EUROPEAN COMMISSION

Brussels, 29.10.2009
C(2009)8428 final

COMP Operations

Subject: State Aid N554/09 – Denmark
Amendments to the short-term export-credit insurance scheme

Sir,

I. PROCEDURE

1. On 9 October 2009, the Danish authorities notified to the Commission amendments to the measures to publicly support export credit transactions for countries where covers for marketable export credit risks are temporarily unavailable. The original measure was approved by the Commission on 6 May 2009 under case number N198/2009[1].

2. The Danish authorities submitted additional information on the measure between 12 and 19 October 2009.

II. DESCRIPTION OF THE MEASURES

3. Denmark considers that the measures taken in May 2009, introducing a reinsurance scheme for temporary non-marketable export credit (hereafter "the Scheme") has proven insufficient to adequately provide Danish exporters with the necessary coverage for their sound short term export credit transactions.
4. Indeed, some well-established exporters who have been declined cover in the private market still cannot apply for reinsurance under the Scheme as these markets do not qualify for the Scheme. Other exporters receive cover from the private market, but only for a part of the amounts applied for. Also, according to Danish authorities, the terms of the reinsurance agreements under the Scheme have proven to be inadequate to properly address the current market failure. Denmark has, therefore, decided to amend the Scheme to ensure that sound and creditworthy Danish exports have access to the necessary credit insurance in the current financial and economic crisis.

[1] OJ C179 of 01.08.2009, pp. 2-3

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5. The notified changes relate to three areas:

   - Modification to the methodology used to identify markets that are temporarily non-marketable

   - changes to the terms of the quota-share system approved on 6 May

   - introduction of an additional top-up window under the reinsurance agreements.

   The other conditions of the scheme, including eligibility, as approved by the Commission on 6 May 2009 remain unchanged.

2.1 Modification to the methodology for identifying markets that are temporarily non-marketable

6. In the current Scheme, unavailability of cover in the private insurance market, is defined with a the conjunction of the following two criteria:

   - The cover provided by the private credit insurers (defined as the ratio between the amount of coverage approved by the insurers and the total amount applied for) has been reduced by at least 20% compared to the pre-crisis period and

   - The cover offered by the private credit insurers is 60% or less of the credit limits applied for by the exporters.

7. Denmark considers that this ratio would in a normal market situation be a good parameter for measuring the availability of cover. However, during the financial crisis where a severe disturbance hit the credit markets, the figure of Approval rate underestimates the tightened terms in the private insurance market, since many exporters receive cancellations of their credit limits or reductions of their credit limits every month. Therefore cancellations and reductions of covered transactions may forestall potential applications from the exporters. Therefore, Denmark intends to modify the formula to measure unavailability of cover to include in the denominator not only applied credit limits but also cancellations and reductions of credit limits. Thus the cover would be evaluated on the basis of the following formula: Approved amount/(Application amount + cancelled amount + reduced amount).

8. According to Danish authorities, the aim of this modification is to take account of the extraordinary cancellation and reduction behaviour of the private insurance companies as a response to the financial crisis in the calculation of market availability. Indeed, Denmark considers that the above described new basis for evaluation of the unavailability of cover is simply a recalibration of the formula used to identify which markets may be covered by the reinsurance system. It does not have any influence on the eligibility of exporters to the scheme. As additional documentation illustrating that these markets are indeed experiencing lack of cover, Denmark has provided statements from numerous well-established exporters in Denmark that have been refused cover by the private market in the additional markets that would open for reinsurance as a result of the change in the methodology.

2.2 Changes to the terms of the quota-share system

9. The changes to the quota-share system relate to both the premium charged and cover percentages offered in the quota-share reinsurance system. The other terms of the

operation of the system remains as described in the Commission decision on State aid case N198/09.

10. In the current Scheme, the following premium levels apply depending on the category of the country, where the relevant buyer is based:

- 1% for the buyers in the countries of the first category (lowest risk);
- 1.5% for the buyers in the countries of the second category (medium risk);
- 2.0% for the buyers in the countries of the third category (highest risk).

