Subject: Comments on the Draft Communication from the Commission to the Member States on the application of Articles 107 and 108 TFEU to short-term export credit insurance

Dear Mrs. Majcher-Williams,

With reference to your letter dated 28th June 2012, ref. COMP/A3/JMW/vn HT.352 2012/069161, please find enclosed comments on the Draft Communication from the Commission to the Member States on the application of Articles 107 and 108 TFEU to short-term export credit insurance from the Croatian Bank for Reconstruction and Development acting in this case in the name of and for account of the Republic of Croatia on matters regarding short-term export credit insurance issues.

Please find below comments on the Draft:

2.1. Scope

8. This Communication applies to export-credit insurance with a risk period of less than two years.

We propose that the scope of this Communication is more thoroughly specified.

2.2. Definitions

We propose to introduce into section 2.2. a definition of the following terms:

1. “Retention or self-insured percentage” instead of “co-insurance”;
2. “reinsurance”;
3. “percentage of cover”.

4.2. Exceptions to the definition of marketable risks

18. Notwithstanding the definition of marketable risks, commercial and political risks incurred on debtors established in the countries listed in the annex, are considered non-marketable in the following situations:

(c) if the Commission, on being notified by a Member State, decides that single-risk cover with a credit period of between 181 days and two years is temporarily non-marketable in the Member State concerned;
We propose that section 4.2. point 18 is amended in a way that it enables the insurance of "single transactions" regardless of the risk/credit period duration in case when private insurers provide insurance cover only for the whole turnover of the exporter.

4.3. Conditions for the provision of cover for exempted marketable risks
4.3.1. Quality of cover

20. The quality of cover offered by export-credit insurers operating for the account of or guaranteed by the State must be consistent with market standards. In particular, only economically justified risks, including protracted default, can be covered. The risks specified in point 18(b) and (c), which private insurers assessed and refused under whole turnover policies because they were not economically justified, cannot be covered. The maximum percentage of cover must be 90% for commercial risks and political risks and the claims waiting period must be a minimum of 90 days.

We propose to the Commission to clarify in point 20. what was meant since in point 20. whole-turnover policies are quoted in connection with point 18 (c) which, on the other hand, refers to single risk cover policies.

4.3.2. Underwriting principles

21. Sound underwriting principles must always be applied to the assessment of risks. Accordingly, the risk of financially unsound transactions must not be eligible for publicly supported schemes. With regard to such principles, risk acceptance criteria should be explicit and exporters should have a positive trading and/or payment experience. Buyers should have a clean claims record, the probability of buyers' default should be acceptable and their internal and/or external financial ratings should also be acceptable.

Point 21. does not address a situation when the buyer for which the exporter seeks insurance is new and the exporter has had no previous business and payment experience with the respective buyer. We suggest that the respective situation is also taken into consideration.

4.3.3. Adequate pricing

We are of the opinion that, given the current circumstances of the Croatian economy, the proposed premium rates are too high. Furthermore, we propose that the Commission specifies which insurers' services would be covered by the administration fee so that the exporters would exactly know what for they are paying this additional cost.

24. For co-insurance, reinsurance and top-up cover, pricing is considered adequate if the premium charged is at least [20%] higher than the premium for the original cover.

We propose that the term "original cover" in point 24. be defined precisely. Further clarification is needed since it is also not clear whether the point 24. addresses the premiums of private insurers. If so, it should be noted that it is very difficult to obtain information on premiums charged by private insurers.
5.2. Modification of the list of marketable risk countries

35. **When the Commission proposes modifying the list of marketable risk countries in the annex, it must consult Member States, private insurers and interested parties. The consultation period must usually not be longer than 15 working days. Member States must be informed of the Commission’s decision in writing.**

We propose a longer consultation period since the period proposed in point 35, seems too short for collecting of all relevant data for the modification of the list of marketable risk countries.

5.4. Notification in other cases

40. **For the cases specified in point 18(d), the Member State concerned must demonstrate that cover is unavailable for exporters in that particular Member State due to a supply shock in the private insurance market, in particular the withdrawal of a major insurer from the country, reduced capacity or a limited range of products compared to other Member States.**

We propose that the Commission defines precisely how shall the Member State demonstrate that the cover is unavailable for the exporters in that particular Member State due to a supply shock on the private insurance market (Shall this be in form of a statement from a private insurer or an exporter that there is no insurance cover available on the private insurance market or would a publicly available report from a regulatory agency be sufficient evidence? Shall the Commission require the State supported insurer to ask the client in its questionnaire whether he has previously sought insurance on the private market or shall the State supported insurers themselves have to seek information directly from private insurers on the availability of the private insurance?).

Yours sincerely,

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Export Credit Insurance