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ANNUAL REVIEW

**of Member States' Annual Activity Reports on Export Credits in accordance with point
3 of Annex I to 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/EC¹ foresees in Annex I that Member States shall make available to the Commission an Annual Activity Report in order to step up 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 calendar year 2012. 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 does neither cover short term export credit transactions² nor activities carried out by certain Export Credit Agencies (ECAs) outside the field of export credits (such as insurance of investments). It also has to 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, the managing of the public export credit program is strictly separated from the private sector activities (the latter are of course not subject to the present review).

2. Annual Activity Reports received for the calendar year 2012:

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

Cyprus, Estonia, Greece, Ireland, Latvia, Lithuania and Malta did not have active export credit programs in the sense of Regulation 1233/2011 during the reporting year.

Croatia joined the European Union on 1 July 2013.

Like in the previous reporting exercise, Member States have used a similar template for their reporting ("checklist" format). While some Member States have chosen to link their Annual Activity Report with national level annual reports published for the same period, others have opted to describe extensively their activities directly in the reporting template.

¹ OJ L 326, 8.12.2011, p. 45.

² To such transactions, the Communication of the Commission pursuant to Article 93(1) of the EC Treaty applying Articles 92 and 93 of the Treaty to short-term export-credit insurance, applies.

3. Analysis of the Annual Activity Reports:

a) General and financial information:

The applicable regulatory framework (Regulation (EU) No 1233/2011) focuses on rules for export credit transactions and programs, but leaves it entirely to the individual Member State to decide whether to run an export credit program or not, and in the affirmative case how to organise its respective Export Credit Agency (“ECA”).

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 providing official support in the form of guarantee or insurance-style "pure cover" and a second one to provide interest rate style support). Compared to the previous reporting year the picture has not fundamentally changed: In 2012, 20 EU Member States were running export credit programs in the sense of Regulation (EU) No 1233/2011, these programs being managed by a total of 27 different agencies and government departments. In the case of the Italian ECA SACE, the ownership has changed from the Ministry of Economy and Finance to the Cassa Depositi e Prestiti (CDP). CDP is now also the majority shareholder of SIMEST, Italy’s other ECA. Both SACE and SIMEST continue their export credit mandate under the new ownership structure.

As already mentioned in the last annual review, the most common category of export credit support offered by European ECAs traditionally used to be "pure cover" (i.e. the export transaction in question is actually financed by a credit from a commercial bank, for which the ECA provides a guarantee or insurance-type cover), although some Member States also have been offering "official financing support" (e.g. interest rate support schemes). As a result of the Global Financial Crisis of 2008-09 and the Eurozone crisis, it has in recent years become more difficult to obtain sufficient liquidity from commercial banks. This problem has been discussed a lot in the international export credit community (e.g. at the OECD). Not all EU Member States are affected in the same way, but many have developed new instruments during the last years to mitigate such problems. During the reporting year 2012, Spain has – in addition to its traditional pure cover and interest rate support schemes – started to operate a direct financing program³. The United Kingdom has been developing a direct lending scheme during the reporting period, which became operational in September 2013. Another solution can be provided by instruments like the “Enhanced Guarantee” (Garantie Rehaussée) introduced by France (this instrument specifically covers institutions refinancing a bank providing an export credit against a default of payment). Belgium has created the “Export Funding Guarantee” (which also allows the issuing of guarantees to the benefit of third party investors who refinance export credits).

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.

³ “Direct Lending” is an export credit category in which the financing, is directly provided by the ECA, not by a commercial bank.

The Annual Activity Reports provide relevant financial information on the export credit programs in 2012. It has however to be stressed 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 Reports⁴.

The Annual Activity Reports of 4 Member States (Czech Republic, Finland, Slovak Republic, and United Kingdom) mention contingent liabilities in reference to Paragraph 1/last phrase of Annex 1 of Regulation (EU) No 1233/2011⁵.

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

Paragraph 2 of Annex I of Regulation (EU) No 1233/2011 states: "*In the Annual Activity Report, Member States 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.*"

All Member States explicitly refer to this provision in their Annual Activity Reports. All of them declare that they examine applications for export credit cover also from an environmental perspective. When referring to Paragraph 2 of Annex I (which explicitly only mentions environmental risks), some Member States⁶ explicitly refer to social impacts as well, a few also to human rights⁷, fundamental labour standards⁸, anti-bribery⁹ and general impact on development¹⁰. Finland has recently updated its policy concerning project reviews and provides a detailed explanation under this section of the Annual Activity Report.

