

Decision in case 212/2016/JN on the European Commission's annual reviewing of Member States' export credit agencies

Decision

Case 212/2016/JN - Opened on 28/04/2016 - Recommendation on 23/05/2018 - Decision on 03/12/2018 - Institution concerned European Commission (Recommendation agreed by the institution) |

The case concerned the adequacy of the European Commission's annual reviewing of export credit agencies — national bodies that give financial support to companies doing business in risky markets — in particular with respect to the protection of human rights and the environment.

The Ombudsman inquired into the matter and found that the Commission's methodology and procedures could be improved. In particular, the Ombudsman recommended that the Commission should engage in a dialogue with Member States and other stakeholders with a view to improving the template used by Member States to compile the reports on export credit agencies which they are required to submit to the Commission each year. The Ombudsman also recommended that the Commission, for its part, should enhance the analysis and evaluation content of the annual reviews of export credit agencies which it submits to the European Parliament.

The Commission informed the Ombudsman that it would consult the Council, Parliament and the European External Action Service, and engage with civil society, in order to implement the Ombudsman's recommendations. In particular, the Commission will propose to the Council Working Group on Export Credits a revised checklist template to be used by Member States for their annual reports. The Commission will also consider drawing up relevant guidance for Member States' reporting.

As the measures announced by the Commission adequately address the Ombudsman's recommendations, the Ombudsman closed her inquiry but asked the Commission to report back within one year.

Background to the complaint

1. The complainant, ECA Watch, is an international coalition of NGOs that monitor export credit



agencies — national bodies that give financial support to companies doing business in markets (for example, developing countries) considered as too risky for conventional private financing. The financial support comes in the form of guarantees, loans and insurance. Export credit agencies can be private, semi-private, or public bodies. Most EU Member States have export credit agencies.

2. Under Regulation 1233/2011 [1] , EU Member States must submit annual reports on their export credit programmes to the European Commission. Based on these reports, the Commission submits an annual review of the activities of export credit agencies to the European Parliament. This review includes an evaluation of export credit agencies' compliance with the EU's objectives and obligations including respect for human rights and the protection of the environment.

3. The complainant questioned the adequacy of the Commission's annual reviewing of Member States' export credit agencies. In particular, the complainant considered that the Commission's reviewing was not thorough enough with respect to the protection of human rights and the environment [2] .

Failure of the Commission to ensure export credit agencies' compliance with Regulation 1233/2011

The Ombudsman's recommendation

4. The Ombudsman examined the Commission's annual reviewing and considered that it should be improved, in particular, regarding information gathering and evaluation in relation to the respect for human rights and the environment. She therefore proposed that the Commission should do so.

5. The Commission rejected the Ombudsman's proposal, mainly because it considered that it went beyond what is permissible for the Commission to do under the current legislation. The Ombudsman then made the following three recommendations [3] :

(i) The Commission should take the appropriate initiative, following consultation with civil society and with the European External Action Service, to have the checklist template revised with a view to enhancing the reporting methodology and, in particular, to ensure (a) the inclusion of explicit references to the relevant principles in the Treaties and in the Charter of Fundamental Rights and (b) the establishing of a methodology for the reporting of non-financial issues.

(ii) Following its engagement with the Member States, the Commission should draw up guidelines to assist the Member States in their reporting to the Commission and with the aim of ensuring that the Member State reports will be as comprehensive as possible as well as presented in a manner which facilitates the Commission's subsequent analysis and evaluation of these reports.



(iii) Building on (ii) above, the Commission should take steps to enhance the analysis and evaluation it uses in preparing the annual reviews it submits to the European Parliament, in compliance with Annex I of Regulation 1233/2011.

6. In its reply, the Commission took issue with the Ombudsman's analysis of the applicable legislation. Nevertheless, it agreed to take steps to improve the reporting process and to implement the Ombudsman's recommendations.

7. The Commission said that it will continue its efforts to address the issues raised in the Ombudsman's recommendations.

Ø As regards the checklist template and the reporting methodology, the Commission will seek the views of the Council and Parliament on the Ombudsman's recommendations. After consulting the European External Action Service, the Commission will propose a draft revised checklist for the Council Working Group on Export Credits to consider.

Ø Should the Council Working Group produce a revised checklist template that would require more detailed information beyond what is required under Regulation 1233/2011, the Commission will assess whether a set of guidelines is necessary to ensure that Member States report this information in a manner that facilitates the Commission's evaluation of compliance with EU law.

Ø Throughout this process, the Commission will consult the European External Action Service. The Commission will also use its existing channels for engaging with civil society representatives to seek their views and debrief them on the process.

8. The Commission is confident that should Member States agree to submit information on the basis of a revised checklist template, this will enhance the analysis and evaluation of the practices of export credit agencies in the report the Commission submits to Parliament. The Commission further said that it remained open to revisit this issue in future when Regulation 1233/2011 is reviewed.

9. In its comments, the complainant emphasised that the Commission is legally required to evaluate how export credit agencies comply with Union objectives and obligations. As a matter of good administration, the Commission should seek and ensure that it receives all the information it needs to carry out this evaluation.

10. The complainant welcomed the Commission's initiative as regards revising the checklist, issuing guidance for Member States and consulting the relevant institutional actors and civil society. However, in its view, the envisaged changes should not depend on the Member States. The Commission should fully comply with the letter and the spirit of Regulation 1233/2011 as it currently stands.

The Ombudsman's assessment after the recommendation



11. The Ombudsman welcomes the measures announced by the Commission which adequately address her recommendations. The revised checklist template, along with guidelines for Member States, should significantly improve the review process in terms of information gathering. Armed with this information, the Commission should be in a position to carry out a meaningful analysis and evaluation.

12. The Ombudsman notes the wide range of bodies the Commission plans to consult going forward. To ensure that they are fully aware of the Ombudsman's assessment in this case, the Ombudsman will forward her recommendation and this decision to Parliament, the Council and the European External Action Service.

13. While the Ombudsman regrets that the Commission does not share her interpretation of the relevant legal rules, she has put her views on the record in her proposal for a solution and her recommendation and maintains those views.

14. Against this background the inquiry can be closed. The Ombudsman will ask the Commission to report back within one year on the steps taken and the outcome thereof.

Conclusion

Based on the inquiry, the Ombudsman closes this case with the following conclusion :

The measures announced by the Commission adequately address the Ombudsman's recommendations.

The Commission should report within one year of this decision on the steps taken and the outcome thereof.

The complainant and the European Commission will be informed of this decision.

Emily O'Reilly

European Ombudsman

Strasbourg, 03/12/2018

[1] 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, OJ L 326, 8.12.2011, p. 45.

[2] More detailed background information can be found in the Ombudsman's solution proposal: <https://ombudsman.europa.eu/cases/solution.faces/en/95453/html.bookmark> [Link]

[3] The full text of the Ombudsman's recommendation can be found here: <https://www.ombudsman.europa.eu/en/recommendation/en/95605> [Link]