

**Comments of the Commission on a request for information from the European Ombudsman**  
**- Complaint by ECA Watch, ref. 212/2016/JN**

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**I. BACKGROUND**

On 3 December 2018, the European Ombudsman (“Ombudsman”) addressed to the European Commission (the “Commission”) her Decision in case 212/2016/JN on the Commission’s annual reviewing of Member States’ export credit agencies (“ECAs”). The case concerned the adequacy of the 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 Commission carries out this annual review for the European Parliament in accordance with Annex 1 of the Regulation 1233/2011 on the application of certain guidelines in the field of officially supported export credits.<sup>1</sup> The complainant in the case was ECA Watch, an international coalition of non-governmental organizations (“NGOs”) that monitor ECAs.

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. Further, the Ombudsman recommended that, following its engagement with the Member States, the Commission should draw up guidelines to assist the Member States in their reporting to the Commission. Building on these guidelines, the Commission should take steps to enhance the analysis and evaluation it uses in preparing the annual reviews in compliance with Annex I of Regulation 1233/2011.

In dialogue with the Ombudsman during the inquiry, the Commission indicated its intention to address the issues raised in the Ombudsman’s recommendations:

- “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.
- 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.
- 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.”

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<sup>1</sup> 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).

The Ombudsman welcomed the measures announced by the Commission and concluded:

“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.”

## II. THE COMMISSION’S REPLY

### • Steps undertaken by the Commission

At the meeting of the Council Working Group on Export Credits (“Council Working Group”) of 5 December 2018, the Commission informed the Member States about the decision of the Ombudsman of 3 December 2018 and the measures proposed by the Commission. The Council Working Group held a general discussion about the implementation of the Ombudsman’s decision.

At the meeting of the Council Working Group of 3 July 2019, the Commission informed the Council Working Group that, in line with the Ombudsman’s decision, it will first take steps to revise the checklist template on the basis of which the Member States draft the Annual Activity Report according to Annex 1 of the Regulation 1233/2011.

Following the discussion in the Council Working Group of 3 July 2019, the relevant Commission services discussed internally and with the European External Action Service (“EEAS”), a draft proposal for a revised checklist template. The consultation between the Commission services ended on 30 August 2019.

In accordance with the Ombudsman’s decision, the Commission also consulted the EEAS on the draft checklist template. The comments by the EEAS were received on 2 September 2019.

The Commission then sought the views of the Council and of the European Parliament on its proposals to update the draft checklist template.

The Commission proposed in particular the following amendments to section III (“Information on the reporting Member State’s Export Credit policies”) of the draft checklist template:

- General refinement of all parts of section III, asking the Member States to elaborate on the assessment process of the projects supported by export credits by giving examples and describing the established assessment procedures with regard to environment, human rights, anti-bribery and sustainable lending.
- A request to specify Export Credit Agencies’ measures regarding screening and classification of projects, environmental reviews, including as regards climate change impact, transparency, monitoring and reporting.
- A reference to alignment of export credits with low-carbon and resilient development of the recipient country.
- A question regarding assessment of climate aspects in supported projects and assets, as well as in the disclosure of the projects.

- A question on assessment of debt sustainability and the long-term development prospects of lower-income countries in the context of concessional lending.

The draft was sent to the Council (Council Working Group for Export Credits) on 10 September 2019 and to the European Parliament (Committee on International Trade) on 11 September 2019.

The European Commission received comments from some of the Member States represented in the Council Working Group. No comments were received from the European Parliament by the deadline of 27 September, nor by the time of writing of this report.

The Commission has also engaged in dialogue with civil society. On the side of the NGOs known to the Commission as being active in the area of export credits (including transparency of export credit agencies), the Commission has been in contact with ECA Watch and CEE Bankwatch Network (Bankwatch). ECA Watch was the complainant in the Ombudsman proceedings that resulted in the decision at hand. Bankwatch contacted proactively the Commission before as well as after the adoption of the Ombudsman's decision. On the side of business associations with stake in the export credits field, the Commission contacted BIAC – Business at OECD, BusinessEurope and European Banking Federation.

The Commission held a meeting with ECA Watch and Bankwatch on 15 October 2019. In the meeting, the Commission in particular debriefed the NGOs and exchanged views with them on the implementation of its commitments pursuant the Ombudsman's decision, the procedure for revision of the checklist template and the timing of the procedure. The Commission also invited ECA Watch and Bankwatch to a stakeholder meeting on 12 November 2019. The aim of the meeting was to provide an opportunity for a broad range of civil society representatives active in the export credits field to be updated on the implementation of the Ombudsman's decision and to express their opinions. To this end, the Commission extended the invitation also to business associations BIAC – Business at OECD, BusinessEurope and European Banking Federation.

The Commission welcomed the invitation by ECA Watch and Bankwatch to panel discussion in the European Parliament on 12 November, organised by MEP Martin Hojsik (Renew Europe) on the topics of the implementation of the Ombudsman's decision and reporting on activities of the EU export credit agencies. The Commission was represented on the panel.

On 28 October 2019, the Commission sent the draft revised checklist template to ECA Watch and Bankwatch for comments. On 29 October 2019, the Commission sent the draft revised checklist template to BIAC, BusinessEurope and European Banking Federation for comments.

- **Next steps**

Following the Commission's commitments in the Ombudsman's decision, the Commission will further undertake the following steps to implement the decision:

- Upon reception of the comments from civil society, the Commission will review the draft checklist template, taking the comments into account, and seek the final views of

the European Parliament on the draft revised checklist template before submitting it to the Council Working Group on Export Credits for consideration (November 2019).

- The Commission will complete the final draft of the revised checklist template and propose it to the Council Working Group on Export Credits for consideration (December 2019).
- Should the Council Working Group agree to a revised checklist template that would require more detailed information beyond what is required under Regulation 1233/2011, and should the Commission conclude that 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, the Commission will prepare such a set of guidelines in the first half of 2020.

- **Conclusion**

The revised checklist template for the preparation of the Member States' annual reports according to Regulation 1233/2011 should be finalised at the end of 2019 / beginning of 2020. Member States will be requested to apply the revised checklist template for their annual reports for the year 2019.

If necessary, Member States will be assisted when drafting their annual reports, by a set of guidelines prepared by the European Commission. This will facilitate the Commission's evaluation of the compliance of Member States' ECAs activities in 2019 with EU law.

Done at Brussels, 17.1.2020

*For the Commission*

*Phil HOGAN*

*Member of the Commission*