11. Denmark indicates that the current level of the premiums was based on an expectation that the risk to be covered by EKF would have been worse that what is actually covered and processed by the scheme. As a consequence, the Danish authorities intend to reduce the premium level as follows:

- [0.5%-1%][*] for the buyers in the countries of the first category (lowest risk);
- [1%-1.5%] for the buyers in the countries of the second category (medium risk);
- [1.25%-2%] for the buyers in the countries of the third category (highest risk).

The calculation of premium remains, based on the total insured amount, remains unchanged.

12. Furthermore, in the current Scheme, EKF commits itself to reinsure the major part of the individual export contracts but the exporter is required to retain 20% of the total risk amount and the primary insurer retains […]%, […]% or […]% of the remaining risk, depending on the risk category of the country [2] where the buyer is established.

13. Denmark intends to reduce the minimum share of insurers' risk from […]% to […]% for the first risk category and from […]% to […]% for the second risk category in order to keep the private insurance companies willing to participate in the Danish reinsurance system after a reduction of the premium and taking into account their increasing risk aversion. The retention rate of […]% for the third risk category (highest risk) remains unchanged.

14. In addition, according to the Danish authorities, many exporters have reported that the 20% risk retention is significantly higher than normally seen in the market. Furthermore, exporters are increasingly sensitive to losses even though they only share a minor portion after insurance/reinsurance. Therefore, the Danish authorities intend to lower the exporters' retention amount from 20% to [10%-20%].

2.3 Introduction of an additional top-up window under the reinsurance agreements

15. In addition to the existing quota-share system, Denmark intends to introduce a top-up window to the reinsurance agreements with the private export credit insurance companies.
16. The top-up window is a tool for providing additional capacity to the private market on a risk sharing basis. It aims at fully utilizing the capacity available in the market.

17. The top-up element, when applied, will be up to 100% of the limit set by the private credit risk insurance company. The top-up window can thus provide up to a doubling of the limit

[*] Confidential information

[2] Please see points 10 and 11 for further details on country classification

available to the exporter from the private credit risk insurance company. Claims under the top-up scheme are shared pro rata.

18. The top-up premium is an all-in premium. Denmark indicates that private insurers are charging premiums ranging between […] and […], with an average of 0.25%-0.30% of the turnover. The EKF premium is 0.50%, thus above the current market premiums. In addition, under the scheme's rule, EKF premiums should never be lower than private ones.[3] and it follows the market premium charged by the private insurance companies, however, with a minimum level of 0.50%. The EKF premium can never be lower than the premium the policy holder pays on his policy with the private insurer to ensure that the EKF top-up cover does not compete with the private market.

19. The quota share and the top-up windows complement each other. When exporters are refused cover by the private market they have the possibility of applying for cover with EKF reinsurance through the quota-share system. When exporters are approved for cover by the private credit risk insurance companies, but with reduced limits, the top-up facility provides additional capacity.

20. The ceding fee to the private insurers is [20-30] percent of the EKF-premium, to cover the costs incurred to administer the policies. The ceding fee for top up scheme is fee is lower than for the quota-share scheme as the risk assessment burden for the insurers in the top up scheme is deemed to be lower as the private insurer only makes one risk evaluation.

21. A review of the level of the ceding commission, both for the [20-30]% management fee related to the top-up facility and the management fee of [25-35]% for the quota-share scheme, will be undertaken at the end of 2009 when data on the scheme usage and costs incurred will be available.

22. If the result of the review does not justify the present level of ceding fee, these will be reviewed downward. Denmark committed to inform the Commission of the result of the review and possible adjustment in the beginning of 2010.

2.4 Implementing body

23. Both the reinsurance and the top up facility are provided by EKF, which is an independent, state-owned administrative entity under the Danish Ministry of Economic and Business Affairs. The statutory basis of the EKF is the Act on Eksport Kredit Fonden no. 913 of 9 December 1999 as amended and an administrative order and a circular on by-laws issued pursuant to the act. The Danish Act on Eksport Kredit Fonden was notified and approved by the Commission on 1 March 1996 (N 856/95)[4].