Environmental evaluation processes typically lead to a decision to either decline or to actually provide export credit support¹¹. Many Member States refer to the procedures contained in the

⁴ 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 programs.

⁵ Their statements in reference to the above-mentioned sentence in the Regulation ("Where contingent liabilities might arise from officially supported export credit activities, those activities shall be reported") are as follows: Czech Republic: "*Bank Guarantees issued CZK 2,168 mil. (approx.. EUR 86.2 mil) reported under total off-balance commitments*" Finland: "*A. Export Credit Guarantees – State of Finland covers the possible deficit. B. Export Credit Financing – State of Finland covers the deficit and guarantees the funding. C. Interest Equalisation Scheme – responsibility of the State of Finland*". Slovak Republic: "*Bank guarantees issued in EUR million reported under total off-balance commitments (01.01.2012: EUR 90.39 mil. 31.12.2012: EUR 47.69 mil.*", United Kingdom: (Refers to its Annual Report and Accounts, which contains on p.140 a full section with information on contingent liabilities for the business years ending 31 March 2012 and 31 March 2013) and indicates the total for 31 March 2013 as "*£ 17.60 bn – before reinsurance and £12.20 bn – net of reinsurance*".

⁶ e.g. Belgium, Czech Republic, Denmark, France, Germany, Netherlands, Romania, Slovak Republic, Slovenia and Sweden

⁷ Sweden, Finland.

⁸ Finland, Netherlands.

⁹ e.g. Denmark, Finland, Netherlands and Sweden.

¹⁰ Belgium, Finland and Germany.

¹¹ Support may be connected with certain conditions, usually aiming at the enforcement of mitigation measures and compliance with standards. Such conditional support requires that the overall assessment of the project's impact is considered as "acceptable". Explicit reference to conditional cover is made in the reports of Belgium, Denmark, Hungary, Italy, Luxemburg, Poland, Portugal, Romania, Slovenia and

OECD Recommendation on Common Approaches for Officially Supported Export Credits and Environmental and Social Due Diligence (the “Common Approaches”)¹².

c) Compliance of ECAs with Union objectives and obligations:

Paragraph 3 of Annex I asks the Commission to evaluate in its annual review the "compliance of ECAs with Union objectives and obligations".

i) Compliance with obligations under international law and EU competition law:

There have been no disputes at WTO level involving European export credit programs.

No complaints concerning potential infringements of EU law involving export credit agencies were received by the European Commission in 2012.

ii) Compliance with Union objectives:

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 Article 21.

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, which read:

Article 206:

By establishing a customs union in accordance with Articles 28 to 32, the Union shall contribute, in the common interest, to the harmonious development of world trade, the progressive abolition of restrictions on international trade and on foreign direct investment, and the lowering of customs and other barriers.

Article 207:

The common commercial policy shall be based on uniform principles, particularly with regard to changes in tariff rates, the conclusion of tariff and trade agreements relating to trade in goods and services, and the commercial aspects of intellectual property, foreign direct investment, the achievement of uniformity in measures of liberalisation, export policy and measures to protect trade such as those to be taken in the event of dumping or subsidies. The common commercial policy shall be conducted in the context of the principles and objectives of the Union's external action.

Neither of these Articles specifically mentions export credits. These provisions are general in nature and the extent to which they can be translated in rules obligations directly relevant for the activity of government agencies specialised in rather technical fields like export credits depends on the specific provisions.

¹² Spain. The concept is also reflected in the OECD Recommendation on Common Approaches for Officially Supported Export Credits and Environmental and Social Due Diligence.
e.g. Italy, Netherlands, Luxemburg, Poland, Portugal, Slovak Republic, Slovenia, Spain and United Kingdom.

In the Commission's view, these Treaty provisions can however serve as a background against which the policies applied to export credit transactions may be evaluated.

