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**Subject: State Aid SA.57112(2020/N) – Denmark
COVID-19: First-loss portfolio guarantee on trade credit insurance**

Excellency,

1. PROCEDURE

- (1) On 22 April 2020, the Danish authorities informed the Commission about a proposal for a first-loss guarantee on the portfolio of insurance claim exposures of trade credit insurers active in Denmark, provided in return for a commitment given by the main insurance industry operators.
- (2) By electronic notification of 11 May 2020, Denmark notified aid in the form of a first loss guarantee on the portfolio of insurance claim exposures of the participating trade credit insurers ("the measure") pursuant to Article 108(3) of the Treaty on the Functioning of the European Union¹ ("TFEU").
- (3) Denmark exceptionally agrees to waive its rights deriving from Article 342 TFEU, in conjunction with Article 3 of Regulation 1/1958,² and to have this Decision adopted and notified in English.

¹ OJ C 115, 9.5.2008, p. 47.

² Regulation No 1 determining the languages to be used by the European Economic Community, OJ 17, 6.10.1958, p. 385.

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2. DESCRIPTION OF THE MEASURE

- (4) Denmark considers that the COVID-19 outbreak has started to affect the real economy. The measure forms part of an overall package of measures and aims to ensure that sufficient liquidity remains available in the market, to counter the damages inflicted upon undertakings impacted by the outbreak and to preserve the continuity of economic activity during and after the outbreak. In particular, its objective is to ensure that trade credit insurance services continue to be available to all companies of the real economy so that buyers of goods or services avoid paying in advance for goods or services, creating immediate liquidity needs, and that seller or service providers can continue market their products
- (5) The measure is based on Article 107(3)(b) TFEU to remedy a serious disturbance of the economy. The Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak ("the Temporary Framework")³ is not applicable, because guarantees on credit insurance activities are not covered therein. However, the measure is designed in analogy to the principles set out in the Temporary Framework.

2.1. The nature and form of aid

- (6) The measure provides aid in the form of a first-loss guarantee on the portfolio of insurance claim exposures of the participating trade credit insurers.

2.2. National legal basis

- (7) The legal basis for the measure is a direct act on the Danish Budget Law and elaborated in an administrative order issued under the EKF Act (Lov om EKF Danmarks Eksportkredit).
- (8) The measure will be implemented by way of bilateral agreements between EKF, Denmark's State-owned export credit agency, and the participating credit insurers that will be confirmed by official certificates under public law. These contracts have not been concluded yet and drafts have not been shared with the Commission. This decision is therefore based solely on the term sheet provided by Denmark, which provides the relevant framework for the individual contracts to be concluded.

2.3. Administration of the measure

- (9) EKF is responsible for granting and administering the measure by concluding individual contracts under public law.

2.4. Relevant context for the measure

- (10) Trade credit insurance is a risk management product offered to all types of companies wishing to protect their accounts receivable from losses due to credit risks. In the absence of such products, sellers of goods or services may ask buyers to switch to paying for goods or services in advance or at the time of delivery or

³ Communication from the Commission - Temporary framework for State aid measures to support the economy in the current COVID-19 outbreak, *OJ C 911*, 20.3.2020, p. 1–9, as amended.

provision. This would have a direct impact on the ability of sellers to continue their business as usual. It would also have an indirect impact on the liquidity requirements of buyers up to a point where business activities may cease if liquidity were to be unavailable or too costly. This again would hurt suppliers. Hence, any reductions in limits of insurance coverage or sudden withdrawal of such coverage, would further weaken the resilience of the economy in the face of the COVID-19 pandemic.

- (11) An important function of the trade credit products that insurers offer to the policy holders (the sellers of a good or provider of a service) lies in the capacity of the insurers to constantly monitor the credit worthiness of buyers and immediately alert the policyholder of a deterioration of this credit worthiness. In the event of a creditworthiness downgrade of a buyer, under an ongoing insurance framework contract the credit insurance can thus immediately reduce the limit assigned to that buyer, up to the point that the buyer could be asked to pay in advance of delivery or provision. In normal times, this risk-monitoring function is relevant for policyholders, as in all trade credit insurance contracts, the policyholder still retains a minimum share of at least 10% of the amount of receivables on their own risk.
- (12) The Danish authorities indicate that a total of approximately 2500 to 3000 companies in Denmark are using trade credit insurance, for an overall annual turnover of DKK 450 billion. There are currently four insurers active on the market and Denmark expects all of them to participate in the measure. Trade credit insurers reported an overall coverage volume of DKK 250 billion ("Total Coverage Volume"). This volume represents the maximum amount of limits possible within the contracts between the trade credit insurers and the policyholders currently in place. However, this amount is not always fully utilised due to the dynamic nature of the calculation of the limits, which are updated daily to reflect incoming payments from buyers and new deliveries of goods or services that increase the utilisation of the limit for the respective buyer.
- (13) Under the present circumstances, given the abrupt deterioration of economic activity and the fear of an overall deterioration of credit worthiness, trade credit insurers may immediately reduce insurance limits, which could further reduce economic activity by aggravating the liquidity situation of companies. Denmark has explained that 35% of limits granted are at risk to be withdrawn at short notice in absence of the measure.

