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COUNCIL DIRECTIVE

of 27 October 1970

on the adoption of a common credit insurance policy for medium- and long-term transactions with private buyers

(70/510/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

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

Having regard to the proposal from the Commission;

Whereas export credit is of primary importance in international trade and an important instrument of commercial policy;

Whereas the various systems of export credit insurance in force in the Member States may give rise to distortions in competition between Community undertakings in markets in third countries;

Whereas harmonisation of the various systems of export credit insurance could facilitate co-operation between undertakings in the various Member States;

Whereas, in view of this, common policies or harmonised solutions in respect of the essential matters should be adopted by Member States in the various fields of credit insurance;

Whereas, however, guarantees for medium- and long-term risks amount in all Member States to a very high percentage of the total of guaranteed transactions;

Whereas, moreover, these medium- and long-term transactions are effected both with private buyers and with public buyers;

Whereas in view of the nature of these credits it seems appropriate to harmonise supplier credits separately from financial credits;

Whereas the adoption of a common policy for medium- and long-term transactions with private buyers under supplier credit would be an important factor in the harmonisation of credit insurance techniques;

Whereas it is important for the Commission to obtain the opinions of the Representatives of the Member States on any problem relating to the uniform application of this Directive;

HAS ADOPTED THIS DIRECTIVE:

Article 1

1. Subject to the provisions of Annex D, Member States shall adopt such measures by law, regulation, or administrative action as may be necessary to put into force as from 1 September 1971 the 'Common Medium- and Long-Term Policy relating to Private Buyers (General Conditions)' appearing in Annex A—hereinafter called the 'common policy'—and the endorsement for extension of the guarantee (bond guaranteeing satisfactory performance of the contract) as in Annexes B and B/1.

2. In interpreting the common policy and the endorsement, the Member States shall follow the attached Explanatory Notes (Annexes C and C/1).

Article 2

Member States shall ensure that credit insurance organisations guaranteeing for the account of or with the support of the State insure transactions which are covered by the common policy in accordance with the terms laid down in that policy and such specific rules as are adopted by the Council.

Article 3

1. The common policy shall cover transactions guaranteed under specific policies and which:

— include either a credit risk of twenty-four months or more, or a manufacturing risk of twelve months or more, or a combination of both these risks for a cumulative period of twenty-four months or more;

— involve a private buyer;

— and are on a supplier credit basis.

2. Transactions for which the common policy is appropriate may be guaranteed solely against political risks or against both political and commercial risks. In both cases, the basic conditions of paragraph 1 shall apply.

3. The provisions of the common policy shall apply also to cover of the risks incurred by the exporter for transactions financed under financial credits where the credit may not be used before the commencement of the credit risk.

Article 4

For the purposes of the common policy, a private buyer is any buyer other than one who, in one form or another, represents the public power itself (States, regional or local authorities having a subordinate status such as provinces or local government units; public undertakings) and who cannot, either judicially or administratively, be made insolvent.

Article 5

The Advisory Committee for Export Credit Insurance, set up under Article 4 of the Council Directive of 27 October 1970[1] on the adoption of a common credit insurance policy for medium- and long-term transactions with public buyers, may be consulted by the Commission on any problem relating to the uniform application of this Directive.

Article 6

The Commission shall, within two years of the entry into force of the common policy and after consultation with the Committee referred to in Article 5, present a report on experience acquired during the application of Articles 3 and 13 of the Common policy. It may make proposals for amendments to these provisions with a view to adapting them to specific needs which the application of these provisions has not been able to meet. That report may, however, be presented at any time if a Member State so requests; it shall be submitted as a matter of urgency to the Council.

Article 7

This Directive is addressed to the Member States.

Done at Luxembourg, 27 October 1970.

For the Council

The President

A. MÖLLER

[1] Council Directive No 70/509/EEC, OJ No L 254, 23.11.1970, p. 1.

