EUROPEAN COMMISSION

Brussels, 05.08.2009
C(2009)6225 final

Subject: **State Aid N 384/2009 – Germany**
Short-term export-credit insurance

Sir,

I. PROCEDURE

1. On 30 March 2009, the German authorities informed the Commission about their plan to offer public short-term export credit insurance for export transactions to the countries, which in normal circumstances are considered marketable, but for which private insurance cover has become temporarily unavailable due to the current financial crisis.

2. The Federal Republic of Germany intends to use the possibility offered by the Communication of the Commission 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 the "Communication") and the Communication on the Temporary framework for State aid measures to support access to finance in the current financial and economic crisis[2] (hereinafter the "Temporary Framework") to demonstrate temporarily unavailability of cover for marketable risks as a consequence of the current financial crisis.

3. The German authorities submitted additional information on the measure on 15 April, 12, 27 and 28 May 2009. The measure was notified to the Commission on 25 June 2009.

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1 O.J. C 281, 17.09.1997, p.4-10.

2 OJ C 16 of 22.1.2009, in particular point 5.1.

Seiner Exzellenz Herrn Frank-Walter STEINMEIER
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II. MARKET FOR SHORT -TERM EXPORT CREDIT INSURANCE IN GERMANY

4. The private credit insurance market in Germany is dominated by three large credit insurers: Euler Hermes, Atradius and Coface. Their respective market shares are […][*] per cent (Euler Hermes), […] per cent (Atradius) and […] per cent (Coface). Thus, these three insurers represent together [(83 – 93)] per cent of the market. Further credit insurers active in the German market are R+V Versicherung and Zürich Versicherung AG.

5. The standard policy offered by the private credit insurers in Germany is a whole-turnover product, which means that the policy covers all exports by the company up to an agreed turnover limit.

6. According to German authorities, the recent actions by the private market reflect a general reluctance to cover risks relating to exports to a number of countries or sectors, resulting in a drastic reduction of existing credit limits[3]. It effectively translates to rejection of the insurance cover for certain export transactions. These reactions are motivated by the financial crisis and consequently, by changes in internal risk management. Moreover, the German authorities indicate that the sheer scale of cancellation of credit limits experienced by exporters in a very short timeframe could not be explained by a change in the creditworthiness of foreign buyers, and is therefore a clear indication of the insurers' reduced willingness to provide cover.

7. Many of the exporters, who faced credit limit cancellation, have approached the Consortium consisting of Euler Hermes Kreditversicherungs-AG (Euler Hermes Bund) and PricewaterhouseCoopers AG WPG ("the Consortium"), which manages the export credit guarantee scheme of the Federal Republic of Germany, in order to obtain risk cover for exports to the markets, for which availability of private export credit insurance has declined most, impairing trade with those countries.

8. Consequently, the German authorities have decided to extend the existing State export credit guarantee framework, which in the normal market conditions is available only for the export transactions to the non-marketable countries, and to offer its insurance cover for the short-term export to the countries[4], for which risk cover has become temporarily unavailable due to the current crisis.

9. The German authorities have submitted to the Commission an extensive evidence of insurance cover unavailability for short-term export credit risks. The proof in form of the numerous letters from the private insurers, which stated the cancellation of credit limits for export transaction to marketable countries due to the current crisis, was provided by well-

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[*] Confidential information.

[3] The credit limit is one of the key elements in credit insurance policies and represents the maximum amount of outstanding receivables resulting from transactions with a certain buyer, which can be covered by the insurer at any given time.

[4] The countries listed in the Annex of the Communication.

established German exporters, which represent various market sectors. The documents provided by most exporters demonstrate lack of cover for transactions relating to a number of EU and high-income OECD countries.

III. DESCRIPTION OF THE MEASURE

3.1 Objective

10. The purpose of the German scheme is to offer state short-term export credit insurance to German exporters who are confronted with unavailability of cover in the private market for financially sound transactions with buyers in certain countries as a result of the financial crisis and resulting market failure.

3.2 Legal terms and conditions

11. Instead of creating new scheme, the Federal Government intends to extend temporarily the already existing state export credit guarantee scheme. The existing public scheme offers state insurance for short-, medium- and long-term export transactions. However, in case of the short-term transactions public cover is offered only for the export to the countries defined by the Communication as non-marketable. The types of the insurance policy available within the existing public scheme include the contracts described in paragraphs 13 to 17. The temporary extension of the scheme means that public export credit guarantee scheme will become available for the risks defined in the Communication as commercial and political risks on public and non-public debtors established in countries listed in its Annex[5] that until now were considered as marketable and cannot normally be covered with the support of Member States. The extension of the scheme does not involve any changes to the conditions of the state insurance policies already available.

