EUROPEAN
COMMISSION

Brussels, 6.12.2021
C(2021) 8705 final

COMMUNICATION FROM THE COMMISSION

on the application of Article 107 and 108 of the Treaty on the Functioning of the European Union to short-term export credit insurance

COMMUNICATION FROM THE COMMISSION

on the application of Article 107 and 108 of the Treaty on the Functioning of the European Union to short-term export credit insurance

1. INTRODUCTION

1. Export subsidies can adversely affect competition in the marketplace among potential rival suppliers of goods and services. That is why the Commission, as the guardian of competition under the Treaty, has always strongly condemned export aid for intra-Union trade and for exports outside the Union. The aim of this Communication is to clarify the Commission's assessment of Member State support for export credit insurance under Union State aid rules.

2. The Commission has used its power to issue guidance on State aid in the area of short-term export credit insurance. The aim has been to address actual or potential distortions of competition in the internal market, not only among exporters in different Member States (in trade within and outside the Union), but also among export credit insurers operating in the Union. In 1997, the Commission set out the principles for State intervention in its *Communication to the Member States pursuant to Article 93(1) of the EC Treaty applying Articles 92 and 93 of the Treaty to short-term export-credit insurance*[1] ("the 1997 Communication"). The principles of the 1997 Communication were to be applied for a period of 5 years from 1 January 1998. The 1997 Communication was subsequently adapted and its period of application was prolonged in 2001[2], 2004[3], 2005[4] and 2010[5]. Its principles applied until 31 December 2012.

3. Experience gained in applying the principles of the 1997 Communication, in particular during the financial crisis between 2009 and 2011, suggested that the Commission's policy in this area should be reviewed. Therefore, the Commission adopted a new *Communication 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*[6] ("the 2012 Communication"). The principles of the 2012 Communication were, in principle, to be applied from 1 January 2013 until 31 December 2018[7]. The Annex to the 2012 Communication was subsequently adapted several times[8] and the 2012 Communication's period of application was extended in 2018[9] and 2020[10]. It now applies until 31 December 2021.

---

1 OJ C 281, 17.9.1997, p. 4.
2 OJ C 217, 2.8.2001, p. 2.
3 OJ C 307, 11.12.2004, p. 12.
4 OJ C 325, 22.12.2005, p. 22.
5 OJ C 329, 7.12.2010, p. 6.
6 OJ C 392, 19.12.2012, p. 1.
7 Point 18(a) and Section 5.2 of the 2012 Communication were to be applied from the date of adoption of the 2012 Communication.
8 OJ C 398, 22.12.2012, p. 6; OJ C 372, 19.12.2013, p. 1; OJ C 28, 28.1.2015, p. 1; OJ C 215, 1.7.2015, p. 1; OJ C 244, 5.7.2016, p. 1; OJ C 206, 30.6.2017, p. 1; OJ C 225, 28.6.2018, p. 1; OJ C 457, 19.12.2018, p. 9; OJ C 401, 27.11.2019, p. 3; OJ C 101I, 28.3.2020, p. 1; OJ C 340I, 13.10.2020, p. 1; OJ C 34, 1.2.2021, p. 6.
9 OJ C 457, 19.12.2018, p. 9.
10 OJ C 224, 8.7.2020, p. 2.

4. In 2019, the Commission launched an evaluation of the 2012 Communication as part of the *Fitness check of the State aid modernisation package, railways guidelines and short-term export credit insurance*[11]. The results of the evaluation showed that, in principle, the rules work well, but that they require some minor improvements to reflect market developments. Therefore, this Communication only contains a few technical adjustments while retaining the principles set out in the 2012 Communication.

5. The rules set out in this Communication will help to ensure that State aid does not distort competition among private and public – or publicly supported – export credit insurers. Those rules will also help to create a level playing field among exporters.

