EUROPEAN COMMISSION

Brussels, 5.10.2009
C(2009) 7623 final

In the published version of this decision, some information has been omitted, pursuant to articles 24 and 25 of Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty, concerning non-disclosure of information covered by professional secrecy. The omissions are shown thus […].	**PUBLIC VERSION** **WORKING LANGUAGE** **This document is made available for information purposes only.**

Subject: State aid N449/2009 – France

Short-term export credit insurance

Minister,

I have the honour to inform you that the European Commission has decided not to raise any objections to the above-mentioned measure.

1. PROCEDURE

(1) The French authorities notified the Commission of the measure which is the subject of this decision on 23 July 2009. The French authorities replied by e-mail on 21 August 2009 to the request for additional information sent on 12 August 2009. Additional information was sent to the Commission on 18 and 24 September 2009.

2. EXPORT CREDIT INSURANCE MARKET IN FRANCE

2.1. Market players

(2) According to the French authorities, the following private insurance companies provide export credit insurance on the French market: Coface, with a market

Mr Bernard KOUCHNER
Minister for Foreign Affairs
37, Quai d’Orsay
F - 75007 – PARIS

share of around [][*], Atradius, with a market share of around [] and Sfac-Euler-Hermes for the remaining share of [].

(3) The insurance policies generally offered on the export credit insurance market cover a total volume of exports, which means that the contracts cover all the exports made by a company within the limit of a set total turnover for exports. The premium paid ex post is calculated on the basis of the actual turnover.

(4) According to the French authorities, short-term export credit insurance premiums on the market were 0.24% of turnover as of the first half of 2009.

2.2. Evolution of the market in the context of the current financial crisis

(5) The French authorities consider that the current crisis has led to a major change in the behaviour of private credit insurance companies. Because of the crisis, they are facing requests for higher compensation than in the past, which is forcing them to adopt a more cautious approach. However, while there has been a deterioration in the general situation since the start of the international financial crisis, the French authorities consider that the reassessment of acceptable risk levels by credit insurance companies is further contracting the supply of insurance cover. The credit insurance companies are therefore over-reacting to the crisis, which justifies intervention by the public authorities.

(6) To illustrate this trend, the French authorities produced evidence of refusal to grant or extend credit and evidence of excessive reductions in credit by private insurance companies in the case of well-established French exporters. Numerous reputable exporting companies, exercising their activities in different sectors, have supplied the Commission with letters from private insurers in which the latter have reduced or annulled the maximum amount of exports insured for export to certain countries, difficulties which are linked to the economic environment.

3. DESCRIPTION OF THE MEASURE

(7) To avoid the major upheaval in the French economy which would result from a failure of the export credit insurance market, the French authorities have notified a measure for reinsurance of export credit insurance policies called ‘CAP export’. The ‘CAP export’ guarantees, dispensed by the credit insurers acting on their own account, will all be ceded for reinsurance to Coface, acting on the account of the French State and under State guarantee. The stakeholders in the measure are thus the Coface State account and the credit insurers entitled to exercise their activities in France.

3.1. Characteristics of the cover

3.1.1. Risks covered

(8) The risks of export credit insurance targeted by the measure are the risks associated with normal export transactions (risks of non-payment of sums owed by a client to an exporter for operations for which the duration for payment is no

[*] This information is confidential.

more than one year, risks beyond metropolitan France, its overseas collectivities or departments).

3.1.2. *Modes of coverage of the guarantee*

(9) The CAP export measure provides top-up insurance over and above the primary policy taken out with a private insurance company. The private insurance company covers the initial losses up to the limit specified in the primary contract; only the losses which exceed this limit will be covered by the State, up to the limit set out in the CAP export contract. The credit limit insured under the CAP export contract may not exceed 100% of the insurance company's own-account exposure. It does not apply if there is no longer a primary guarantee. The insurance provided by the private credit insurance company will be used as a basis for the conditions governing this insurance. Thus the general conditions governing the operator's private credit insurance and the supplementary insurance will be the same, except for the conditions of remuneration.

(10) Alternatively, if private insurers have totally withdrawn from covering certain risks, the State alone will cover these under the CAP export measure. To ensure that the private insurers' withdrawal is entirely due to the prevailing market conditions and not due to an increase in the intrinsic risk for their client companies, the measure will be available only to deals made with clients that fall within a range of default rates, the lower limit of which is high enough that there is no market substitute, but the upper limit of which is low enough to avoid situations where the risks of insolvency appear too great. The CAP export measure is thus available only for deals made with client companies whose default rates are between 2% and 6%, corresponding to the rating categories [] and [] of Coface ([] and [] for Euler)[1]. With this default rate range of 2 to 6%, the French authorities consider that the measure meets a need not met by insurers without infringing on the market segment where the credit insurers are prepared to retain exposure and without exposing the State to risks incurred by companies where it seems that that the likelihood is too great that payment will be suspended.

