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PUBLIC VERSION

WORKING LANGUAGE

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Subject: State Aid N 50/2009 – Luxembourg
Short-term export credit insurance

Sir,

I have the honour to inform you that the European Commission has decided not to raise any objections to the above-mentioned measure.

1. PROCEDURE

(1) The Luxembourg authorities notified the Commission of the measure which is the subject of this decision on 23 January 2009 following a meeting held on 15 January 2009. The Luxembourg authorities replied by e-mail on 20 February 2009 and 13 March 2009 to requests for additional information sent on 11 February 2009 and 9 March 2009.

2. EXPORT CREDIT INSURANCE MARKET IN LUXEMBOURG

2.1. Market players

(2) According to the Luxembourg authorities, the following private insurance companies provide export credit insurance on the Luxembourg market: Atradius, Coface, Ducroire SA and Euler-Hermes. These private insurance companies offer "whole turnover" products.

2.2. Evolution of the market in the context of the current financial crisis

(3) The Luxembourg authorities consider that the current crisis has led to a major change in the behaviour of private credit insurance companies. They are facing requests for higher compensation than in the past which is forcing them to adopt a more cautious approach than hitherto when granting credit. International private credit insurance companies have witnessed a considerable deterioration in their finances. While there has been a decline in the general situation, the Luxembourg

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authorities consider that the reassessment of risk levels acceptable to private credit insurance companies is further contracting the supply of insurance cover. The Luxembourg authorities consider that the behaviour of credit insurance companies in the current situation would have been different had their final customers found themselves in this position twelve months ago, which points to a failure of the Luxembourg export credit insurance market.

(4) To illustrate this trend, the Luxembourg authorities produced evidence of refusal to grant or extend credit and evidence of excessive reductions in credit by private insurance companies in the case of four well-established Luxembourg exporters.

3. DESCRIPTION OF THE MEASURE

(5) To avoid serious disruption because of the failure of the export credit insurance market, Luxembourg notified an insurance cover mechanism in the form of an "individual top-up" insurance policy. This cover complements basic export credit insurance taken out with private insurance companies. The notified mechanism was designed to be temporary, and to ensure that the risk could be kept under control by the Government and that the premium was above the market rate.

(6) Because of the importance of private insurance companies on the Luxembourg market, the purpose of the notified mechanism is not to replace the products already existing on the market but to complement cover when there is evidence that private companies are reducing credit excessively or refusing it. The insurance provided by private credit insurance companies will be used as a basis for the conditions governing this insurance. Thus the general conditions governing private credit insurance and the complementary insurance will be the same.

3.1. Characteristics of the cover

3.1.1. Risks covered

(7) The insurance mentioned in the notified measure covers extraordinary losses by policy-holders following failure by one or more customers to pay for the delivery of goods or services exceeding the credit covered by the basic credit insurance company. In cases of failure to pay, the customers covered are those which meet the criteria laid down in the general conditions of the basic credit insurance company.

(8) The percentage of cover applying to the claims covered is that laid down and applied by the basic credit insurance company when calculating its indemnity. The sum insured per debtor is the amount of the credit limit provided in addition to that laid down by the basic credit insurance company. The indemnity is calculated according to the rules applied by the basic credit insurance company.

(9) If the insured event occurs, Luxembourg will intervene by way of the notified mechanism only after the basic credit insurance has intervened. The private insurance company will cover the initial losses up to the credit limit insured by it. The State will cover only the losses exceeding this limit, up to the credit limit insured in the context of the individual top-up policy.

3.1.2. *Credit limits*

(10) In order to determine the credit limits applicable, the Luxembourg authorities defined a methodology based on the situation of policy-holders.

3.1.2.1. Undertakings insured before 1 September 2008

(11) Credit limits will be granted in addition to those granted by credit insurance companies to customers for whom the basic credit insurance limit was reduced after 1 September 2008.

(12) The credit limit exceeding the limit of the basic credit insurance is established on an individual basis; the ceiling is the limit which was granted before 1 September 2008 provided that the undertaking had an insurance policy before that date.

3.1.2.2. Undertakings insured after 1 September 2008

(13) The complementary cover provided by Luxembourg can also apply to an undertaking not insured before 1 September 2008. If the credit decision by the credit insurance company is not satisfactory for the undertaking, it can ask for top-up cover. The Luxembourg authorities will then take an individual decision on the basis of a file containing a record of the Luxembourg undertaking's turnover with the customer undertaking, the payment history of this undertaking, details relating to the private credit insurance company's decision and all other information which the Luxembourg undertaking considers important or which Ducroire deems necessary.

(14) The conditions governing cover will be identical to those in the basic credit insurance and the premium rates will be calculated in the same way as for undertakings insured before 1 September 2008.

