

Letter from the European Ombudsman to the European Commission on how the European Commission ensures respect for human rights in the context of international trade agreements

Correspondence - 07/07/2021

Case SI/5/2021/VS - **Opened on** 07/07/2021 - **Decision on** 15/07/2022 - **Institution concerned** European Commission |

Ms Ursula von der Leyen

President

European Commission

Strasbourg, 07/07/2021

Subject: SI/5/2021/VS on how the European Commission ensures respect for human rights in the context of international trade agreements

Dear President,

In recent years, I have conducted several complaint-based inquiries focusing on different aspects of EU trade negotiations and agreements (including on human rights impact assessments [1] , reporting on the activities of export credit agencies [2] , and sustainability impact assessments [3]). These inquiries confirmed that there is a growing public interest in how the EU, as the world's largest trading bloc, prepares international trade agreements and how, in line with the requirements of the Treaties [4] , it ensures that its trade relations uphold and promote the EU's values around the world.

Against this background, I have decided to contact the European Commission on the question of how it ensures respect for human rights in the context of international trade agreements. Concretely, I would like to examine how the Commission prepares the so-called 'human rights clauses' contained in international trade agreements signed by the EU and how, once trade agreements have entered into force, it monitors the application of these clauses.



I would be grateful to receive your reply to the questions set out in Annex I, and any additional observations you may wish to share, by 29 October 2021. Please also feel free to share any documentation that would help us to better understand the procedures and practices involved (for example, documents outlining the internal procedures, examples of reporting, monitoring and enforcement documentation, etc.).

I would like to thank you in advance for the reply to this letter, which I intend to publish on our website.

Should the Commission require any further information about this initiative, the responsible inquiries officers are Ms Valentina Stoeva and Mr Josef Nejedlý.

Yours sincerely,

Emily O'Reilly European Ombudsman

Annex I EO Questions in SI/5/2021/VS

It would be helpful if the Commission could respond to the following questions:

Regarding the preparatory stage:

- 1) How does the Commission decide whether to include a human rights clause in an international trade agreement? What are the principles and criteria on which it bases its decision?
- 2) How does the Commission decide on the content of the human rights clause in a particular case? Are there any objective criteria for determining what the Commission decides to include in such clauses?
- 3) How does the Commission determine the relevant human rights standard to be used as a benchmark in a given case?

Regarding the implementation stage:

- 1) How does the Commission monitor the implementation by its trading partners of their human rights obligations? Could the Commission describe the administrative framework it has in place for this monitoring?
- 2) Does the Commission have in place a mechanism allowing interested parties, including the victims of human rights violations and civil society organisations, to report human rights concerns? [5] The Commission's 2020 Annual Report on Implementation of EU Trade



Agreements [6] mentions the creation of a new single entry point for stakeholders' complaints on a variety of issues (centralised complaints procedure) [7] . From the wording of the online complaint form [8] it appears that stakeholders who would like to file a complaint about human rights violations could do so by selecting the option 'Trade and Sustainable Development (TSD) commitment or Generalised Scheme of Preferences (GSP) regulation provision violated'. Could the Commission confirm that this indeed is the case and share its experience so far with complaints related to human rights violations that have been submitted (number of complaints, their nature, complaint handling procedure, and the outcome)?

3) Could the Commission describe the internal procedures it has in place to determine what action to take when it discovers that a country with which the EU has a trade agreement has breached human rights standards?

4) Could the Commission provide details on how it uses the Charter of Fundamental Rights as a benchmark when verifying compliance in the context of trade agreements? [9]

5) How does the Commission identify human rights concerns in countries with which the EU has concluded a trade agreement? How does the Commission measure a decrease in the level of human rights protection in countries with which the EU has concluded a trade agreement? What circumstances would trigger the application of the so-called 'non-execution' clause or 'suspension' clause in a specific case? [10]

6) What actions and/or sanctions has the Commission taken so far in cases where a trade partner breached its obligations under the human rights clause? [11] Has the Commission invoked the human rights clause in order to suspend trade preferences? Does the Commission have internal rules or guidelines for its work in this area?

7) How does the Commission ensure the transparency of its actions in relation to the implementation of human rights clauses (reporting, monitoring, enforcement)? How does it facilitate public participation in this context? Which entities/actors are given a say, and how are different inputs weighed at every stage: from the negotiations to the implementation of trade agreements?

8) In the context of EU trade policy, the EU has created a growing number of entities with different roles: these include joint committees, specialised sub-committees, working groups, advisory groups and civil society forums, etc. Could the Commission please explain what role these different entities play in ensuring respect for human rights in the application of EU trade agreements?

9) The Ombudsman previously inquired into whether the Commission should have carried out a prior human rights impact assessment in the context of trade negotiations with Vietnam. Since August 2020, the EU-Vietnam trade agreement is in force. Could the Commission provide information on what measures/instruments it has put in place to identify and address the impact of the free trade agreement on human rights in Vietnam?



[1] Case 1409/2014/JN (recommendation), subsequently 1409/2014/MHZ (decision) regarding the EU-Vietnam Free Trade Agreement; case 150/2017/JN regarding the OECD provisions on export credits for coal-fired electricity generation projects.

[2] Case 212/2016/JN on the annual reviewing of Member States' export credit agencies.

[3] Case 1026/2020/MAS regarding the failure by the European Commission to finalise an updated 'sustainability impact assessment' before concluding the EU-Mercosur trade negotiations.

[4] Articles 2, 3(5), 21(2)(a) and 32 TEU and Article 207(1) TFEU.

[5] For instance, in 2020 and 2021 the European Parliament made recommendations for setting up an independent complaints mechanism for reporting human rights infringements:

European Parliament resolution of 15 January 2020 on human rights and democracy in the world and the European Union's policy on the matter – annual report 2018 (2019/2125(INI)):

https://www.europarl.europa.eu/doceo/document/TA-9-2020-0007_EN.html [Link]

European Parliament resolution of 20 January 2021 on human rights and democracy in the world and the European Union's policy on the matter – annual report 2019 (2020/2208(INI)):

https://www.europarl.europa.eu/doceo/document/TA-9-2021-0014_EN.html [Link]

[6] https://trade.ec.europa.eu/doclib/docs/2020/november/tradoc_159039.pdf [Link]

[7] <https://trade.ec.europa.eu/access-to-markets/en/contact-form> [Link]

[8] https://trade.ec.europa.eu/access-to-markets/en/form-assets/TSD-GSP_Complaint_Form.pdf [Link]

[9] For instance, the 2015 DG Trade Guidelines on the analysis of human rights impacts states that the assessment of the human rights impact of a trade-related initiative is done *'against the normative framework of human rights obligations as set out in the Charter of Fundamental Rights of the European Union (CFR) and a number of international sources...'*:

https://trade.ec.europa.eu/doclib/docs/2015/july/tradoc_153591.pdf [Link].

It also refers to a "Fundamental Rights Check List":

https://ec.europa.eu/info/sites/default/files/file_import/better-regulation-toolbox-28_en_0.pdf [Link].



[10] A 'non-execution' clause provides that 'appropriate measures' may be taken in case of a failure to fulfil the obligations in the agreement. A suspension clause authorises the suspension of the application of the agreement in whole or in part in cases of serious breach of essential provisions. This is outlined in the 1995 Communication by the Commission on the inclusion of respect for democratic principles and human rights in agreements between the Community and third countries.

[11] A recent example of similar EU action known to the public is the partial withdrawal in 2020 of tariff preferences for Cambodia due to serious human rights violations in the country:

<https://trade.ec.europa.eu/doclib/press/index.cfm?id=2113> [Link]