2.5. Sectoral and regional scope of the measure

- (14) The measure is open to all undertakings active in the trade credit insurance sector in Denmark that were not in difficulty within the meaning of the General Block Exemption Regulation ("GBER")⁴ on 31 December 2019. The scheme covers trade credit to purchasers of goods and services in Denmark, the European Single Market as well as in third countries. All policyholders of the participating trade

⁴ As defined in Article 2(18) of the Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty, OJ L 187 of 26.6.2014, p. 1.

credit insurance providers with economic activities in Denmark are covered under the measure.

2.6. The measure, budget and duration

- (15) The measure sets out a mechanism intended to help companies to overcome the most critical economic phase related to the COVID-19 outbreak, and to avoid an aggravating of the contraction in the real economy. This mechanism comprises two elements.
- (16) As a first element of this mechanism, Denmark enters into an agreement with the Trade Credit Insurance Companies ("TCIs") active in Denmark participating in this measure. As part of this agreement that takes the form of legally binding contracts, TCIs commit to retain their existing limits as applicable on 31 December 2019. This includes explicitly also the limits towards companies that were not in difficulty as of 31 December 2019 but may face difficulties in view of the COVID-19 outbreak. However, the insurance limit for trade credit to a given purchaser of a good or service may exceptionally be reduced under an ongoing insurance contract if that purchaser:
 - (i.) is in danger of insolvency and public support measures cannot be reasonably expected; or
 - (ii.) has been reported to the trade credit insurer to have defaulted on a payment; or
 - (iii.) do not need the limit in the current amount due to a reduction in the turnover of the policyholder.
- (17) The Danish authorities may carry out inspections at any time, either directly or via a duly authorised representative, to verify the correct implementation of the measure.
- (18) As a second element of this mechanism, Denmark provides a guarantee (the "Guarantee" or "the measure") on the overall portfolios of those trade credit insurers active in Denmark that have signed the agreement. The guarantee therefore covers not only particularly risky transactions but rather mirrors the full range of exposures of the industry.
- (19) The measure covers claims related to the delivery of goods or services that take place between 1 January 2020 and 31 December 2020, provided that the trade credit insurer participates in the measure. However, it excludes any claims that have been notified before 1 March 2020 to ensure that claims not related to the COVID-19 outbreak are excluded.
- (20) The measure is open for trade credit originated by policyholders registered and with activities in Denmark; it covers obligors inside and outside of Denmark.
- (21) The measure covers losses, stemming from covered receivables and/or other covered costs, of the participating trade credit insurer, based on respective individual contract conditions. Covered costs means insured costs for manufacturing or storage independent of the type of claim (e.g. insolvency, revocatory action, protracted default, political risk). In addition, covered damages

include recovery costs and claim settlement costs, which the trade credit insurer incurs on covered receivables and/or covered costs.

- (22) The mechanism will cover only trade credit insurance for trades between 1 January and 31 December 2020. The payment of trade credit is often due after 90 days or 360 days for some goods. In any case, claims before 1 March 2020 are excluded from coverage under the measure, Denmark foresees a period to claim damages on those trades that due to exceptional circumstances may take more time, but in any case no later than 31 December 2024.
- (23) The measure is split along two thresholds. The first element of the measure comprises a guarantee up to a nominal amount of DKK 5 billion (approx. EUR 670 million), including DKK 500 million (approx. EUR 67 million) to be provided by TCIs. The second element of the measure is the maximum theoretical volume (the "Guarantee Volume") that is capped at a maximum nominal amount of DKK 30 billion (approx. EUR 4bn).
- (24) The portfolio guarantee is designed as follows:
- (i.) Each participating trade credit insurer is allocated its share of the overall Guarantee Volume in line with market shares.
 - (ii.) To ensure an appropriate sharing of losses, trade credit insurers bear 10% of all claims losses up to a cumulative amount of DKK 5 billion. This means that each participating trade credit insurer covers an individually allocated share⁵ of the collective total maximum amount of DKK 500 million.
 - (iii.) If the damages are higher than the trade credit insurer's share of the capped amount, Denmark covers 100% of the so called "first loss piece" up to the trade credit insurer's share of the Guarantee Volume (i.e. less than 10% of Total Coverage Volume based on 2019 figures).
 - (iv.) If the claims are higher than the trade credit insurer's share of the Guarantee Volume, the Danish authorities do not cover any additional losses. This implies that on a collective level, all claims above the theoretical maximum of the Guarantee Volume remain fully with the TCIs.
 - (v.) Any recoveries and proceeds from the sale of collateral will be allocated according to the coverage ratio. The guarantee does not change the legal rights and obligations between the TCI and the policyholders. This includes also the responsibility of the TCI to perform recovery. In this context it is important to note the incentive for recovery of the TCI because of the loss-sharing agreement as well as the obligations of the TCIs arising from the risk participation of the policyholders. When a single covered loss is expected to exceed DKK 25 million the beneficiaries shall notify the obligor hereof without further delay. The beneficiary shall be obligated to consult with the obligor prior to

