COMMISSION OF THE EUROPEAN COMMUNITIES

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Proposal for a

COUNCIL REGULATION (EEC)

concerning the establishment of a European Export Credit Insurance Facility to provide export credit insurance for export contracts to third countries sourced in more than one Member State

(submitted by the Commission)

COM(87) 251 final/2

COM 251/2

EXPLANATORY MEMORANDUM

A EUROPEAN EXPORT CREDIT INSURANCE FACILITY

INTRODUCTION

1. In its White Paper of June 1985, on policies to implement fully the Community's internal market by 1992 (approved by the European Council in June 1985), the Commission emphasised the importance of an environment favouring the development of cooperation between Community firms. In spite of the progress already realised, cooperation between private firms is hampered by legal, fiscal and administrative problems. The Commission is therefore concerned to take measures which will assist the process of cooperative ventures between Community firms (1) . As the more integrated market envisaged in the White Paper takes shape, European Companies, especially those involved in capital intensive high technology projects in competition with the Community's industrialised partners, should increasingly be cooperating across Community borders in research, development and marketing. This is particularly vital in the search for export markets; and it is to be anticipated that demand will grow for arrangements to cover exports sourced in more than one country, including export credit insurance.

The existing provisions for national export credit insurance agencies in member-states to insure goods from other member-states are clearly insufficient to meet this demand. There are barriers of language, law , insurance coverage, delay, cost and complexity which hinder and discourage European collaboration in exporting outside the Community. A European Export Credit Insurance Facility (EECIF) would encourage European collaboration in export markets to the benefit of European industry as well the development of a more integrated internal market. In this sense a European Export Credit Insurance Facility would be an added instrument to help reach the objective of a real internal market by 1992 and to achieve a more complete European commercial policy.

In this explanatory memorandum, the term European Export Credit Facility (EECIF or the European Facility) is used to denote an administrative entity to be set up to manage a common credit insurance policy which, under defined conditions, could be issued when exports originate from more than one member-state.

(1) pars. 133 and 134 of the White Paper.

SHORTCOMINGS IN THE PRESENT ARRANGEMENTS

2. There is already provision for the national export credit insurance agencies of member-states to insure supplies from other member states up to a limit of 40 % of the value of an export contract. (1)
However, it is clear that the national export credit agencies do meet great difficulties in applying the current Community provisions regarding intra-Community subcontracting.
In practice, to source a single export order from more than one member state too often involves separate application to each of the national export credit insurance agencies involved. This means that firms often do not look further than their own lenders, a factor which could lead to decreased competitivity when faced with competition from third countries.

3. These agencies use, of course, different languages, are based on different legal systems, and have different policies to set country limits for their operations. Despite many years of trying, it has not proved possible to harmonize the insurance coverage they provide, so that there are significant variations of detail, such as the proportion of credit covered, the risks covered and premium rates. The use of different export credit insurance agencies thus also complicates the arrangement of finance, which is generally linked to the export credit insurance provided. The consequences are, first, that buyers outside the Community are deterred from using Community suppliers by the need to negotiate a whole series of separate financing agreements; second, that Community suppliers are deterred from sourcing in other member-states by the delays, the cost and the complexity involved in negotiating a whole series of different insurance and financing agreements with different national agencies; and third, that Community suppliers lose export orders because sourcing in the wrong countries for export credit insurance reasons can make their price uncompetitive.

(1) Council decision 82/854/CEE, O.J. L. 357 of 18.12.1982

4. The example of Airbus Industrie is instructive. Consortia such as this are difficult and time-consuming to set up. But once established, it ought to be relatively easy for them to deal with the kinds of problems mentioned above. The companies concerned have worked with each other for some time. The share of each export order which is to be sourced in the different member states is known in advance to the companies and to their governments.
Nevertheless the insurance of Airbus Industrie's exports to markets outside the Community has still proved to be very complex, and has imposed delays and extra costs. The situation is very much worse for a contractor contemplating a single export contract, part of which he may wish to source from other countries.

5. It is, in fact, now the case that when consortia are formed for the purpose of tendering for major export contracts outside the Community, the availability of finance and of the export credit insurance on which it is based, are factors of major importance, often overriding the choice of source of supply which would otherwise be made on the grounds of quality and cost.
The financial institutions which the Commission has consulted in preparing this proposal, all of which have extensive experience in the arrangement of international consortia to bid for major export contracts, are convinced that the absence of a single, European Export Credit Insurance Facility is a significant deterrent to the use of Community sources of supply even when they are competitive on quality and price.
This view is confirmed by the exporting companies which have been consulted.

