



COMMISSION OF THE EUROPEAN COMMUNITIES

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REPORT FROM THE COMMISSION

**Experience gained and the convergence achieved in applying the provisions laid down in
the Directive on medium and long term export credit insurance**

1. INTRODUCTION AND BACKGROUND

1. The Council Directive 98/29/EC on harmonisation of the main provisions concerning export credit insurance for transactions with medium and long-term cover entered into force on the 20th day following its publication in the Official Journal of the European Communities on 7 May 1998.
2. Member States were obliged to bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 1 April 1999.
3. The main objectives of the Directive are to achieve harmonisation of export credit insurance programs, lessen existing distortions of competition between Member States (as envisaged in Article 132 of the EC Treaty and this without prejudice to the rules on state aid laid down in Articles 87 to 89), increase transparency and foster co-operation between enterprises within the Community.
4. Article 5 (Report and review) of the Directive stipulates that the Commission shall submit a report to the Council by 31 December 2001 on the experience gained and the convergence achieved in applying the provisions laid down in this Directive.
5. Prior to the preparation of this report the Commission Services have asked four European organisations¹ to submit their comments on the Directive. The FBE and UNICE responded to the invitation. The comments of FBE have been taken into account, whereas UNICE's comments referred to different export credit issues.

2. OVERALL ASSESSMENT AND RESULTS ACHIEVED

6. All Member States comply with the Directive. Although the Directive has brought limited changes in Member States' export credit insurance systems it is operating well.
7. The positive impacts of the Directive are as follows:
 - The Directive is the first set of rules of common principles on export credit insurance, premium, cover policy and transparency Member States agreed upon.
 - The increase of reinsurance agreements between Member States in recent years underpins the significant improvement in co-operation for common projects in third countries. Any standardisation of regulations, such as the Directive, contributes to this development.
 - Transparency is an important factor for harmonisation and develops its disciplining role in the long run.
 - The Directive serves its purpose not only within the Member States, its spill-over effects concern export credit systems outside the Community also, in particular

¹ Fédération Bancaire de l'Union Européenne (FBE), Union of Industrial and Employers' Confederations of Europe (UNICE), Liason Group of the European Mechanical, Electrical, Electronic and Metalworking Industries (ORGALIME) and EuroCommerce

the current alignment of the export credit systems of the EC enlargement candidates.

8. Member States can derogate from the Directive, either by providing more favourable cover conditions (point 47 to the Annex to the Directive: Ex-ante notification for information) or less favourable cover conditions (point 48: Ex-post notification for information). In the period under review only one Member State has not notified any derogation, whereas all other Member States have notified derogations which refer to one or more of the following points:

- Claim waiting period (point 24 with reference to point 6(b) and (c)): Two Member States apply at the same time more favourable and less favourable terms as far as the claims waiting period for losses arising from manufacturing or credit risk is concerned. Two Member State offer more favourable terms, whereas two Member States are more restrictive.
- Uninsured percentage (point 9): Two Member States explicitly stipulate that the policy holder cannot lay off the uninsured percentage.
- Other infrequent deviations concern the effective date of cover (point 12), decisions of the country of the insurer or the policyholder (point 21), calculation and payment of the claim (points 27 and 28) and additional costs (point 31) resulting from action to minimise or avoid loss.

In addition, the following points have been notified which, however, are offset by premium surcharges or discounts in accordance with the OECD Premium Agreement as far as sovereign and country credit risk is concerned (see also paragraph 22 of this report):

- Unconditional cover (point 6(d)): Unconditional cover for buyer credits is offered by one Member State.
- Cover for post-maturity interest (point 7(b)): Some Member States refrain from extending cover for post-maturity interest.
- Percentage of cover (point 8(b)): Several Member States indicate that they offer a cover percentage higher than 95 %, but in only four cases it goes up to 100 % (for buyer credits, sovereign/political risk for special countries or under limited conditions). On the other hand, the percentage of cover especially for the commercial risk is often less than 95% or a differentiation of the percentage of cover for the commercial risk between supplier and buyer credits is applied.

