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ANNUAL REVIEW BY THE COMMISSION

of Member States' Annual Activity Reports on Export Credits in the sense of Regulation (EU) No 1233/2011

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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[1] foresees in its Annex I that Member States shall make available to the Commission an Annual Activity Report in order to increase 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 2016 calendar year. 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 covers neither short term export credit transactions[2] nor activities carried out by certain Export Credit Agencies (ECAs) outside the field of export credits (such as investment insurance). It must also be noted that in the case of some Member States, the function of Export Credit Agency is performed by an insurance company operating under a public mandate. In such cases, management of the public export credit programmes is strictly separated from other private sector activities (the latter of which are of course excluded from the present review).

The Commission has taken note of the Resolution adopted on 2 July 2013 by the European Parliament on the first reporting exercise under Regulation (EU) No 1233/2011[3] and has drawn the particular attention of Member States to the recommendations contained in this Resolution – such as the recommendation to the Council Working Group on Export Credits and the Commission to consult with the European External Action Service on further developing the reporting methodology.

2. Annual Activity Reports received for the 2016 calendar year:

Annual Activity Reports have been received from the following Member States: Austria, Belgium, Bulgaria, Croatia, Czech Republic, Denmark, Finland, France, Germany, Hungary, Italy, Luxemburg, the Netherlands, Poland, Portugal, Romania, Slovenia, Slovak Republic, Spain, Sweden, and the United Kingdom.

The remaining seven Member States (Cyprus, Estonia, Greece, Ireland, Latvia, Lithuania and Malta), did not have active export credit programmes in the sense of Regulation (EU) No 1233/2011 during the reporting year.

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

[2] To such transactions, the Communication from the Commission to the Member States on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to short-term export-credit insurance applies.

[3] European Parliament resolution of 2 July 2013 on the first annual report from the Commission to the European Parliament on the activities of Member States' Export Credit Agencies (2012/2320 (INI).

3. Analysis of the Annual Activity Reports:

a) General and financial information:

The applicable regulatory framework (Regulation (EU) No 1233/2011) sets the general rules for export credit transactions and programmes. Although most European governments have set up an ECA, the scope and type of export credit programmes provided, as well as the organisational structure of the agency, differ between Member States.

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 which provides official support in the form of guarantee or insurance-style "pure cover" and another which provides interest rate style support). In 2016, 21 EU Member States provided export credit programmes in the sense of Regulation (EU) No 1233/2011. These programmes were managed by a total of 29 different agencies and government departments.

In general, Member States have expanded their toolkit of export credit programmes in recent years. As regards the types of export credit support offered by European ECAs, the most common form remains "pure cover" (i.e. the export transaction in question is financed by a commercial bank, for which the ECA provides a guarantee or insurance-type cover). All 21 Member States providing export credits in the sense of Regulation (EU) No 1233/2011 during the reporting period offer this kind of support. Fifteen Member States also offer other forms of support covered by Regulation (EU) No 1233/2011 and the OECD Arrangement on Officially Supported Export Credits[4], such as direct credit or financing (in which the financing is directly provided by the ECA, not by a commercial bank)[5], re-financing[6] or interest rate support schemes[7]. Several Annual Activity Reports also explicitly mention project finance[8], tied aid,[9] and/or financing for SMEs[10].

Generally a higher degree of conformity has evolved during recent years as the OECD Arrangement on Officially Supported Export Credits has come to encompass a wide range of issues. Nonetheless, the following differences should be borne in mind as they render it difficult to provide a fully-fledged comparison which gives a complete picture. First, Member States have – within the general export credit types mentioned in the previous paragraph – developed a wide variety of export credit programmes. Moreover, while a particular product may be common to multiple ECAs, the terms and conditions attached to it may not be. Second, the impact of an export credit programme obviously also depends on the characteristics of the national economy and on the capacities of the private financial sector.

