



COMMISSION OF THE EUROPEAN COMMUNITIES

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Proposal for a
COUNCIL DIRECTIVE

on harmonization of the main provisions concerning export credit insurance for
transactions with medium- and long-term cover

(presented by the Commission)

EXPLANATORY MEMORANDUM

Credit insurance is an instrument extensively used by governments to promote exports. By providing cover for their exporters against the risk of default of the foreign debtor, whether on commercial or political grounds, they encourage them to do business in markets presenting an element of risk which enterprises are unwilling or unable to bear themselves. A great deal of money is involved: Each year, Member States' credit insurance agencies cover some ECU 25-30 billion worth of new contracts with a credit period in excess of one year. From 1980 to 1995, the cost to the national budgets was particularly high (e.g. nearly ECU 5 billion a year between 1988 and 1994 for the Community as a whole), because of claims arising from political contingencies including the debt crisis, the Gulf War and the collapse of the former Soviet Union.

Each Member State has its own export credit insurance system, with different guarantee conditions, premium rates and cover policies. The result is that Community exporters are not competing for business on a level playing-field.

Concerned about the effects of government interference in markets at the taxpayer's expense, OECD countries have bound themselves to disciplines restricting official support with regard to credit terms. Negotiations are currently under way in the OECD to introduce guidelines which would result in convergence of premium rates applying to the different systems of export credit insurance.

In the Community itself it was apparent from the outset that the Member States' systems for granting aid for exports to third countries needed to be harmonized, and indeed this objective is explicitly set out in Articles 112 and 113 of the Treaty establishing the European Community.

The Council set up a Policy Coordination Group for Credit Insurance, Credit Guarantees and Financial Credits in 1960. Its brief was to frame proposals for harmonizing Member States' credit insurance arrangements.

The Coordination Group has mainly been involved with issues of consultation and cooperation between credit insurers, and has also been very active in connection with the various negotiations in the framework of the OECD.

On the harmonization front a technical committee was given a mandate in the late 1960s to draft common credit insurance policies for all credit insurers in the Community, and such terms were indeed enacted in a Council Directive adopted on 27 October 1970, which, however, remained a dead letter. None of the initiatives mooted since then, including the establishment of a European credit insurance system and, more recently, the creation of a credit insurance pool for Eastern Europe, has borne fruit.

Similarly, on 13 July 1994 the Commission adopted a proposal for a Directive based to a large extent on two reports submitted to the Council by an expert working party charged with looking at ways of harmonizing medium- and long-term export credit insurance. Once again, however, the Council declined to approve the proposal, objecting both to the procedural aspects and its lack of flexibility, particularly in the approach to competition from outside the EC.

It is plain from the experience of the last 37 years that Member States have been reluctant to cede their freedom of manoeuvre on officially supported export credits, partly on political grounds, since they regard export policy to some extent as a foreign policy tool, and partly for financial reasons, since the cost of claims to the public purse is considerable.

This latest Commission proposal constitutes a first step in the direction of harmonization of export credit insurance systems, and also aims to introduce a measure of transparency in this field.

While it lays down certain common principles applicable to the main constituents of cover, however, it allows for considerable flexibility in the way they are applied. Derogations are allowed on condition that any alteration in the quality of cover is reflected in the premium charged, and notified to the Commission and the other credit insurers.

The common principles on premium represent a framework designed to bring greater transparency to current practice and allow for incorporation of whatever guidelines emerge from the ongoing OECD negotiations. The proposal does not prejudge the outcome of these negotiations, which cover the following areas:

- country risk model and country classification procedure;
- premium benchmarks and premium feedback tool;
- related conditions;
- permitted exceptions; and
- special attention for the specific position of small export credit agencies.

The Directive can stand alone, but is designed to be complemented by future OECD rules. However, it should not need textual amendment in the light of any foreseeable OECD agreement.

The common principles on cover policy establish a format necessary for the exchange of information between credit insurers, supplemented by the figures of each year's results. This information is to a large extent already provided to national authorities and international organisations; over and above that, the use of electronic mail will ensure that the additional administrative burden is relatively small.

Decision-making is by standard committee procedure which will be used only in certain exceptional circumstances, principally in case of dispute over the status of the debtor, and should in practice be infrequent. Recourse to an already existing committee does not appear appropriate, since there are no existing committees which correspond to the requirements of export credit insurance. The committee arrangements are therefore unlikely to affect credit insurers' routine business.

To sum up, this draft Directive is a first step towards fulfilment of the duty laid on us by the Treaty, while allowing a degree of flexibility reflecting the wishes of both credit insurers and business circles.