6. This Communication gives Member States more detailed guidance about the principles on which the Commission intends to base its interpretation of Articles 107 and 108 of the Treaty and their application to short-term export credit insurance. It should make the Commission's policy in this area as transparent as possible and ensure predictability and equal treatment. To that end, it sets out a series of conditions that must be fulfilled when State insurers wish to enter the short-term export-credit insurance market for marketable risks.

7. Risks that are in principle non-marketable are outside the scope of this Communication.

8. Section 2 describes the scope of this Communication and sets out the definitions used in it. Section 3 deals with the applicability of Article 107(1) of the Treaty and the general prohibition of State aid for export credit insurance of marketable risks. Finally, Section 4 provides for some exceptions from the scope of marketable risks and specifies the conditions under which State support for the insurance of temporarily non-marketable risks may be compatible with the internal market.

2. SCOPE OF THE COMMUNICATION AND DEFINITIONS

2.1. Scope

9. The Commission will apply the principles set out in this Communication only to export credit insurance with a risk period of less than two years. All other export finance instruments are excluded from the scope of this Communication.

2.2. Definitions

10. For the purposes of this Communication, the following definitions apply:

(1) 'export credit insurance' means an insurance product whereby the insurer provides insurance against a commercial or political risk, or both, related to payment obligations in an export transaction;

(2) 'private credit insurer' means a company or organisation other than a State insurer that provides export credit insurance;

(3) 'State insurer' means a company or other organisation that provides export credit insurance with the support of, or on behalf of, a Member State, or a Member State that provides export credit insurance;

[11] Commission staff working document – *Fitness check of the 2012 State aid modernisation package, railways guidelines and short-term export credit insurance*, 30.10.2020, SWD(2020) 257 final.

(4) ‘marketable risks’ means commercial or political risks, or both, with a maximum risk period of less than two years, on public and non-public buyers in the countries listed in the Annex; all other risks are considered non-marketable for the purposes of this Communication;

(5) ‘commercial risks’ include in particular the following risks:

(a) arbitrary repudiation of a contract by a buyer, that is to say any arbitrary decision made by a non-public buyer to interrupt or terminate the contract without a legitimate reason;

(b) arbitrary refusal of a non-public buyer to accept the goods covered by the contract without a legitimate reason;

(c) insolvency of a non-public buyer and its guarantor;

(d) protracted default, that is to say non-payment by a non-public buyer and by its guarantor of a debt resulting from the contract;

(6) ‘political risks’ include in particular the following risks:

(a) the risk that a public buyer or country prevents the completion of a transaction or does not pay on time;

(b) a risk that is beyond the scope of an individual buyer or falls outside the individual buyer’s responsibility;

(c) the risk that a country fails to transfer to the country of the insured the moneys paid by buyers domiciled in that country;

(d) the risk that a case of force majeure occurs outside the country of the insurer, which could include warlike events, in so far as its effects are not otherwise insured;

(7) ‘risk period’ means the manufacturing period plus the credit period;

(8) ‘manufacturing period’ means the period between the date of an order and the delivery of the goods or services;

(9) ‘credit period’ means the period of time given to the buyer to pay for the delivered goods and services under an export credit transaction;

(10) ‘single-risk cover’ means cover for all sales to one buyer or for a single contract with one buyer;

(11) ‘reinsurance’ means insurance that is purchased by an insurer from another insurer to manage risk by lowering its own risk;

(12) ‘co-insurance’ means the percentage of each insured loss that is not indemnified by the insurer but is borne by another insurer;

(13) ‘quota share’ means reinsurance that requires the insurer to transfer, and the reinsurer to accept, a given percentage of every risk within a defined category of business written by the insurer;

(14) ‘top-up cover’ means additional cover over a credit limit established by another insurer;

(15) ‘whole turnover policy’ means a credit insurance policy other than single-risk cover; that is to say, a credit insurance policy that covers all or most of the

credit sales of the insured as well as payment receivables from sales to multiple buyers.

