

II

(Acts whose publication is not obligatory)

COUNCIL

COUNCIL DECISION

of 10 December 1982

on the rules applicable, in the fields of export guarantees and finance for export, to certain subcontracts with parties in other Member States of the European Communities or in non-member countries

(82/854/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

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

Having regard to the proposal from the Commission,

Whereas the increasing interdependence of the Member States' economies requires a strengthening of cooperation and the finalization of joint solutions to the particular problems posed in the field of subcontracting by export guarantees and finance,

HAS DECIDED AS FOLLOWS :

Article 1

The detailed rules applicable in each Member State to the automatic inclusion of subcontracts with parties in other Member States of the European Communities or in non-member countries in the cover which may be granted on behalf of or with the support of the State to the principal contractor, and also to the financing of such subcontracts, are defined in the Annex to this Decision.

Article 2

However, Section IV shall not apply to subcontracts relating to export transactions concluded on the basis of credits involving any form of financial support from a Member State.

Article 3

Decision 70/552/EEC (1), is hereby repealed.

This Decision shall enter into force on 1 January 1983.

Article 4

This Decision is addressed to the Member States.

Done at Brussels, 10 December 1982.

For the Council

The President

G. FENGER MØLLER

ANNEX**SECTION I****Definition of 'subcontract'**

'Subcontract' means a contract concluded by an undertaking (hereinafter called the 'principal contractor') with another undertaking (hereinafter called the 'subcontractor') under which it is agreed that, in performance of another contract made between the principal contractor and a third undertaking (hereinafter called the 'buyer'), the subcontractor will deliver goods or perform services which the principal contractor must incorporate or use in supplying the item or items which the buyer has ordered from him, it being understood that:

(a) Position in law

The subcontractor is not a co-signatory to the contract concluded between the principal contractor and the buyer, and the principal contractor has sole responsibility to the buyer for performance of the contract and bears all the risks which may be guaranteed in relation to the latter.

(b) Technical and economic position

Supplies from the subcontractor cover goods (other than raw materials or semi-finished goods) and/or services which, from the technical and economic point of view, constitute for the buyer essential ancillaries to performance of the contract by the principal contractor.

SECTION II**Automatic inclusion of subcontracts in the cover**

1. Subcontracts exclusively with parties in one or more Member States shall be automatically included in the cover which may be granted to the principal contractor where the amount of such subcontracts is equal to or less than:

- 40 % for contracts of a value less than 7 500 000 ECU,
- 3 000 000 ECU for contracts of a value between 7 500 000 and 10 000 000 ECU,
- 30 % for contracts of a value over 10 000 000 ECU.

However, where the principal contractor's credit insurer is unable, because the risk inherent in the transaction is particularly heavy, to support cover for the whole of the transaction, consultation between the interested credit insurance organizations shall take place with a view to resolving the problem by means of joint insurance or, if possible, re-insurance.

2. Where export contracts involve subcontracting both in Member States and in non-member countries, subcontracting in Member States shall be automatically included, in so far as total subcontracting in all countries does not exceed the percentages and limits fixed in paragraph 1 by reference to the value of the contract.

3. Cover shall be granted to the principal contractor, under the same conditions, whether he has recourse to national subcontracting or to subcontracting in other Member States.

SECTION III**Financing of subcontracts which have been included in cover**

Without prejudice to application of the customary criteria used in banking matters, treatment equal to that applicable to export contracts comprising exclusively national supplies shall be granted, as regards financing, in respect of export contracts which include subcontracts incorporated in accordance with the provisions of Section II.

SECTION IV**Exchange of information**

1. A subsequent exchange of information shall take place within the framework of the Policy Coordination Group for Credit Insurance, Credit Guarantees and Financial Credits as regards individual contracts in respect of which subcontracting in non-member countries exceeds 30 % and, in respect of mixed subcontracting both in Member States and in non-member countries, where the total value exceeds that percentage.

Such exchange of information shall, however, only take place for individual contracts exceeding 500 000 ECU in value and involving credit for a period of more than three years.

The following shall apply:

- such individual contracts are to be considered as exceptional,
- a study may at any time be made within the Coordination Group of the difficulties which may arise in connection with certain individual contracts reported within the framework of the subsequent exchange of information,
- if experience shows that the subsequent exchange of information procedure is unsatisfactory, the Commission and the Member States may request that ways and means be sought of remedying those aspects that are found to be unsatisfactory.

3. Where a Member State proposes to conclude with a non-member country an agreement relating to inclusion of subcontracts on a reciprocal basis, the Member State concerned shall submit a preliminary notification to be followed by consultations within the framework of the Policy Coordination Group for Credit Insurance, Credit Guarantees and Financial Credits. The percentages relating to automatic inclusion allowable in such agreements may not — unless the Council decides otherwise — exceed 30 % irrespective of whether the subcontracting is in the non-member country with which the agreement has been made or whether subcontracting in other countries is involved.

SECTION V

Basis of calculation

The percentages and amounts referred to shall be calculated in accordance with the following rules:

- costs incidental to export i. e. transport and insurance, are included in the total amount of the contract on which these percentages and amounts are calculated,
- financing costs are totally excluded from the amount of the contract, whether itemized or not,
- the non-repatriable portion of incidental local expenditure on supplies is not normally deducted from the amount of the contract, it being understood, however, that if this portion exceeds 15 % of the amount of the contract less the costs of financing, the excess will be deducted.
