5</sup> According to some English language dictionaries both interpretations of the term are possible.

## **b) Treatment of "environmental risks, which can carry other relevant risks":**

Paragraph 2 of Annex I of Regulation (EU) 1233/2011 states "*In the Annual Activity Report, Member States shall describe how environmental risks, which can carry other relevant risks, are taken into account in the officially supported export credit activities of their ECAs.*"

19 Member States explicitly refer to this provision in their Annual Activity Reports. All of them declare that they examine applications for export credit cover also from an environmental perspective. When referring to Paragraph 2 of Annex I (which explicitly only mentions environmental risks), some Member States<sup>6</sup> explicitly refer to social impacts as well, a few also to human rights<sup>7</sup>, anti-bribery<sup>8</sup> and general impact on development<sup>9</sup>.

Such environmental evaluation processes typically lead to a decision to either decline or to actually provide export credit support<sup>10</sup>. Many Member States refer to the procedures contained in the OECD Recommendation on Common Approaches on the Environment and Officially Supported Export Credits<sup>11</sup>.

## **c) Compliance of ECAs with Union objectives and obligations:**

Paragraph 3 of Annex I asks the Commission to evaluate in its annual review the "compliance of ECAs with Union objectives and obligations".

### **i) Compliance with obligations under international law and EU competition law:**

No complaints concerning potential infringements of EU law involving export credit agencies were received by the European Commission in 2011.

There have been no disputes at WTO level involving European export credit programs. As of 1 September 2011, a new premia system has come into effect for all Participants to the OECD Arrangement on Export Credits (comprising 2 basic elements: 1. Introduction of a new common framework for the pricing of buyer credit risk 2. A revised set of minimum premium rates for country credit risk). This reform is – among other objectives - supposed to further consolidate the coherence between the OECD Arrangement and WTO law<sup>12</sup>.

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<sup>6</sup> e.g. Belgium, Czech Republic, Denmark, France, Germany, Netherlands, Romania, Slovak Republic, Slovenia, and Sweden. In the case of Spain, an explicit reference to social factors as an element of the risk analysis is contained in another part of the report.

<sup>7</sup> Sweden

<sup>8</sup> Finland, Netherlands

<sup>9</sup> Belgium, Finland and Germany

<sup>10</sup> Support may be connected with certain conditions, usually aiming at the enforcement of mitigation measures and compliance with standards. Such conditional support requires that the overall assessment of the project's impact is considered as "acceptable". Explicit reference to conditional cover is made in the reports of Belgium, Denmark, Hungary, Italy, Luxembourg, Poland, Portugal, Romania, Slovenia and Spain. The concept is also reflected in the OECD Recommendation on Common Approaches on the Environment and Officially Supported Export Credits.

<sup>11</sup> e.g. Italy, Netherlands, Luxembourg, Poland, Portugal, Slovak Republic, Slovenia, Spain and United Kingdom

<sup>12</sup> For further details see the Commission's annual report on negotiations in the sense of Annex I, Paragraph 4 of Regulation (EU) 1233/2011

## ii) Compliance with Union objectives:

The Treaty on the European Union (TEU) enumerates the general objectives of the Union in its Article 3 and the principles and objectives of the Union's External Action in its Article 21.

These principles and objective are:

### *Article 3*

- 1. The Union's aim is to promote peace, its values and the well-being of its peoples.*
- 2. The Union shall offer its citizens an area of freedom, security and justice without internal frontiers, in which the free movement of persons is ensured in conjunction with appropriate measures with respect to external border controls, asylum, immigration and the prevention and combating of crime.*
- 3. The Union shall establish an internal market. It shall work for the sustainable development of Europe based on balanced economic growth and price stability, a highly competitive social market economy, aiming at full employment and social progress, and a high level of protection and improvement of the quality of the environment. It shall promote scientific and technological advance.*

*It shall combat social exclusion and discrimination, and shall promote social justice and protection, equality between women and men, solidarity between generations and protection of the rights of the child.*

*It shall promote economic, social and territorial cohesion, and solidarity among Member States.*

*It shall respect its rich cultural and linguistic diversity, and shall ensure that Europe's cultural heritage is safeguarded and enhanced.*
- 4. The Union shall establish an economic and monetary union whose currency is the euro.*
- 5. In its relations with the wider world, the Union shall uphold and promote its values and interests and contribute to the protection of its citizens. It shall contribute to peace, security, the sustainable development of the Earth, solidarity and mutual respect among peoples, free and fair trade, eradication of poverty and the protection of human rights, in particular the rights of the child, as well as to the strict observance and the development of international law, including respect for the principles of the United Nations Charter.*
- 6. The Union shall pursue its objectives by appropriate means commensurate with the competences which are conferred upon it in the Treaties.*

### *Article 21*

- 1. The Union's action on the international scene shall be guided by the principles which have inspired its own creation, development and enlargement, and which it seeks to advance in the wider world: 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.*

*The Union shall seek to develop relations and build partnerships with third countries, and international, regional or global organisations which share the principles referred to in the first subparagraph. It shall promote multilateral solutions to common problems, in particular in the framework of the United Nations.*
- 2. The Union shall define and pursue common policies and actions, and shall work for a high degree of cooperation in all fields of international relations, in order to:*
  - (a) safeguard its values, fundamental interests, security, independence and integrity;*
  - (b) consolidate and support democracy, the rule of law, human rights and the principles of international law;*
  - (c) preserve peace, prevent conflicts and strengthen international security, in accordance with the purposes and principles of the United Nations Charter, with the principles of the Helsinki Final Act and with the aims of the Charter of Paris, including those relating to external borders;*
  - (d) foster the sustainable economic, social and environmental development of developing countries, with the primary aim of eradicating poverty;*
  - (e) encourage the integration of all countries into the world economy, including through the progressive abolition of restrictions on international trade;*
  - (f) help develop international measures to preserve and improve the quality of the environment and the sustainable management of global natural resources, in order to ensure sustainable development;*
  - (g) assist populations, countries and regions confronting natural or man-made disasters; and*
  - (h) promote an international system based on stronger multilateral cooperation and good global governance.*

3. The Union shall respect the principles and pursue the objectives set out in paragraphs 1 and 2 in the development and implementation of the different areas of the Union's external action covered by this Title and by Part Five of the Treaty on the Functioning of the European Union, and of the external aspects of its other policies.

