Consultation on the draft Communication on short term export credit insurance.

UK Comments

We have read the draft Communication and have the following comments.

We support the inclusion of additional definitions in this latest version of the Communication and have a number of suggestions.

2.2 Definitions

‘Co-insurance’: the percentage of each insured loss that is not indemnified by the insurer but borne by and that the insured has to bear for its own account or for another insurer’s account. - Or delete entirely

Comment;
Co-insurance is defined so as to include not only any part of the risk borne by any other insurer but also the uninsured percentage. However, that expression is only used in paragraph 24 where it clearly relates to the involvement of another insurer rather than to the uninsured percentage.

More importantly, whilst we can understand the reason for a reinsurer being required to charge a higher premium rate, where two Export Credit Agencies (ECAs) are sharing the risk, it would be appropriate for each of them to charge the same rate.

Accordingly, we would suggest that coinsurance be deleted from paragraph 24 and from the definitions section. If that expression is to remain, then it should be redefined as meaning “the percentage of each insured loss that is not indemnified by the insurer but borne by another insurer’s account”.

‘Credit period’: the period of time the insured exporter gives given to the buyer to pay for the delivered goods and services under an export credit arrangement.

Comment;
The Communication needs to clarify whether it intends to exclude from its scope the possibility of credit being provided by financial institutions. The current definition of ‘credit period’ only applies to credit provided by the exporter. Under this definition of a credit period ECAs may provide direct loans, or guarantee bank loans, to overseas buyers. Is that the intention of the Commission? If is not, then we suggest amending the definition to include other forms of official support.

It would be helpful if the Communication could clarify the position with regards to retention payments. Are retention payments included within the definition of a credit period? We suspect they are but it is not clear.

The definition should include export of goods and services.
‘Export-credit insurance’: an insurance product whereby the insurer provides insurance against takes over the commercial and/or political risk as defined in this Communication, of protracted default, insolvency or bankruptcy of the buyer in a trade transaction occurring in relation to an export transaction (or in relation to credit provided to the buyer in connection with such a transaction).

Comment:
Similar to the comments above, the definition of ‘export credit insurance’ allows an Export Credit Agency to guarantee loans to overseas buyers or to guarantee letters of credit, with a Risk Period under 2 years. Is that the intention of the Commission? If it is not, then we suggest amending the definition as above.

The reference to “protracted default, insolvency or bankruptcy” is unnecessary as this is already imported into the definition by the use of the phrase “commercial risk”, which is defined so as to include those concepts. Likewise “as defined in this Communication” is superfluous given that the terms “political risks” and “commercial risks” are clearly defined in the Communication.

The definition uses an unnecessarily complex way of expressing a clear, commercial and legal concept, namely that of providing insurance. The word “insurance” is adequate for this purpose.

The definition should apply to exports rather than to trade in general (which would include domestic trade).

‘Marketable risks’: commercial and political risks with a maximum risk period of less than two years, established on (public and non-public) debtors in countries where there is sufficient private capacity to cover all economically justifiable risks. These countries are listed in the annex to this Communication. All other risks are considered non-marketable.

Comment:
It would be simpler, and more correct, for the definition of marketable risks simply to refer to those countries listed in the Annex to the Communication and insert the wording regarding the type of country which should appear in the Annex in section 5.2, which deals with the circumstances under which that list of countries may be modified. As presently drafted, the definition gives scope for Member States to argue that, if a country should appear in the list but does not, the Communication should be construed as if it had been included, notwithstanding any failure on the part of the Commission to amend the list.

Other Comments

Para 13- “affect intra EU Trade in credit insurance services”?

Section 4.1
Para 15
We understand that the intention here is to regulate “private sector” subsidiaries of officially supported ECAs, so as to ensure they operate on the same basis as a private sector company supported by shareholders and market funds; hence the requirement for these private subsidiaries to maintain separate funds. We strongly support this approach. However we are unclear whether the conditions in Para 15 also apply to Government Departments such as ECGD.

In the event that the UK obtained a waiver from the Commission, to support SMEs for example, ECGD would be unable to conform to the conditions at Para 15 as technically it does not have a “certain amount of own funds” as ECGD funds form part of the UK Government Funds. We would appreciate a clarification here.

Section 4.3

Para 20
As other have mentioned, “not economically justified” is unclear. We will not necessarily know the reason why an exporter cannot obtain cover from the private sector insurance market. Any application to ECGD for short term export credit support in non marketable risk countries (outside the scope of the STC) requires a statement from a credit insurance broker that cover is not available. We believe this should be sufficient for both marketable and non marketable ST business, as the reason for non availability of cover could be due to a general reduction in cover limits/capacity limits, rather than a specific refusal.

Para 21
We understand these are intended to be broad principles but we are unclear what “risk acceptance criteria” means. We also suspect that SME exporters will not necessarily have the specific information on their potential buyers as suggested in this section.

Para 22 and 23
We strongly support the principles set out but have concerns regarding the escape clause which seems to allow MS to charge lower premium rates where they provide evidence that the safe harbour premium rates are “inappropriate”. We think the minimum rates should be a hard floor, so as to ensure a level playing field. We also do not see the point of a range of minimum prices - currently in square brackets in the draft. A single minimum price for each risk categories is more transparent and easier to understand. Any price above this floor would be within the safe harbour.

We support the idea of providing indicative risk categories and to attempt to match them against Standard and Poor credit ratings, although we would note that few buyers of goods and services sold on short term credit have a public rating. However if a buyer does have a public rating this should determine the risk category and the minimum price. We suggest that Footnote 11 is amended to that effect.

As there is no safe harbour premium for ‘Bad Risks’, footnote 17 should simply say “may not be covered”, or a safe harbour premium should be set.

END