⁵ The allocation of this capped amount follows the same methodology as for the Guarantee Volume.

proceeding with any material actions. The beneficiaries shall in good faith take into account the obligor's interests and recommendations in making any determination of covered losses. However, it is agreed and understood that the beneficiaries shall not be bound by any recommendations made by the obligor.

- (25) As remuneration for this portfolio guarantee, the participating trade credit insurers will pay the total gross annual premia for 2020 less administrative costs, set at 35% based on an estimation of 2019 data. This implies that 65% of annual gross premia on their entire portfolio for the full year 2020 will be transferred as remuneration for the guarantee, invoiced on a quarterly basis and payable by the respective beneficiary to Denmark.
- (26) The overall Guarantee Volume will be distributed among the participating trade credit insurers according to their share of the Total Coverage Volume in 2019. The Total Coverage Volume shall only include the policyholders which are covered by the measure.
- (27) To implement the mechanism, Denmark will conclude a guarantee agreement with each interested trade credit insurer, in which the terms and conditions for invoking the guarantee will be specified as well as the commitment by the insurer.
- (28) The Danish authorities and the participating trade credit insurers will agree on a reporting on details concerning the covered receivables and the covered losses (as defined in recital (19)). Upon demand, each participating trade credit insurer will provide documents and information to allow the Danish authorities to check whether they are eligible to receive payments under the measure.
- (29) If the covered damages are adjusted subsequent to the initial payment from the Danish authorities to the trade credit insurer, due to late payments or proceeds from the liquidation of collateral, the trade credit insurers will reimburse the Danish authorities accordingly.

2.7. Monitoring and reporting

- (30) At the latest three months after the end of the calendar year, starting on 31 March 2021, the Danish authorities will provide a report to the Commission to provide figures on the actual payments and usage of the guarantee for reasons of transparency.

3. POSITION OF THE MEMBER STATE

- (31) Denmark considers that the proposed measure should be deemed compatible aid within the meaning of Article 107(3)(b) TFEU, which states that aid may be deemed compatible with the internal market if its objective is "*to remedy a serious disturbance in the economy of a Member State*".
- (32) Denmark submits that the effects of the COVID-19 outbreak have an impact on the economy of Denmark and beyond that should be classified as a serious disturbance.
- (33) Denmark further explains that trade credit insurances have a systemic importance for the flow of goods and services in the economy. In the absence of such

products, suppliers would be forced to require advance payments from their buyers. Such advance payments would lead to significant liquidity requirements for these companies that could not be addressed at short notice or may force them to cease business activities. Therefore, a potential withdrawal of existing limits would have a significant impact on the economy that is already affected by the current crisis.

- (34) Notably, Denmark considers that already at the current moment the continued coverage of credit insurance is at risk as the simultaneous supply and demand shocks triggered by the COVID-19 outbreak have put a larger number of both suppliers and buyers under severe strain.
- (35) Denmark explains that without immediate action, 35% of current total limits would likely be withdrawn by trade credit insurers to limit overall risk for 2020.
- (36) In addition, Denmark explains that the trade credit insurance industry shows important signs of network effects. If individual insurers were forced to reduce limits for individual clients that may be particularly affected by the current shock, it would have a domino effect leading to a widespread cancellation of limits across wide parts of the economy. Therefore, Denmark opens the scheme to the entire trade insurance sector and has indicated that it has received, to its knowledge, interest from all market participants operating in Denmark.
- (37) Furthermore, Denmark explains that the measure is necessary, appropriate and proportionate because of the limits provided and the required risk-sharing of the trade credit insurers.
- (38) In particular, Denmark notes that the requirement to pay 65% of gross premia in return for the guarantee coverage is an important contribution and ensures that over-compensation of the direct beneficiaries is excluded. Based on aggregated numbers collected from the industry for 2019, Denmark explains that the administrative costs account to 35-40%, so that the sharing of the premia is based on conservative assumptions.
- (39) In addition, Denmark argues that the 10% loss-sharing by the insurers can lead to them bearing losses of up to DKK 500 million. Overall, Denmark therefore expects that the credit insurers will face losses under the scheme, i.e. it will not be a specific benefit for the insurers to join the scheme.
- (40) Finally, Denmark explains that the measure replaces existing reinsurance agreements covered under the Short-term export-credit Communication.⁶ Existing limits that are already covered under the existing reinsurance schemes cannot be covered additionally under the new portfolio guarantee.
- (41) Given the above, Denmark claims that the advantage conferred to the insurers is more than offset by the remuneration and loss-sharing, which shows that the measure is proportionate.