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 113 thereof,

Having regard to the proposal from the Commission¹,

Having regard to the opinion of the European Parliament²,

1. Whereas medium- and long-term export credit insurance plays a crucial role in international trade and constitutes a major commercial policy instrument;
2. Whereas medium- and long-term export credit insurance plays an important part in trade with developing countries and thus fosters their integration into the world economy, which is an objective of Community development policy;
3. Whereas the differences between the official medium- and long-term export credit insurance systems currently operating in the Member States with regard to the main constituents of cover, premiums and cover policy may result in distortions of competition among enterprises in the Community;
4. Whereas, in view of the third paragraph of Article 3b of the Treaty, the measures provided for in this Directive should not go beyond what is necessary to achieve the objective of the harmonization necessary to ensure that export policy is based on uniform principles and that competition between enterprises in the Community is not distorted;
5. Whereas in order to lessen existing distortions of competition, it is desirable that the different official export credit insurance systems be harmonized, as envisaged in Article 112 of the Treaty, on the basis of uniform principles and in such a way as to form an integral part of the common commercial policy;
6. Whereas the provision by governments (or special institutions controlled by governments) of export credit guarantee or insurance programmes at premium rates which are inadequate to cover the long-term operating costs and losses of the programmes are classified as prohibited export subsidies in the Agreement on Subsidies and Countervailing Measures concluded in the framework of the Uruguay Round multilateral negotiations (1986-1994)³ (see Article 3.1(a) and paragraph (j) of Annex I thereto);

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3. OJ No L 336, 23.12.1994, p. 156.

7. Whereas the premium charged by credit insurers should correspond to the risk insured;
8. Whereas harmonization would foster cooperation among the credit insurers acting on behalf of the State or with State support, and enhance cooperation among enterprises in the Community as envisaged by Article 130 of the Treaty;
9. Whereas both harmonization and cooperation are major and crucial factors in the competitiveness of Community exports on non-Community markets;
10. Whereas the Commission White Paper on completing the internal market adopted by the European Council in June 1985 stresses the importance of an environment conducive to cooperation among enterprises in the Community;
11. Whereas, by a Decision⁴ dated 27 September 1960, the Council set up a Policy Coordination Group for Credit Insurance, Credit Guarantees and Financial Credits;
12. Whereas on 15 May 1991 the said Policy Coordination Group mandated experts from each of the Member States at that time who, as the Single Market 1992 Experts' Group, submitted reports containing a set of proposals on 27 March 1992, 11 June 1993, and 9 February 1994;
13. Whereas Council Directive 70/509/EEC⁵ of 27 October 1970 on the adoption of a common credit insurance policy for medium- and long-term transactions with public buyers, as last amended by the Act of Accession of Austria, Finland and Sweden and Council Directive 70/510/EEC⁶ of 27 October 1970 on the adoption of a common credit insurance policy for medium- and long-term transactions with private buyers, as last amended by the Act of Accession of Austria, Finland and Sweden, should be replaced by this Directive;
14. Whereas this initial harmonization of the export credit insurance should be considered as a step towards convergence of the various systems of the Member States and should be followed by subsequent steps in order to eliminate any remaining forms of distortion of competition,

HAS ADOPTED THIS DIRECTIVE:

Article 1 **Scope**

The Directive applies to cover for export transactions for goods and/or services originating in a Member State, as far as it is provided directly or indirectly for the account of or with the support of one or more Member States, involving a repayment period of two years or more, or a manufacturing period and a repayment period of two years or more in total.

⁴ OJ No 66, 27.10.1960, p. 1339/60.

⁵ OJ No L 254, 23.11.1970, p. 1.

⁶ OJ No L 254, 23.11.1970, p. 26.

The Directive does not apply to cover for advance payment, performance and retention bonds. Neither does it apply to cover for risks relating to construction equipment and material when locally used for the performance of the commercial contract.

Article 2

Obligations of the Member States

Member States shall ensure that institutions providing cover in the form of export credit insurance or guarantees for the account of or with the support of the State, hereinafter referred to as "insurers", insure export transactions covered by this Directive in accordance with the provisions set out in the Annex, when destined to countries outside the Community and financed by buyer credit or supplier credit or paid on cash terms.

Article 3

Committee

The Commission shall be assisted by a committee composed of the representatives of the Member States and chaired by the representative of the Commission.

The representative of the Commission shall submit to the Committee a draft of the measures to be taken. The Committee shall deliver its opinion on the draft within a time limit which the chairman may lay down according to the urgency of the matter. The opinion shall be delivered by the majority laid down in Article 148(2) of the Treaty in the case of decisions which the Council is required to adopt on a proposal from the Commission. The votes of the representatives of the Member States within the Committee shall be weighted in the manner set out in that Article. The chairman shall not vote.

The Commission shall adopt measures which shall apply immediately. However, if these measures are not in accordance with the opinion of the Committee, they shall be communicated by the Commission to the Council forthwith.

In that event, the Commission may defer application of the measures which it has decided for a period of not more than one month from the date of such communication.

The Council, acting by a qualified majority, may take a different decision within the time limit referred to in the previous paragraph.

Article 4

Application of the Committee procedure

Decisions referred to in points 47, 50 and 51 of the Annex shall be taken in accordance with the procedure laid down in Article 3.