12. In spite of the reference to as an export credit guarantee scheme, the state support granted to exporters within the notified measure is in fact insurance and not guarantee on first demand. Above all, the purpose of the scheme is to transfer the main part of the risk relating to a specific export transaction (namely the non-payment for the exported goods and/or services by the foreign buyer) from the exporter to the State. Further, the payment of the claims put forward by the exporters is conditional on the fulfilment of a number of requirements. Notably, the exporter becomes entitled to an indemnification only after having provided evidence that all conditions of the insurance policy were met. This conditionality gives the measure features of insurance. Finally, the insurance products offered by Euler Hermes Bund for the short-term export credit transactions under the notified scheme are complementing export credit insurance in the same insurance market as provided by private credit insurance companies in the normal market conditions but currently temporarily unavailable.

[5] The countries listed in the Annex of the Communication are all the Member States in the European Union and most of the OECD countries. The marketable risk countries are countries where political risk is considered to be negligible.

13. The German authorities intend to offer coverage for the countries in question by the four following products: Whole Turnover Policy (APG) (or in simplified form for SMEs as Export Whole Turnover Policy light), Supplier Credit Cover (single or revolving) and Manufacturing Risk Cover. Cover for the notified countries will be temporarily embedded into the products which are described below.

14. The main product of the scheme will be the Whole turnover Policy, which is the equivalent cover of the policies of the private credit insurers. The Whole turnover Policy (APG) is designed for exporters supplying goods or services to several buyers in different countries, who seek insurance cover for their export receivables with credit terms of up to 12 months. The policy may cover commercial risks as well as sovereign or isolated political risks. The global cover policies offered by the private insurance companies are similar to the Whole turnover Policy, although sovereign and isolated political risks are generally excluded. Whole turnover policies are available to every exporter established in Germany with an annual export turnover of at least EUR 500,000 spread over different markets. Additional markets can be integrated at any time in already existing contracts. The framework of whole turnover cover includes, as a principle, the condition that the exporter has to apply for cover for all transactions and all buyers he conducts business with in any predetermined country for the duration of the insurance contract (usually one year), in order to avoid a negative risk selection. For countries admitted for cover under the Escape Clause the obligation to include all buyers would be waived. This would allow exporters to sustain existing contracts with private insurers and/or to return to the private market as soon as possible.

15. Whole turnover Policy light is designed especially for small export companies which do not generate sufficient export turnover to be eligible for cover under a Whole turnover Policy. These exporters cannot find appropriate insurance products on the private market due to their low scale turnover. The Whole turnover Policy light offers protection against payment default for export receivables with credit terms up to 4 months (protracted default). A Whole turnover Policy light is available to every German exporter, who generates a coverable export turnover not exceeding EUR 1 million per year.

16. Supplier Credit Cover safeguards the trade receivables due to an exporter relating to a single or revolving export transaction with credit terms of up to 24 months. This policy is available to every exporter established in Germany.

17. Manufacturing Risk Cover protects the exporter against the loss of the production costs accruing up to the level of the respective order value for the supplies and services to be provided to the foreign buyer under the export contract. A certain percentage of the prime costs are charged as premium for cover. In each case, the level of this premium depends on the length of the manufacturing period and the scope of the risks to be covered. Though available for short term business this product is designed for medium-/ and long-term business, in particular for the manufacturing of custom products, for which the costs are difficult to recover, should the order be withdrawn. Therefore it is expected that this product will play only marginal role if any under the notified scheme for short term business. A Manufacturing Risk Cover is available to every exporter established in Germany.

18. Administration and management of the insurance relationship with the policyholders will be handled by the Consortium according to the normal service standards as applied in case of the cover for non-marketable countries. In particular the Consortium is responsible for the information and advice to the exporters on the export insurance cover offered within the scheme. It also receives the applications for cover, conduct risk assessment, take the decisions to provide cover on behalf of the State for export contracts up to EUR 5 million or prepare decisions on applications for consideration at the meetings of the Interministerial Committee (IMC) in case of export contracts exceeding this threshold, advise the Federal Government during the decision-making process and handle the claims.