⁶ Communication from the Commission to the Member States on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to short-term export-credit insurance (OJ C 392, 19.12.2012, p. 1) as amended (OJ C 101 I, 28.3.2020, p. 1).

4. ASSESSMENT

4.1. Legality of the measure

- (42) By notifying the measure before putting it into effect, the Danish authorities have respected their obligations under Article 108(3) TFEU.

4.2. Existence of State aid

- (43) For a measure to be categorised as aid within the meaning of Article 107(1) TFEU, all the conditions set out in that provision must be fulfilled. First, the measure must be imputable to the State and financed through State resources. Second, it must confer an advantage on its recipients. Third, that advantage must be selective in nature. Fourth, the measure must distort or threaten to distort competition and affect trade between Member States.
- (44) The measure is imputable to the State, since it is granted by EDK, a Danish State-owned agency and it is based on guarantee agreements binding the State. It is financed through State resources, since it is financed by public funds.
- (45) The proposed measure aims at stabilising the system of trade credit insurances and therefore the wider economy by providing a safety-net that enables to maintain supply chains between companies. In particular, it aims at ensuring that trade insurers commit to retain coverage limits to trade credit originated in the real economy and liquidity management in the real economy. The effects of the measure should therefore consist in a benefit to the real economy on different levels: suppliers can continue to deliver their products to customers under the existing trade credit protection system while their customers are protected from sudden additional liquidity requirements that would arise in case of a withdrawal of existing insurance limits. The measure is thus aimed at keeping the flow of goods and services as well as at reducing the likelihood of liquidity squeezes, rating downgrades and even defaults.
- (46) The measure is designed in a way that trade credit insurance providers are direct beneficiaries but entails design features to ensure that the advantage is as much as possible passed on to the wider economy.
- (47) The stabilisation effect will be achieved by providing a guarantee to insurers of trade credit risk. The primary beneficiaries of the measure are thus all participating trade credit insurance providers with activities in Denmark. These providers have committed in return for the guarantee to uphold or re-instate where necessary limits at their level as of 31 December 2019 and not to reduce covered volumes, subject to limited exceptions (see recital (16) above). This upholding of existing limits that would otherwise be withdrawn will provide systemic stabilisation for the whole economy.
- (48) Therefore, the measure confers an advantage on the direct beneficiaries, i.e. the participating trade credit insurers, as it removes risks from their portfolios. At the same time, it is likely that they would have significantly reduced the coverage of trades by reducing limits on a supplier's counterparties under the existing contracts.

- (49) The advantage granted by the measure is selective, since it is awarded only to certain undertakings, namely participating trade credit insurance companies with operations in Denmark.
- (50) The measure is liable to distort competition, since it strengthens the competitive position of its beneficiaries. It also affects trade between Member States, since trade credit insurers are active in a sector in which intra-Union trade exists.
- (51) In view of the above, the Commission concludes that the measure constitutes aid within the meaning of Article 107(1) TFEU. The Danish authorities do not contest that conclusion.
- (52) As regards the fact that parts of the measure relate also to export-credit risks and expressly replace existing reinsurance agreements under the Short-term export credit Communication, the Commission currently considers all countries listed in the Annex to the Communication to be temporarily non-marketable risk countries until 31 December 2020. Consequently, under point 29 of the Communication there is in principle no obligation for Member States to notify reinsurance of short-term export-credit risks until the end of this year, provided that the conditions in Section 4.3 are respected. Nevertheless, the Commission will also consider the respect of the relevant conditions in the Communication for sake of completeness.