ANNEX A

COMMON CREDIT INSURANCE POLICY

Medium- and long-term transactions with private buyers

GENERAL CONDITIONS

The general conditions are hereby laid down upon which .....[1], hereinafter called 'the Company', will indemnify the insured for losses which he may suffer, under the contract described in the special conditions, hereinafter called 'the contract', in the event of the materialisation of one of the risks covered, as listed in these general conditions.

CHAPTER I

SCOPE OF THE GUARANTEE

Article 1

Manufacturing risk

The manufacturing risk shall materialise when performance of the contractual obligations of the insured, or manufacture of the goods ordered, is suspended for a period of six months in so far as the direct cause of such suspension is the occurrence of one or more of the events listed in paragraphs B, C, D, E, G and H of Article 3 to the exclusion of all other events or, when the occurrence of one or more of such events is threatened, by a decision of the Company.

Where despite the occurrence of any such event manufacture is continued because of a decision of the Company and subsequently, through either the continuation of that event or the occurrence of a further event, complete performance of the contractual obligations of the insured proves impossible or is judged inopportune by the Company, the manufacturing risk shall materialise on the date of suspension or completion of manufacture provided six months have elapsed since the occurrence of the event which was the initial cause, or since the initial decision of the Company, as referred to in the preceding paragraph.

Article 2

Credit risk

The credit risk shall materialise when the insured finds it impossible to recover all or part of the amount owed to him within six months of its due date, subject to this non-recovery being directly caused by the occurrence of one or more of the events listed in Article 3, to the exclusion of all other events.

However, where the impossibility of recovery is directly caused by one of the events listed in paragraphs A, B and E of Article 3 the credit risk shall materialise as follows:

— in the case of paragraph A, nine months from maturity of the unpaid debt,

— in the case of paragraph B, at the time of insolvency,

— in the case of paragraph E: six months from completion of the formalities necessary in order to obtain transfer to the insured's account of sums paid by the debtor in respect of the guaranteed maturity.

[1] Belgium: Office national du ducroire
Germany: The Federal Republic of Germany
France: Compagnie française d'assurance pour le commerce extérieur
Italy: Istituto nazionale delle assicurazioni
Luxembourg: Office du ducroire du Luxembourg
Netherlands: Nederlandsche Credietverzekering Maatschappij N.V.

In no case may the periods referred to above be cumulative.

When the provisions of paragraphs A and B of Article 3 are excluded by the special conditions and the maturity remains unpaid three months after its due date without any other of the events listed in that Article having made recovery by the insured impossible, the credit risk guarantee in respect of the unpaid maturity shall expire after the three month period mentioned above.

Article 3

Events constituting a cause of loss

These events shall be the following:

A. Non-payment by the debtor at maturity

B. Insolvency of the debtor.

Insolvency arises:

insolvency de jure

1. at the date of an order of adjudication in bankruptcy, of an order for winding-up, of an order for administration of the debtor's affairs by the court, or at the date of a court order having equivalent effect,

2. or at the date of conclusion of an extra-judicial agreement between the debtor and all his creditors, which is binding on every one of them,

insolvency de facto

3. or at the date when, in the course of execution of judgment, it becomes established that the levy of execution has been fruitless or has not fully satisfied the debt,

4. or at the date on which the insured shows that the financial state of the debtor is such that even partial payment is unlikely (and) (or)[1] that to enforce judgment (and) (or)[1] particularly to request that the debtor be adjudicated bankrupt or be wound up would have no other foreseeable result than one out of proportion to the costs of the proceedings.

C. General moratorium decreed by the government of the country of the debtor or by that of a third country through which payment must be effected.

D. Any other measure or decision of the government of a foreign country which prevents performance of the contract.

E. Political events, economic difficulties arising outside . . .[2] or legislative or administrative measures taken outside . . .[2] which prevent or delay the transfer of funds paid over in respect of the contract.

F. Legal provisions adopted in the country of the debtor declaring payments made by the debtor to be valid discharge of the debt, notwithstanding that as a result of fluctuations in exchange rates such payments, when converted into the currency of the contract, no longer cover the amount of the debt at the date of transfer.

