Comments

of the German Insurance Association

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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

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Executive Summary

The German insurance industry welcomes that the EU Commission maintains the country- and term-related approach of the previous Commission Communication. This approach, which is based on the marketability of the respective country and a maximum risk period of less than two years, has proven its worth.

It is also welcomed that the EU Commission’s decision to temporarily remove a country from the list of marketable risk countries should be applied uniformly in all EU Member States and limited to an initial period of one year. In principle we also welcome the indicator-based approach for determining the non-marketability of any country (section 5.2, points 33 to 37); however, some details should be modified and clarified.

The envisaged special rules on risks incurred by small and medium-sized enterprises (section 4.2, point 18 (b)) as well as on single-risk cover with credit periods of between 181 days and two years (section 4.2, point 18 (c)) are unnecessary and contrary to the system. The same applies to the special rule on risks “related … to the supply conditions of export-credit insurance” (section 4.2., point 18 (d)). Furthermore, this rule is worded in an unclear manner.

We welcome in principle the envisaged introduction of minimum premiums for state export-credit insurance. However, the proposed calculation of such “safe-harbour premiums” on the basis of Standard & Poor’s ratings (section 4.3.3, point 23) seems impracticable because only a small fraction of the companies to be insured have such a rating. Instead, national solutions ensuring a sufficient price gap between private and state export-credit insurance (section 4.3.3, point 22) should be allowed.
1. **Scope of the Communication (section 2)**

We welcome that the country- and term-related approach of the previous Commission Communication is maintained. “Marketable risks” are correctly defined as commercial and political risks with a maximum risk period of less than two years, established on debtors in countries where there is sufficient private capacity (section 2, point 9). This approach has proven its worth.

As before, the countries concerned are listed in an annex to the Commission’s Communication. However, this annex is incomplete both in its German and its English version: while Japan has been omitted in the German version, the English version must be complemented by adding Croatia, which has obviously already been included in the list in anticipation of the forthcoming accession to the EU.

2. **Conditions for the provision of export-credit insurance for marketable risks and procedural issues (sections 4 and 5)**

a. **Derogation according to section 4.2, point 18 (a)**

According to section 4.2, point 18 (a), it is possible to temporarily remove one or several countries from the list of marketable risk countries, by means of the mechanism described in section 5.2, provided that the capacity of the private insurance market is insufficient to cover all economically justifiable risks. According to the draft, when determining whether there is a lack, the Commission has to take the indicators mentioned in section 5.2, points 33 et seq. into account.

From our point of view, the indicator mentioned in point 33 (a) (contraction of private credit insurance capacity) is of decisive importance in this respect. We consider the characteristics of such a lack (withdrawal of a credit insurer from a specific market, decrease of between at least 20 to 30 % in insured amounts and in acceptance ratios within a 12-month period) in principle to be suitable, provided that the three characteristics mentioned are met **cumulatively** to prove this lack. In this respect, the draft is unclear and should be clarified respectively. Moreover, the German version should be made more precise. The text should read “der Rückzug eines großen internationalen Kreditversicherers” (rather than “großer internationaler Versicherer”). This clearly results from the English original version (“the withdrawal of a major international insurer”). In consequence...
we suggest to add in the English version the word "credit" so that it would read: “the withdrawal of a major international credit insurer”.

The indicators mentioned in points 33 (b) (deterioration of sovereign sector ratings) and 33 (c) (deterioration of corporate sector performance) are at best appropriate to additionally confirm the result of the analysis obtained under point 33 (a). Furthermore, the wordings “big increase in CDS spreads” (point 33 (b)) and “sharp increase in insolvencies” (point 33 (c)) are imprecise. To make this regulation practicable, concrete thresholds should be indicated.

b. Derogations according to section 4.2, point18 (b) and (c)

We reject the derogation for small and medium-sized enterprises having a total annual export turnover not exceeding EUR 2 million provided for in section 4.2, point 18 (b). The coverage offered by private credit insurers is fully available to small and medium-sized enterprises with a limited export turnover as well. Therefore no special rule is needed for this target group.

Nor is there any need for the special rule on single-risk cover with credit periods of between 181 days and two years, as provided for in section 4.2, point 18 (c). In this area as well, sufficient coverage is offered to companies by the private credit insurance market.

c. Derogation according to section 4.2, point 18 (d)

Lastly, the derogation for risks “due to other factors, related in particular to the supply conditions of export-credit insurance”, as provided for in section 4.2, point 18 (d), is not needed either.

This rule should be dismissed due to its unclear wording. By referring to the “supply conditions of export-credit insurance”, it does not become apparent what “other factors” are actually meant.

Section 5.4, point 40 states that “for the cases specified in section 4.2, 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” (withdrawal of a major insurer, reduced capacity, limited range of products). The characteristics of a supply shock mentioned there largely correspond with those applying to the derogation according to section 4.2, point 18 (a) in conjunction with section
5.2, point 33.1. As a result, the special rule would enable state ECAs to circumvent in individual cases the prerequisites for offering a possibility of state coverage, as provided for in point 18 (a).

Therefore, the derogation provided for in section 4.2, point 18 (d) is contrary to the system and superfluous. Moreover, it is not in line with the principle of subsidiarity.

d. Procedural issues (section 5, points 34 and 35)

Section 5, point 34 provides that the Commission has to obtain the relevant data for determining the capacity of the insurance industry “from private export insurers and Member States”. To ensure that the data of all relevant credit insurers are obtained, the wording should be precised so that the data have to be obtained “from all large international credit insurers”.

The consultation period of only 15 working days, as provided for in section 5, point 35, is too short. Removing one or even several states from the list of marketable risk countries is of considerable importance to credit insurers from the economic point of view and in terms of regulatory policy. Therefore the reasonings for the Commission’s decision must be thoroughly checked. This is impossible within the proposed period. We therefore propose to extend the period to 30 working days.

3. Premium rates for state export-credit insurance (section 4.3.3)

Section 4.3.3, point 22 contains the correct requirement that premium rates under publicly supported schemes must be set at a higher level than the average premiums charged by private credit insurers for similar risks.

However, to determine whether or not the premium is adequate, it is referred to the risk categories of Standard & Poor’s (point 23). We do not consider this practicable as for a multitude of small and medium-sized enterprises no such rating exists. Also, in light of the very heterogeneous premium levels in the different European markets, it seems appropriate to determine the adequate premium gap for each individual Member State.

For Germany, market statistics would be available in this respect (GDV statistics on premium income and insured amounts of private credit insur-
ers), on the basis of which an “average premium” of the private credit insurance market could be established. The premium rates mentioned for state export-credit insurance in section 4.3.3, point 23, are currently adequate for whole turnover policies. However, an annual review of the adequacy on the basis of GDV statistics will be necessary.

4. Consistent observance of the principle of subsidiarity

In few other European markets, private credit insurers observe that state ECAs engage in private credit insurance activities, either directly or through private credit insurance companies. Such activities should be rejected as circumvention of the principle of subsidiarity.

In light of this fact, strict control of compliance with the principle of subsidiarity by the EU Commission is required. Consistent compliance with the principle of subsidiarity should also be incorporated into the Commission’s Communication. In particular, the EU Commission should explain how it will check and ensure observance of this principle.

Berlin, 10 September 2012