4.3. Compatibility

- (53) Since the measure involves aid within the meaning of Article 107(1) TFEU, it is necessary to consider whether that measure can be declared compatible with the internal market.
- (54) Pursuant to Article 107(3)(b) TFEU the Commission may declare compatible with the internal market aid “*to remedy a serious disturbance in the economy of a Member State*”.
- (55) By adopting the Temporary Framework on 19 March 2020, the Commission acknowledged (Section 2) that “*the COVID-19 outbreak affects all Member States and that the containment measures taken by Member States impact undertakings*”. The Commission concluded that “*State aid is justified and can be declared compatible with the internal market on the basis of Article 107(3)(b) TFEU, for a limited period, to remedy the liquidity shortage faced by undertakings and ensure that the disruptions caused by the COVID-19 outbreak do not undermine their viability, especially of SMEs*”.
- (56) The measure aims at facilitating trade between companies at a time when the normal functioning of markets, including the trade credit insurance market, is severely disturbed by the COVID-19 outbreak, and that outbreak is affecting the wider economy.
- (57) While the Commission has provided guidance in the Temporary Framework as to when aid under Article 107(3)(b) TFEU can be declared compatible with the internal market in light of the current shock, this communication is not applicable to the measure proposed by Denmark, as it does not cover guarantees on portfolios of trade credit insurance contracts.

- (58) Therefore, the measure proposed by Denmark has to be assessed based on general criteria for compatibility under Article 107(3)(b) TFEU. However, the Temporary Framework can provide general guidance and its principles can be applied in analogy *mutatis mutandis* as far as appropriate.
- (59) As for any derogation from the prohibition on State aid enshrined in Article 107(1) TFEU, the compatibility exception pursuant to Article 107(3)(b) TFEU provision must be interpreted and applied restrictively. Such a strict application requires taking into account, in particular, the nature and the objective seriousness of the disturbance of the economy of the Member State concerned, on the one hand, and the appropriateness, necessity and proportionality of the aid to address it, on the other. It also requires taking into account the possibly systemic importance and position of the beneficiaries and the sector concerned and any safeguards proposed to avoid undue negative effects on competition and trade between Member States.
- (60) For the avoidance of doubt, the Commission notes that the Banking Communication of 2013 (the "Banking Communication")⁷ is not applicable to the measure, as the beneficiaries of the proposed measure are not credit institutions. The Commission considers further that it is also not appropriate to apply the principles of the Banking Communication by analogy to the current situation⁸, because the measure is not intended to address concerns related to financial stability or existing liquidity or solvency needs of the trade credit insurers. This is because the insurers could simply avoid assuming any further risks that may overburden their capital position by withdrawing existing limits going forward. By incentivising trade credit insurers to uphold limits also in the future, the measure addresses the direct consequences of the COVID-19 outbreak in the real economy. As a result, applying the Banking Communication to the measure would not be appropriate.

4.3.1. Appropriateness

- (61) In order to be appropriate, the aid has to be well targeted to its objective, i.e. in this case to remedy a serious disturbance in the entire economy. This would not be the case if the disturbance disappeared in the absence of the measure or if the measure is not appropriate to remedy the disturbance.
- (62) First, the measure has to be seen in the light of the unique situation caused by the COVID-19 outbreak and the ensuing economic shock that is unprecedented in its severity and affects demand and supply at the same time.
- (63) In addition, the measure is also unique as regards the direct beneficiaries and the specificities of the trade credit sector. TCIs can manage their risk effectively by adjusting insurance limits for a given purchaser for future trades as an immediate reaction to sudden credit risk changes as well as to their own capacity to bear risk going forward. Any measure that should have the intended effect needs to take

⁷ Communication from the Commission on the application, from 1 August 2013, of State aid rules to support measures in favour of banks in the context of the financial crisis (OJ, C 216 of 30 July 2013, p. 1).

⁸ See point (26) of the Banking Communication.

this peculiarity into account, namely that the beneficiaries would not require support, unless they should be convinced to refrain from using their normal risk adjustment techniques for the sake of a wider policy consideration.