19. The Interministerial Committee (IMC) for the export credit guarantees of the Federal Government, chaired by the Federal Ministry of Economics and Technology and composed of representatives from the Federal Ministry of Finance, the federal Foreign Office and the Federal Ministry for Economic Cooperation and Development, examines all major applications and decides whether to grant a cover. Experts from exporting and banking sectors regularly support the Committee's work with their expertise. The IMC also decides on the basic principles of the state account cover scheme, all internal guidelines and the cover policy. Reporting to and monitoring by the Interministerial Committee of all details related to the application of flexible rules with respect to the temporarily non marketable countries takes place on a regular basis.

20. The risk of the export transaction, for which cover was granted under the public export credit guarantee scheme, is borne directly and to 100% of the amount insured by the federal budget. However, the amount covered under the policy generally relates only to 90% of the underlying transaction's value. The policy of the federal export credit guarantees requires that 10% of the default risk remains with the exporter. In a response to the financial crisis exporters may now apply for a reduction of that share to 5% in exchange for an appropriate increase in the premium. This reduction of risk retention by the exporter is available only until 31 December 2010. Nevertheless, the Federal Government always reserves the right to increase the exporter's retention to a maximum of 35%, should the risk assessment of the buyer identify a heightened risk. Additionally, risks concerning the enforceability of the contract always remain with the exporter. Euler Hermes does not retain any risk related to the covered export business.

3.3 Eligibility

21. The Federal Government submitted evidence of refusal by credit insurers to grant a cover for export transactions with respect to all the notified countries. The evidence was provided by numerous well-established German exporters.

22. Therefore, all exports from German undertakings to a foreign buyer located in one of the notified countries will be eligible under the public short-term export credit insurance scheme.

23. Furthermore, to be eligible under the public short-term export credit insurance scheme, the export transaction must be justifiable in terms of the commercial and political risk involved. In order to meet this criterion, the export to be covered needs to fulfil a set of requirements stipulated by the Interministerial Committee of the Federal Government for each country.

These include the financial strength and economic policies of the country concerned, as well as macro-economic and political factors. In addition to this, the foreign buyer's creditworthiness and his payment record are scrutinised. The procedures and standards for assessing the creditworthiness of foreign buyers are virtually identical both in the private credit insurance business and in the state account scheme. Therefore, the notified scheme will not be applied to buyers in economic difficulties or to buyers with a weak or insufficient solvency.

24. The public short-term export credit insurance cover is available to all exporters established in Germany until 31 December 2010, when the latest delivery should be carried out, if it is to fall into the scope of the scheme. The scheme does not foresee any limitation with regard to the groups of products or sectors, which can be covered by a policy within a scheme.

3.4 Implementing body

25. As stated above, the intended measure will be administrated on behalf of the Federal Government by the Consortium consisting of Euler Hermes Kreditversicherungs-AG (Euler Hermes Bund) and PricewaterhouseCoopers AG WPG (PwC) – the same way the public German export credit insurance system is managed in general.

26. A strict "Chinese wall" – functional division – exists between the activities of Euler Hermes as a private credit insurer (Euler Hermes Privat) and the Consortium (in particular Euler Hermes Bund). This translates to separation of accounts and administration between those parties. Moreover, no exchange of credit information on individual foreign buyers takes place. The Consortium does not share confidential information obtained from the German government with the private sector. In addition, Euler Hermes Privat is not in a position to shift risks which are difficult to accept on own account to the Consortium

3.5 Legal basis

27. The legal basis of the export credit scheme in Germany is the annual federal budget law. This law is, for the purposes of export credits, complemented by internal guidelines and general conditions.

3.6 Level of remuneration

28. Within the notified measure the same system of premium rates will be applied as the one, which defines the level of premium for the State insurance cover for the non-marketable countries in the normal market conditions. The premium to be paid by the exporter for the insurance cover within the notified measure varies according to the category of the country, in which the buyer is based, his creditworthiness, nature of risk covered and the type of the policy.

29. The average premium for Whole turnover Policy of the German Export Credit Guarantee scheme is [(0.49 – 0.56)] % for receivables with credit terms up to 6 months and [(0.73 – 0.81)] % for receivables with credit terms up to 12 months in case of existing contracts and respectively [0.56 – 0.64]) % and [(0.73 – 0.82)] % for the new contracts. The premium level is valid for the entire policy period of one year. Loss experience is taken into account

from the end of the second policy year on: if losses during the last contract period exceeded the premium paid, there will be a surcharge of 10 % on the calculated premium for the next period. Vice versa the premium will be reduced by 5 % if no substantial losses occurred. For the contracts, which cover commercial risks, the lowest possible premium level is [(0.33 – 0.39)] %. This premium level can be reached after 6 years if only customers in countries with the best risk category have been delivered and if no substantial claims occurred during these 6 years. So far, no contract has reached this level.

