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

Estonia highly evaluates the efforts that European Commission has made in order to draft new communication on short term export-credit insurance (hereinafter the Communication). We are in supportive standpoint and deem it important to envisage in more clear way which situations prefigure market gaps, under which conditions intervention can take place and how involvement of stakeholders should be conducted.

However we have some remarks regarding the draft of the Communication:

Article 6. Risks established on debtors in countries not listed in the annex of the Communication are non-marketable. Referring to the afore-mentioned would be appropriate.

Article 9. Term “co-insurance” is used but the definition itself refers to self-retention. The term should be replaced with „self-retention“ or the definition should be clarified. At the present moment it is not clear which of the above-mentioned institutes have been defined. Furthermore, in article 24 “co-insurance” is used in its usual meaning (joint insurance).

Article 13. The content of the article in present wording is not clear, we suggest amendments to the last sentence as following: This requires that they do not insure marketable risks otherwise than on conditions that fall under exemptions in accordance with section 4 of the Communication.

Article 15. The content of the article in present wording is not clearly understandable. We suggest amendments to the second sentence as following: Should they wish to insure marketable risks, it must be ensured that, in so doing, they do it on conditions that fall under exemptions in accordance with section 4 of the Communication.

If examples can be presented on how an insurer may indirectly benefit from state aid, it could make the text more unambiguously understandable.

Article 18. In regard to subsections 18b and 18d we would like express support to the standpoints that Denmark, Sweden and Finland have previously pointed out: SMEs having annual turnover not exceeding EUR 5 million are in similar position than SMEs having annual turnover not over EUR 2 million; taking into account the type of risk (single risks or whole turnover) would be more appropriate than credit period (or rather risk period) between 181 days to 2 years.

The subsections of article 18 describe market gaps and in general follow the presentation that was acquainted at multilateral meeting on July the 24th. Still there is one exception, from the text of subsection 18d it is not entirely understandable that acute general supply shortage has been meant. For the purpose of proper understanding the Communication it would be appropriate to clearly name general supply shortage in subsection 18d and furthermore to bring examples (like situation where no registered private insurers act in MS, etc).
Also it is not clear whether in the current version of text in subsection 18d “Member-State concerned” refers to a state where the insurer sells insurance or to the state of residence of a buyer (where risks are).

**Articles 22 and 23.** Linking appropriate premiums to average premiums charged by private insurers requires up to date publicly available, market specific data. The problem is that such data is not available.

If appropriate premium is linked to average premium charged by private insurers, adequate minimum (safe harbour) premium should also be automatically adjusting. It is not understandable from the the Communication how is this process envisioned.

It needs clarification why minimum premium in the table is given by range and not a certain minimum %.

In the footnote 12 there is mentioned 30-day insurance contract. As pricing is typically based on insured turnover, dividing premium tariff by 12 is confusing. The same applies if there will be stipulated a range for minimum tariffs (see comment above).

**Article 24.** “Co-insurance” has been used in the meaning of joint insurance here. The definition in article 9 explains “co-insurance” as self-retention which would be not relevant in article 24 (please also see comment about article 9).

**Article 33.** For better understanding of the Communication it would be appropriate to specify in subsection 33a whether “specific market” means market where the insurer sells insurance or the market where risks are (country of buyer).

**Article 36.** There have been stated that policy must be valid not more than 90 days after expiry date of modified list. It would be good to specify what exactly has been meant by “valid” (insurance period, period during which claims may be submitted, etc).

**General remark about inexact expressions**

The text of the Communication consists several inexact expressions such as “market standards” and “economically justified risks” in article 20, “acceptable probability” in article 21, “appropriate premium” in article 22, “adequate premium” in article 23 (is the latter the same as appropriate premium?) Would it be possible to clear the content of these expressions or give guidelines on how to evaluate them (how for example a risk should be deemed to be acceptable/unacceptable)?

**General remarks about translation**

We also have remarks about translation (Estonian text). For example:

“Commercial risks” have been translated into Estonian as “marketable risks” which is not relevant. Marketable risks have been defined separately by mentioning both commercial and political risks.
“Political risks”. In first subsection there is named circumstance that country prevents fulfilment of a transaction. In third subsection there is named circumstance that country prevents performance of transaction. In Estonian text in both above-mentioned subsections is used word „fulfilment“. The consequence is that in Estonian text the third subsection repeats the first.

After completing the final version of the Communication translation should be revised also from the viewpoint of elimination of the aforementioned discordances.