9. Although, from a general point of view, these more and less favourable deviations appear to be balanced within and between the export credit insurance systems of Member States, some of them can have a decisive impact on the position of Community's exporters in a competitive situation.

10. Article 132 of the EC Treaty sets forth that

"..., Member States shall progressively harmonise the systems whereby they grant aid for exports to third countries, to the extent necessary to ensure that competition between undertakings of the Community is not distorted. ..."

Against this background, further efforts are necessary to fulfil this objective.

3. SHORTCOMINGS AND POSSIBLE IMPROVEMENTS

3.1. Issues Raised by the Fédération Bancaire de l'Union Européenne (FBE)

3.1.1. Premium Levels for Commercial Risk

11. The FBE argues that the Directive had limited effect on premium levels. The effective date of the Directive (1 April 1999) coincided with the entering into force of the OECD Guiding Principles for Setting Premia and Related Conditions which stipulate minimum premium rates for sovereign and country credit risk, irrespective of whether the debtor is a private or public entity. As a result, a high degree of convergence exists as far as sovereign debtors are concerned. However, with regard to public and private debtors important differences in premium levels still persist.
12. The FBE believes that it would be useful to develop rough guidelines for setting premia for commercial risk, taking into account the different levels of the percentage of cover, in order to minimise distortions of competition.

3.1.2. Percentage of Cover

13. With regard to the percentage of cover the FBE argues that the situation has not improved much since the implementation of the Directive. As full coverage (100 % of the risk) is not available in most Member States, commercial banks have to bear the remaining percentage of risk.
14. The banks capital adequacy ratios have the tendency to rely increasingly on international credit ratings. Banks are obliged to cover a portion (depending on the credit rating) of the uninsured amount with their equity capital. Consequently, a percentage of cover less than 100 % has an impact on the willingness of banks to finance a transaction.

3.1.3. Disclosure of Notifications

15. As to the notification procedures the FBE considers that the so-called disciplinary transparency (points 46 (Notification for decision) and 47 (Ex-ante notification for information)) should be made publicly available in order to reinforce the disciplining role of the market.

3.2. Issues Raised by the Commission Services

3.2.1. Export Credit Database

16. As indicated before, transparency can be considered as the driving force for harmonisation. The Commission Services have developed an Export Credit Database in order to materialise the transparency principles laid down in the Directive. The overriding goal of this database is to provide Member States and the Commission with a useful tool giving, at any time, an updated picture of export credit insurance facilities within the Community. At the same time the database eases the notification burden and permits Member States online-updating. Every up-date of the database is automatically notified to all its users.

17. The database is already operational. The Directive does not explicitly stipulate the use of a database for notifications. Therefore, the formal approval of the use of the database as a replacement of the electronic mail system for the bulk of notifications is lacking.

3.2.2. Dispute on the Status of the Debtor

18. In the period under review only one case of disagreement on a status of a debtor (classification as a public or private entity) between Member States occurred which finally was settled without pursuing the procedure laid down in Article 4 (Committee) of the Directive. The status of a debtor has an important implication on both the premium rate charged and the percentage of cover offered. Thus, the bid may be decided on the basis of more favourable terms for cover.
19. In view of the fact that disagreement on the status of a debtor is extremely rare, the abolishment of the Committee could be considered provided agreement can be found on a clarification and an enhanced definition of the status of the debtor (point 5) in order to improve legal certainty.

3.2.3. New Time Limit for Report and Review

20. This report has been drafted approximately three and a half years after the entry into force of the Directive and less than three years after Member States' obligation to comply with the Directive. Thus, it appears reasonable to fix a new time limit for the second report three years after this review of the Directive has been finalised.

4. COMMENTS AND PROPOSALS

4.1. Premium Levels for Commercial Risk

21. With regard to the pricing for commercial risks the Commission believes that more convergence in the corporate risk sector has to be achieved. From an exporter's/bank's viewpoint a level playing field presupposes converged all-in costs for an insurance policy or guarantee. On the other hand, work on premia for commercial risk is expected to begin in the framework of the OECD. At this stage, therefore, it would be premature to launch work on rough guidelines for setting premium levels for commercial risk within the Community.