With these reservations in mind, the table below listing aggregate nominal risk exposure as of 31 December 2016 provides at least a general idea of the size of the biggest “pure cover” type export credit schemes.[11]

[4] The OECD Arrangement on Officially Supported Export Credits forms an annexe to the Regulation.
[5] Belgium, Czech Republic, Denmark, Hungary, Italy, Poland, Slovak Republic, Spain and United Kingdom.
[6] Hungary, Slovak Republic and Sweden.
[7] Finland, France, Poland, and Spain.
[8] Denmark, Germany, Italy and the Netherlands.
[9] Austria, Denmark, Hungary, Poland and Spain.
[10] Bulgaria, Denmark and Romania.
[11] Note that the United Kingdom also listed aggregate nominal risk exposure of £23.4bn as of 31 March 2017.

Official support in the form of "pure cover" in 2016 (€ billions) **Largest in EU according to aggregate nominal risk exposure**	
Germany	89.7
France	68.7
Sweden	35.7
Italy	26.1
Netherlands	23.9

As already mentioned above, European ECAs are active in a broad range of areas beyond the scope of the reporting under the EU Regulation (EU) No 1233/2011. The latter essentially covers medium and long term export credit activities (as defined by the OECD Arrangement on Officially Supported Export Credits). However, many European ECAs also offer products such as short term export credits, letter of credit guarantees, manufacturing risk guarantees and investment insurance products. It should also be noted that several Member States have developed sector-specific export credit products for (for example) aircraft manufacturing and shipbuilding. It is useful to keep this in mind when assessing the wider economic role of ECAs.

Detailed information may be found in Sections II and IV of the reporting template used for the Annual Activity Reports, as well as in the general annual reports to which several Member States explicitly refer.

Overall, the Annual Activity Reports provide relevant financial information on the export credit programmes in 2016. It should be stressed, however, that according to Regulation (EU) No 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[12].

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

According to Paragraph 2 of Annex I of Regulation (EU) No 1233/2011 Member States in their Annual Activity Reports *"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."*

Environmental risks receive increasing attention from Member States and play an important role in the determination of whether export credit support will be provided or not. Member States have thus developed internal processes to evaluate the risks in question. Where the risks involved are deemed to be unacceptable or disproportionate, no cover is provided. Where the risks are deemed to be acceptable, export credit support is typically conditional and

[12] 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 programmes.

contingent on mitigation measures and compliance with certain standards. There is increased emphasis on monitoring compliance with these conditions in the reports in respect of 2016[13]. Convergence in practice is also demonstrated, for example, by the application of different assessment procedures depending on the categorisation of the transaction, as explicitly described by some Member States[14].

As regards Member States with several ECAs, Member States have developed inter-agency cooperation and coordination in order the evaluate environmental risks. Typically, where more than one agency is involved in the transaction, such as where the transaction receives not only an export credit guarantee but also interest rate support, one agency is clearly designated to ensure that the transaction meets the requirements of the OECD Recommendation on Environmental and Social Due Diligence. Examples of this inter-agency cooperation include Italy and the Czech Republic.

Paragraph 2 of Annex I mentions both environmental risks and "other relevant risks," which Member States have interpreted broadly. Indeed, several Member States explicitly refer to social impacts as well,[15] such as human rights[16]. These risks may be assessed by external independent experts or, increasingly, by dedicated specialists within each ECA.

Many Member States refer in particular to the procedures contained in the OECD Recommendation on Common Approaches for Officially Supported Export Credits and Environmental and Social Due Diligence (the "Common Approaches") which have gained acceptance and normative force even beyond OECD membership. Bulgaria, for example, applies the OECD Recommendation on Bribery. While it has not implemented the OECD Recommendation on Common Approaches to the Environment, nor the Human Rights related aspects, it remains "open" to integrating these Recommendations. Certain Member States also apply the Common Approach beyond the recommended scope in order to give enhanced scrutiny to an even greater variety of transactions.[17]