It is naturally difficult to be certain that bids for export orders by European consortia have been lost because of the complexity of multi-agency export credit and the delays which this imposes. It is nevertheless true that both the exporting companies involved and their financial advisers will usually be aware that this factor has played some role in lost orders. This was certainly the case in recent years when a copper development project in Zaire was obliged to order its equipment in the United States even though the managing companies of the consortium were European; or when a French, German and Italian consortium failed to gain a substantial order in Morocco.

In summary there appear to be two main widely recognised problems :

a) Major projects outside the Community involving mass transit systems, power stations etc. where equipment and engineering contractors from more than one country are required, but where less than optimal Community bids are made and/or higher than necessary prices offered, and

b) Multinational companies which manufacture in different member states who have found it necessary to direct production to locations within the group (with possible consequences for price) or have been offered cover on condition that they transfer production from one member state to another.

A COMMUNITY ALTERNATIVE

6. In order to enable European industry to overcome the difficulties identified above, the Commission proposes the creation of a European Export Credit Insurance Facility. It should be made clear from the outset that this entity will not undertake direct financing nor insuring of exports and far from competing with the european export credit insurers(public or private) active in this field, it will catalyse cooperation between them.

   The Facility would be set up and run as a pooling operation between the national export credit agencies. The pool would be managed by the European Export Credit Insurance Facility (EECIF) . This would not act as an insurer but would coordinate the activities of the pool.

The market for a European Export Credit Insurance Facility of the kind outlined above is distinct from that covered by national insurance agencies. The bulk of the business transacted, and the revenue earned by most Export Credit Insurance Agencies consists of short-term contracts to supply goods on a continuing basis from one source. The European Facility, on the other hand, will not arrange insurance for that type of transaction . Its business will rather be medium-term credit insurance. Part of this market will be the one-off large export contract, typically for a complex product or system requiring the combination of materials and technology from different countries. Such export contracts are, almost by definition, uncommon; and the world market for major projects has been considerably weakened by the financial consequences for oil-producing countries of the declining price of oil. There will, however, be another part of the market for a European Facility which is growing, and is likely to grow further as European industry adapts to the reality of a Common Market by rationalising production across the EEC. This concerns exports of manufactured products, parts of which are made in different member states. As the Common Market develops, the tendency must increase for equipment to contain components made in other member-states. Exporting such equipment to markets outside the EEC tends to be discouraged by the present export credit insurance arrangments, and should be encouraged by the Euroòean Facility proposed .
The Facility would therefore arrange export credit insurance for exports to destinations outside the Community, where the exports concerned are sourced from more than one Member State of the Community (consortium business and subcontracting).

NATURE OF THE EUROPEAN FACILITY

7. The Commission proposes establishing the Facility in accordance with a pragmatic formula.
   The EECIF would be responsible, on the basis of a common policy to be elaborated in consultation with national export credit agencies, for coordinating the issue of policies to insure credit for multi-source export contracts including intra-Community subcontracting.

   The policy would be written in such a way that cover would be given proportionally by the national export credit agencies in accordance with the contractual obligations of participating firms.
   Thus an export contract involving supply from, say, France, Germany and Belgium would be jointly insured in proportion to the value of the contract taken by each country, by COFACE,HERMES and OND.

   This insurance would be subject to the conditions established initially by the EECIF in consultation with national export credit agencies.
   In particular, the following would be considered grounds for possibly withholding cover or at least further investigation of the transaction beyond the normal :

   - the exporters' record demonstrates that it is probable that he will not fulfill his obligations
   - acceptance of the insurance would oblige the national agency to exceed its country limit. This would trigger a mechanism to examine whether the Facility has spare capacity (see para. 20)
   - the importing country concerned is "off-cover" to the national agency for economic or political reasons
   - the buyer's credit-worthiness is called into question

8. The pool would function as follows :

The export consortium leader would first address the EECIF who would inform the national agencies of the application.Within a determined period of time - and given that time is of the essence in gaining orders probably not more than ten working days when no complicating circumstances are foreseen - the national agencies would accept the risk in proportion provided the agreed criteria were met. The EECIF would then issue the policy in the name of the appropriate agencies, and collect and distribute the premia in proportion. With regard to the question as to who should pursue claims as they arise, the Commission considers that either the lead national export credit agency should do so, or the Facility. This matter would be determined when the detailed management of the scheme is worked out.

The applicable law of the policy should in principle follow the law of the country which takes the biggest share of the transaction.