Article 5

Report and review

The Commission shall submit a report on the experience gained in applying the provisions laid down in this Directive to the European Parliament and to the Council by 31 December 2000.

The Commission shall, where necessary, with a view to further convergence of the national export credit insurance systems and elimination of remaining distortions of competition between Community policy holders, propose amendments to this Directive.

Article 6
Relationship to other procedures

The procedures laid down by this Directive supplement those established by Council Decision 73/391/EEC⁷.

Article 7
Repeal

Directive 70/509/EEC and Directive 70/510/EEC are hereby repealed.

Article 8
Transposition

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 30 September 1998. They shall immediately inform the Commission thereof.

When Member States adopt these provisions, these shall contain a reference to this Directive or shall be accompanied by such reference at the time of their official publication. The procedure for such reference shall be adopted by Member States.

Article 9
Entry into force

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Communities*.

Article 10
Addressees

This Directive is addressed to the Member States.

Done at Brussels,

For the Council
The President

⁷ OJ No L 346, 17.12.1973, p. 1.

Common Principles for Export Credit Insurance

Chapter I: Constituents of cover

Section 1: General principles and definitions

1. Scope of the common principles

- (a) The common principles laid down in this annex shall apply to cover for supplier credit transactions with public or private buyers and to cover for buyer credit transactions with public or private borrowers.
- (b) The common principles shall apply to cover for all risks as defined in point 4. Nevertheless, the insurer may decide in each individual case to limit its cover to certain risks only.
- (c) When all the obligations of a private debtor are wholly and unconditionally guaranteed by a public entity, the common principles for public debtors shall apply.

When used in this Annex, the term "debtor means" either the buyer or borrower as referred to in point 1(a), or their guarantor with regard to the insured transaction.

2. Characteristics of supplier credit

- (a) The term supplier credit shall apply to a commercial contract providing for an export of goods and/or services originating in a Member State between one or more suppliers and one or more buyers, whereby the buyer(s) undertake to pay the supplier(s) on cash terms or on credit terms.
- (b) Cover provisions for supplier credit shall apply where cover is given to enterprises established in a Member State in accordance with Article 58 of the EC Treaty.
- (c) If a commercial contract is being financed by means of a buyer credit or any other financing arrangement, cover given to the exporter for the commercial contract itself shall follow the provisions for cover for supplier credits.

3. Characteristics of buyer credit

- (a) The term buyer credit shall apply to a loan agreement between one or more financial institutions and one or more borrowers financing a commercial contract providing for an export of goods and/or services originating in a Member State, whereby the lending institution(s) undertake to pay the supplier(s) under the underlying transaction on cash terms on behalf of the buyer(s)/borrower(s), while the buyer(s)/borrower(s) will reimburse the lending institution(s) on credit terms.

- (b) Cover provisions for buyer credit shall apply where cover is given to financial institutions, irrespective of their place of establishment or registration, provided that the buyer credit constitutes an unconditional obligation of the borrower to repay its debt, irrespective of the performance of the commercial contract to be financed.
- (c) Cover provisions for buyer credit shall apply to any financial arrangement financing a commercial contract, which involves negotiable instruments payable by a buyer and held properly by a financial institution.

4. Definition of the risks involved

- (a) The commercial risk for private debtors is determined by points 14, 15 and 16.
- (b) The political risk for private debtors is determined by points 17 to 22, and for public debtors by points 15 to 22.
- (c) The manufacturing risk is determined by point 6(b).
- (d) The credit risk is determined by point 6(c).

5. Definition of the public and private status of the debtor

- (a) Public debtor is defined as an entity which, in whatever form, represents the public authority itself and which cannot, either judicially or administratively, be declared insolvent.

Any debtor which is not public, according to the aforementioned definition, shall be considered as private.

- (b) When assessing the status of a debtor, the insurer shall determine:
 - the legal status of the debtor;
 - the real effectiveness of any legal action against the debtor;
 - the debtor's sources of finance and revenue;
 - the degree of influence or control over the debtor that can be exercised by the host country government.
- (c) In case of doubts about the status of the debtor, the insurer shall take account of the fact that:
 - a public debtor may either be a sovereign state or a central government entity, or any other public entity which is subordinate to the central government, such as regional, municipal or parastatal authorities or other public institutions;
 - the acts of a public debtor may commit the central government or the State; payment obligations under the commercial contract or the buyer credit agreement will thus either be met from national budget funds or guaranteed by the State, for example, acting through the Ministry of Finance or the Central Bank;

- a public debtor may also discharge his debts by using sources which are not related to central government funds, for example, through revenues raised by local taxation, or by providing public services.

Section 2: Scope of cover

6. Covered risk

- (a) The covered risks shall be the manufacturing and the credit risk.
- (b) The manufacturing risk materialises when the performance of the contractual obligations of the policy holder, or the manufacture of the goods ordered, has been suspended for a period of six consecutive months, provided that such suspension is caused directly and exclusively by the occurrence of one or more of the covered causes of loss listed in points 14 to 22.
- (c) The credit risk materializes when the policy holder has been unable to obtain payment of all or part of its claim during a period of three months after the due date, provided that such non-payment is caused directly and exclusively by the occurrence of one or more of the covered causes of loss listed in points 14 to 22.
- (d) The risk relating to a buyer credit may be covered conditionally or unconditionally. The insurer shall follow the principles and procedures laid down in points 32, 33, and 48(a).