3. APPLICABILITY OF ARTICLE 107(1) OF THE TREATY

3.1. General principles

11. Article 107(1) of the Treaty states that 'any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the internal market'.

12. If State insurers provide export credit insurance, such insurance involves State resources. The involvement of the State may give the insurers or the exporters a selective advantage and could thereby distort or threaten to distort competition and affect trade between Member States. The principles set out in Sections 3.2, 3.3 and Section 4 are designed to provide guidance on how such measures will be assessed under State aid rules.

3.2. Aid for insurers

13. If State insurers have certain advantages compared with private credit insurers, State aid may be involved. The advantages can take different forms and might include, for example:

(a) State guarantees of borrowing and losses;

(b) exemption from the requirement to constitute adequate reserves and the other requirements stemming from the exclusion of export credit insurance operations for the account of or guaranteed by the State from Directive 2009/138/EC of the European Parliament and of the Council[12];

(c) relief or exemption from taxes normally payable (such as company taxes and taxes levied on insurance policies);

(d) awards of aid or provision of capital by the State or other forms of financing that are not in accordance with the market economy investor principle;

(e) provision by the State of services in kind, such as access to and use of State infrastructure, facilities or privileged information, on terms that do not reflect their market value;

(f) direct reinsurance by the State or a direct State reinsurance guarantee on terms more favourable than those available on the private reinsurance market, leading to underpricing of the reinsurance cover or to the artificial creation of capacity that would not be forthcoming from the private market.

3.3. Prohibition of State aid for export credits

14. The advantages for State insurers listed in point 13 with regard to marketable risks affect intra-Union trade in credit insurance services. They lead to variations in the insurance cover available for marketable risks in different Member States. This distorts competition among insurers in different Member States and has secondary

[12] Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) (OJ L 335, 17.12.2009, p. 1).

effects on intra-Union trade regardless of whether intra-Union exports or exports outside the Union are concerned[13]. For those reasons, if State insurers have such advantages compared to private credit insurers, they should not be able to insure marketable risks. It is therefore necessary to determine the conditions under which State insurers can operate, in order to ensure that they do not benefit from State aid.

15. Advantages for State insurers are also sometimes passed on to exporters, at least in part. Such advantages may distort competition and trade and constitute State aid within the meaning of Article 107(1) of the Treaty. However, if the conditions for the provision of export credit insurance for marketable risks, as set out in Section 4.3 of this Communication, are fulfilled, the Commission will consider that no undue advantage has been passed on to exporters.

4. CONDITIONS FOR PROVIDING EXPORT CREDIT INSURANCE FOR TEMPORARILY NON-MARKETABLE RISKS

4.1. General principles

16. As stated in point 14, if State insurers have any advantages compared with private credit insurers, as described in point 13, they must not insure marketable risks. If State insurers or their subsidiaries wish to insure marketable risks, it must be ensured that in so doing, they do not directly or indirectly benefit from State aid. To that end, they must have a certain amount of own funds (a solvency margin, including a guarantee fund) and technical provisions (an equalisation reserve) and must have obtained the required authorisation in accordance with Directive 2009/138/EC. They must also at least keep a separate administration account and separate accounts for their insurance of marketable risks and non-marketable risks with the support of, or on behalf of, the State, to show that they do not receive State aid for their insurance of marketable risks. The accounts for businesses insured on the insurer's own account should comply with Council Directive 91/674/EC[14].

17. Member States providing reinsurance cover to an export credit insurer by way of participation or involvement in private sector reinsurance contracts covering marketable and non-marketable risks must be able to demonstrate that the arrangements do not involve State aid as referred to in point 13(f).

18. State insurers may provide export credit insurance for temporarily non-marketable risks, subject to the conditions set out in the Section 4 of this Communication.