- (64) In addition, the Commission considers that such a measure can only be fully effective if it is being applied by significant parts of the sector. The Commission notes in this respect Denmark's explanation that, to their knowledge, all TCIs operating in Denmark have already agreed to participate in the overall mechanism. In addition, the mechanism remains in any event open for participation by any potentially remaining operators.
- (65) The Commission considers that the measure can provide secondary economic effects beyond the advantage provided to the direct beneficiaries, which will be able to continue offering their insurance products on the market. In particular, as regards the clients of trade credit insurers, the measure provides them with the indirect advantage that in principle existing limits are retained as of the level set on 31 December 2019, in spite of the macroeconomic effects of the COVID-19 outbreak. As regards the wider economy, the measure therefore also prevents suddenly increasing liquidity needs that companies would likely be faced with in the absence of the measure, because suppliers would be forced to demand advance payments.
- (66) Furthermore, the serious disturbance in the Danish economy due to the effects of the COVID-19 outbreak could multiply if trade credit insurance were not available to the real economy. The impact on liquidity needs for purchasers that would be required to provide advance payments as well as the potential losses spreading on to suppliers would be significant, sudden and widespread across the whole economy.
- (67) The deteriorating economic outlook due to the current shock requires trade credit insurance operators to reduce limits provided to policyholders. Any such reduction or withdrawal of limits would most likely lead to domino effects at the level of credit insurers and in the wider economy.
- (68) In order to benefit from the proposed measure, trade credit insurers have committed themselves to uphold current limits, subject to certain exceptions (see recital (16) above). The measure therefore has the intended effect to keep the current trade credit insurance system in place without interruption and to avoid the negative effects described above which would lead to a significant deterioration of the economic situation in Denmark.
- (69) In light of the above, the Commission considers that the measure proposed by Denmark is appropriate, because it directly addresses the imminent risk of a significant further disturbance of the Danish economy.

4.3.2. *Necessity*

- (70) In order to meet the compatibility criterion of necessity, the aid measure must, in its amount and form, be necessary to achieve the objective. That implies that it must be of the minimum amount necessary to reach the objective. In other words, if a lesser amount of aid were sufficient to remedy the serious disturbance in the Danish economy, the present measure would not be limited to the minimum necessary.

- (71) First, it is important to note the extreme and fully unexpected situation caused by the COVID-19 outbreak, for the insurance providers. It is inherent to the system of trade credit insurance that the delivery of a good or service under such protection deviates in time from the moment of payment. It is true that the prediction of credit worthiness of purchasers is the core competency of the insurance providers and is conducted based on complex models, involving numerous parameters. However, the current and unprecedented situation with the sudden widespread economic shock that affects demand and supply at the same time, the sudden increase in the demand for liquidity in the real economy and associated concerns on future credit worthiness of companies, was not predictable only a few months ago.
- (72) Second, it should be considered that the normal risk remediation technique the trade credits insurers would take in absence of the measure – namely the significant de-risking going forward via reducing limits – is what the measure intends to avoid by asking a commitment from the insurers as described in recital (16). Therefore, it is important to assess the incentive effect of the guarantee measure in the context of the overall mechanism that rests on commitments by TCIs benefiting from the guarantee to provide to Denmark. In legally binding contracts the TCIs will commit to the guarantee provider to retain existing limits as of 31 December 2019 subject to only limited exceptions. Denmark has clearly stated that no other agreement can be reached with TCIs that would still convince them to bind themselves to these commitments.
- (73) Third, as regards the amounts proposed by Denmark, the following should be considered:
- (74) The DKK 5 billion threshold up to which insurers and the State will both participate in potential losses represent only 2% of the Total Coverage Volume. In light of the current uncertainties, it cannot be excluded that such losses could materialise in light of the unprecedented economic impact of the COVID-19 outbreak. Therefore, the Commission considers a threshold of this magnitude as justified.
- (75) The Commission notes that Denmark considers it as a possible scenario that losses would exceed the threshold of DKK 5 billion. Therefore, a second threshold amounting to the maximum cap of DKK 30 billion has been set as the Guarantee Volume to provide a sufficient buffer to enable the de-risking of the participating trade credit insurance providers. Even the latter amount represents only 12% of the Total Coverage Volume of trade credit insurance contracts in Denmark based on 2019 numbers.⁹ The Commission notes that Denmark explains that this was part of the overall package as agreed with TCIs and therefore a precondition to avoid the reduction of current limits by 35% on short notice that Denmark expected to happen without this measure.
- (76) Fourth, it should also be taken into account that the guarantee is in any case contingent upon actual losses in the real economy and will only be utilised in an exceptional situation. In the current, unprecedented situation, any estimates of

⁹ Even in case of significant changes to these levels of insurance coverage, the Guarantee Volume is limited to a maximum of 35% of total coverage volume.

future economic activity are fraught with a high degree of uncertainty beyond the limits of traditional financial modelling. At this stage of the COVID-19 crisis, robust data that would allow for a precise quantification of default probabilities in the real economy do not exist. With this in mind, the Commission considers that the maximum amount for the Guarantee Volume is calibrated to address the factual and unprecedented uncertainties in which TCIs are operating which requires a coverage also of less likely scenarios. The amount therefore appears justified to reach the intended result, namely to stabilise the trade credit insurance activity and to avoid negative effects leading to widespread reduction or cancellation of trade credit insurance limits of the real economy.

