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COUNCIL DIRECTIVE 98/29/EC

of 7 May 1998

on harmonisation of the main provisions concerning export credit insurance for transactions with medium and long-term cover

(OJ L 148, 19.5.1998, p. 22)

Amended by:

		Official Journal		
		No	page	date
►**M1**	Council Regulation (EC) No 806/2003 of 14 April 2003	L 122	1	16.5.2003

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COUNCIL DIRECTIVE 98/29/EC

of 7 May 1998

on harmonisation of the main provisions concerning export credit insurance for transactions with medium and long-term cover

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 113 thereof,

Having regard to the proposal from the Commission,

(1) Whereas medium and long-term export credit insurance plays a crucial role in international trade and constitutes a major commercial policy instrument;

(2) Whereas medium and long-term export credit insurance plays an important part in trade with developing countries and thus fosters their integration into the world economy, which is an objective of Community development policy;

(3) Whereas the differences between the official medium and long-term export credit insurance systems currently operating in the Member States with regard to the main constituents of cover, premiums and cover policy may result in distorsions of competition among enterprises within the Community;

(4) Whereas it seems appropriate that the measures provided for in this Directive should not go beyond what is necessary to achieve the objective of the harmonisation necessary to ensure that export policy is based on uniform principles and that competition between enterprises in the Community is not distorted;

(5) Whereas in order to lessen existing distorsions of competition, it is desirable that the different official export credit insurance systems be harmonised, as envisaged in Article 112 of the Treaty, on the basis of uniform principles and in such a way as to form an integral part of the common commercial policy;

(6) Whereas the provision by governments (or special institutions controlled by governments) of export credit guarantee or insurance programmes at premium rates which are inadequate to cover the long-term operating costs and losses of the programmes are classified as prohibited export subsidies in the Agreement on Subsidies and Countervailing Measures concluded in the framework of the Uruguay Round of multilateral trade negotiations (1986 to 1994) ([1]), in particular under Article 3(1)(a) and paragraph (j) of Annex I thereto;

(7) Whereas the premium charged by credit insurers should correspond to the risk insured;

(8) Whereas harmonisation would foster cooperation among the credit insurers acting on behalf of the State or with State support, and enhance cooperation among enterprises within the Community as envisaged by Article 130 of the Treaty;

(9) Whereas both harmonisation and cooperation are major and crucial factors in the competitiveness of Community exporters on non-Community markets;

(10) Whereas the Commission White Paper on completing the internal market adopted by the European Council in June 1985 stresses the importance of an environment conducive to cooperation among enterprises in the Community;

(11) Whereas, by a Decision ([2]) dated 27 September 1960, the Council set up a Policy Coordination Group for Credit Insurance, Credit Guarantees and Financial Credits;

([1]) OJ L 336, 23. 12. 1994, p. 156.
([2]) OJ 66, 27. 10. 1960, p. 1339/60.

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(12) Whereas on 15 May 1991 the said Policy Coordination Group mandated experts from each of the Member States at that time who, as the Single Market 1992 Experts' Group, submitted reports containing a set of proposals on 27 March 1992, 11 June 1993 and 9 February 1994;

(13) Whereas by Decision 93/112/EEC [1], the Council implemented into Community law the OECD Arrangement on Guidelines for Officially Supported Export Credits;

(14) Whereas Council Directive 70/509/EEC of 27 October 1970 on the adoption of a common credit insurance policy for medium- and long-term transactions with public buyers [2] and Council Directive 70/510/EEC of 27 October 1970 on the adoption of a common credit insurance policy for medium and long-term transactions with private buyers [3], should be replaced by this Directive;

(15) Whereas this initial harmonisation of export credit insurance should be considered as a step towards convergence of the various systems of the Member States,

HAS ADOPTED THIS DIRECTIVE:

Article 1

Scope

This Directive applies to cover for transactions related to the export of goods and/or services originating in a Member State, in so far as this support is provided directly or indirectly for the account of, or with the support of, one or more Member States, involving a total risk period of two years or more, that is to say, the repayment period including the manufacturing period.

This Directive does not apply to cover for bid, advance payment, performance and retention bonds. Neither does it apply to cover for risks relating to construction equipment and material when locally used for the performance of the commercial contract.

Article 2

Obligations of the Member States

Member States shall ensure that any institution providing cover directly or indirectly in the form of export credit insurance, guarantees or refinancing for the account of the Member State or with the support of the Member State representing the government itself or controlled by and/or acting under the authority of the government providing cover, hereinafter referred to as 'insurers', covers transactions related to the export of goods and/or service in accordance with the provisions set out in the Annex, when destined for countries outside the Community and financed by buyer credit or supplier credit or paid on cash terms.