However, in a recent trend, many Member States also look beyond the Common Approaches and have begun to benchmark against other international standards in addition to the Common Approaches such as the World Bank Safeguard Policies,[18] the United Nations Guiding Principles on Business and Human Rights[19], the International Labour Organisation Declaration on Fundamental Principles and Rights at Work[20], the Equator Principles[21] and the International Finance Corporation's Environmental and Social Performance Standards[22]. Another recent trend is the inclusion of climate change initiatives in this context, including reference to the UN Framework Convention on Climate Change.[23] Finally, certain Member States also cited their ongoing commitment to improving and developing existing disciplines. Finland, for example, noted its participation in inter-ECA working groups as well as wider international cooperation, the latter of which was also cited by the United Kingdom. The

[13] E.g. Belgium, Italy, Romania.
[14] E.g. Belgium, Denmark, Germnay, Slovak Republic and Spain.
[15] Austria, Belgium, Czech Republic, Finland, France, Germany, Netherlands, Slovak Republic and Sweden.
[16] Austria, Germany and Sweden.
[17] Germany, the Netherlands and Spain.
[18] Slovak Republic.
[19] Finland and the Netherlands.
[20] Netherlands.
[21] United Kingdom.
[22] The Netherlands and Slovak Republic.
[23] E.g. Belgium and Germany.

Netherlands, for example, is developing its own due diligence tools to review the human rights implications of transactions. Some Member States reported on changes that have been made to their own policies in 2016, demonstrating continuous internal assessment and review.

In general, then, Member States have interpreted environmental and associated risks broadly. Transactions are assessed with not only environmental but many other considerations in mind. Member States have demonstrated not only the integration of the Common Approaches into their export credit policies but also, increasingly, other international standards and have shown a commitment towards further evolution in this respect. The Common Approaches themselves were revised in 2016, following successful international cooperation by many Member States to reinvigorate the recommendations.

c) Other information contained in the Annual Activity Reports

In addition to the information already mentioned in sections 3a) and b) above, the 21 Annual Activity Reports also show that Member States have developed export credit policies more generally relating to the environment, anti-bribery and sustainable lending to low income countries. The three relevant OECD Recommendations[24] play a major – but not exclusive – role. Even Member States which are not OECD Members apply these instruments or intend in principle to do so. Many Member States state in particular that the "Common Approaches" are applied beyond the scope defined by the OECD[25]. In addition, Member State policies are informed by international standards such as the UN Guiding Principles on Business and Human Rights[26] and the broader EU *acquis* including, for example, the Regulation on prudential requirements for credit institutions and investment firms[27]. Frequent references to EU "objectives", "standards" and "guidelines" demonstrate that soft as well as hard law instruments are taken into account and that the spirit is as important as the letter of the law.

Moreover, Member States increasingly cite additional policy objectives or considerations which complement those enshrined in the Common Approaches. Examples include gender,[28] social sustainability[29] and preventing tax evasion.[30] In several cases, the ECAs in question have developed relevant instruments themselves. An example of this would be a Corporate Social Responsibility policy,[31] which typically involves not only internal efforts but also close dialogue with the ECA's clients.[32]

As regards protection of the environment, new trends include an emphasis on sustainability[33] and emissions reductions[34]. Like in the previous reporting exercise, many Member States stress the particular importance of human rights. Practically all reports continue to reflect

[24] 1. OECD Recommendation on Common Approaches for Officially Supported Export Credits and Environmental and Social Due Diligence (the so-called *"Common Approaches"*) 2. OECD Recommendation on Bribery and Officially Supported Export Credits. 3. The Principles and Guidelines to Promote Sustainable Lending Practices in the provision of Official Export Credits to Low-Income Countries
[25] France, Germany, Italy, Netherlands, Slovak Republic and Sweden.
[26] Denmark, Netherlands, Poland and Sweden.
[27] Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012
[28] United Kingdom.
[29] Romania, Slovak Republic, Spain.
[30] Sweden.
[31] Belgium, Denmark, Italy, Netherlands, Slovak Republic and Sweden.
[32] e.g. Belgium.
[33] Czech Republic, Poland, Romania, and Spain.
[34] Belgium and Denmark.

support for the development of a human rights' dimension under the new Common Approaches. In some cases, the topic is directly linked to employment rights[35].