- (77) Fifth, the coverage provided should be seen in relation to the remuneration provided. In return for the guarantee coverage, participating trade credit insurers will transfer the full amount of gross premia for the year 2020 less a fixed share of 35% to cover administrative costs to the State. In fact, Denmark has explained that 35% as cost ratio is at the lower bound of the amounts needed to cover administrative costs. The remuneration would thus result in the insurers passing on the profits net of administrative cost on their annual activity for 2020 to the State even before participating in any losses.
- (78) Sixth, the proposed measure is limited in time and applies only to contracts in place between 1 January and 31 December 2020. Because losses incurred before 1 March 2020 are excluded (see recital (19) above), the measure does not cover guarantee events that have occurred before the COVID-19 outbreak.
- (79) Seventh, Denmark has argued that in the current circumstances the speed by which the measure will show an effect on the underlying trades is of the essence. According to Denmark, there are up to 3000 policyholders in Denmark, and in view of the restrictions in public life due to health precautions, it would take too long to adjust all contracts with a product to replace only the riskiest trades.
- (80) Therefore, a measure that is designed to cover portfolios of exposures is an adequate reaction to address also the specific time constraints in the current situation.
- (81) Finally, it is particularly important to note that the proposed portfolio-based measure covers bad as well as good risks. This means that 65% of all 2020 premia are also passed-on for those policies that will have remained profitable.
- (82) In light of the above, the Commission considers that the proposed measure is limited to the necessary amount of aid and that no less distortive instrument is available that would be as effective.

4.3.3. *Proportionality*

- (83) The positive effects of the measure must be properly balanced against the distortions of competition, in order for the distortions to be limited to the minimum necessary to reach the measure's objectives.
- (84) In a first step, it should be noted that the measure is designed in a way to keep market forces working under the safety net provided. By sharing risks and premia across the whole portfolio, it is excluded that private insurers conduct an adverse

selection and transfer only bad risks to the State while keeping profitable business for themselves.

- (85) This model of sharing risks and return on a full portfolio level also ensures that the vital function of credit risk assessment provided by the industry is upheld. By retaining a certain amount of risk with the insurers, they still have an incentive to provide an individualised credit risk assessment of purchasers – a function that is also vital for policyholders who also participate in potential losses stemming from a possible default of the trading partner. It therefore appears that the model chosen by Denmark is well justified as a methodology that effectively limits State intervention while still providing the envisaged result that would not be achievable as an outcome of pure market forces alone.
- (86) In a next step, and as already considered in recital (57) above, the Temporary Framework – although not directly applicable – provides a valuable source of inspiration to identify relevant principles to assess the proportionality of the measure.
- (87) First, it should be considered that the coverage up to DKK 5 billion, i.e. the level up to which private trade credit insurers participate in any potential losses, assumes a significant increase of such credits events. Therefore, the participation of the direct beneficiaries covers an important part of likely losses.
- (88) The fact that the "first-loss" piece as described by Denmark goes up to a total Guarantee Volume of DKK 30 billion seems unlikely but is nevertheless required to convince private insurers to not withdraw current limits as would be the normal reaction to such a situation. However, even if such an extreme downside scenario would materialise, it should be considered that the Guarantee Volume is still limited to 12% of the likely covered volume.¹⁰ Therefore, the total guarantee coverage remains in any case below the limits provided in point 25(f)(ii) of the Temporary Framework.
- (89) Second, the measure requires trade credit insurers to participate in claims even before the "first-loss" element is applied. Trade credit insurers have to contribute own funds to cover losses up to the total capped amount of DKK 500 million. This implies that losses up to DKK 5 billion are split between the private insurers and the State proportionally with the trade credit insurers covering 10% and Denmark covering 90% of the losses up to DKK 5 billion. A State guarantee coverage of 90% is also the threshold provided for in point 25(f)(i) of the Temporary Framework.
- (90) Third, the guarantee premium to be paid amounts to 65% of the annual gross premia charged by the trade credit insurers in 2020. Based on 2019 figures, this would amount to a total guarantee premium of approximately DKK 327 million to be paid to the State. This amounts to approximately 1.1% of the total Guarantee Volume of DKK 30 billion, which is significantly above the minimum premia as defined in point 25(a) of the Temporary Framework for a one-year protection.

¹⁰ And even in the unlikely case of significant changes of annual volumes in any case capped to remain below 35%.

