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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 public buyers

(70/509/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 is 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, many of these medium- and long-term transactions are effected 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 public 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 Public 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 public buyer or a private buyer whose commitments are guaranteed by a public authority or by a body within the meaning of the last subparagraph of this paragraph;

— and are on a supplier credit basis.

For the purposes of the common policy, a public buyer is 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.

2. 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

There shall be appointed to the Commission an Advisory Committee for Export Credit Insurance, hereinafter called 'the Committee', which shall consist of Representatives of the Member States, with a representative of the Commission as Chairman.

The Committee shall establish its own rules of procedure.

Article 5

The Committee shall meet when convened by its Chairman, either on the initiative of the latter or at the request of the Representative of a Member State.

Article 6

The Committee may be consulted by the Commission on any problem relating to the uniform application of this Directive.

Article 7

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 4, 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 8

This Directive is addressed to the Member States.

Done at Luxembourg, 27 October 1970.

For the Council

The President

A. MÖLLER

ANNEX A

COMMON CREDIT INSURANCE POLICY

Medium- and long-term transactions with public 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 A, 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.

Article 3

Events constituting a cause of loss

These events shall be the following:

A. Repudiation of the contract by the debtor.

B. Default of the debtor.

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.

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[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.

[2] Country of credit insurer.

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 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 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, cost 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 1000000 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.

The loss resulting from such action shall be indemnifiable:

— either, in derogation from Article 1, under the conditions specified for indemnification of losses on additional costs where the suspension lasts less than six months, provided that this suspension is due to a decision of the Company,

— or under the conditions specified for indemnification of manufacturing losses, where the suspension lasts not less than six months;

(b) where the manufacturing risk is not covered, to amend, suspend or cancel the guarantee of the credit risk in so far as it has not yet taken effect within the meaning of the second subparagraph of Article 4 (1).

[1] The passage in brackets is optional.

[2] Country of credit insurer.

Article 6

Percentage guaranteed and maximum indemnity

§ 1 — Losses shall be indemnifiable up to the guaranteed percentage stipulated in the special conditions and up to the maximum limits laid down in those conditions.

§ 2 — The insured himself shall retain exclusively for his own account responsibility for the portion not guaranteed by the Company.

Article 7

Nullities[1]

CHAPTER II

OBLIGATIONS OF THE INSURED

Article 8

Conduct of the transaction insured

The insured shall be required to conduct the transaction with all reasonable and usual care, skill and forethought and to follow all instructions of the Company. Accordingly:

1. The insured may not, without the express authority of the Company, agree to any modification of the terms or conditions of the contract or to the securities attached to it. (Subject, however, to a duty to give notice, the insured shall not be obliged to seek prior agreement of the Company for increases or reductions in the value of the contract which cumulatively exceed neither 10% of the initial amount nor 20 000 units of account. The same applies to extensions of delivery periods approved by the debtor in so far as the initial delivery period is not increased by more than 25% and the total extensions do not exceed three months. The Company shall have the right to withdraw this concession at any time)[2].

2. (a) The insured must inform the Company as soon as he is aware of any event which might aggravate the risk or constitute a threat of loss such as:
   - difficulties encountered at receipt of goods or services, or in the drawing up or handing over of instruments of payment,
   - failure of the debtor to meet his obligations, in particular failure to make payments on their due dates, indicating where known the reason for such failure;

   (b) failure to recover must in any event be declared to the Company within thirty days.

3. The insured must consult the Company immediately in the event of a threat of loss and must abide by its decisions without in particular being able to plead financing difficulties. Such decisions may include the surrender to the Company of the conduct of all negotiations and proceedings undertaken or to be undertaken. To this end the Company may require an irrevocable power of attorney and even the submission or transfer to it, in a form effective against third parties, of all documents and deeds whatsoever which establish the rights deriving from the contract, or which are merely useful to the exercise of these rights.

   As regards the guaranteed maturities, in particular the portion for which he retains responsibility in accordance with Article 6 (2), the insured must, where the Company considers it necessary, comply with the latter's decisions and bear all the consequences thereof, particularly when they relate to debt consolidation agreements which the Company may have entered into or to which it may have adhered or which it is responsible for carrying out.

4. The insured shall be required to provide the Company, its agents and the experts designated by it with all information and documents which it may consider necessary for verifying the accounts and operations of the insured and for examining the validity of his claims. No action of this kind shall give rise to any liability on the part of the Company. Any document drawn up in a foreign language shall, at the request of the Company, be translated by the insured.

5. Without prejudice to the provisions of Article 4 (2) (c), the insured shall bear all costs involved in the application of this Article.

Article 9

Declarations on the conduct of the transaction[1]

Article 10

Premium

§ 1 — Conclusion of the insurance contract shall render the insured liable for payment of the premium, the amount and terms of payment of which are stipulated in the special conditions.

§ 2 — Where appropriate, the Company shall grant a partial refund of the premium to take account, in the absence of loss, of the reduction in the amount or duration of the risks.

In the case of a manufacturing loss the Company will make a revised calculation of the premium, taking into account the reduction in the amount to which the credit risk is covered.

[1] This Article is optional.

[2] The passage in brackets is optional.