2.5 Legal basis

24. The measure is based on section 6(2) and (3) of the act on a Danish export credit fund.

2.6 Duration

25. Both the reinsurance agreement and the top up facilities are in place until the end of 2010.

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[3] As a way of example, if the private premium is equal to 0.30%, EKF will charge 0.50%. In case, and this should be exceptional, the premium charged by private insurers would be 0.60%, EKF will charge at least 0.60%

[4] Ref. SG(96) D/2712

2.7 Budget

26. The Danish authorities do not foresee any budgetary limitations for the scheme. The only form of budgetary restriction is the limited equity of EKF. Should EKF's capital increase be needed, it will be notified to the Commission.

III. Assessment

27. The Commission examined the notified measure pursuant to the Communication of the Commission on short-term export credit insurance[5] (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[6](hereinafter the "Temporary framework").

28. 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[7]. Financial advantages in favour of exporters or export credit insurers, who respectively enter or cover a transaction qualified as marketable risk, are normally prohibited.

29. The measure at hand provides public support with regard to insuring risks on a significant part of 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

30. 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 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.

31. 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.

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

32. The unavailability of cover for the risk in question was demonstrated by declarations of two well-known international export credit insurers, Atradius and Euler Hermes, which

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5 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, O.J. C 281 of 17.09.1997, p.4-10.

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

7 The list includes EU and OECD countries.

represent […] of the Danish short-term credit insurance market. The Danish authorities provided evidence by the two insurance companies in the form of a full market study demonstrating that a significant part of the market faces unavailability of the insurance cover for certain countries. In its decision of 5 May 2009[8] the Commission concluded that the evidence is sufficient to demonstrate unavailability of private coverage at least for a significant part of the market.

33. The Commission considers that the adaptation of the methodology to include in the calculation of "Approval rates" not only applied limits but also cancellations and reductions of credit limits is consistent with the purpose of measuring insurance demand that was not cover in the private market and does not alter the conclusions that there is unavailability of private market coverage.

34. Furthermore, for the additional markets that would be considered as non marketable as a result of the change in the methodology, Denmark has provided statements from numerous well-established exporters in Denmark, representing various industrial sectors and have been refused cover by the private market.

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

36. In addition, the construction of both the reinsurance scheme and the top up facility ensure that the state assisted scheme must only cover transactions for which private cover is not available in the market as a consequence of the financial crisis, insofar as the exporter must face either a refusal from the private market (quota share system) or an approval with reduced limit, before applying for the scheme. Furthermore, as a result of the eligibility conditions and the minimum risk retention for insurers, the scheme includes safeguards so that financially unsound transactions that would not obtain cover even under normal market conditions do not unduly benefit from the measure.

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

37. The premium rates for the cover provided within the scheme are set after taking into consideration the information on the market pricing of the certain risk types provided by the private market players.

38. The new premium levels in the Danish reinsurance system, notwithstanding the reduction explained above, continue to be higher than the premium in the market in a range of 1.5 to 3 times higher. In this respect there is still a clear incentive for the Danish exporters to seek back to the private insurance market when the markets are restored, thereby limiting crowding out of the private insurance companies.

39. As to the top up scheme, the premium charged by EKF is 0.50% of the turnover, while private premiums are on average 0.25-0.30%. The EKF premium is therefore higher than the premium charged normally by the private insurance companies on the portion of risk they are still ready to cover. This should ensure that the EKF top-up scheme does not crowd out the private market.

40. The Commission also notes that the requirement that the exporter must face either the withdrawal or a reduction in the limit of the private cover first, before applying for the insurance within the state supported scheme, should ensure that private insurers will not

[8] See footnote 1.

be crowded out of the short-term export credit insurance market. Therefore the amended scheme continues to contain an in-built mechanism that should lead to phasing out of the state intervention as soon as the private insurance market revives.

41. On the basis of the foregoing assessment, the Commission concludes that the modified 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.

DECISION

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

The Commission notes that for the reason of urgency Denmark exceptionally accepts the adoption of the decision in the English language.

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

Yours faithfully,

For the Commission

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Member of the Commission