

**Communication of the Commission to Member States amending the communication pursuant to Article 93(1) of the EC Treaty applying Articles 92 and 93 of the Treaty to short-term export-credit insurance**

(2001/C 217/02)

(Text with EEA relevance)

## I. Introduction

The communication of the Commission to 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<sup>(1)</sup> (hereinafter referred to as 'the 1997 communication') was to apply from 1 January 1998 for a period of five years, which would normally expire on 31 December 2002.

The purpose of the 1997 communication is to remove distortions of competition due to State aid in the sector of export-credit insurance, where there is competition between public or publicly supported export-credit insurers and private export-credit insurers. In particular, the sector directly concerned by such competition, and therefore by the 1997 communication, is that of export-credit insurance relating to short-term export-credit risks on trade within the Community and with countries outside it.

These risks are defined in the 1997 communication as 'marketable risks'. Marketable risks are those risks which may not be covered by export-credit insurers with the support of the State. All those risks which are not 'marketable' can *a contrario* be publicly supported.

Point 2.6 of the 1997 communication states that:

'The capacity of the private reinsurance market varies. This means that the definition of marketable risks is not immutable and may change over time; for example, it might be extended to cover political risks. The definition will therefore have to be reviewed regularly (namely at least once a year) by the Commission. The Commission will consult Member States and other interested parties on such reviews<sup>(10)</sup>. In so far as necessary, changes to the definition will have to take account of the scope of Community legislation governing export-credit insurance, in order to avoid any conflict or legal uncertainty.'

<sup>(10)</sup> *Inter alia*, the Commission will call on the help of the Council (for example, its Export Credits Group).'

Following the completion of a study into the private reinsurance market, and after consultation of the Member States, both within the Council Export Credits Group and at a multi-lateral meeting on State aid, the Commission has decided to amend the definition of marketable risk to include political risks arising within the European Union and in those OECD member countries currently listed in the Annex to the 1997 communication. The current list of names of all the Member

States will be replaced by a generic reference to the Member States of the European Union so that the future enlargement of the European Union will not necessitate further amendment of the 1997 communication.

The new definition of marketable risk will apply from 1 January 2002 until 31 December 2004. State aid notifications which are pending on 1 January 2002 will be assessed in accordance with the new definition. Unlawful State aid, that is aid put into effect in contravention of Article 88(3) of the Treaty, will be assessed in accordance with the rules in force at the time the aid was granted.

The Commission has also decided to extend the duration of the 1997 communication until 31 December 2004.

The Commission wishes to inform Member States and interested parties that it intends to undertake a further study in 2003 to verify the capacity of the private reinsurance market to adapt to a further extension of the definition of marketable risk to cover a wider range of commercial risks, possibly including commercial risks arising in all countries of the world. Should the results of that study and consultations with Member States confirm that such coverage is possible, it will amend the definition of marketable risk accordingly as part of the general review of the 1997 communication in 2004.

## II. Amendments to the 1997 communication

Accordingly, the following amendments to the 1997 communication will take effect on 1 January 2002:

1. In Point 2.5, the first two paragraphs are replaced by the following:

'In view of the above, "marketable" risks are defined for the purposes of this communication as commercial and political risks on public and non-public debtors established in the countries listed in the Annex. For such risks the maximum risk period (that is, manufacturing plus credit period with normal Berne Union starting point and usual credit term) is less than two years. All other risks (that is, catastrophe risks<sup>(9)</sup> and commercial and political risks on countries not listed in the Annex) are considered to be not yet marketable.'

<sup>(9)</sup> That is, war, revolution, natural disasters, nuclear accidents, and so forth, not so-called "commercial, catastrophe risks" (catastrophic accumulations of loss on individual buyers or countries) which may be covered by excess of loss reinsurance and are commercial risks.'

<sup>(1)</sup> OJ C 281, 17.9.1997, p. 4.

2. Point 2.6 is replaced by the following:

'The capacity of the private reinsurance market varies. This means that the definition of marketable risks is not immutable and may change over time. The definition may, therefore, be reviewed, notably at the expiry of this communication on 31 December 2004. The Commission will consult Member States and other interested parties on such reviews <sup>(10)</sup>. In so far as necessary, changes to the definition will have to take account of the scope of Community legislation governing export-credit insurance, in order to avoid any conflict or legal uncertainty.

<sup>(10)</sup> *Inter alia*, the Commission will call on the help of the Council (for example, its Export Credits Group).'

3. In Point 4.5, the first sentence is replaced by the following:

'This communication will apply from 1 January 1998 for a period of seven years.'

## 4. The Annex is replaced by the following:

'ANNEX

**LIST OF MARKETABLE RISK COUNTRIES**

<b>European Union</b>	<b>Countries which are members of the OECD</b>
All the Member States	Australia Canada

Iceland  
Japan  
New Zealand  
Norway  
Switzerland  
United States of America'

**III. Appropriate measures proposed to Member States under Article 88(1) of the Treaty**

The Commission proposes to Member States, on the basis of Article 88(1) of the Treaty, the following appropriate measures concerning their respective existing schemes.

In order to comply with the new definition of marketable risks, Member States should amend, where necessary, their export-credit systems for marketable risks in such a way that the granting of State aid of the types indicated in point 4.2(a) to (f) of the 1997 communication to publicly supported export-credit insurers in respect of such risks is ended by 1 January 2002.

The Member States are invited to give their explicit agreement to the proposed appropriate measures within two months from the date of publication of this communication. In the absence of any reply, the Commission will assume that the Member State in question does not agree with the proposed measures.