

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

(2005/C 325/11)

I. Introduction

The communication of the Commission 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⁾ (hereinafter referred to as 'the 1997 communication') was adopted in 1997 and was to apply for a period of five years from 1 January 1998 until 31 December 2002.

In 2001, the Commission adopted an amendment to the 1997 communication ⁽²⁾ (hereinafter referred to as 'the 2001 amendment') concerning the definition of 'marketable' risks which may not be covered by export-credit insurers with the support of the State. The 2001 amendment also extended the validity of the 1997 communication until 31 December 2004. The validity of the 1997 communication was further extended until 31 December 2005 by a communication adopted by the Commission in 2004 ⁽³⁾.

According to point 2.6 of the 1997 communication as laid down in the 2001 amendment:

'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 ⁽¹⁰⁾. 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.'

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

The 2001 amendment also states in its introduction that:

'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 market-

able risk accordingly as part of the general review of the 1997 communication in 2004.'

Following the completion of a study on the situation of the private reinsurance market in the field of export credit insurance, and after consultation of the Member States both within the Council Working Group on Export Credits and at a multi-lateral meeting on State aid as well as of other interested parties, the Commission has decided to leave unchanged the definition of 'marketable' risks contained in the 2001 amendment. However, due to the unavailable or insufficient cover in the majority of Member States of export-credit insurance offered by private insurers to small companies with a limited export turnover, which is caused by no or very low profitability reflecting an insufficient spread of foreign countries/buyers and lack of education and knowledge of the complexities of export-credit insurance among such companies entailing significant handholding and processing costs, the Commission is prepared to consider their export-related risks as temporarily 'non-marketable' in these Member States where there is no adequate offer by the private market, also in consideration of the need for the commercial insurers to adapt to the increased market size created by the EU enlargement.

This new provision will apply from 1 January 2006 until 31 December 2010. However, the Commission will assess the market situation for those SMEs with limited export turnover within three years. Should export-credit insurance cover for such SMEs prove to be sufficiently available in the private market, the Commission will amend this Communication by considering their export-related risks as 'marketable.'

The Commission has also decided to extend the validity of the 1997 Communication until 31 December 2010.

The Commission wishes to inform Member States and interested parties that in 2010 it will re-examine the capacity of the private reinsurance market to adapt the definition of 'marketable' risks accordingly if necessary, in particular with regard to the new situation considered to give rise to 'non-marketable' risks.

II. Amendments to the 1997 communication

The following amendments to the 1997 communication as amended by the 2001 amendment will take effect on 1 January 2006:

⁽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.

1. In point 2.5, the following paragraph is introduced after the first paragraph:

'Notwithstanding the definition of "marketable" risks contained in the first sentence of the previous paragraph, if and to the extent that no private insurance market exists in a Member State, commercial and political risks incurred on public and non-public debtors established in the countries listed in the Annex are considered to be temporarily non-marketable if incurred by small and medium-sized enterprises falling within the relevant EU definition ⁽¹⁾ and having a total annual export turnover not exceeding EUR 2 million ⁽²⁾. In such circumstances, a public or publicly supported export-credit insurer shall, as far as possible, align its premium rates for such "non-marketable" risks with the rates charged elsewhere by export-credit insurers for the type of risk in question, namely taking into account the limited spread of foreign buyers, the characteristics of the insured enterprises, and the associated costs. Member States intending to submit a notification to the Commission on the application of this clause shall be subject to the same procedure and the same conditions as set out in point 4.4 below for the application of the escape clause. The Commis-

sion reserves the right to discontinue this clause or to revise the conditions of its application in consultation with Member States if it finds that the capacity of the private insurance market in this segment changes during the period of validity of this Communication'.

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. The Commission will consult Member States' representatives with relevant experience in this field and other interested parties on such reviews. 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'.

3. Point 4.5 is replaced by the following:

'This Communication will apply until 31 December 2010'.

⁽¹⁾ Commission Recommendation 2003/361/EC of 6 May 2003 concerning the definition of small and medium-sized enterprises, OJ L 124, 20.5.2003, p. 36, as may be amended in the future.

⁽²⁾ The calculation of the relevant annual export turnover will be effected according to Article 4 of Annex I of Commission Recommendation 2003/361/EC of 6 May 2003, as may be amended in the future. The provisions laid down in Article 4(2) of Annex I will apply *mutatis mutandis* with respect to the annual export turnover of the relevant enterprise.