- (91) Fourth, participating in losses up to DKK 500 million ensures a significant participation of the insurers in total costs and is intended to exclude any potential over-compensation as the insurers are required to pay the State the full premia for 2020, less administrative costs.
- (92) Based on the points above, the Commission considers that the measure proposed by Denmark ensures a participation of direct beneficiaries that is at least as strict as the one foreseen in the Temporary Framework.
- (93) As regards the underlying logic of point (31) of the Temporary Framework, namely that any advantage of aid should be passed on to the economic operators in the real economy directly affected by the current shock to the largest extent possible, the following should be considered:
- (94) First, in order to benefit from the proposed measure, trade credit insurers have to commit to uphold existing limits for policyholders, limited to only few exceptions. Therefore, the measure will have the effect of keeping current coverage volume for the real economy in place, in spite of the macro-economic shock stemming from the COVID-19 outbreak. This effect is particularly important to alleviate the risk of the aforementioned domino effects in the real economy.
- (95) Second, it should be considered that the measure is open for all trade credit insurers with activities in Denmark. This will lead to competition between these providers and therefore provide an additional lever to ensure that benefits are channelled through to the real economy to the largest extent possible.
- (96) Third, the Commission notes that the risk-retention by the insurers, at least up to losses of DKK 5 billion, and the risk-retention by the policy holders of the trade credit insurance will still lead to an overall risk-monitoring by creditors, in line with the intention of Section 3.2 on guarantees in the Temporary Framework.
- (97) Based on the above, the Commission considers that the measure as proposed by Denmark is proportionate to reach the intended goal while minimising the distortive effects on competition.
- (98) Finally, the Commission reminds Denmark that the effectiveness of the mechanism to support the real economy crucially hinges on Denmark exercising its responsibility to monitor and enforce its conditions. Given that the TCIs will provide individual and legally binding commitments in the respective contracts to be concluded with Denmark, the Commission has no doubt that Denmark will fully exercise its responsibility to ensure that the terms described above are adhered to in the implementation of the mechanism. Only a strict adherence to the terms on which this Decision is based will ensure that the significant amounts of taxpayer funds dedicated by Denmark will have a beneficial effect also for the customers of the trade credit insurers, with the effect that they can continue to benefit from the coverage as before the current, unprecedented shock.

4.3.4. Conclusion on compatibility

- (99) Based on the above considerations, the Commission concludes that the measure is compatible under Article 107(3)(b) TFEU.

4.4. Short-term export-credit elements

- (100) Following the amendment to the Short-term export-credit Communication of 28 March 2020, the Commission considers all countries as non-marketable or as temporarily non-marketable risk countries until 31 December 2020.
- (101) In as far as the measure covers export-credit insurance with a risk period of less than two years that may fall under the Short-term export-credit Communication, the Commission notes that the quality of cover will be consistent with market standards, as it will remain the one offered by the private insurers in normal conditions. The maximum coverage will always be less than 95% for commercial risks as policyholders will maintain a share of the risk (see recital (11) above). The minimum waiting period will typically be 90 days and in any case remain consistent with market standards, given that no changes to the actual contracts are foreseen (recital (22)).
- (102) The Commission notes that the measure is temporary in nature as it only covers trade credit provided before 31 December 2020 with the aim to remedy the disturbance caused by the COVID-19 outbreak in the trade credit insurance market in Denmark. The measure is therefore designed to keep the credit insurance available in the Danish economy within the pre-crisis limits to the largest possible extent.
- (103) The cover is accessible to all commercial insurers in Denmark in an open, transparent and non-discriminatory manner (recital (14)). The measure essentially allows the market to remain at 2019 levels for all private insurers, with respect to all short-term credits and for all policyholders in Denmark. In that regard, the reinsurance is being offered on a large scale to portfolios consisting of all types of risks, including a significant number of creditworthy buyers with clean claims record and good financial ratings (recital (6)). The remuneration resulting from the risk and premium sharing is therefore justified and adequate in light of objective of the measure to preserve the existing credit and surety insurance limits available for a limited period of time to the real economy in Denmark.
- (104) On the basis of the above and in view of the principle set out in point 31 of the Short-term export-credit Communication, the Commission considers that the measure also fulfils the requirements of the Short-term export-credit Communication in as far as it is applicable.

5. CONCLUSION

The Commission has accordingly decided not to raise objections to the aid on the grounds that it is compatible with the internal market pursuant to Article 107(3)(b) TFEU.

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Your request should be sent electronically to the following address:

European Commission,
Directorate-General Competition
State Aid Greffe
B-1049 Brussels
Stateaidgreffe@ec.europa.eu

Yours faithfully,

For the Commission

Margrethe VESTAGER
Executive Vice-President

CERTIFIED COPY
For the Secretary-General,

Jordi AYET PUIGARNAU
Director of the Registry
EUROPEAN COMMISSION