7. Extent of cover

- (a) Cover for manufacturing risk shall include, within the limit of the contract amount, the costs incurred by the policy holder either in performing its contractual obligations or in manufacturing the goods subject to the contract, provided that such costs are properly attributable to the performance of the contract.

Cover for the manufacturing risk shall not include:

- costs incurred in respect of goods for which cover of the credit risk has already taken effect;
 - the credit insurance premiums paid by the policy holder to the insurer;
 - amounts paid by the policy holder following the calling of a performance bond issued in respect of the covered contract; however, this does not prevent the insurer from covering such risks outside the scope of this Directive; and
 - amounts corresponding to penalties and damages paid by the policy holder.
- (b) Cover for credit risk shall include the amount (principal and interest) owed by the buyer under the commercial contract or by the borrower under the buyer credit agreement, including interest as far as it accrues between the due date and the end of the claim waiting period (post-maturity interest).

In case of a buyer credit, cover for credit risk shall include the standard banking fees due after the coming into force of the buyer credit agreement.

In case of a supplier credit, cover for credit risk shall exclude amounts corresponding to penalties and damages paid by the policy holder.

8. Percentage of cover

- (a) The percentage of cover shall be 95%.
- (b) If an insurer gives a higher cover percentage than set out in (a) above, it shall follow the principles and procedures laid down in points 32, 33, and 48(a).
- (c) The percentage of cover and the maximum amount of the indemnity for which the insurer may be liable shall be expressly laid down in the credit insurance policy issued by the insurer.

9. Uninsured percentage

The policy holder shall retain for its own account a portion of the uninsured percentage equivalent to 2% of the insured amount. The insurer may decide to allow the policy holder to lay off this remaining uninsured percentage.

10. Cover for transactions in foreign currency

If transactions provide for payment or financing in one or more foreign currencies, cover may be given in any currency.

11. Foreign supplies

Subcontracts with parties in one or more Member States are automatically included in the cover in accordance with Council Decision 82/854/EEC on the rules applicable, in the field of export guarantees and finance for export, to certain subcontracts with parties in other Member States or in non-member countries⁸.

12. Effective date of cover

- (a) In case of a buyer credit, cover shall take effect on the date of entry into force of the loan agreement, provided that the conditions precedent stipulated in the credit insurance policy and the buyer credit agreement have been met.
- (b) In case of a supplier credit, cover of the manufacturing risk shall take effect on the date of entry into force of the commercial contract, provided that the conditions precedent stipulated in the credit insurance policy and the commercial contract have been met.

Cover of the credit risk shall take effect on the date on which full completion of the contractual obligations of the policy holder entitles the latter to payment, provided that the conditions precedent stipulated in the credit insurance policy and the commercial contract have been met. However, cover of the credit risk may take effect on the date of each partial delivery or partial dispatch, provided that the policy holder, under the terms of the contract, is entitled to payment of a fixed and definitive amount corresponding to the value of the goods delivered or dispatched.

⁸ OJ No L 357, 18.12.1982, p. 20.

Section 3: Causes of loss and exclusions of liability

13. Liability of the insurer

The insurer shall be liable if the loss is directly and exclusively attributable to one or more of the covered causes of loss laid down in points 14 to 22.

14. Insolvency

Insolvency of the private debtor and, if any, its guarantor, either *de jure* or *de facto*.

15. Default

Default of the debtor and, if any, its guarantor.

16. Arbitrary repudiation or refusal

Decision of the buyer under a supplier credit to interrupt or cancel the commercial contract, or to refuse to accept the goods and/or services, without being legally entitled to do so.

17. Decision of a third country

Any measure or decision of the government of a country other than the country of the insurer, including measures and decisions of public authorities which are deemed to constitute government interventions, which prevents performance of the buyer credit agreement or the commercial contract, respectively.

18. Moratorium

General moratorium decreed either by the government of the country of the debtor, or by that of a third country through which payment in respect of the buyer credit agreement or the commercial contract must be effected.

19. Prevention or delay in the transfer of funds

Political events, economic difficulties, or legislative or administrative measures which occur or are taken outside the country of the insurer, and which prevent or delay the transfer of funds paid in respect of the buyer credit agreement or the commercial contract, respectively.

20. Legal provisions in the debtor's country

Legal provisions adopted in the country of the debtor declaring payments made by the debtor to be valid discharge of the debt, although such payments, when converted into the currency of the commercial contract or of the buyer credit agreement, respectively, no longer cover the amount of the debt at the date of transfer as a result of fluctuations in exchange rates.