3.1.2.3. Undertakings unable to obtain insurance

(15) In principle, the cover to be granted by the Luxembourg authorities is applicable only if the undertaking has a private credit insurance policy. If an undertaking that was not insured before 1 September 2008 is refused access to private credit insurance, Luxembourg will examine the case individually and will ask the undertaking to provide evidence that it took the necessary steps to obtain cover from several credit insurance companies.

(16) If the undertaking can provide evidence that private credit insurance companies refused to offer insurance, then a special investigation is carried out to find out the reasons for their refusal and to take a decision on the case. Before taking a decision on granting cover, however, the Luxembourg authorities must contact the private credit insurance companies to encourage them to provide an insurance policy.

3.1.3. *Premiums*

(17) The premium costs three times the basic insurance premium for the amount covered if declared insolvency is covered[1], and at least 1.5% per year. If the policy-holder wishes to cover alleged insolvency, the minimum premium rate rises to 4% per year. The premium is payable in advance.

3.1.4. *Duration of cover*

(18) The cover expires after one quarter. A new application for the granting of credit must be made in order to renew the cover. If this is accepted, a new quarterly premium must be paid.

3.1.5. *Implementing body*

(19) The measure is operated by Ducroire Luxembourg (hereinafter Ducroire) on behalf of the Luxembourg Government. Ducroire is a public institution set up in 1961 by the Luxembourg Government which is already providing export credit insurance with a state guarantee. It takes the form of medium and long-term credit insurance and short-term credit insurance for non-marketable-risk countries. Ducroire also provides short-term export credit insurance without a state guarantee for marketable-risk countries.

3.2. General conditions governing the measure

3.2.1. *Risk analysis by Ducroire*

(20) Acting on behalf of the Luxembourg authorities, Ducroire will, when assessing the risk of an operation, adopt a similar approach to that taken before the crisis by private insurance companies when deciding to grant cover. In the context of the notified scheme, cover cannot be provided for an operation that would not have been insured by a private company before the crisis (which can be the case, for instance, when one of the parties to an operation is an undertaking in difficulty).

3.2.2. *Granting of cover on a non-discriminatory basis*

(21) Acting on behalf of the Luxembourg authorities, Ducroire undertakes to grant cover on an objective, non-discretionary and non-discriminatory basis. Consequently, all economic operators in a comparable situation will be treated in the same way as regards the granting of cover, within the limits of the budgetary resources available.

3.3. Duration of the measure

(22) Acting on behalf of the Luxembourg authorities, Ducroire will be able to grant insurance cover under the notified measure up to the end of 2010.

[1] Insolvency can be either declared or presumed. Declared insolvency is a legal situation in which the debtor has been declared bankrupt or in default of payment or is the subject of an equivalent judicial measure. Presumed insolvency is when a debt remains unpaid for a waiting period established by the insurance company or when a situation occurs fulfilling other conditions laid down by the insurance company.

3.4. Budget

(23) The total cover granted by the State shall not at any time exceed EUR 25 million.

(24) The Luxembourg authorities have authorised Ducroire to cover, on behalf of the State, up to EUR 25 million by way of this special cover granted during the current crisis.

4. THE POSITION OF THE LUXEMBOURG AUTHORITIES

(25) The Luxembourg authorities are faced with a situation in which undertakings are pointing to the failure of the private credit insurance sector to provide cover for risks which, until now, were regarded as marketable risks in accordance with 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*[2] (hereinafter the Communication). This Communication states that marketable risks can be covered by export credit insurance that is supported by Member States. Point 4.4 of the Communication states that: "In such circumstances, those temporarily non-marketable risks may be taken on to the account of a public or publicly supported export-credit insurer for non-marketable risks insured for the account of or with the guarantee of the State. The insurer should, as far as possible, align its premium rates for such risks with the rates charged elsewhere by private export-credit insurers for the type of risk in question. Any Member State intending to use that escape clause should immediately notify the Commission of its draft decision."

(26) The Luxembourg authorities invoke the procedural simplification in the *Communication from the Commission — Temporary Community framework for State aid measures to support access to finance in the current financial and economic crisis*[3] of 17 December 2008 (hereinafter the temporary framework).

5. THE COMMISSION'S ASSESSMENT

(27) The Commission must examine the notified mechanism in line with the Communication while taking into account the simplification measures listed in section 5.1 concerning short-term export credit insurance under the temporary framework.

(28) Point 2.5 of the 1997 Communication defines marketable risks as commercial and political risks on public and non-public debtors established in a Member State or in one of the eight other members of the Organisation for Economic Cooperation and Development. 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. This Communication states that marketable risks can be covered by export credit insurance that is supported by Member States. However, point 2.5 of the 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. The definition may, therefore, be*

[2] OJ C 281 of 17.9.1997, amended by the Communications of 2.8.2001 (OJ C 217) and then of 22.12.2005 (OJ C 325).