4.2. Exceptions to the scope of marketable risks: temporarily non-marketable risks

19. Notwithstanding the definition of marketable risks, certain commercial or political risks, or both, on buyers established in the countries listed in the Annex are considered temporarily non-marketable in the following cases:

(a) where the Commission decides to temporarily remove one or more countries from the list of marketable risk countries in the Annex, as described in Section 5.2, because the capacity of the private insurance market is insufficient

---

13 In its judgment in Case C-142/87 *Kingdom of Belgium* v *Commission of the European Communities*, the Court held that not only aid for intra-Union exports, but also aid for exports outside the Union, can influence intra-Union competition and trade. Both types of operation are insured by export credit insurers and aid for both can therefore affect intra-Union competition and trade.

14 Council Directive 91/674/EC of 19 December 1991 on the annual accounts and consolidated accounts of insurance undertakings (OJ L 374, 31.12.1991, p. 7).

to cover all economically justifiable risks in the country or countries concerned;

(b) where the Commission, after having received a notification from a Member State as referred to in Section 5.3 of this Communication, decides that the risks incurred by small and medium-sized enterprises as defined by the Commission Recommendation 2003/361/EC[15], with a total annual export turnover not exceeding EUR 2.5 million, are temporarily non-marketable for exporters in the notifying Member State;

(c) where the Commission, after having received a notification from a Member State as referred to in Section 5.3 of this Communication, decides that single-risk cover with a risk period of at least 181 days and less than two years is temporarily non-marketable for exporters in the notifying Member State;

(d) where the Commission, after having received a notification from a Member State as referred to in Section 5.4 of this Communication, decides that, due to a shortage of export credit insurance, certain risks are temporarily non-marketable for exporters in the notifying Member State.

20. To minimise distortions of competition in the internal market, risks that are considered temporarily non-marketable in accordance with point 19 can be covered by State insurers, provided they fulfil the conditions set out in Section 4.3.

4.3. Conditions for providing cover for temporarily non-marketable risks

4.3.1. Quality of cover

21. The quality of cover offered by State insurers must be consistent with market standards. In particular, only economically justified risks, that is to say risks that are acceptable on the basis of sound underwriting principles, can be covered. The maximum percentage of cover must be 95% for commercial risks and political risks and the claims waiting period must be a minimum of 90 days.

4.3.2. Underwriting principles

22. Sound underwriting principles must always be applied to the assessment of risks. Accordingly, the risk of financially unsound transactions must not be eligible for cover under publicly supported schemes. With regard to such principles, risk acceptance criteria must be explicit. If a business relationship already exists, exporters must have a positive trading or payment experience, or both. Buyers must have a clean claims record, the probability of the buyers' default must be acceptable and their internal or external financial ratings must also be acceptable.

4.3.3. Adequate pricing

23. Risk carrying in the export credit insurance contract must be remunerated by an adequate premium. To minimise the crowding out of private credit insurers, average premiums under publicly supported schemes must be higher than the average premiums charged by private credit insurers for similar risks. This requirement ensures the phasing out of State intervention, because the higher premium will ensure that exporters return to private credit insurers as soon as market conditions allow them to do so and the risk becomes marketable again.

---

[15] Commission Recommendation 2003/361/EC of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises (OJ L 124, 20.5.2003, p. 36).

24. Pricing is considered adequate if the minimum annual risk premium[16] ('safe harbour premium') for the relevant buyers' risk category[17], as set out in the following table, is charged. The safe harbour premium applies unless Member States provide evidence that those rates are inadequate for the risk in question. For a whole turnover policy, the risk category must correspond to the average risk of buyers covered by the policy.

Risk category	**Minimum annual risk premium**[18] (% of insured volume)
Excellent[19]	0.2 – 0.4
Good[20]	0.41 – 0.9
Satisfactory[21]	0.91 – 2.3
Weak[22]	2.31 – 4.5

25. For co-insurance, quota share and top-up cover, pricing is considered adequate only if the premium charged is at least 30% higher than the premium for the (original) cover provided by a private credit insurer.