*The Union shall ensure consistency between the different areas of its external action and between these and its other policies. The Council and the Commission, assisted by the High Representative of the Union for Foreign Affairs and Security Policy, shall ensure that consistency and shall cooperate to that effect.*

As regards the EU's common commercial policy, reference to the principles and objectives of the Union's external action is made in the first paragraph of Article 207 of the Treaty on the Functioning of the European Union, which reads:

*Article 207:*

The common commercial policy shall be based on uniform principles, particularly with regard to changes in tariff rates, the conclusion of tariff and trade agreements relating to trade in goods and services, and the commercial aspects of intellectual property, foreign direct investment, the achievement of uniformity in measures of liberalisation, export policy and measures to protect trade such as those to be taken in the event of dumping or subsidies. The common commercial policy shall be conducted in the context of the principles and objectives of the Union's external action.

Neither of these Articles specifically mentions export credits. Besides, these provisions are general in nature and the extent to which they can be translated in rules obligations directly relevant for the activity of government agencies specialised in rather technical fields like export credits depends on the specific provisions.

In the view of the Commission, these Treaty provisions could however serve as a background against which evaluating the policies applied to export credit transactions.

The information reflected in the Annual Activity Reports shows that Member States in general have policies on export credits and environment<sup>13</sup>, anti-bribery and sustainable lending practices concerning low income countries. The 3 relevant OECD Recommendations<sup>14</sup> (OECD Recommendation on Bribery and Officially Supported Export Credits, the Revised Recommendation on Common Approaches to the Environment and Officially Supported Export Credits<sup>15</sup>, the Principles and Guidelines to Promote Sustainable Lending Practices in the provision of Official Export Credits to Low-Income Countries) play an important – but not exclusive – role. Even Member States which are not OECD Members apply them or intend in principle to do so. Moreover, many Member States in their reports state that for example the "Common Approaches" are applied beyond the scope defined by the OECD, or that they have national legislation or practices of their own, which go beyond OECD by establishing more ambitious policies<sup>16</sup>. In several cases, the ECAs in question have developed relevant instruments themselves (e.g. a CSR policy or an ethics code)<sup>17</sup>.

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<sup>13</sup> On environmental policies, see already Section 3b) above.

<sup>14</sup> According to the OECD "*Recommendations are not legally binding, but practice accords them great moral force as representing the political will of Member countries and there is an expectation that Member countries will do their utmost to fully implement a Recommendation. Thus, Member countries which do not intend to do implement a Recommendation usually abstain when it is adopted.*"

<sup>15</sup> A new version of this Recommendation - the "Common Approaches for Officially Supported Export Credits and Environmental and Social Due Diligence" – has been adopted by the OECD in June 2012, but during the reporting period the 2007 version was still applicable.

<sup>16</sup> e.g. Austria, Belgium, Bulgaria, Denmark, Finland, France, Germany, Netherlands, Romania and Sweden

<sup>17</sup> e.g. Italy, Luxemburg and Slovenia

Several Member States<sup>18</sup> explicitly attach importance to human rights considerations in export credits: This does not limit itself to just applying the human rights related aspects of the existing "Common Approaches"<sup>19</sup>. Several Member States declare to have actively promoted the new focus on human rights in the revision of the Common Approaches or their intention to support relevant work in the OECD export credit groups. Several Member States<sup>20</sup> apply human rights considerations to their assessment of applications for cover beyond or without direct reference to the OECD "Common Approaches".

Member States' policies linked to export credit activities also include transparency (openness and confidentiality policy), dialogue with civil society, contribution to sustainable development, corporate social responsibility (either in the form of a CSR policy for the ECA itself or by promoting efforts of exporters in this field), and the promotion of respect of the OECD Guidelines for multinational enterprises.

In summary, the European Commission takes note that all Member States have developed policies to accompany the management of their export credit programs. Policy Recommendations developed in the OECD - the only international organisation to have developed specialised rules on export credits – are in common use, but relevant activities by Member States clearly go beyond them.

It is difficult to define a precise benchmark for measuring "compliance" in EU law. That being said, the Commission sees a clear general willingness on the side of the Member States to apply policies to their export credit programs, whose objectives are in line with the general language of Articles 3 and 21. In the view of the European Commission, this concerns notably the following objectives: *"establishing of an internal market"* (Art 3.3. – as mentioned, all export credit programs have to be compatible with relevant legislation), and - at an international level – to uphold and promote *"free and fair trade"* (Art.3.5), *"to consolidate and support human rights"* (Art 21.2b), *"to encourage the integration of all countries into the world economy"* (Art 21.2e) and *"to help develop international measures to preserve and improve the quality of the environment and sustainable management of global natural resources, in order to ensure sustainable development"* (Art 21.2f).

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<sup>18</sup> for example Austria, Belgium, Denmark, Germany, Italy, Netherlands and Sweden

<sup>19</sup>It has to be noted that all Member States' reports welcome the inclusion of human rights in the new 2012 version of the OECD Common Approaches.

<sup>20</sup> Austria, Belgium, Denmark, Germany, Netherlands and Sweden