(11) The 'CAP export' measure consists of the sale by credit insurance companies of a policy covering risks for companies from which the insurance company wishes to partially or totally withdraw. This contract will be reinsured by Coface for the State with a State guarantee to do so.

(12) This coverage will not be offered on a deal by deal basis, but for an overall amount for a giver buyer. In other words, the total amount thus guaranteed covers all the deals made by the exporter with that buyer in a given period within the limit, however:

- of the exposure retained by the credit insurer for the 'reduction' scheme;

---

[1] Coface (Euler) no longer covers risks below the ratings [ ] and [ ] (above the ratings [ ] and [ ]) because the probability of its clients defaulting is too high. Above (below) those ratings, on the other hand, the private credit insurance market continues to operate normally and there is no need for State intervention.

- of three times the own funds of the client company within an absolute limit of €400 000 for the companies least at risk and €200 000 for the companies most at risk among the companies eligible for the ‘withdrawal’ scheme.

3.1.3. Eligibility for the CAP export measure

(13) The eligibility conditions for the CAP export measure are as follows:

- the measure is open to exporting companies based in France with a turnover of less than €1.5 billion;
- only well-established buyers, i.e. buyers (i) rated by the credit insurer, (ii) in existence for at least two years, and (iii) not the subject of collective insolvency proceedings at the date of application, are eligible for this measure.
- in the ‘reduction’ scheme, the credit insurance company retains part of the risk by providing the ‘primary guarantee’. the State only covers the ‘supplementary guarantee’, the limit for which may be up to the amount of exposure retained by the insurance company.
- in the ‘withdrawal’ scheme, only clients rated by the credit insurer as corresponding over a long period to a one-year default rate of 2 to 6% are eligible for the measure.
- the exporter should continue to bear a high proportion of the risks. 10% for the ‘reduction’ scheme (or even more, as the portion not covered by the guarantee will be at least equal to that provided for in the primary contract) and 20% for the ‘withdrawal’ scheme. The difference is justified by the fact that the exporter, in the context of the ‘reduction’ scheme, continues to bear the proportion not covered by the primary contract (10%), which is not the case for the ‘withdrawal’ scheme, for which there is no primary contract.

3.1.4. Duration of cover

(14) The measure is available for an period of three months, renewable on expiry.

3.1.5. Remuneration

(15) The pricing of the CAP export measure aims at establishing equilibrium. To achieve this objective, it is based on the overall amount covered and, on an annual basis[2] and including the credit insurer commission, is equal to:

Scheme/Zone	**1**	**2**	**3**	**4**[3]
Reduction	2%	2.5%	3%	3.5%

2 The price paid by the insured party for an overall guarantee with a particular client company depends on the payment duration accorded. The prices indicated in the table are calculated on an annual basis, that is to say that they apply to transactions for which the payment durations are between 9 and 12 months. For transactions with a payment duration between 6 to 9 months, the price paid by the insured party is equal to three quarters of the price on an annual basis; for transactions for which the payment duration is between 3 and 6 months, to half; and for transactions for which the payment durations are less than three months, to a quarter of the price on an annual basis.

3 The pricing for zone 4, which only concerns two countries (Russia and Ukraine), has not yet been established. In any case, it will be higher than the pricing for zone 3.

Withdrawal	3%	4.5%	6%	7.5%

(16) As the pricing is based on the total amount guaranteed, it can be structured directly in line with the underlying risk of claims:

- for the 'withdrawal' scheme, only clients rated internally by the credit insurer as corresponding over a long period to a one-year default rate of 2 to 6% are eligible for the measure. These client companies are no longer covered by the private credit insurance market; thus, there is no market rate for these risks. For zone 1 countries (the least risky) the pure premium rate (i.e. minus the 0.5% commission for the credit insurer) is 2.5% of the total guaranteed, included the non-guaranteed portion of 20% borne by the insured party. The pure premium, expressed as a percentage of the sole portion guaranteed, is thus 3.1%. However, the total guaranteed is not usually consumed in its entirety, but rather only in part: the pure premium, expressed as a percentage of the sum for which the risk is effectively borne, is over 4% for utilisation rates below 75%. The overall premium level borne by the insured party (3% for countries in zone 1) is increased, for the sake of prudence, by 50% for the countries in zone 2 and 100% for countries in zone 3.