In general, Member States policies regarding ECAs have tended to converge. An example of this is in anti-bribery measures. Many Member States require a signed non-bribery declaration from the parties involved and state explicitly that coverage is automatically invalidated by a finding of bribery. In Portugal, for example, COSEC guarantees are not valid where there is evidence of bribery. An increasing number of Member States also mention the importance of monitoring[36] and are active in encouraging banks and exporters to develop anti-bribery measures of their own.[37]

Many Member States have developed their own specific anti-bribery and anti-corruption tools in addition to compliance with the Common Approaches, such as an ethics charter[38] or whistle-blowing measures[39]. Anti-money laundering measures are also increasingly cited as a priority,[40] along with the prevention of terrorism financing.[41]

Similarly, convergence is demonstrated by the close adherence to the requirements of the World Bank and the International Monetary Fund cited by many Member States as regards sustainable lending practices to low income countries.

Member States are also careful to ensure that ECAs operate as transparently as possible while respecting the confidentiality that may be necessary for commercial transactions. Particular attention was given to this issue by certain Members States in the Annual Activity Reports in respect of 2016[42].

It is clear, then, that the OECD Common Approaches have been fully integrated into Member State export credit policies. Moreover, as the variety of considerations included above demonstrates, the Common Approaches are increasingly becoming a *minimum* standard. In many areas, Member States apply their own additional measures in order to ensure that export credit support is only available to transactions that meet a strict set of standards ranging from environmental to social.

d) Compliance of ECAs with Union objectives and obligations:

In order to step up transparency at the EU level, Member States shall make available to Commission an Annual Activity Report, reporting in line with its national legislative framework certain financial and operational information on their export credit activities, which also includes information on how environmental risks are addressed.

According to Paragraph 3 of Annex I "*the Commission shall produce an annual review for the European Parliament based on this information, including an evaluation regarding the compliance of ECAs with Union objectives and obligations"*.

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.

[35] Denmark and Sweden.
[36] Italy and United Kingdom.
[37] Belgium, Denmark, Germany and Poland.
[38] Luxemburg.
[39] Slovak Republic.
[40] Bulgaria, Romania, Slovak Republic and Sweden.
[41] Bulgaria, Romania and Sweden.
[42] Austria, Belgium, Bulgaria, Denmark, France and Poland.

As regards the EU's common commercial policy, reference to the principles and objectives of the Union's external action is made in Article 206 and in the first paragraph of Article 207 of the Treaty on the Functioning of the European Union.

The European Commission takes note based on the information provided that Member States with export credit activities in the sense of Regulation (EU) No 1233/2011 have established policies to accompany the management of their export credit programmes that are in line with the EU's objectives. The export credit-specific Policy Recommendations developed in the OECD – the only international organisation to have developed specialised rules for this policy area so far – are in common use, but the activities of Member States go beyond this level.

As mentioned in previous Annual Reviews, in response to a recommendation contained in the above-mentioned Resolution by the European Parliament of July 2013 on guidance for future reporting exercises, the Commission has issued a recommendation to notably use the work of international monitoring institutions (including the UN) as guidance in further policy developing. Member States' reports, to a different degree, already use such international instruments as references and the Commission encourages further work in this direction. Further dialogue with the European External Action Service when it comes to human rights policies would also be crucial.

The European Parliament has called upon the Commission for a statement on whether Member States comply with Union objectives and obligations; the European Commission has performed its annual review in accordance with Annex 1 based on the Annual Activity Reports submitted by Member States and considers that, in view of the information contained therein, ECAs are in compliance with Articles 3 and 21 TEU. Of course, the European institutions may like to set themselves jointly more ambitious political targets. The Commission stands ready to facilitate and promote an inter-institutional dialogue in this regard but must in the meantime perform its evaluation in accordance with Paragraph 3 of Annex 1.

As regards compliance with international obligations and obligations under EU competition law, there have been no disputes at WTO level involving European export credit programmes during the reporting period. No complaints concerning potential infringements of EU law involving export credit agencies were received by the European Commission in 2016.