21. Decision of the insurer's country

In the case of a supplier credit agreement, any measure or decision of the government of the country of the insurer, including measures and decisions of the European Community, relating to trade between a Member State and third countries, such as a ban on exports, in so far as its effects are not covered otherwise by the government concerned.

22. Force majeure

Cases of force majeure occurring outside the country of the insurer, for example war including civil war, revolution, riot, civil disturbance, cyclone, flood, earthquake, volcanic eruption, tidal wave, nuclear accident, in so far as its effects are not insured otherwise.

23. General exclusion from liability

The insurer shall have no liability if the loss is directly or indirectly attributable to the following:

- (a) any action or omission by the policy holder, or by any person acting on its behalf, which makes the buyer credit agreement or the commercial contract wholly or partially unenforceable;
- (b) any provision restricting the policy holder's rights, which is included in the buyer credit agreement, the commercial contract, or any associated document including any document relating to the guarantee or security arrangements involved;
- (c) any further agreement between the policy holder and the borrower, or a guarantor respectively, after conclusion of the buyer credit agreement or the commercial contract, which prevents or delays the payment of the debt;
- (d) in the case of a supplier credit, any failure of subcontractors, co-contractors, or other suppliers to perform their obligations, provided that such failure is not a consequence of political events as described in causes of loss listed in points 17 to 22.

Section 4: Provisions for the indemnification of claims

24. Claim waiting period

- (a) The claim waiting period shall correspond to the period of time set for the covered risk to materialise, as laid down in point 6(b) and (c).
- (b) No claim waiting period need apply:
 - when, in the case of a private debtor, the non-payment is due to the debtor's insolvency, either *de jure* or *de facto*;
 - in case of a bilateral intergovernmental debt restructuring agreement; and
 - in case of the insurer giving cover in the form of an unconditional guarantee.

25. Indemnification

The policy holder is entitled to indemnification at the end of the claim waiting period as defined in point 24, provided that the conditions precedent to the insurance have been fulfilled, the claim is legally valid, and the policy holder has managed the risk with due diligence.

26. Secured obligations

If the debtor's obligations to the policy holder have been secured by means of a guarantee or other security, the policy holder must have taken all necessary measures to ensure not only that the guarantee or other security is valid, but also that it is enforceable.

27. Calculation of the claim

In calculating the payment of a claim, the insurer shall not pay the policy holder an amount exceeding the actual amount of its total loss, and/or exceeding the amount which the policy holder was actually entitled to receive from the borrower under the buyer credit agreement or from the buyer under the commercial contract, respectively.

28. Payment of the claim

The claim shall be paid without delay, at the latest, however, within one month of the end of the claim waiting period, provided that the insurer has received all necessary information, documents, and evidence in order to establish the validity of the claim in good time.

In the case of cover for manufacturing risk, the claim shall be paid within one month either of the end of the claim waiting period, or of the date of receipt of an expert's report, where relevant, or of the date of agreement by the policy holder and the insurer on the amount of the claim, whichever is later.

29. Disputes relating to the claim

If losses subject to an application for indemnification by the policy holder relate to rights which are in dispute, the insurer shall defer the payment of the claim until the dispute is settled in favour of the policy holder by the court or arbitration body provided for in the buyer credit agreement or the commercial contract, respectively.

30. Bilateral intergovernmental debt restructuring agreement

- (a) If the covered buyer credit agreement or commercial contract is subject to a bilateral intergovernmental debt restructuring agreement, the policy holder shall follow the conditions of the restructuring agreement in respect of both the insured and the uninsured portions of that buyer credit agreement or commercial contract, respectively. The policy holder shall give any assistance to the insurer which is necessary for the performance of the restructuring agreement.
- (b) If the insured amount is included in a bilateral intergovernmental debt restructuring agreement, the insurer may waive the one-month period provided for in point 28, once the bilateral agreement is effective.

31. Additional costs

Additional costs resulting from action to minimise or avoid loss shall be covered proportionally to the percentage of cover under the credit insurance policy, provided that they have been approved by the insurer. Additional costs include costs of court action and other legal expenses.

However, if such costs also relate to amounts or maturities not covered by the insurer, they shall be attributed proportionally to the insured and uninsured amounts or maturities.

Chapter II: Premium

32. General principles for setting the premium

The premium charged for export credit insurance shall:

- correspond to the risk covered;
- adequately reflect the scope and the quality of the cover granted;
- not be inadequate to cover long-term operating costs and losses.

33. Quality of cover

When determining the quality of cover as mentioned in point 32, the insurer shall duly take into account the percentage of cover, the degree of conditionality of cover, and any other condition affecting the quality of cover.

34. Country risk assessment

The level of premium charged for each country or each country category shall be based on an appropriate country risk assessment.

35. Status of the debtor

- (a) When setting premium rates, the public or private status of the debtor as set out in point 5 shall be taken into account by applying premium rates reflecting the creditworthiness of the debtor.
- (b) In the case of a private debtor, the insurer may cover either the commercial or the political risk or both types of risk. Where cover is limited to one type of risk, the premium charged shall correspond only to the risk covered.