- for the 'reduction' scheme, credit insurers usually only wish to expose themselves to risks for client companies with a less than 2% one-year probability of default. For zone 1 countries (the least risky) the pure premium rate (i.e. minus the 0.3% commission for the credit insurer) is 1.7% for the total guaranteed, included the non-guaranteed portion of (at least) 10% borne by the insured party. The pure premium, expressed as a percentage of the sole portion guaranteed, is thus 1.9%. However, the total guaranteed is not usually consumed in its entirety, but rather only in part: the pure premium, expressed as a percentage of the sum for which the risk is effectively borne, is over 2% for utilisation rates below 75 %. The overall premium level borne by the insured party (2% for countries in zone 1) is increased, for the sake of prudence, by 25% for the countries in zone 2 and 50% for countries in zone 3, for the reasons set out in the previous indent.

(17) The credit insurer who proposes a supplementary guarantee receives a commission for each guarantee signed which is intended to defray the costs incurred for implementing the measure and the brokerage fee. This commission is 0.3% per year of the total amount guaranteed for the 'reduction' scheme and 0.5% for the 'withdrawal' scheme. The commission for the 'withdrawal' scheme is higher, because in its absence, the client company would not have been covered and the credit insurer would not have had to continue to cover it. In the 'reduction' scheme, the credit insurance company continues to insure part of the total (primary guarantee).

(18) The total remuneration from the State, minus the commission for the private insurers, thus ranges from 1.7% ('reduction' scheme for a zone 1 country) to 7% ('withdrawal' scheme for a zone 4 country).

3.2. Duration of the measure

(19) The measure is intended to provide CAP export guarantees up to 31 December 2010.

3.3. Budget

(20) The 'CAP export' will cover a total of €1 billion in client export credit (after application of the guaranteed portion).

4. POSITION OF THE FRENCH AUTHORITIES

(21) The French authorities are faced with a situation in which undertakings are pointing to the failure of the private credit insurance sector to provide cover for risks which, until now, were regarded as marketable risks in accordance with the *Communication of the Commission to the Member States pursuant to Article 93(1) of the EC Treaty applying Articles 92 and 93 of the Treaty to short-term export-credit insurance*[4] (hereinafter 'the Communication'). This Communication states that marketable risks cannot be covered by export credit insurance that is supported by Member States. Point 4.4 of the Communication states that: 'In such circumstances, those temporarily non-marketable risks may be taken on to the account of a public or publicly supported export-credit insurer for non-marketable risks insured for the account of or with the guarantee of the State. The insurer should, as far as possible, align its premium rates for such risks with the rates charged elsewhere by private export-credit insurers for the type of risk in question. Any Member State intending to use that escape clause should immediately notify the Commission of its draft decision.'

(22) France invokes this escape clause for the countries mentioned in the Communication from the Commission of 17 September 1997 and amended in particular by Communication 2005/C 325/11 of 22 December 2005.

5. ASSESSMENT OF THE COMMISSION

(23) The Commission must examine the notified measure in line with the Communication while taking into account the simplification measures listed in section 5.1 concerning short-term export credit insurance under the Temporary framework for State aid measures to support access to finance in the current financial and economic crisis[5].

(24) Point 2.6 of the Communication defines marketable risks as commercial and political risks on public and non-public debtors established in a Member State or in one of the eight other members of the Organisation for Economic Cooperation and Development. For such risks the maximum risk period is less than two years. This Communication states that marketable risks cannot be covered by export credit insurance that is supported by Member States. However, point 2.5 of the

[4] OJ C 281 of 17.9.1997, amended by the Communications of 2.8.2001 (OJ C 217) and 22.12.2005 (OJ C 325).

[5] OJ C 83, 7.4.2009, p. 1-15.

Communication states that '*The capacity of the private reinsurance market varies. This means that the definition of marketable risks is not immutable and may change over time. The definition may, therefore, be reviewed, notably at the expiry of this communication.'*

(25) Moreover, point 4.4 of the Communication provides for an escape clause under which: 'In certain countries, cover for marketable export-credit risks may be temporarily unavailable from private export-credit insurers or from public or publicly supported export-credit insurers operating for their own account, owing to a lack of insurance or reinsurance capacity. Therefore those risks are temporarily considered to be non-marketable. In such circumstances, those temporarily non-marketable risks may be taken on to the account of a public or publicly supported export-credit insurer for non-marketable risks insured for the account of or with the guarantee of the State. The insurer should, as far as possible, align its premium rates for such risks with the rates charged elsewhere by private export-credit insurers for the type of risk in question.'