26. An administration fee must be added to the risk premium regardless of the term of the contract in order for pricing to be considered adequate.

4.3.4. Transparency and reporting

27. Member States must publish the schemes put in place for risks that are considered temporarily non-marketable in accordance with point 19 on the websites of State insurers, specifying all applicable conditions.

28. They must submit annual reports to the Commission on risks that are considered temporarily non-marketable in accordance with point 19 and are covered by State insurers. They must do so at the latest on 31 July of the year following the intervention.

29. The report must contain the following information for each scheme:

(a) the total amount of credit limits granted;

(b) the turnover insured;

---

16 For each relevant risk category, the safe harbour risk premium range was established on the basis of one-year credit default swap (CDS) spreads, based on a composite rating including ratings of all three main credit rating agencies (Standard & Poor's, Moody's and Fitch), for the years 2007–11, assuming that average recovery ratios for short-term export credit insurance are 40%. The ranges were subsequently made continuous to better cater for the fact that risk premiums do not remain constant over time.

17 The buyers' risk categories are based on credit ratings. Ratings do not need to be obtained from specific rating agencies. National rating systems or rating systems used by banks are equally acceptable. For firms without a public rating, a rating based on verifiable information could be applied.

18 Safe harbour for a 30-day insurance contract can be obtained by dividing the annual risk premium by 12.

19 The excellent risk category includes risks equivalent to AAA, AA+, AA, AA-, A+, A, A- in Standard & Poor's credit ratings.

20 The good risk category includes risks equivalent to BBB+, BBB or BBB- in Standard & Poor's credit ratings.

21 The satisfactory risk category includes risks equivalent to BB+, BB or BB- in Standard & Poor's credit ratings.

22 The weak risk category includes risks equivalent to B+, B or B- in Standard & Poor's credit ratings.

(c) premiums charged;

(d) claims registered and paid;

(e) amounts recovered;

(f) the administrative costs of the scheme.

30. Information is to be provided in a spreadsheet data format, which allows data to be searched, extracted, downloaded and easily published on the internet, for instance in CSV or XML format. The Member States must publish the reports on the websites of the State insurers.

5. PROCEDURAL RULES

5.1. General principles

31. The risks specified in point 19(a) can be covered by State insurers, subject to the conditions set out in Section 4.3. The Commission does not have to be notified in such cases.

32. The risks specified in points 19(b), (c) and (d) can be covered by State insurers, subject to the conditions set out in Section 4.3 and following notification to and approval by the Commission.

33. Failure to fulfil any one of the conditions set out in Section 4.3 does not mean that the export credit insurance or insurance scheme is automatically prohibited. If a Member State wishes to deviate from any of the conditions set out in Section 4.3 or if there is any doubt about whether a planned export credit insurance scheme fulfils the conditions set out in this Communication, in particular Section 4, the Member State must notify the scheme to the Commission.

34. Analysis under State aid rules does not prejudge the compatibility of a given measure with other Treaty provisions.

5.2. Modification of the list of marketable risk countries

35. When determining whether the lack of sufficient private capacity justifies the temporary removal of a country from the list of marketable risk countries, as referred to in point 19(a), the Commission will take the following factors into account, in order of priority:

(a) contraction of private credit insurance capacity: in particular, the decision of a major credit insurer not to cover risks on buyers in the country concerned, a significant decrease in total insured amounts or a significant decrease in acceptance ratios for the country concerned within a six-month period;

(b) deterioration of sovereign sector ratings: in particular, sudden changes in credit ratings within a six-month period, for example multiple downgrading by independent rating agencies, or a big increase in credit default swap spreads;

(c) deterioration of corporate sector performance: in particular, a sharp increase in insolvencies in the country concerned within a six-month period.

36. Where market capacity becomes insufficient to cover all economically justifiable risks, the Commission may revise the list of marketable risk countries in the Annex at the written request of at least three Member States or on its own initiative.