These arrangements would ensure that the national agencies of the member states would continue to fulfill their role of encouraging national exports to third countries. Furthermore the need for financial support for the EECIF would be confined to minimal running costs, since it would simply act as an administrative vehicle rather than a risk bearing organisation. The costs of running the EECIF could be financed either (preferably) by an agreed percentage of premia or commission or otherwise by direct administrative charge on the agencies if this were considered desireable . In any event, the aim would be for the EECIF to cover its costs only. These methods of working would be enshrined in the administrative arrangements to be worked out with the national agencies.

Such arrangements would not increase the exposure to risks of national agencies beyond the level of the direct insurance granted as part of their current activity.

9. The Commission proposes that above a certain proportion of sourcing from more than one member state, which in the light of the experience of the current subcontracting rules should be 15 %, the European Facility should be available. There may be a need to set a minimum contract value for the European Facility. But that- and, if appropriate, its level - is best left to the judgement of those responsible for establishing and running the Facility.

10. In order for the above arrangements to achieve the uniformity and relative simplicity required to smoothe the path of multi-source export business. it is clearly necessary, for the purposes of the Facility, to agree a Community wide set of credit insurance policy conditions. The premia to be charged would be a weighted average of existing premia of national agencies for comparable business, taking into account the export market involved.

11. In a later stage, and in the light of future developments and experience the possibility for greater involvement by the Community in the field of export credit insurance , could be examined. It might be envisaged that the European Facility could provide reinsurance as well as the facilitation of exchange of portfolio.

These aspects of the scheme have not been considered in detail since they would only be enlarged upon at a later stage of the Facility's development if appropriate.

THIRD-COUNTRY PROCUREMENT

12. It would not be practical to require that all procurement under a contract to be insured by the European facility should be undertaken in member-states of the Community. It is a characteristic of international consortia formed to tender for major export contracts that there is very often participation in them by companies based in industrialised countries outside the Community. To compare non-EEC content with total EEC content would in any case often make the proportion of non-EEC content look less dramatic than it looks to national agencies who compare non-EEC content to national content from a single member-state. To exclude all non-Community sourcing would limit the usefulness of the facility and the opportunities for Community industry to participate in successful international consortia. On the other hand it would clearly be inappropriate for the Community to support, in the name of assisting European industry, exports from other industrialized countries which compete in third markets with Community producers. A balance is needed. The Commission proposes that the European Facility should be empowered to arrange export credit insurance for an export contract provided that not less than 85 % of the value of the contract is to be sourced from companies based in member-states of the Community.

The rules under which this would operate would be worked out between the EECIF and the national agencies. This percentage could be reduced in proportion if a non-Community export credit insurance agency agreed to re-insure the risk in accordance with para. 13.

13. The Commission considers that the European Facility, once it is well established , should explore the scope for reciprocal reinsurance arrangements but only for multi-source contracts with the export credit insurance agencies of other industrialized countries. The objective would be to arrive at a situation where the non-EEC portion of an export contract insured through the Eureopan Facility with national agencies would be reinsured by the export credit insurance agency of the country from which the balance of the exports were to come.

The European Facility in its turn could arrange reinsurance of the proportion sourced in the EEC of an export contract predominantly sourced elsewhere and covered by export credit insurance from the national agency of another industrialised country. Again, the detailed rules would have to be worked out between the appropriate agencies and the EECIF.

EXPORT FINANCE

14. Although the link between export credit insurance and export finance is very close, as previously indicated the Facility would not undertake any financing of exports. This task should be left to the banking sector. Thus, the European Facility would arrange only pure cover. On the other hand, in order to avoid disadvantaging high interest rate currencies participating in a contract with multicurreny financing, companies insured through the Facility should have access to the existing mechanisms for subsidising interest rates in the countries from which exports are sourced. This would enable exporters with high interest rate currencies to compete on an equal footing. In order to facilitate either multicurrency financing or financing in ECU, consideration should be given to the possibility of the European Facility arranging through the pool exchange risk cover when offered by the national export credit insurance agencies for the exporter, at least between bid and contract, when the contract is or should be denominated in a currency other than the one used by participating companies.

ESTABLISHMENT OF THE EUROPEAN FACILITY

15. The creation of a new institution for the EECIF would raise a number of administrative and budgetary difficulties.What is needed, rather, is the facility for credit insurance of the kind proposed,to be issued when it is needed on a European basis. That does not require the creation of a new institution. It requires instead agreement on :

(a) the conditions under which the Facility could be used (extent of cross-border sourcing, extent of non-EEC participation);
(b) the policy conditions and policy wording to be used for the European Export Credit Insurance Facility;
(c) arrangements for credit insurance professionals to take decisions case by case on the risks to be underwritten and the processing of claims.

