



The European Commission's failure to evaluate the compliance of Member-States Export Credit Agencies with the EU's objectives and obligations, in particular on human rights

Correspondence - 28/04/2016

Case 212/2016/JN - Opened on 29/04/2016 - Recommendation on 23/05/2018 - Decision on 03/12/2018 - Institution concerned European Commission (Recommendation agreed by the institution) |

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Strasbourg,

Inquiry concerning the European Commission's evaluation and review of the national Export Credit Agencies' activities under Regulation 1233/2011.

Dear Colleague,

I am writing to inform you that, following a complaint I received from ECA Watch - an international coalition of NGOs that monitors the activities of the national Export Credit Agencies - I have decided to inquire into the extent to which the European Commission ensures the sound evaluation of the compliance of the national Export Credit Agencies with the EU's objectives and obligations, in particular in regard to human rights and environmental matters in accordance with Regulation 1233/2011 [1].

These agencies support companies that wish to export and invest in markets that are considered as too risky for conventional private financing. Many of these agencies are public bodies and, as such, may be scrutinised by the respective national ombudsman. The forgoing Regulation [2] requires that the national agencies act transparently and take into account environmental and social risks before deciding to offer official support for export credits. In that respect, it is noted that recital 4 of the Regulation requires that Member States comply with the Union's general provisions on external action, such as "*consolidating democracy, respect of human rights and policy coherence for development, and the fight against climate change, when establishing, developing and implementing their national export credit systems and when carrying out their supervision of officially supported export credit activities*".

The Regulation also requires that the Member States provide the Commission with an Annual Activity Report of their national export agencies programmes, and that the



Commission produces an annual review for the European Parliament based on the national reports, including an evaluation regarding the compliance of the national export agencies' activities with the Union's objectives and obligations.

My inquiry will focus on how the Commission carries out the evaluation and review process and to what extent this process may have an impact on the Member-States' own supervision of their export agencies. However, to get a full picture, and be able to ensure that the agencies comply with the requirements of transparency as well as human rights and environmental protection when supporting investments in third countries, my inquiry would benefit greatly from parallel inquiries being conducted at Member State level by my fellow ombudsmen.

In light of the foregoing, I would like to invite you to consider launching an inquiry or taking any other initiative you consider appropriate on that matter. To my mind, parallel inquiries carried out simultaneously by the European Ombudsman and National Ombudsmen could address in a more comprehensive way many of the concerns raised by the civil society about reconciling economic development and prosperity with respect for human rights and environment.

I would appreciate it if you would let me know whether you consider it feasible to launch an inquiry or to take some other action in this area. I would be grateful also for any relevant information that you can provide in this regard. I would greatly value your view as to whether greater cooperation among the national agencies, as well as between the national ministries (responsible for monitoring their national agencies) and the Commission would be desirable with a view to developing robust and commonly shared compliance tests and benchmarking that would reflect the EU's obligations and standards.

With your permission, I would like to make available to the European Commission whatever reply you may send me. In the interests of transparency, I would also like to make it available to the public on my website. If you consider it useful to include any information in your reply that should not be made public (for example, because it concerns identifiable individuals), please provide such information separately.

Yours sincerely,

Emily O'Reilly

Enclosure: copy of the letter to the European Commission

[1] This regulation incorporated into the EU legal system is the 2005 version of the 'Arrangement on Officially Supported Export Credits' (known as *the Arrangement*) which is the main international agreement which regulates export credits. The *Arrangement* is negotiated within and overseen by the OECD. The EU is a party to this agreement, while the European Commission (EC) is responsible for negotiating on behalf of the Member States.



The *Arrangement* is revised regularly and although it is described as 'a gentlemen's agreement', until 2011 its versions became EU law via a Council decision. In 2011, the European Parliament agreed that the future versions of the OECD *Arrangement* would be transposed into EU law through a Delegated Act (decision by the European Commission and not the Council) in exchange for more transparency in Member States' export credit activities..

[2] See also the related OECD Document "Recommendation of the Council on Common Approaches for Officially Supported Export Credit and Environmental and Social Due Diligence (the Common Approaches)".