4.2. Percentage of Cover

22. As to the unequal level of the percentage of cover it is up to the Member States to determine the percentage of cover and increase it up to 100%. Following the OECD Premium Agreement Member States are bound to a pricing system for sovereign and country credit risk which produces premium surcharges for coverage greater than 95%. However, the Commission acknowledges that some Member States refrain from taking the full risk due to a crucial principle of insurance, namely the involvement of the insured in case of a loss.

4.3. Disclosure of Notifications

23. The Commission is of the view that transparency should be enhanced in order to take advantage of its converging effect. In point 44 (Types of notification procedures) it is stipulated that

"The data provided shall not be disclosed to third parties".

24. On the other hand, the issue of transparency and openness has gained significant importance in the past years. As a rule export credit agencies of Member States make various items, such as country cover policy, level of premia, conditions for cover, turnover, exposure, operative results, etc. publicly available whilst they are subject to confidentiality in the Directive. This is a paradox situation, which is difficult to justify.

25. Against this background, the Commission proposes to lift confidentiality for the following elements of notifications:

- point 45 (a): the total amount of cover, the total outstanding exposure, the premium earned, the amount of recoveries made and the amount of claims paid on an aggregated basis
- point 45(b): country cover policy and the conditions the insurer intends to routinely impose on cover (excluding the type and level of ceilings)
- point 46: notifications with regard to the status of the debtor; this issue is related to the proposal below as to the dispute on the status of the debtor
- point 47(a): notifications of more favourable cover conditions
- point 48(a): notifications of less favourable cover conditions
- point 48(b): adjustments of country cover policy

4.4. Dispute on the Status of the Debtor

26. The Commission wants to underline that a general internal reform is under way with the goals of streamlining procedures, simplification and less administration. The abolishment of committees, deemed to be redundant, goes in line with these goals.

27. The Committee set up for the settlement of a dispute on the status of the debtor has not yet met. Apart from that, the Commission believes that future disagreements on the status of the debtor should and could be avoided by a clarification of the existing definition of the status of the debtor mentioned in point 5. The objective should be to provide legal certainty for the exporter instead of a politicised discussion in a Committee on a purely technical issue. In addition, the above mentioned proposal on the introduction of external transparency with regard to point 46 intends to foster mutual agreement on the status of the debtor.

28. As a starting point for the discussion on the clarification of the existing definition of the status of the debtor, other important criteria, such as ownership, performance of essential public functions (whose suspension would not be tolerated for a prolonged period by public authorities (water, electricity, ...)), monopolistic position, prices

administered by public authorities for the debtor's output, etc. could be taken into consideration.

29. The Commission suggests to start deliberations in accordance with Article 132 of the EC Treaty and Article 2(a) of the Council Decision setting up a Policy Co-ordination Group for Credit Insurance, Credit Guarantees and Financial Credits in order to agree on a clarification of the existing definition of the status of the debtor set forth in point 5 of the Directive. In return, it is proposed to repeal Article 3 (Implementing decisions), Article 4 (Committee) and point 46 (c) of the Directive.

4.5. Export Credit Database

30. The use of the Export Credit Database for notifications reflects improved technical facilities. The intention is that online-updating is extended for all notifications of general nature (such as insurer's activity, country cover policy, overall system) whereas the electronic mail system is kept for notifications of individual nature (such as terms for particular transactions, notifications with regard to the status of the debtor). The Commission proposes to amend point 49 (Use of an electronic mail system) accordingly.

4.6. New Time Limit for Report and Review

31. Finally, the Commission suggests the following modification of Article 5:

"Report and Review

The Commission shall submit a report to the Council not later than three years after the entry into force of the amendments to the Directive on the experience gained and the convergence achieved in applying the provisions laid down in this Directive."

5. Conclusion

32. Member States are therefore invited to indicate their views on:
- a disclosure to third parties of some of the data which are already being disclosed to other Member States and by some Member States even to the general public
 - a more precise definition of a public debtor, with the view to making the abolishment of the Committee possible
 - the modification with regard to the means used for notifications (Export Credit Database)
 - the amendment as to the new time limit for a second report and review.