36. Risk period

- (a) When calculating the premium, the total risk period shall be taken into account.
- (b) In the case of manufacturing risk, the total risk period shall be the period between the effective date of the commercial contract and:
 - the full completion of the exporter's contractual obligations; or
 - the average weighted date of deliveries if the contract stipulates partial deliveries and entitles the supplier to corresponding payments.

(c) In the case of credit risk, the total risk period, weighted according to the amount of principal and interest actually at risk, shall be:

- the period between the date on which the credit risk cover took effect for the exporter and the last payment made by the buyer; or
- the average risk period between the first drawing as envisaged under the buyer credit and the date of the final repayment.

37. Chargeable amount

(a) Premium shall be paid on the chargeable amount as defined below, which determines the maximum liability for the insurer under the credit insurance policy.

(b) In the case of buyer credit, the chargeable amount shall be determined by the total of the covered amounts of:

- the principal of the loan;
- the interest of the loan, including constructional interest;
- the standard banking fees; and
- the post-maturity interest.

(c) In the case of supplier credit and cash contracts, the chargeable amount shall be:

- for the manufacturing risk the total contract value minus the downpayment and any amounts not covered; the chargeable amount may, if the insurer agrees, be reduced to the expected maximum loss;
- for the credit risk either the total of principal and interest including post-maturity interest, or the amounts due on or after partial delivery or on or after full completion of the contractual obligations, or the amounts due upon separate performances which entitle the supplier to corresponding payments; the chargeable amount may, if the insurer agrees, be reduced to the expected maximum loss.

38. Payment of premium

(a) The total premium amount shall be due on the date of issue of the credit insurance policy.

(b) However, the premium may be paid in instalments. In this case, the insurer shall:

- require at least 15% of the premium amount to be paid on the date of issue of the credit insurance policy;
- charge interest corresponding to an appropriate commercial interest rate on the deferred payments from the date of issue of the credit insurance policy;
- require that the premium received matches at least the premium due for the amount at risk at any particular time.

Chapter III: Country cover policy

39. Determination of the country cover policy

- (a) The insurer shall base its country cover policy on an assessment of the risk by country, its total outstanding exposure for each country, and the composition of its country risk portfolio in the light of its size and specific structure.
- (b) In setting its country cover policy, the insurer shall take into account each debtor country's classification.
- (c) Nevertheless, the insurer shall be free to stop or limit insuring business for a particular country, regardless of the country classification.

40. Definition of total outstanding exposure

- (a) The total outstanding exposure shall, within the limits of the percentage of cover, be determined on the basis of the amounts for medium and long term business, as defined in Article 1 of the Directive.

The total outstanding exposure consists of the following elements set out below in (b) to (e).

- (b) The maximum amount at risk in principal and interest for concluded contracts which the insurer is committed to cover even if the insurance policy has yet to be issued.

Covered post maturity interest accruing during the claim waiting period.

Any amount reinsured, if the insurer is acting as reinsurer; if, however, the insurer is acting as prime insurer, the reinsured amount is excluded.

- (c) The amount of outstanding claims awaiting recovery and not yet written off, irrespective of whether such claims relate to materialization of a manufacturing risk and/or a credit risk.
- (d) The amount of non-repatriable amounts, such as those relating to bonds and non-repossession risk cover, once a claim has actually been paid and has neither been recovered nor been written off.
- (e) Outstanding interest and interest to be paid by debtor countries under rescheduling arrangements, including capitalized interest.

41. Country risk

- (a) As regards the group of countries which constitute the best risk, the insurer shall, in principle, set no restrictions on its cover policy.
- (b) For other countries, the insurer may set restrictions on its cover policy.
- (c) An insurer which, in principle, does not offer cover for a country or a particular group of countries, may, however, exceptionally cover certain transactions for reasons of bilateral policy or national interest, or where sufficient freely convertible foreign exchange is available for the transaction in question.

42. Exposure limits

- (a) Concerning the countries referred to in point 41(b), insurers may set risk ceilings, which shall normally represent the highest degree of exposure an insurer may risk on a specific country.
- (b) At or above the risk ceiling for a particular country, the insurer may limit the total outstanding exposure for the country in question by increasing the applicable premium, or restricting, in cumulative or alternative manner, for example:
- the total outstanding exposure for that country;
 - the total value of offers of cover;
 - the value of new contracts to be covered;
 - the maximum amount covered per transaction.
- (c) Below the risk ceiling for a particular country, there shall generally be no limit on cover policy. Nevertheless, the insurer may restrict the amount of cover for the country in question by using, for example, the restrictions provided for in (b) above.

43. Specific conditions for country cover

In any case, the insurer may routinely apply to a particular country, irrespective of the corresponding country category, certain cover conditions such as:

- payment and/or transfer guarantee by the central bank or the finance ministry of the relevant country;
- irrevocable letter of credit or bank guarantee;
- extension of the claim waiting period;
- reduction in the cover percentage;
- restriction of the cover for certain sectors of activity or for certain types of projects.

