Communication from the Commission to the Member States on the application of Articles 107 and 108 TFEU to short-term export-credit insurance - Draft issued on June 29th

Comments of Finland

Introduction

A multilateral consultation meeting was organized by the European Commission on 24th July, 2012 concerning the new draft Communication of the short-term export-credit insurance. The Commission published the draft of the new Communication in the beginning of July before the multilateral consultation meeting. Member states and various organizations can comment the draft until September, 21st. The current Communication is in force until 31 December, 2012.

According to the draft, public organizations are not allowed to give credit insurances for less than 2 years risk period in the so called market risk countries, i.e. EU member state countries and Western industrialized countries. The draft communication stipulates definitions, pricing, exemptions and notification procedures. It would be possible to apply for specified exception by notification based on market failure. The new communication will enter into force 1.1.2013 and will be valid till 31.12.2018.

General remarks

Finland welcomes the new draft communication, which enhances the current communication text. Finland is pleased that in the new draft communication the experience of both the MS and the Commission concerning the implementation of the current communication (including the notification procedure) has been considered. Also, the market changes have been recognized.

As a starting point, the publicly supported export-credit insurers are not in principal allowed to insure the marketable risks, i.e. insurances with risk period of less than two years in the marketable risk countries. The draft presents the following possible exceptions to the definition of marketable risks:

1. Commission changes the list of marketable risk countries
2. MS demonstrates a market gap in its notification and the Commission decides to grant a temporary permission in these areas:
   a. risks incurred by SMEs, which export turnover is not more than EUR 2 million
   b. single-risk cover with a credit period of over 180 days
   c. other factors

The draft communication states rightly that the cover of private market differs from one MS to another as well as over time. Therefore, Finland has previously notified the lack of cover in certain market areas, especially in the SME sector.

Main Comments

Below you will find the main issues Finland wishes to point out in the draft text.

Article 4.2 Exceptions to the definition of marketable risks and 4.3

Finland sees a clear need for clarification in the fulfillment of 4.3. conditions when the exception 18 (a) applies. The fulfillment of all the criteria in 4.3 seems inappropriate in case the Commission has removed a country from the list using exception 18 (a). We understand the need for the conditions for public involvement in section 4.3 if a MS covers marketable risk under 18 (b) and 18 (c). However, if a country is removed from the list of marketable risk countries, it should become comparable to any non-marketable country and the MS should be able to cover the risks in the same way as for other non-marketable countries (i.e. which are not on the list). We propose that all 4.3. conditions should be applied to exceptions 18 (b), (c) and (d), but not 18 (a).

In article 4.2. Item 18 (c) the term risk period (production period + credit period) instead of the current credit period should be used to make the text more consistent, see Item 8 in Article 2.1.

In the item 18 (c) the risk/credit period of the single-risk insurance exception has been limited to 180 days only. We would like to point out that the situation has not changed in Finland. According to the market studies and the experiences over the recent years, we see in Finland an evident lack of private credit insurance supply both in credit periods of 180 days and longer and in single risks in all credit periods. The private insurers focus on the shorter credit periods, i.e. 60-90 days at maximum and to the whole turnover insurances. The intention of Finland is to notify the lack of cover in this sector also under the new communication.

In item 18 (b) we have a concern about the definition of SMEs with a total export turnover of EUR 2 million. The export turnover of EUR 2 million is
very low compared to the 50 million turnover criterion of the SME definition. The domestic market is fairly small and the proportion of the exports is often larger in Finnish SMEs than e.g. in companies in Central Europe. From the experience in the Finnish market, also the SMEs with e.g. export turnover between EUR 2 and 5 million are facing the exactly same problems as the “smallest of the smalls”. Therefore, Finland proposes that the export turnover limit would be EUR 5 million in item 18 (b).

Finland requests a clarification to the item 20 concerning the effect of the following issues to the exporter’s possibility to apply for cover from the public insurer under the items 18 (b) and 18 (c):

1) the exporter’s need to cover a single risk only (refusal to accept a portfolio insurance that private insurer has offered for the whole turnover)
2) the exporter has a portfolio insurance with a private insurer, but the buyer’s risk limit has not been accepted or has been only partially accepted
3) the reason (not necessarily known) of the private insurer to refuse to cover a certain risk (or only cover it partially)

In the draft in the item 20 it is stated that ‘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’. However, it has been stated before that, if the clause 18 (b) - (c) is used, the risks of a SME with an export turnover of max. EUR 2 million or single risks with risk periods of over 180 days, are considered nonmarketable. So, if the risks are nonmarketable by definition, we question the need to verify the reason of possible denial from the private market.