16. There are very strong arguments for a Facility of this kind to have the closest operational links with the national export credit insurance agencies of the member-states . They have the expertise. The Community will need to rely on their representatives to agree the policy conditions and policy wording appropriate to the European facility. And day to day business will be conducted by the Facility in close contact with the agencies.

17. The Commission proposes that the EECIF be established with legal personality.

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(1) OJ. L 199/1 of 31/7/85

18. The possibility of the European Investment Bank having a role in the European Facility has been excluded at least for the time being.

Nevertheless the Bank does

have expertise in the management of the risk inherent in lending on large capital projects. A future role for the EIB is therefore not excluded a priori.

19. Arrangements of the kind outlined under this heading would have the advantage of maximising operational cooperation with the national agencies and minimising the cost of establishing and maintaining the European Facility.

Effective marketing would be needed to draw the attention of potential customers to the existence of the new facility.

COUNTRY LIMITS

20. One aspect of the operation of the proposed facility which would need particular attention is the way in which country limits would be set for its operations. For the European Facility to set its own country policy would require an unnecessary duplication of the staff, information and procedures to produce and monitor the situation in each country. It would also probably be unacceptable to the national export credit insurance agencies, since they would be required to bear a share of the country risks, cover for which is arranged by the European Facility, and would have to take that into account in setting their own country limits.

The Commission therefore proposes that initially the pooling arrangement would include provisions for each national export credit insurance agency to allocate a given percentage of its country limits to the EECIF.

This would function as follows :
The country limit for the EECIF would be the sum of the agreed percentage of the limits imposed by each of the national agencies for the country in question. If a particular national agency then reached the position where it had used up the remaining percentage of its limit on a particular country and wished to take on more business there, while the European Facility still had spare capacity for that country, it might be open to the national agency to take back unused capacity from the European Facility, up to the limit of the percentage it had originally allocated.
Conversely, it might be open to the European Facility, either in these circumstances or in any case where it reached a country limit, to seek further allocations of capacity for that country from national agencies which had not fully used their own percentage of capacity for that country.

RESCHEDULING

21. As a pooling arrangement between national agencies, the proposed Facility would not be a multinational institution and thus would claim no exemption from re-scheduling. In any case there is no existing export credit insurance agency which enjoys exemption from rescheduling. If a European acility were exempted from rescheduling, that would provide a wholly artificial stimulus in demand for its cover, which might distort its portfolio in favour of countries with serious balance of payment difficulties.

ADMINISTRATION

22. The Commission proposes that the EECIF should be managed by a manager with sufficient delegation of power and a staff backed by computer facilities. The manager and supporting staff for the pool could appropriately be provided by the national agencies on secondment. They might conveniently be located - at least initially - in the premises of one of the national agencies.
Decisions would be taken by a Board of Directors with representatives of the national export credit agencies. The Board of Directors would have the right to delegate their powers under the Facility in order to ensure its smoothe and timely operation.

COST

23. If the European Facility is established in the manner proposed in paragraph 7 above, the cost of setting it up would be relatively small and would reflect principally the number of staff employed which in turn would be a function of the exact functions entrusted to the EECIF.

24. Once the Facility is operational, as previously indicated, operating costs would either be covered by a percentage of premia, a commission or by direct administrative charge as considered appropriate.

CONCLUSION

25. It is therefore proposed that the Council :

Approves the Regulation attached establishing a European Export Credit Insurance Facility in accordance with the principles set out in this explanatory memorandum.

Proposal for a

COUNCIL REGULATION (EEC)

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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,

Having regard to the opinion of the European Parliament,

Whereas export credit insurance influences international trade flows and as such constitutes a powerful instrument of commercial policy;

Whereas the increasing interdependence of the Member States' economies results in a trend towards the growth of export operations undertaken by a number of undertakings in different Member States; such cooperation is a major, or even decisive, factor in the competitiveness of Community exports to third country markets;

Whereas differences between the export guarantee systems at present in force in the Member States not only distort competition between undertakings of different Member States in export markets but also give rise to substantial difficulties in the carrying out of such export operations on a cooperative basis;

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Whereas therefore it is necessary to establish a common export credit insurance system for exports originating in more than one Member State and to provide for the issue of the common export credit insurance policy by a European Export Credit Insurance Facility;

Whereas it is necessary to provide for the establishment of the terms of the common insurance policy, the method of operation of the Facility and rules on the financing of the Facility and other matters by the Commission acting in close cooperation with the Member States,

HAS ADOPTED THIS REGULATION:

Article 1

Export credit insurance for exports from the Community shall be provided by the Member States in the manner set out in this Regulation.