Chapter IV: Notification procedures

44. Scope of the notification procedures

- (a) Each insurer shall apply the following procedures to the common principles set out in Chapters I, II and III.
- (b) These procedures shall supplement those established under Council Decision 73/391/EEC on consultation and information procedures in matters of credit insurance, credit guarantees and financial credits⁹.

⁹ OJ No L 346, 17.12.1973, p. 1.

45. Types of notification procedures

There shall be four types of notification procedures, destined to the Commission and the other insurers:

- annual notification for information;
- notification for decision;
- ex-ante notification for information; and
- ex-post notification for information.

46. Annual notification for information

(a) At the end of each year, at the latest however by 31 March of the following year, each insurer shall report to the other insurers and to the Commission on its activity over the previous year on a retrospective basis. This report shall cover all debtor countries and shall contain, for each of these countries:

- the total amount of cover the insurer has offered;
- the total outstanding exposure as defined in point 40;
- the premium income earned;
- the amount of present arrears;
- the amount of recoveries made; and
- the amount of claims paid.

(b) At the beginning of each year, at the latest by 31 January, each insurer shall report to the other insurers and to the Commission on its cover policy as envisaged for the year to come. This report shall cover all debtor countries and shall contain, for each of these countries, at least the following information:

- the total amount of cover the insurer is willing to offer;
- the country cover policy; i.e. the type and level of ceilings as well as the conditions the insurer intends to routinely impose on cover;
- the way premium will be calculated and charged for commercial and political risk.

47. Notification for decision

(a) In case of competing offers from Community exporters or banks, an insurer involved shall respond without delay to any request for information from another insurer involved on the status of the debtor of the transaction in question - as defined in point 5.

(b) In case of disagreement on the status of the debtor, the insurers involved shall make the information available to the other insurers in a bid to settle on a mutually agreed status.

- (c) If insurers cannot agree on the status of the debtor within 10 working days from the request for information, the insurers involved shall bring the matter with the relevant information to the attention of the Commission, which shall then initiate a decision to be taken in accordance with the procedure laid down in Article 3 of the Directive.

48. *Ex-ante* notification for information

- (a) An insurer which intends to derogate from the provisions of this annex by giving more favourable cover conditions either for a particular transaction or a set of transactions, or for a certain sector or sectors, or for a certain country or countries, or for its overall system, shall notify the other insurers and the Commission of its intention at least seven working days before its decision becomes effective, stating the reasons for the intended derogation, e.g. the need to match international competition, and the corresponding premium rate to be charged.
- (b) An insurer which intends to charge lower premium than that set out in its annual notification in accordance with point 46(b), shall notify the other insurers and the Commission of its intention at least seven working days before its decision becomes effective.
- (c) An insurer which, following another insurer's notification in accordance with point (a) or (b) above, intends to give more favourable conditions than the initiating notifier, shall notify the other insurers and the Commission of its intention at least seven working days before its decision becomes effective, stating the premium rate it intends to charge.
- (d) An insurer which, in accordance with point 41(c), intends to cover transactions with debtors in countries, for which it normally does not offer cover, shall notify the other insurers and the Commission of its intention at least seven working days before its decision becomes effective, stating the premium rate it intends to charge.

49. *Ex-post* notification for information

- (a) An insurer which decides to derogate from the provisions of this annex by giving less favourable cover conditions either for a particular transaction or a set of transactions, or for a certain sector or sectors, or for a certain country or countries, should notify the other insurers and the Commission accordingly.
- (b) An insurer which decides to adjust one or more elements of its country cover policy set out in its annual notification in accordance with point 46(b), shall without delay notify the other insurers and the Commission accordingly.
- (c) An insurer which, following a notification in accordance with points 48(a) and/or (b), decides to give the same conditions as the initiating notifier, shall without delay notify the other insurers and the Commission accordingly.
- (d) Each insurer shall without delay give detailed replies to any request from other insurers or the Commission for clarification or information on its activity.

50. Use of an electronic mail system

- (a) All notifications shall normally be made via an electronic mail system, or, if necessary, by other appropriate means of instant written communication.
- (b) The electronic mail system shall be decided upon in accordance with the procedure laid down in Article 3 of the Directive.

51. Currency to be used in notifications

All monetary amounts contained in any notification, irrespective of the type, shall be expressed in ECUs on the basis of the latest exchange rate, unless otherwise decided in accordance with the procedure laid down in Article 3 of the Directive.

FINANCIAL STATEMENT

Council Directive on harmonization of the main provisions concerning export credit insurance for transactions with medium- and long-term cover

1. TITLE OF OPERATION

Council Directive on harmonization of the main provisions concerning export credit insurance for transactions with medium- and long-term cover

- 2. BUDGET HEADING INVOLVED:** See point 10 - administrative expenditure

3. LEGAL BASIS

Article 113 of the Treaty on European Union

Proposal for a Council Directive on harmonization of the main provisions concerning export credit insurance for transactions with medium- and long-term cover (COM(97) 264)

4. DESCRIPTION OF OPERATION

4.1 General objective

Credit insurance is one of the most effective tools available to the Member States to promote exports and was one of the most costly for national budgets from 1980 to 1995. Each Member State has its own system, with significant differences in guarantee conditions, premium rates and cover policies. The result is that the playing field for Community exporters competing for business on non-EC markets is not level.