G. The occurrence outside . . .[2] of one of the following events: war (including civil war), revolution or riot, cyclone, flood, earthquake, volcanic eruption or tidal wave.

H. A measure or decision of the government of . . .[2] specifically relating to foreign trade, such as a ban on exports, in so far as the reason for this measure or decision is to be found in the conduct of international affairs.

Article 4

Effective date and extent of the guarantee

§ 1 — *Effective date*

The guarantee of the manufacturing risk shall take effect on the date of entry into force of the contract.

The guarantee of the credit risk shall take effect:

— either on the date of each partial dispatch or partial delivery when, by the terms of the contract, such dispatch or delivery entitles the insured to payment therefor in one or more fixed maturities;

— or alternatively, on the date on which, by the terms of the contract, completion of the contractual obligations of the insured entitles the latter to payment.

Where the contract involves, on the conclusion thereof or within sixty days thereafter, the payment

[1] Choice between these two formulae is left to each Company.

[2] Country of credit insurer.

of an amount on account, the opening of a confirmed or unconfirmed documentary credit, or the delivery of a transfer guarantee or a payment guarantee, the taking effect of the insurer's guarantee shall be conditional upon the completion of these formalities.

§ 2 — *Extent*

(a) Manufacturing risk

The guarantee of the manufacturing risk shall apply, within the limit of the contract amount, to the amount of the costs incurred by the insured in performing his contractual obligations or in manufacturing the goods which have been ordered from him.

It shall not apply to:

— expenditure relating to goods in respect of which the guarantee of the credit risk has taken effect within the meaning of paragraph 1 of this Article;

— premium paid by the insured to the Company;

— sums paid by the insured consequent upon the calling of a bond guaranteeing satisfactory performance of the contract.

(b) Credit risk

The guarantee of the credit risk shall apply exclusively to the amount owed to the insured in principal and interest, in so far as the maturities fall after the effective date of the guarantee (and are indicated in the special conditions).[1]

However, the insured shall also be entitled to be indemnified for non-recovery of maturities due before the effective date of the guarantee of the credit risk, according to the rules applicable to the guarantee of the credit risk, provided:

(a) that the manufacturing risk is covered; and

(b) that the Company, availing itself of the provisions of Article 1, instructs the insured to continue manufacture, or

— that the event referred to in paragraph F of Article 3 has occurred.

Amounts payable to the insured under an irrevocable documentary credit confirmed in . . .[2] are excluded in any event from the guarantee of the credit risk. Amounts in respect of interest on arrears, penalties or damages payable by the debtor are likewise excluded.

(c) Additional costs

The guarantee shall cover additional costs resulting from a loss or threat of loss incurred with the approval of the Company, in order to avoid or limit the damage.

The following shall be considered as additional costs:

— in the event of a manufacturing loss or threat of loss, costs such as financing, stocking or costs of pursuing rights in court or otherwise;

— in the event of a credit loss or threat of loss, costs of pursuing rights in court or otherwise.

If, however, these costs also relate to amounts or maturities not guaranteed by the Company, they shall be attributed proportionately to the guaranteed and unguaranteed amounts or maturities.

Ordinary recovery costs—including protest charges—can in no case be indemnified.

(d) Supply of foreign goods

The guarantee also applies to foreign goods and services declared to the Company and approved by it. (However, the insured need not seek the agreement of the Company if the value of the foreign goods and services exceeds neither 10% of the contract amount nor 1 000 000 units of account. No increase in the approved proportion of foreign goods and services may be made without the authorisation of the Company).[1]

Article 5

Threat of loss

The Company shall have the right, where one of the events listed in Article 3 occurs, or where it considers that there is the threat of such an event occurring, to require the insured to take any suitable measure to avoid the occurrence of a loss or to limit its effects, and in particular:

(a) Where the manufacturing risk is covered, to instruct the insured to suspend manufacture or the performance of all or part of his contractual obligations.

[1] The passage in brackets is optional.

[2] Country of credit insurer.