Article 2

1. In cases where

   - not less than 85 % of the value of the contract for exports of goods or services to markets outside the Community (hereinafter called the "export contract") is supplied by undertakings from more than one Member State and

   - the export contract is of a minimum value to be determined in accordance with the procedure laid down in Article 7,

   export credit insurance shall be provided together by the export credit insurance organization acting on behalf of the State, or with its support, or the public departments acting in place of such an organization (hereinafter called the "export credit agency") of each Member State acting as co-insurer proportionately to the value of the export contract supplied by the undertaking or undertakings established in that Member State.

2. The percentage of 85 % referred to in the first indent of paragraph 1 may be reduced in proportion to any insurance of the non-Community element in the export contract by an export credit agency outside the Community approved by the European Export Credit Insurance Facility.

3. Provision of export credit insurance in accordance with this Regulation shall not prejudice access to existing mechanisms for supporting interest rates operated by export credit agencies in the Member States from which the exports originate.

ARTICLE 3

The export credit insurance cover shall be offered in a single common policy, to be known as the European Export Credit Insurance Facility policy, (hereinafter called the "EECIF policy"), the terms and conditions of which shall be established in accordance with the procedure laid down in Article 7.

ARTICLE 4

1. The EECIF policy shall be issued on behalf, and in the name, of the export credit agencies of the Member States concerned by a common agent to be appointed by each of them for this purpose.

2. The detailed rules for the issue of the EECIF policy shall be established pursuant to the procedure laid down in Article 7.

ARTICLE 5

1. The common agent referred to in Article 4, to be known as the European Export Credit Insurance Facility (hereafter called the "EECIF"), shall be established by 1 January 1988 as an entity with legal personality.

2. The amount of the working capital of the EECIF, intended to cover its initial administrative costs, shall be laid down in accordance with the procedure laid down in Article 7. It shall be provided by the export credit agencies of the Member States in proportion to a formula to be established in accordance with the same procedure.

3. The administrative costs of the EECIF shall be covered by a commission to be paid by the export credit agencies of each of the Member States concerned in respect of the policies issued on their behalf.

4. The EECIF shall have a Board of Directors consisting of one member appointed by each Member State's export credit agency and one member appointed by the Commission acting on behalf of the Community.

5. The Board shall be empowered to:

- decide whether the conditions contained in the detailed rules for the issue of the EECIF policy are fulfilled in the case of each request received and that the policy will therefore be issued;

- appoint an Executive Director to whom will be delegated powers to engage the necessary staff to operate the EECIF.

6. Decisions of the Board of Directors shall be taken by a majority of its members.

ARTICLE 6

All requests for insurance cover to be arranged by the EECIF shall be immediately forwarded to the EECIF.

ARTICLE 7

1. A Committee (hereinafter called the "EECIF Committee") is hereby set up. It shall consist of representatives of the Member States with a representative of the Commission as Chairman. The Committee shall adopt its own rules of procedure.

2. Where the procedure laid down in this Article is to be followed, the representative of the Commission, who shall act as Chairman, shall submit to the Committee a draft of the measures to be adopted. The Committee shall

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deliver its opinion on the draft within a time limit which the Chairman may lay down having regard to the urgency of the matter. The opinion shall be delivered by the majority laid down in Article 148 (2) of the Treaty in the case of decisions which the Council is required to adopt on a proposal from the Commission. The votes of the representatives of the Member States within the Committee shall be weighted in the manner set out in that Article.

The Chairman shall not vote.

The Commission shall adopt the measures envisaged if they are in accordance with the opinion of the Committee.

If the measures envisaged are not in accordance with the opinion of the Committee, or if no opinion is delivered, the Commission shall without delay submit to the Council a proposal with regard to the measures to be adopted. The Council shall act by a qualified majority.

If, within three months of the proposal being submitted to it, the Council has not acted, the proposed measures shall be adopted by the Commission.

ARTICLE 8

This Regulation shall not prejudice the automatic inclusion of certain subcontracts in export credit insurance cover by the export credit agencies of the Member States pursuant to Council Decision 82/854/EEC[1].

(1) OJ No L 357, 18.12.1982, p. 20.

ARTICLE 9

This Regulation shall enter into force on the 30th day following its publication in the Official Journal of the European Communities.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels

For the Council

FICHE D'IMPACT PME

"Although the aim of the facility is not mainly directed to SME, it is certain, however, that SMEs will benefit from a mechanism which is intended to cover export transactions for consortion business and also subcontracting, where SMEs are active.

In conclusion, DG I considers that the impact for SME will certainly be positive."