[3] OJ C 16, 22.1.2009.

reviewed, notably at the expiry of this communication."

(29) Moreover, point 4.4 of the Communication contains an escape clause which states that "*In certain countries, cover for marketable export-credit risks may be temporarily unavailable from private export-credit insurers or from public or publicly supported export-credit insurers operating for their own account, owing to a lack of insurance or reinsurance capacity. Therefore those risks are temporarily considered to be non-marketable. In such circumstances, those temporarily non-marketable risks may be taken on to the account of a public or publicly supported export-credit insurer for non-marketable risks insured for the account of or with the guarantee of the State. The insurer should, as far as possible, align its premium rates for such risks with the rates charged elsewhere by private export-credit insurers for the type of risk in question*."

(30) In the context of the current financial crisis, the Commission states, in section 5.1 of the temporary framework, that "*in order to speed up the procedure for Member States, the Commission considers that, until 31 December 2010, Member States may demonstrate the lack of market by providing sufficient evidence of the unavailability of cover for the risk in the private insurance market. Use of the escape clause will in any case be considered justified if:*

(31) *– a large well-known international private export credit insurer and a national credit insurer produce evidence of the unavailability of such cover, or*

(32) *– at least four well-established exporters in the Member State produce evidence of refusal from insurers for specific operations."*

(33) The Commission has examined the situation to see whether the above conditions have been met in this case.

5.1. Applicability of the escape clause

(34) The Luxembourg authorities have provided evidence of refusal by insurers to cover certain operations by several well-established operators in Luxembourg. The Commission notes in this respect that private credit insurance companies are refusing to grant new credit and are reducing the existing limits for exporters and for risks they had insured in the past.

(35) The Commission would point out that one reason for refusal given by private insurance companies is the wish to reduce exposure in certain countries or sectors. This reassessment of the risk, which has caused a reduction in the supply of credit, combined with the deterioration in the economic situation, means that the resulting increased demand has given rise to a situation whereby the needs of credit insurance market customers are not being met.

(36) The Commission also notes the commitment by the Luxembourg authorities not to cover an operation which would not have been covered by a private insurance company before the crisis. The Commission understands, therefore, that only those operations that could have been insured under normal market conditions will be granted cover from Ducroire, acting on behalf of the Luxembourg authorities.

(37) Based on these comments, and in line with section 5.1. of the temporary framework, the Commission agrees with Luxembourg that the risks arising from such operations are non-marketable for the moment.

5.2. Alignment of premiums with the rates charged by private export credit insurance companies for the type of risk in question

(38) The Commission notes that where the State intervenes jointly with private insurers, the Luxembourg authorities have decided to set the premium rate at triple that of basic private insurance. The premium is therefore considerably higher than the market rate. In the case of exclusive cover, the Luxembourg authorities have set a minimum level that is also much higher than the going rate on the market[4].

(39) The Commission welcomes this methodology which covers all the risk analysis elements used by private insurance companies since the basis for calculating the premium is the rate actually set by the private insurance company for this type of risk.

(40) The fact that the cover is complementary, that private insurance companies are encouraged to intervene in the first instance, and that the level of the premium is much higher than the market rate all guarantee that this mechanism will not result in private insurance companies being squeezed out of the market. As soon as normal market conditions are restored, policy-holders will go back to private insurance companies. In addition, the risk selection process established by the Luxembourg authorities and the short-term nature of the cover will prevent non-marketable risks from being covered by Luxembourg.

(41) The Commission therefore considers that the level of the premium is aligned with the level charged by private insurance companies.

(42) In the light of the above, the Commission considers that the notified measure is compatible with the EC Treaty.

[4] The minimum level for a premium – 1.5% per year – is set at a relatively high level, and at 4% in the case of presumed insolvency. These premiums must be compared with those paid by exporters to private insurance companies in Luxembourg which vary between 0.05% and 0.5%.

6. CONCLUSION

(43) The Commission has decided to consider that the notified measure is compatible with the internal market up until 31 December 2010.

(44) If this letter contains confidential information which should not be disclosed to third parties, please inform the Commission within fifteen working days of the date of receipt. If the Commission does not receive a reasoned request by that deadline, you will be deemed to have agreed to the disclosure to third parties and to the publication of the full text of the letter in the authentic language on the Internet site: http://ec.europa.eu/community_law/state_aids/index.htm.

Your request should be sent by registered letter or fax to:

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Directorate-General for Competition
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Yours faithfully,

For the Commission

Neelie KROES

Member of the Commission