EUROPEAN COMMISSION

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PUBLIC VERSION

WORKING LANGUAGE

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Subject: State aid N 532/2009 – Belgium
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 Belgian authorities notified the Commission of the measure which is the subject of this decision on 25 September 2009. The Belgian authorities replied by e-mail on 16 October 2009 and 20 October 2009 to a request for additional information sent on 29 September 2009.

2. EXPORT CREDIT INSURANCE MARKET IN BELGIUM

2.1. Market players

(2) According to the Belgian authorities, four main insurance companies and some smaller firms provide export credit insurance on the Belgian market: Euler Hermès, Atradius, S.A Ducroire and to a lesser extent Coface. Total revenue for credit insurance for 2008 was EUR 159 901 547, of which 66% related to export operations. The domestic credit insurance market is largely dominated by Euler Hermès and Atradius, while S.A. Ducroire dominates the export segment, ahead of Euler Hermès and Atradius.

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

(3) The Belgian authorities consider that the current crisis has led to a change in the behaviour of private credit insurance companies. Because of the crisis, they are facing requests for higher compensation than in the past, which is forcing them to adopt a more cautious approach. However, while there has been a deterioration in the general situation since the start of the international financial crisis, the Belgian authorities consider that the reassessment of acceptable risk levels by credit insurance companies is further contracting the supply of insurance cover. The credit insurance companies are therefore over-reacting to the crisis, which justifies intervention by the public authorities.

(4) To illustrate this trend, the Belgian 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 well-established Belgian exporters. Moreover, the main Belgian credit insurance companies (96% of the market) have signed a common declaration attesting to the deterioration of the risks they insure.

3. DESCRIPTION OF THE MEASURE

(5) To avoid the major upheaval in the Belgian economy which would result from a failure of the export credit insurance market, the Belgian authorities have notified a measure for reinsurance of export credit insurance policies called BELGACAP. 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) 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.

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 when one or more customers defaults on payment for the delivery of goods or services exceeding the credit covered by the basic credit insurance company. Defaulting customers are taken to be those which meet the criteria laid down in the general conditions of the basic credit insurance company.

(8) The risks of export credit insurance targeted by the mechanism are the risks associated with normal export transactions. 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 maximum amount insured per debtor may not exceed the initial limit granted. The indemnity is calculated according to the rules applied by the basic credit insurance company.

3.1.2. Modes of coverage of the guarantee

(9) The BELGACAP mechanism provides top-up insurance over and above the primary policy taken out with a private insurance company. The private insurance company covers the initial losses up to the limit specified in the primary contract; only the losses which exceed this limit will be covered by the government, up to the limit set out in the BELGACAP contract. The credit limit insured under the BELGACAP contract may not exceed 100% of the insurance company's exposure. It ceases once the primary guarantee is no longer present. The insurance provided by the private credit insurance company 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 (period of grace, compensation, recovery of debt, retention rates), except for the conditions of remuneration.

(10) The BELGACAP mechanism consists of the sale by credit insurance companies of a policy covering business risks from which the insurance company has partially withdrawn. It is proposed that the instrument be managed through the Participation Fund (*Le Fonds de participation*). Any credit insurance company in the Belgian market may offer the mechanism to its customers.

(11) Maximum credit limits have been set for insured companies (Articles 3.3 and 3.4 of the Royal Decree of 2 July 2009):

- EUR 3 million for large firms,
- EUR 1.5 million for SMEs.

(12) The Belgian authorities undertake 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 budget available.

3.1.3. Eligibility for the BELGACAP mechanism

(13) The eligibility conditions for the CAP export mechanism are as follows:

- it is open to any firm located in Belgium which has undergone or is undergoing a reduction in cover since 1 January 2009; it only covers new invoices. It is open to any firm carrying on economic activities in Belgium;
- the credit insurance company retains part of the risk by providing the "primary guarantee". BELGACAP only covers the "complementary guarantee", the limit for which may be up to the amount of exposure retained by the insurance company.

3.1.4. Legal basis

(14) The Royal Decree of 2 July 2009 sets out the detailed rules for the BELGACAP mechanism, confirming the decision of the Belgian Council of Ministers of 29 May 2009.

(15) Management of the BELGACAP mechanism was entrusted to the Participation Fund, a public credit institution. The Participation Fund is a federal financial institution that supports the self-employed, professionals and jobseekers who

would like to start their own businesses. In addition, the Participation Fund's objective is to share its know-how by providing administrative, technical and financial services to other institutions, alone or with the help of other organisations.

3.1.5. Administrative management of the mechanism

(16) The Participation Fund's role is solely to manage the Belgian government's guarantee at an operational level. The Participation Fund's "management role" includes:

- administrative and technical management of the cases submitted by credit insurance companies;
- follow-up of recovery procedures and management of relations between the parties.

Accepting cases is the responsibility of the credit insurance company and not the Participation Fund.

3.1.6. Duration of cover

(17) The Royal Decree of 2 July 2009 defines the duration of the mechanism. The measure is available for an initial period of 6 months. This period began on 9 July 2009 and will finish on 8 January 2010, according to the Royal Decree of 2 July 2009. The Belgian authorities are planning to extend the mechanism until 31 December 2010 and have requested the European Commission to approve this additional period. They are, however, awaiting the Commission's decision before implementing the mechanism.