The information reflected in the Annual Activity Reports shows that Member States in general have policies on export credits and environment¹³, anti-bribery and sustainable lending practices concerning low income countries. The 3 relevant OECD Recommendations¹⁴ (OECD Recommendation on Bribery and Officially Supported Export Credits, the Recommendation on Common Approaches for Officially Supported Export Credits and Environmental and Social Due Diligence, the Principles and Guidelines to Promote Sustainable Lending Practices in the provision of Official Export Credits to Low-Income Countries) play an important – but not exclusive – role. Even Member States which are not OECD Members apply them or intend in principle to do so. Many Member States state in their reports that for example the "Common Approaches" are applied beyond the scope defined by the OECD, or that their respective national legislation or practices are in substance more ambitious than the, OECD recommendations¹⁵. In several cases, the ECAs in question have developed relevant instruments themselves (e.g. a CSR policy or an ethics code)¹⁶.

Human rights play an important role in the export credit policies of many Member States: The new focus on human rights expressed in the new version of the “Common Approaches” adopted by the OECD in 2012 is generally appreciated. Several Member States report that they actively support the OECD’s work on practical implementation of this new human rights dimension of the Common Approaches¹⁷ or stress that they apply human rights considerations irrespective of the scope of the Common Approaches¹⁸.

Member States' policies linked to export credit activities do not limit themselves to the four policy areas already mentioned, but also include transparency (openness and confidentiality policy), dialogue with civil society, contribution to sustainable development, corporate social responsibility (either in the form of a CSR policy for the ECA itself or by promoting efforts of exporters in this field), and the promotion of respect of the OECD Guidelines for multinational enterprises and fundamental labour standards as expressed in core ILO Instruments,

In summary, the Commission takes note that all Member States have developed policies to accompany the management of their export credit programs that are in line with the EU’s objectives. Policy recommendations developed in the OECD - the only international organisation to have developed specialised rules on export credits – are in common use, but relevant activities by Member States clearly go beyond them.

¹³ On environmental policies, see already Section 3b) above.

¹⁴ According to the OECD "Recommendations are not legally binding, but practice accords them great moral force as representing the political will of Member countries and there is an expectation that Member countries will do their utmost to fully implement a Recommendation. Thus, Member countries which do not intend to do implement a Recommendation usually abstain when it is adopted."

¹⁵ e.g. Austria, Belgium, Bulgaria, Denmark, Finland, France, Germany. Netherlands, and Sweden.

¹⁶ e.g. Denmark, Italy, Luxemburg, Slovenia and Sweden.

¹⁷ e.g. Italy.

¹⁸ For example Austria, Belgium, Denmark, Germany, Italy, Netherlands and Sweden. Sweden even applies beyond the general screening of transactions a system of further assessments for transactions with inherent labour and human rights risks/transactions in high risk countries/sectors.

For example, Finland's Annual Activity Report mentions among its environmental principles "support to international developments towards a common set of rules for ECAs in environmental issues in order to provide equal competitive opportunities in this respect for exporters from different countries". In the Commission's view, this position has - beyond the environmental field - a lot of merit for itself: International competition between exporters should be on the quality and the price of the relevant products or services, not on the conditions of the export credit financing package nor on the substance of the policies applied to export credits.

Generally, it would also be advisable to use the work of international monitoring institutions (including the UN) as guidance in further policy developing.

It is difficult to define a precise benchmark for measuring "compliance" in EU law. That being said, the Commission sees a clear general willingness on the side of the Member States to apply policies to their export credit programs, whose objectives are in line with the general language of Articles 3 and 21 TEU. In the European Commission's view, this concerns notably the following objectives: "*establishing of an internal market*" (Article 3(3) – as mentioned, all export credit programs have to be compatible with relevant legislation), and - at an international level – to uphold and promote "*free and fair trade*" (Article 3(5), "*to consolidate and support human rights*" (Article 21(2)(b), "*to encourage the integration of all countries into the world economy*" (Article 21(2)(e) and "*to help develop international measures to preserve and improve the quality of the environment and sustainable management of global natural resources, in order to ensure sustainable development*" (Article 21(2)(f).

The Commission has taken note of the Resolution adopted in July 2013 by the European Parliament on the first reporting exercise under Regulation (EU) No 1233/2011. It would obviously have been difficult to apply the substance of this Resolution retroactively to the reporting exercise 2012 (the deadline for submission of Annual Activity Reports by Member States was end of July 2013). The Commission has since then brought this Resolution to the attention of Member States for future reporting exercises.