Subject: Multilateral Meeting with M-S on the Draft Communication from the Commission to the M-S on the application of Articles 107 & 108 TFEU to Short-term export credit insurance

Dear Sirs,

In reply to your note of June 28th 2012, we send you our comments & remarks to the draft of the ST-Communication. We apologize for the late response.

First of all, we would like to congratulate and thank the Danish Presidency for their note communicated on July 6th, by which they have collected the clarification questions raised during the CWG meeting of July 5th, 2012.

Following our discussion on the above subject during the aforementioned meeting, we would like to inform you that we fully share all clarification questions and comments expressed by MS. We also agree with the communicated comments by the Delegations of Sweden, Slovakia and the Czech Republic.

As a general comment, we consider that the revision of the ST Communication is taking place in time, reflecting the new challenges posed by the economic crisis. Nevertheless, we share the concerns raised by other M-S, about the need for clearer definitions as well as for adopting more specific procedures and quantifiable criteria concerning the temporary revision of the marketable risk country list.
Also, based on the principle of equal treatment, in cases when there is a revision of the marketable risk country list, the Commission should consult with all member states and particularly with those in concern.

We strongly believe that the role of state ECAs or those receiving state aid in the current financial and economic crisis is crucial. As stated in the “Study on Short-term Trade Finance and Credit Insurance in the EU”¹ (February 2012), as a result of the Global Financial Crisis there was a decrease in the business underwritten by private insurers both generally and within the EU in 2009 and 2010 and an increase in business underwritten by public insurers both generally and by those ECAs within the EU in both these years. As it is stated, “the increased business done by EU ECAs is not surprising given that a number of MS applied for – and were given- exceptions....an interesting question is, of course, the amount of business done my MS under the exceptions regime. However, despite efforts we have been unable to get quantifiable data on ECA activities under these exceptions”. As we have stated in our position papers, we would welcome more evidence on State ECAs’ role and impact on the payment terms in countries under exception.

With regard to the text of the under revision S-T Communication, our specific comments are as follows:

**Regarding “Definitions” (2.2.),** we agree with the Delegations which have asked for more “clear-cut” descriptions of “co-insurance” and “export credit insurance”. Also, we fully agree with the proposal made by the Swedish Delegation, according to which, there is a need for a definition on “re-insurance”. After all, “re-insurance” has always been a term which has been frequently used in the various versions of the ST-Communication.

- Also, we consider that certain terms, such as “legitimate reason”, “sufficient private capacity” and “economically justifiable risks” should be clarified further. Moreover, we consider that the sentence: “All other risks are considered non-marketable” should be analyzed further in the sense that these risks should be clearly stated one by one to avoid any misunderstanding.

Regarding “Prohibition of state aid for export credits” (3.3.-13),:
- The first sentence reading “the advantages for insurers mentioned above in respect of marketable risks affect intra-EU trade in services” Underlined term within the context of the sentence is unclear.
- The final sentence needs to be completed as follows: “This requires that they do not insure marketable risks, unless they can prove that they operate as fully autonomous Organizations which do not benefit from state aid”.

Regarding “Exceptions to the definition of marketable risks” (4.2)
- (a) It should be added “if the Commission, after consultation with M-S, decides to temporarily remove one or several countries from the list of marketable risk countries”.
- (d) We consider that the reference: “...due to other factors, ...”, should be analyzed further.

In the same spirit, we consider that the reference “certain risks” needs more clarification.

Regarding “Underwriting principles” (4.3.2. - 21), we agree with the remark made by the Czech Delegation (according to which, “criteria in second & third sentence should be more clearly specified”) and the Delegation of Slovakia (according to which the word “available” should be added, in sense the sentence to be “...exporters should have a positive trading and/or payment available experience”. The whole paragraph could be erased, (4.3.2.–21)) as professional experts working in Private or Public ECAs possess anyway the technical expertise to make a “rational” underwriting.

Regarding “Adequate pricing” (4.3.3. – 23), we agree with the second comment made by the Delegation of Slovakia (according to which, “The minimum rates should apply only for the countries, which have been withdrawn from the List of marketable risk countries. As long as the risk is reinsured by private reinsurance company it should remain negotiable. The reason is that minimum rates are too high e.g. in risk category Satisfactory and Weak are minimum rates higher than short-term non-marketable risk categories”).
Regarding “Administrative Fees” (4.3.3. – 25), we also agree with the comment made by the Delegation of Slovakia (according to which “We recommend the administrative fees to be a subject of ad hoc voluntary basis of each ECA. Minimum rates are set too high for many Slovak exporters (especially SME). They will not be interested in the insurance by State ECA even after a refusal from private insurance companies, because of the savings of the expenses. This would have liquidation consequences on the exporter in the case of the claim”).

Regarding “Modification of the list of marketable risk countries” (5.2.)

- (b) We consider that in the reference “...sudden changes in credit ratings...” quantifiable data should be added, i.e. by how many ranks in downgrades is it considered “sudden”?
- In addition where it is stated “... a big increase in CDS spreads...” that increase should be quantified.
- (c) The same quantifiable terms should be applied in the reference “... a sharp increase in insolvencies...”.
- (34) Text should be revised as follows: “The Commission may revise the list of marketable risk countries at the written request of at least five Member States or on its own initiative, when market capacity becomes insufficient to cover economically justifiable risks, as described in the above-mentioned criteria (par. 33 a), b) and c). Prior to its decision, the Commission should inform M-S accordingly and particularly those in concern, with sufficient and reliable data, obtained from private export insurers and Member States.”
- (35) “…it must consult all Member States.”….“The consultation period must not be longer than 21 [or 30] working days”.
- (36) ”The modified list of marketable risk countries must be valid for a period of no less than 12 months with the possibility to review the situation upon request by a M-S].
- (37) “…in consultation with all Member States...”.

Yours Sincerely,