3.1.7. Remuneration

(18) The premium to be paid by the beneficiary firm totals 1% of the amount of complementary cover provided, on a six-monthly basis, or 2% of the credit limit granted on an annual basis. This is three to six times higher than the premiums which private export credit insurance firms charge for similar risks (from 0.3% to 0.7% of the credit limit granted on an annual basis). The premium received by the credit insurance firms is paid to the Participation Fund, except for a management fee of 20% of the premium.

(19) In return for handling operational management (and its obligations to report to government), the Participation Fund receives a fee of EUR 120 000. This is a flat-rate fee which covers the handling of 300 BELGACAP files. A further EUR 55 is paid for any new file over and above that number. For the rest, the Participation Fund collects BELGACAP premiums, processes claims and may call on the state guarantee if payments for claims exceed the revenue from premiums.

3.1.8. Budget

(20) The maximum amount which can be underwritten by BELGACAP has been set at EUR 300 million per quarter.

(21) According to the Belgian authorities, the level of premium applied is aimed at guaranteeing that the system will be self-financing. It is however possible that the mechanism will result in expenditure from the state budget.

4. POSITION OF THE BELGIAN AUTHORITIES

(22) The Belgian 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[1] (hereinafter "the Communication"). This Communication states that marketable risks cannot 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.*"

(23) The Belgian 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[2] of 17 December 2008 (hereinafter "the temporary framework").

5. ASSESSMENT OF THE COMMISSION

(24) 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 for State aid measures to support access to finance in the current financial and economic crisis[3].

(25) Point 2.5 of the 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 is less than two years. This Communication states that marketable risks cannot 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 reviewed, notably at the expiry of this communication.*"

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1 OJ C 281 of 17.9.1997, amended by the Communications of 2.8.2001 (OJ C 217) and 22.12.2005 (OJ C 325).

2 OJ C 16, 22.1.2009.

3 OJ C 83, 7.4.2009, p. 1-15.

(26) 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."

(27) 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:*

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

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

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

(28) Belgium has undertaken to open the mechanism to any company carrying on economic activities in Belgium and the Commission will only authorise it on this basis.

5.1. Applicability of the escape clause

(29) The Belgian authorities have provided evidence of many cases of refusal by private insurers to cover well-established operators in Belgium. These letters of refusal demonstrate the risk-reduction strategy adopted by private insurance companies since the start of the financial crisis. The Commission notes in this respect that private credit insurance companies are refusing to grant new credit and are reducing the existing credit limits for exporters and for risks they had insured in the past.

(30) 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 causes a reduction in the supply of credit. At the same time, the deterioration in the economic situation has led to increased demand and a situation in which the needs of credit insurance market customers are not being met.

(31) Moreover, decisions on the applicability of the escape clause are made on a country-by-country basis.

(32) Based on these comments, and in line with section 5.1. of the temporary framework, the Commission considers the evidence provided as sufficient to demonstrate a market failure in accordance with point 4.4 of the Communication and agrees with Belgium that the risks arising from such operations are temporarily non-marketable.

(33) Moreover, the BELGACAP mechanism contains the provisions needed to guarantee that only risks not covered by the market will be covered by the Belgian state: this cover will only be used as a complement to basic export credit insurance taken out with private insurance companies. It does not cover operations by firms whose cover has been withdrawn completely by private insurance companies which might constitute too high a risk for the mechanism.

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

(34) The Commission notes that the level of remuneration proposed for BELGACAP guarantees is very much higher than the market-rate premiums charged before the crisis for equivalent levels of risk. The premium (2% of the credit limit granted on an annual basis) is three to six times higher than the premiums which private export credit insurance firms charge for similar risks (from 0.3% to 0.7% of the credit limit granted on an annual basis).

(35) The level of remuneration for BELGACAP guarantees therefore constitutes an incentive to withdraw from the mechanism when the crisis starts to recede.

(36) The Commission considers that the premiums required in the BELGACAP mechanism are, as far as possible, aligned on the rates of premium demanded by private insurance companies for similar risks. The high level of BELGACAP export premiums by comparison with market premiums is justified by the fact that the premiums charged by private insurance companies relate to an overall turnover figure for a particular exporter, which allows the risks insured to be diversified. The BELGACAP mechanism focuses more on the risks on transactions which, in the current market conditions, would not have been covered.

(37) The Commission considers that the level of premiums applied under the mechanism is aligned with the level of premiums which private insurance companies would have applied to similar individual risks because the level of premium charged is aimed at ensuring that the mechanism is self-financing.

(38) Moreover, the risk selection process established by the Belgian authorities and the short-term nature of the cover will prevent previously non-marketable risks from being covered by Belgium.

(39) For this reason, the Commission considers, in agreement with the Belgian authorities, that the BELGACAP export mechanism will not result in private insurance companies being squeezed out of the market and that it will only remain in place for the duration of the financial crisis.

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

6. CONCLUSION

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

(42) 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/state_aids_texts_fr.htm.

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

European Commission
Directorate-General for Competition
Directorate State Aid
State Aid Registry
B-1049 Brussels
stateaidgreffe@ec.europa.eu

Yours faithfully,

For the Commission

Neelie KROES
Member of the Commission