30. There is no individual calculation of the premium for the Whole turnover Policy light. Instead a fixed percentage of 0.80 % will be applied for new contracts. Loss experience is taken into account from the end of the second policy year on: if losses during the last contract period exceeded the premium paid the premium will be increased by 0.10 basis points for the following policy year. If no substantial claims payments had to be made during that period, the premium will be reduced accordingly. This way, the premium can drop to a minimum of 0.60 % or rise to a maximum of 1.05 %.

31. The premium rate for Supplier Credit Cover (Single or Revolving) depends primarily on the OECD risk category, into which the country of the buyer is categorized. The premium is further influenced by the order value, the repayment term, the buyer's status (public or private, with or without a bank guarantee) and by the level of risk retention by the exporter. In case of a private buyer its credit standing also influences the premium amount. As a result the premium under this cover is generally higher than 1.0 % for short term business. The absolute premium floor for commercial risks in a country with the best OECD-category and the best category of the buyer will result in the premium rate of 0.49 %.

32. Despite the Bonus-Malus system, the German authorities demonstrated to the Commission that in each case, where comparable risks are covered under a policy of a private insurer or a Whole Turnover Policy of the German Export Credit Guarantee scheme the price an exporter has to pay will be higher under the scheme's Whole Turnover Policy. In case of supplier credit cover or a manufacturing risk cover under the German scheme, analogical types of cover are either not available on the private insurance market for the business in question or - as far as the manufacturing risk cover is concerned - only available in combination with the insurance cover for the credit period. In any case charges for these types of cover under the German scheme are significantly higher than the charges under a Whole Turnover Policy and therefore will always be higher than the premiums for comprehensive cover of comparable risks on the private market. The German authorities pointed out that the exporters are currently accepting higher premium rates because their main focus is availability of coverage for their receivables. It is expected that as soon as the private insurers start offering cover again the focus of the exporters will again be to secure the lowest cost for the cover they seek.

33. The annual remuneration due to the Consortium for the administration of the public scheme with the total budget of up to EUR 117 billion is estimated at around EUR [(55 – 68)] million and depends, inter alia, on the volume covered transactions. This corresponds to all administrative costs and a management fee for the Consortium related to the administration of the whole State export credit guarantee scheme covering both non-marketable and temporarily non-marketable risks. The Consortium's remuneration for the management of

the scheme for those countries which have become temporarily non-marketable is calculated according the same methodology as for the non-marketable countries.

3.7 Duration

34. The public insurance scheme will become available for the exporters delivering to marketable countries, which became temporarily non-marketable, until the end of 2010.

3.8 Budget

35. The current budgetary limitations for the existing state export credit guarantee scheme for non-marketable risks amount to EUR 117 billion per annum. The German authorities do not plan any extension of this limit due to inclusion of further countries. That is, no specific budget will be allocated to the part of the public export credit scheme covering the exports to the temporarily non-marketable countries.

IV. ASSESSMENT

36. The Commission examined the notified measure pursuant to the Temporary Framework and the Communication.

37. Point 2.5 of the Communication defines 'marketable risks' as those on public and non-public debtors established in the countries listed in the Annex to the Communication[6]. Financial advantages in favour of exporters or export credit insurers, who respectively enter or cover a transaction qualified as marketable risk, are normally prohibited.

38. The measure at hand provides public support with regard to insuring risks on the market that faces unavailability of the insurance cover for certain countries. Insofar as countries not listed in the Annex to the Communication are concerned, such risks are 'non-marketable' within the meaning of the Communication and public support for insuring them is in compliance with the Communication

39. According to the Communication and in particular point 4.4, risks incurred on debtors established in countries listed in the Annex to the Communication are considered temporarily non-marketable only if it can be demonstrated that private insurance cover for the risks generally viewed as marketable is unavailable in certain Member State. In particular, Member States who wish to invoke this escape clause have to provide a market report and produce evidence thereof from two well-known, international export-credit insurers as well as a national credit insurer both demonstrating the unavailability of cover for the risks in the private insurance market. Moreover, the 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 and provide a description of the conditions which the public export-credit insurer intends to apply in respect of such risks.

[6] The list includes EU and OECD countries.

40. In order to speed up the procedure, the Temporary Framework simplifies, until 31 December 2010, the proof that Member States need to produce to demonstrate the unavailability of cover. To this end, Member States have to submit evidence provided by a large well-known international private export credits insurer and a national credit insurer or by at least four well-established exporters in the Member State.

