The Hague, 19th September 2012

Comments of the Dutch public authorities on the Draft Communication from the Commission to the Member States on the application of articles 107 and 108 TFEU to the short-term export-credit insurance.

It is much appreciated that the Commission is drafting the new Communication in close contact and consultation with the Member States. We sincerely believe that this approach can result in a useful and mature instrument for achieving the goal of preventing competition distortion among private and public or publicly supported export-credit insurers and creating a level playing field among exporters.

To complete this round of consultations we would very much appreciate if the Commission would be willing to allow for further comments on the basis of her new and possibly adapted draft.

This being said, the Netherlands would like to comment on the draft as follows.

One of the main concerns of the Netherlands is to have an instrument that is really able to act at short notice in clear cut circumstances. In order to be able to do so we need clear definitions on the one hand as well as an arrangement with a proper timeframe to take swift action if necessary.

As has been put forward in the questions by the presidency, the current wording of the Communication still leaves (too) much room for discussion. (At the end of these comments there are additional questions of the Netherlands)

We feel that there should be clarity on the text and its meaning before the Communication enters into force, hence our demand for an additional round of discussions.

Secondly we would like to point at the timing issue. Timing is of essence for the Communication. Especially for the part of the instrument that functions as a crises instrument. Therefore the Netherlands is strongly in favour of a clear and precise indication of a maximum timeframe for the Commission to take a decision after a request of one of the member states.

In the current Communication there is a time limit of 2 months within which the Commission should decide whether a Member state can effectively use the escape clause. The Netherlands is strongly in favour of reintroducing such a time limit, considering the necessity to be able to take swift action.

A third point we would like to raise is the administration fee. The proposal sets the fee as a percentage of the insured volume. We feel this should be a fixed fee. The amount of work does not differ substantially in function of the insured volume, therefore we feel a fixed fee is more appropriate. Otherwise the administration fee to be paid for large transactions would be much too high. As an indication we mention the Dutch fee for the topping up scheme was € 250 per policy. A handling fee of € 50 per three months was charged for each individual credit limit request under the reinsured cover.
Fourth comes an internal market issue which the Netherlands has already raised in the answer to the first Questionnaire, last year. As mentioned above an important goal of the Communication is to create a level playing field for exporters. In the opinion of the Netherlands this means that exceptions to the definition of marketable risks as foreseen in article 18 should have the least possible impact on competition or the level playing field.

In article 18 (a) this is realised by the community wide effect of the decision of the Commission to temporarily remove one or several countries from the list of marketable countries.

However the mechanism of article 18 b, c and d lacks such an effect. The decision taken by the Commission on request of a Member State is only effective for the individual EU-country concerned. Resulting in a situation where a market distortion allegedly only occurring in one Member State is sanctioned by the Commission. Moreover risks are more likely non-marketable community wide, not just for some countries, notably in a market which is dominated by three key players.

All in all the application of articles 18 b, c and d result in competition distortion because only in the Member State concerned cover may be offered. It neglects the goal of one internal EU-market for short-term marketable export credits.

We therefore propose to opt also in articles 18 b, c and d for a community wide implementation. If upon the request of a Member State for application of one of these articles, the Commissions grants an exemption, this should have community wide applicability.

Dutch technical questions for DG COMP concerning the draft text for the ST Communication.

§9:

- We understand the definition of co-insurance as the own risk or retention of the exporter. Normally this will be a small percentage. This seems inconsistent with the meaning of co-insurance if para 24, where co-insurance is used in its usual meaning, as equal partners in an insurance, where we may rely on the pricing of the market players. We would prefer to restrict co-insurance to the latter meaning and talk about own risk or retention here.

- Should “exporter” in the definition of “Credit period” not be deleted or alternatively be replaced by “creditor” as not only exporters grant export credit to buyers but also bankers?

- The definition of “Export credit insurance” also includes the insurance of non export credits. Is this intended or should the definition be restricted to cross border trade transactions?

- Should “Marketable risks” not be the “private capacity available in the EU or the member EU-State of the insurer to cover all economically justifiable risks on debtors in other countries listed in the Annex” instead of in the countries of the debtor, or should this be regulated in the Scope?
§11 and 26, 27, 29, 30
The Communication applies to “insurers operating for account or guaranteed by the State”. We are in favour of a definition that also includes EU-Member states that act as insurer themselves, as these also influence the level playing field among exporters from different EU member states.

§18
As mentioned we are in favour of a two month period for the Commission to decide that a risk is no longer marketable. We would also be in favour of clarity in the period between the non-marketability and the Commission’s decision.

§20
We would like to include some examples of market standards such as covered percentage and underwriting practices.

§21
- Does the reference to a probability of default mean that this has to be established and be registered in percentages, or does it refer to a subjective underwriting opinion?
- ‘Positive trading and/or payment experience’: how to assess this if it is the first time an exporter wants to do business with the buyer?

§33 (a)
If a major international insurer withdraws from a market, does this insurer withdraw from the market where it sells insurance or from the market where the risks are, that it used to cover? If the first option is meant, we suggest to clarify that in the text.

§37
Will the Member States be informed in writing if the Commission uses its competence in paragraph 37?