This was apparent to the founding fathers of the Treaty establishing the European Economic Community with Articles 112 and 113 calling for the harmonization of the systems whereby Member States grant aid for exports to non-EC countries.

This Directive is the first step towards the harmonization of credit insurance systems which will reduce distortions of competition for Community business and introduce some transparency into this area.

The proposed Directive provides for a notification system (Chapter IV) and decision-making procedure (Article 4) involving consultation of a committee.

4.2 Period covered and arrangements for renewal

The measure covers an indefinite period as the notification system to be set up under the proposed Directive will be permanent.

5. CLASSIFICATION OF EXPENDITURE

- 5.1 Compulsory expenditure
- 5.2 Non-differentiated appropriations
- 5.3 Type of revenue: none

6. TYPE OF EXPENDITURE OR REVENUE

100% subsidy: none

Subsidy for joint financing with other sources in the public and/or private sector: none

Interest subsidy: none

Other: none

Should the operation prove an economic success, is there provision for all or part of the Community contribution to be reimbursed? : n/a

Will the proposed operation cause any change in the level of revenue? If so, what sort of change and what type of revenue is involved? : n/a

7. FINANCIAL IMPACT

7.1 Method of calculating total cost of operation (definition of unit costs)

7.2 Itemized breakdown of cost

CA (ECU million)							
	Year 1998	1999	2000	2001	2002	2003 and sub years	Total
Breakdown							
Total							None

7.3 Indicative schedule of commitment/payment appropriations

CA (ECU million)							
	Year 1998	1999	2000	2001	2002	2003 and sub years	Total
Commitment appropriations							None
Payment appropriations							
Year 1998							
1999							
2000							
2001							
2002							
2003 and sub years.							
Total							None

8. FRAUD PREVENTION MEASURES

Specific measures planned

Expenditure (travelling expenses of national representatives attending meetings) will be reimbursed only on presentation of supporting documents.

9. ELEMENTS OF COST-EFFECTIVENESS ANALYSIS

9.1 Specific and quantifiable objectives and target population

Specific objectives: links with general objective

The objectives cannot be quantified in cost-effectiveness terms.

Target population: distinguish as applicable for each objective; indicate the end beneficiaries of the Community financial contribution and the intermediaries involved

Exporters, financial institutions and credit insurance agencies

9.2 Grounds for the operation

Need for Community financial aid in the light of the principle of subsidiarity

Under Article 113 of the Treaty on European Union the Community has sole responsibility for commercial policy and the principle of subsidiarity does not therefore apply. The Commission will be assisted by a committee

composed of representatives of the Member States and chaired by a Commission representative.

Choice of ways and means

Meeting of existing or future committee provided for in the proposed Directive (Articles 4 and 5)

Advantages over possible alternatives (comparative advantages)

Explanatory reference to similar Community or national operations

Spin-off and multiplier effects expected

See point 4.1 general objective: harmonization and transparency

Main factors of uncertainty which could affect the specific results of the operation

Member States' failure to apply the terms of the Directive

9.3 Monitoring and evaluation of the operation

Performance indicators selected

Output indicators (measuring activities used)

Impact indicators (measuring performance against objectives)

The Commission will present a report on the lessons to be drawn from the implementation of the provisions of the proposed Directive to Parliament and the Council by 31 December 2000

Assessment of the results obtained

Details and frequency of planned evaluations

10. ADMINISTRATIVE EXPENDITURE (PART A OF SECTION III OF THE BUDGET)

The necessary administrative resources will actually be mobilized by means of the annual Commission Decision to allocate the resources, having regard to present resources and additional resources authorized by the budgetary authority.

10.1 Impact on the number of posts

Type of post		Staff to be assigned to administration of the operation		of which		period
		<u>Permanent posts</u>	<u>Temporary posts</u>	from use of existing resources within the DG, service or department concerned	from additional resources in 1997	<i>indefinite</i>
Officials or temporary staff	A	2	-	2	-	
	B	1	-	1	-	
	C		-	-	-	
Other resources			2 SNE	2 SNE	-	
Total		3	2	5	-	

10.2 Total financial impact of the additional human resources

	Amounts	Method of calculation
Officials		
Temporary staff		
Other resources (state budget heading)		
Total		

10.3 Increase in other operating expenditure resulting from the operation

Budget heading (No and description)	Amount	Method of calculation
A 2510	21 000	Two Member State(committee) coordination meetings a year (Total cost of organizing these two Member State meetings in Brussels a year, with one Member State representative per meeting)
Total	21 000	

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