4.1 Unavailability of cover in the private insurance market and the application of the escape clause

41. According to the information provided by the German authorities, the three largest international export credit insurance companies (Euler-Hermes, Atradius and Coface) dominate the German credit insurance market. Further credit insurers active in the German market are R+V Versicherung and Zürich Versicherung AG. The role of the Consortium is to complement the market by offering the cover for non-marketable risks.

42. The unavailability of cover for the risk in question was demonstrated by means of the extensive evidence provided by numerous well-established German exporters, who represent various industrial sectors and faced limit cancellations with the largest credit insurers.

43. The Commission considers the evidence as sufficient to demonstrate unavailability of private cover under the Temporary Framework for a significant part of the market.

44. In addition, the construction of the scheme ensures to a large extent that the state will only cover transactions for which private cover is not available in the market as a consequence of the financial crisis. Firstly, it prevents any crowding out of private cover thanks to the waiver of the requirement that the exporter applies for public cover for all buyers he conducts business with in any predetermined country for the duration of the Whole Turnover Policy (usually one year). This will allow exporters to sustain existing contracts with private insurers and to return to the private market as soon as possible.

45. Secondly, due to the fact that the whole risk accepted under the scheme is born exclusively by the State, a private insurer, which cancels credit limits, forgoes the premium income related to the rejected transaction without obtaining any other source of income under the scheme instead. Therefore, it is highly unlikely that the private insurers would reduce their exposure to export credit risk below the level of their capacity during the crisis. Against this background, the Commission notes that it is very unlikely that the export transactions would be artificially shifted to the more expensive state scheme, should the private market still be able and willing to cover the underlying risk.

46. Finally, the eligibility criteria mentioned in paragraph 23 provide safeguards, which will prevent the State from insuring financially unsound transaction, which would be unable to obtain credit insurance even in the normal market conditions due to the negative credit assessment by the private credit insurance companies. Their effect is strengthened by the retention requirement, which means that the scheme will provide the insurance cover amounting generally to 90% of the total transaction, forcing the exporter to retain 10% of the risk. This way the insurance cover granted under the scheme will be based on both the

risk assessment conducted by the Consortium and IMC and the counterparty risk monitoring by the exporter.

4.2 Alignment of premium rates with rates charged elsewhere by private credit insurers

47. The premium under the scheme will be set at a higher level than the benchmark provided by private credit insurers. According to the information provided by the German authorities, the average premium on the turnover charged by the private credit insurers has risen since the beginning of the crisis and fluctuates now around […] % (tax included) for already existing contracts and […] % for new contracts. Under the state supported scheme, exporters will be charged premiums rates for Whole Turnover Policy, which are approximately 50 % to 75 % higher than those for the comparable private insurance polices. In case of the other types of policy available under the notified scheme the difference is even higher.

48. The Commission considers that the premium rates charged under the export credit insurance scheme are, as far as possible, aligned with the rates charged by private export-credit insurers for the same type of risk. The fact that the premiums charged by the Consortium are higher than the market levels is partially explained by the difference in the type of policy offered. The private insurers operate only on a whole turnover basis, which provides for the diversification of risk. Whereas the premiums charged by the Consortium reflect the higher risk associated with the individual transactions or smaller group of buyers, which otherwise would not be covered in the current market conditions. Moreover, the fact that the scheme applies the premiums rates, which are normally charged to the non-marketable risks, to the cover for export to the countries, which have become non-marketable due to the current crisis, shows that the level of premiums is appropriate, even if relatively higher than on the private market. At the same time, the level of the premiums charged by the public scheme limits to the minimum the crowding out of the private insurers as the exporters have an incentive to seek cover with private insurers who charge relatively lower premiums. Therefore the scheme contains an in-built mechanism that should lead to phasing out of the state intervention as soon as the private insurance market revives, since the level of premium charged would ensure that the exporters return to the private insurers as soon as the market conditions allow and the risk becomes marketable again.

4.3 Conclusion

49. On the basis of the foregoing assessment, the Commission concludes that the scheme meets the requirements of the escape clause of the Communication (point 4.4) and the evidence is in line with the Commission's temporary framework for state aid measures, which gives Member States additional scope to facilitate access to financing in the present economic and financial crisis.

V. DECISION

50. The Commission has accordingly decided to consider the notified measure to be compatible with the common market until 31/12/2010.

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

- European Commission
  Directorate-General for Competition
  Directorate for State Aid
  State Aid Greffe
  B - 1049 Brussels
  Fax No: +32 2 296 12 42

We would ask you to state the case name and number in all correspondence.

Yours faithfully,

For the Commission

Neelie KROES
Member of the Commission