(26) In the context of the current financial crisis, the Commission states, in section 5.1 of the temporary framework, that '*in order to speed up the procedure for Member States, the Commission considers that, until 31 December 2010, Member States may demonstrate the lack of market by providing sufficient evidence of the unavailability of cover for the risk in the private insurance market. Use of the escape clause will in any case be considered justified if:*

- *a large well-known international private export credit insurer and a national credit insurer produce evidence of the unavailability of such cover, or*

- *at least four well-established exporters in the Member State produce evidence of refusal from insurers for specific operations.'*

The Commission has examined the situation to see whether the above conditions have been met in this case.

5.1. Applicability of the escape clause

(27) The French authorities have provided evidence of refusal by insurers to cover certain operations by several well-established operators in France. The Commission notes in this respect that private credit insurance companies are refusing to grant new credit and are reducing the existing credit limits for exporters and for risks they had insured in the past.

(28) The Commission would point out that one reason for refusal given by private insurance companies is the wish to reduce exposure in certain countries or sectors. This reassessment of the risk causes a reduction in the supply of credit. At the same time, the deterioration in the economic situation has led to increased demand and a situation in which the needs of credit insurance market customers are not being met.

(29) Based on these comments, and in line with section 5.1. of the temporary framework, the Commission considers the evidence provided as sufficient to demonstrate a market failure in accordance with point 4.4 of the Communication and agrees with France that the risks arising from such operations are temporarily non-marketable.

(30) Moreover, the CAP export measure contains the provisions needed to guarantee that only risks not covered by the market will be covered by the State:

- in the 'reduction' scheme, 50% of the risks covered remain covered by private insurers;
- in the 'withdrawal' scheme, the only risks covered by the measure only are those risks for which there is temporarily no market (risks for clients whose probability of default is between 2 and 6%).

(31) Lastly, the restriction of the coverage to three times the client company's own funds to an absolute limit of €200 000 to €400 000 in the 'withdrawal' scheme meets the need to limit the risk run by the State.

5.2. Alignment of premiums with the rates charged by private export credit insurance companies for the type of risk in question

(32) The Commission notes that the level of remuneration proposed for CAP export guarantees is very much higher than the market-rate premiums charged before the crisis for equivalent levels of risk. Even if the market premiums and the CAP export premiums are not entirely comparable (the former are for the turnover of an average of 180 days while the latter are for a guaranteed annual total), the level of remuneration under the CAP export seems clearly higher than the average market remuneration: assuming a total use of the insured amounts, the CAP export remuneration appears four to nine times higher than the average market remuneration for zone 1 and 2 countries. The level of remuneration therefore constitutes an assurance that the level of the premium is an incentive to withdraw from the measure when the crisis starts to recede.

(33) Nevertheless, the Commission considers that the premiums required in the CAP export measure are, as far as possible, aligned on the rates of premium demanded by private insurance companies for similar risks. The high level of CAP export premiums by comparison with market premiums is justified by the fact that the premiums charged by private insurance companies relate to an overall turnover figure for a particular exporter, which allows the risks insured to be diversified. The CAP export measure, on the other hand, focuses more on the risks on transactions with foreign countries which, in the current market conditions, would not have been covered.

(34) Moreover, the risk selection process established by the French authorities and the short-term nature of the cover will prevent previously non-marketable risks from being covered by France.

(35) For this reason, the Commission considers, in agreement with the French authorities, that the CAP export measure will not result in private insurance companies being squeezed out of the market and that it will only remain in place for the duration of the financial crisis.

(36) In the light of the above, the Commission considers that the notified measure is compatible with the EC Treaty.

6. CONCLUSION

(37) The Commission has decided to consider that the notified measure is compatible with the internal market up until 31 December 2010.

(38) If this letter contains confidential information which should not be disclosed to third parties, please inform the Commission within fifteen working days of the date of receipt. If the Commission does not receive a reasoned request by that deadline, you will be deemed to have agreed to disclosure to third parties and to the publication of the full text of the letter in the authentic language on the Internet site:
http://ec.europa.eu/community_law/state_aids/state_aids_texts_en.htm .

Your request should be sent by registered letter or fax to:

European Commission
Directorate-General for Competition
State Aid Registry
SPA 3 - 6/5
B-1049 Brussels
stateaidgreffe@ec.europa.eu

Yours faithfully,

For the Commission

Neelie KROES
Member of the Commission