We are concerned about the practical considerations of verifying this issue, and would prefer some clarification to the text. It is now unclear whether a refusal letter from the private market is a precondition for applying credit insurance under possibly notified articles. Often the exporter receives a refusal note which does not state any particular reason why the applied limit has been refused and so does not provide information about the financial situation of the buyer. It is not clear now whether the mere fact that the exporter has a portfolio insurance with a private insurer is a reason for denying the possibility to cover risks through a public insurer. This would namely favor the exporters which have not consummated an agreement with a private insurer to cover the risks from their receivables, which is surely not the sound way of guidance.

**Article 4.3.3. Adequate pricing**
Finland proposes that the separate administration fee would be replaced by setting a certain minimum fee (e.g. 0.2 % or 0.3 %), which would simplify the pricing and invoicing process. According to our experience/ rating approach, the risk category “excellent” is not relevant, and therefore the categories excellent and good could be merged. We would recommend a very simple approach concerning the minimum premiums – even figures within the ranges proposed by the Commission in the draft as follows:

<table>
<thead>
<tr>
<th>Risk Category</th>
<th>Annual Minimum Premiums %</th>
</tr>
</thead>
<tbody>
<tr>
<td>Excellent/good</td>
<td>1.00</td>
</tr>
<tr>
<td>Satisfactory</td>
<td>2.00</td>
</tr>
<tr>
<td>Weak</td>
<td>3.00</td>
</tr>
</tbody>
</table>

Comments in Detail

Finland would like to present the following views to the English version of the draft communication item by item. In the Finnish text we have noted a few issues we wish to be reviewed and there is a separate comment paper concerning those as an attachment.

1. Introduction (and 2.2. Definitions)

Item 4 - Purpose of the Communication, and Item 9 - definitions of “commercial risks” and “marketable risks”

The purpose of the Communication is to prevent state aid from distorting competition among private and public or publicly supported export-credit insurers. However, the risk definitions include a reference to debtors generally.

Consequently, it is not totally clear whether risks which are normally covered by banks (such as letters of credits), and not by private credit insurers, considered as marketable risks. From the point of view of Finland, the segment of risk where the risk is connected to a European bank is marketable and there is no demand for cover from public insurers. Therefore this risk type could explicitly be mentioned as marketable.

2.2. Definitions - Item 9
general observation – “buyer” and “debtor”

In the definition of commercial risks, marketable risks and single-risk cover, the concept of “debtor” is used. In the definition of political risks, the concept of “buyer” is used. For the sake of consistency, we propose that “debtor” could be used in all the definitions. In credit insurance transactions the buyer and the debtor are the same counterparty but the concept of debtor is broader.

“co-insurance”

The definition is not for “co-insurance” but for “self-risk portion”

“commercial risks” and “marketable risks”

In the definition of commercial risks insolvency and protracted default of a debtor and guarantor are mentioned. However, in the definition of “marketable risks”, guarantor is not mentioned. It would be better either to omit guarantor from both or to add it to both in order to avoid confusion.

In the current Communication text, guarantors are mentioned. We propose to leave them out of the scope because in normal, quick-paced ST credit risk cases guarantor structures are not used. In case a debtor needs a guarantor, it is a sign of a riskier/more complicated transaction where the involvement of a public ECA is justified.

“manufacturing period”

Finland proposes that manufacturing period is defined as follows: “The period between the date of an order and the effective delivery of goods and services”

“political risks”

The concept of a government buyer is not customarily used. We would like to propose that concept of “public debtor” would be used - a definition can be found from the EU MLT-directive.

Any entity which, in whatever form, represents the public authority itself and which cannot, either judicially or administratively, be declared insolvent, shall be considered as a public debtor. This may either be a sovereign debtor, i.e. an entity which represents the full faith and credit of the State, e.g. the Ministry of Finance or the Central Bank, or any other subordinate public entity, such as regional, municipal or parastatal authorities or other public institutions.

1 COUNCIL DIRECTIVE 98/29/EC of 7 May 1998 on harmonisation of the main provisions concerning export credit insurance for transactions with medium and long-term cover
We would prefer the whole concept of political risk to be defined according to the EU MLT-directive to be more precise and clear.

5.2. Modification of the list of marketable risk countries

Item 33 b – deteriorating of sovereign sector ratings

We would propose that both deterioration of sovereign sector ratings or a big increase in CDS spreads could be indicators when looking the lack of credit insurance capacity – both of these would not need to be fulfilled. The word “and” should be replaced by the word “or”.

Item 34 – revision of country list

Instead of 5 MS, we would propose that the revision could be initiated by request of 3 MS. This has been proven to be a good procedure in OECD Country Risk Group.

Annex – list of Marketable Risk Countries

The list of marketable risk countries is presumably based on the private market capacity. We would like to see a clearer basis for the list and also that the basis would be explained and opened in the Communication.

The definition of marketable risks (maturity + list of countries) has essentially remained unchanged. In the Finnish comments during the consultation of autumn 2011 we highlighted the fact that the ratings provided by S&P and Moody’s could be a better indication of the “marketability” of a certain country than merely the membership of EU or OECD.

Annex Observations to the Finnish version of the draft communication