37. If the Commission intends to modify the list of marketable risk countries it will consult and seek information from Member States, private credit insurers and interested parties. The consultation and the type of information sought will be announced on the Commission's website. The consultation period will usually not be longer than 20 working days. Where, based on the information gathered, the Commission decides to modify the list of marketable risk countries, it will announce that decision on its website.

38. The temporary removal of a country from the list of marketable risk countries will be valid for, in principle, at least 12 months. Insurance policies relating to the temporarily removed country that are signed during that period may be valid for a maximum of 180 days after the date on which the temporary removal ceases. New insurance policies may not be signed after that date. Three months before the temporary removal ceases, the Commission will consider whether to extend the removal of the country concerned from the list. If the Commission determines that market capacity is still insufficient to cover all economically justifiable risks, taking into account the factors set out in point 35, it may extend the temporary removal of the country from the list, in accordance with point 37.

5.3. Notification obligation for temporarily non marketable risks referred to in points 19(b) and (c)

39. The evidence currently available to the Commission suggests that there is a market gap as regards the risks specified in points 19(b) and (c) and that those risks are therefore non-marketable. It must be borne in mind, however, that the lack of cover does not exist in every Member State and that the situation could change over time, as the private sector might become interested in this segment of the market. State intervention should only be allowed for risks that the market would otherwise not cover.

40. For those reasons, if a Member State wants to cover the risks specified in points 19(b) or (c) of this Communication, it must notify the Commission pursuant to Article 108(3) of the Treaty and demonstrate in its notification that it has contacted the main credit insurers and brokers in that Member State[23] and given them an opportunity to provide evidence that cover for the risks concerned is available there. If the credit insurers and brokers concerned do not provide the Member State or the Commission with information concerning the conditions of cover and insured volumes for the type of risks the Member State wants to cover within 30 days following receipt of a request from the Member State to do so, or if the information provided does not demonstrate that cover for the risks concerned is available in that Member State, the Commission will consider the risks temporarily non-marketable.

5.4. Notification obligation in other cases

41. As regards the risks specified in point 19(d), the Member State concerned must, in its notification to the Commission pursuant to Article 108(3) of the Treaty, demonstrate that cover is unavailable for exporters in that particular Member State due to a supply shock in the private insurance market, in particular the withdrawal of

[23] The contacted credit insurers and brokers should be representative in terms of the products offered (for example, specialised providers for single risks) and the size of the market they cover (for example, representing jointly a minimum share of 50% of the market).

a major credit insurer from the Member State concerned, reduced capacity or a limited range of products compared with other Member States.

6. DATE OF APPLICATION AND DURATION

42. The Commission will apply the principles set out in this Communication from 1 January 2022, except for the list of the countries in the Annex which will be applied from 1 April 2022. Until 31 March 2022, the Commission will consider all commercial and political risks associated with exports to all countries temporarily non-marketable in accordance with the temporary exemption specified in point 33 of the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak[24] and in point 62 of Commission Communication C(2021) 8442 on the 6th Amendment to the Temporary Framework. The Commission may decide to adapt this Communication at any time if necessary for reasons associated with competition policy or to take account of other Union policies and international commitments.

[24] Communication from the Commission 'Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak', C(2020)1863, 19.03.2020 (OJ C 91 I, 20.3.2020, p. 1), as amended by Commission Communications C(2020) 2215 (OJ C 112I, 4.4.2020, p. 1), C(2020) 3156 (OJ C 164, 13.5.2020, p. 3), C(2020) 4509 (OJ C 218, 2.7.2020, p. 3), C(2020) 7127 (OJ C 340I, 13.10.2020, p. 1), C(2021) 564 (OJ C 34, 1.2.2021, p. 6) and C(2021) 8442 (OJ C 473, 24.11.2021, p. 1). Points 24 to 27 and 62 of Commission Communication C(2021) 8442 on the 6th Amendment to the Temporary Framework provide further information on the temporary exemption.