Article 3

Implementing decisions

The decisions referred to in point 46 of the Annex shall be taken by the Commission, in accordance with the procedure laid down in Article 4.

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(1) OJ L 44, 22. 2. 1993, p. 1. Decision as last amended by Decision 97/530/EC (OJ L 216, 8. 8. 1997, p. 77).

(2) OJ L 254, 23. 11. 1970, p. 1. Directive as last amended by the 1994 Act of Accession.

(3) OJ L 254, 23. 11. 1970, p. 26. Directive as last amended by the 1994 Act of Accession.

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Article 4

Committee

1. The Commission shall be assisted by a committee.

2. Where reference is made to this Article, Articles 4 and 7 of Decision 1999/468/EC ([1]) shall apply.

The period laid down in Article 4(3) of Decision 1999/468/EC shall be set at one month.

3. The Committee shall adopt its Rules of Procedure.

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Article 5

Report and review

The Commission shall submit a report to the Council by 31 December 2001 on the experience gained and the convergence achieved in applying the provisions laid down in this Directive.

Article 6

Relationship to other procedures

The procedures laid down by this Directive supplement those established by Decision 73/391/EEC ([2]).

Article 7

Repeal

Directive 70/509/EEC and Directive 70/510/EEC are hereby repealed.

Article 8

Transposition

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 1 April 1999. They shall forthwith inform the Commission thereof.

When Member States adopt these measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

Article 9

Entry into force

This Directive shall enter into force on the 20th day following its publication in the *Official Journal of the European Communities*.

Article 10

Addressees

This Directive is addressed to the Member States.

([1]) OJ L 184, 17.7.1999, p. 23.
([2]) OJ L 346, 17. 12. 1973, p. 1. Decision as amended by Decision 76/641/EEC (OJ L 223, 16. 8. 1976, p. 25).

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ANNEX

COMMON PRINCIPLES FOR EXPORT CREDIT INSURANCE

CHAPTER I: CONSTITUENTS OF COVER

Section 1: **General principles and definitions**

1. *Scope of the common principles*

(a) The common principles laid down in this Annex shall apply to cover for supplier credit transactions with public or private buyers and to cover for buyer credit transactions with public or private borrowers.

(b) The common principles shall apply to cover for all risks as defined in point 4. Nevertheless, the insurer may decide in each individual case to limit its cover to certain risks only.

(c) When all the obligations of a private debtor are wholly and unconditionally guaranteed by an entity which is considered public in accordance with point 5 of this Annex, the common principles for public debtors shall apply.

When used in this Annex, the term 'debtor' means either the buyer or borrower as referred to in point 1(a), or their guarantor with regard to the insured transaction.

2. *Characteristics of supplier credit*

(a) The term 'supplier credit' shall apply to a commercial contract providing for an export of goods and/or services originating in a Member State between one or more suppliers and one or more buyers, whereby the buyer(s) undertake to pay the supplier(s) on cash terms or on credit terms.

(b) Cover provisions for supplier credit shall apply where cover is given to enterprises established in a Member State in accordance with Article 58 of the Treaty.

(c) If a commercial contract is being financed by means of a buyer credit or any other financing arrangement, cover given to the exporter for the commercial contract itself shall follow the provisions for cover for supplier credits.

3. *Characteristics of buyer credit*

(a) The term 'buyer credit' shall apply to a loan agreement between one or more financial institutions and one or more borrowers financing a commercial contract providing for an export of goods and/or services originating in a Member State, whereby the lending institution(s) undertake to pay the supplier(s) under the underlying transaction on cash terms on behalf of the buyer(s)/borrower(s), while the buyer(s)/borrower(s) will reimburse the lending institution(s) on credit terms.

(b) Cover provisions for buyer credit shall apply where cover is given to financial institutions, irrespective of their place of establishment or registration, provided that the buyer credit constitutes an unconditional obligation of the borrower to repay its debt, irrespective of the performance of the commercial contract to be financed.

(c) Cover provisions for buyer credit shall apply to cover given to a financial institution in respect of negotiable instruments properly held by that financial institution and payable by a buyer pursuant to any arrangement for the financing of a commercial contract.

4. *Definition of the risks involved*

(a) The commercial risk for private debtors is determined by points 14, 15 and 16.

(b) The political risk for private debtors is determined by points 17 to 22, and for public debtors by points 15 to 22.

(c) The manufacturing risk is determined by point 6(b).

(d) The credit risk is determined by point 6(c).