

# COMMISSION OF THE ~~EUROPEAN~~ COMMUNITIES

COM(80) 745 final

Brussels, 14 November 1980

Proposal for a  
COUNCIL DECISION  
concluding the OECD Understanding on export credits for ships and  
establishing arrangements for its implementation

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(submitted to the Council by the Commission)

COM(80) 745 final



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EXPLANATORY MEMORANDUM

On 24 July 1979 the Council adopted a decision on the Community's position within the OECD regarding its participation in the Understanding on export credits for ships and the amendment of that Understanding. The negotiating directives authorizing the Commission to conduct the negotiations in consultation with the Committee set up under Article 113 of the Treaty called for :

- (i) participation in the Understanding by the Community as such instead of the Member States;
- (ii) modification of the credit terms fixed in the previous Understanding with regard to minimum cash payments, maximum duration and minimum interest rates;
- (iii) extension of the Understanding to cover ship conversion;
- (iv) alignment of procedures with those in force under the Arrangement on guidelines for officially supported export credits (the Consensus).

The negotiations in the OECD with the other participants in the existing Understanding were conducted in two stages. Those which took place on 9 and 26 October 1979 resulted in agreement to Community participation in the Understanding, removal of the national protocols annexed to the previous Understanding, modification of the credit terms and the inclusion of ship conversion. The Council approved this first series of amendments by a decision dated 14 December 1979.

The negotiations for the last of the objectives set out in the Council Directives of 24 July 1979 continued on 13 February, 13 May and 30 September 1980. At the last of these meetings of the OECD Council Working Party on Shipbuilding, the participants in the Understanding agreed to amend clauses 7 and 8 of the Understanding and replace the original procedure by that laid down in the Arrangement on guidelines for officially supported export credits (the Consensus). This change

is a major step towards rationalization of the different procedures existing within the OECD in the field of export credits and will make it easier to apply them in a uniform manner.

The Commission considers that all the objectives laid down by the Council directives have been attained and that these last results in the procedural field bring to an end the negotiations opened pursuant to the directives of 24 July 1979. Accordingly, the Commission proposes that the Council, in conformity with Article 113 of the Treaty, conclude the Understanding resulting from the negotiations of 30 September 1980.

In approving the Decision of 14 December 1979 adopting the initial conclusions of the negotiations on the Understanding on export credits for ships, the Council agreed to enter in its minutes certain provisions relating to Article 4 of the Decision. To ensure the clarity of the decision which the Council is now called upon to adopt, the Commission has incorporated in the draft the terms of the 14 December Decision and therefore proposes retaining the entries in the minutes concerning Article 4 and tied aid credits.

In accordance with the custom evolved by the OECD Council's Working Party on shipbuilding, the agreed procedure for the application of Clause 7 and 8 will be set out in the OECD Secretariat text on definitions and administrative procedures relating to the Understanding on export credits for ships. Although the said procedure is expressly referred to in the Understanding, the Commission suggests that the Council enter in its minutes that it approves the text mentioned in Annex 2 and requests the Commission to specify in the notification given pursuant to Clause 11 that the procedure is an integral part of the Understanding.

As regards the procedural changes incorporated in Clauses 7 and 8 of the Understanding on export credits for ships, the Commission proposes that the Council enter in its minutes suitable provisions concerning application of the consultation and information procedures in the fields of credit insurance, credit guarantees and financial credits (Council Decisions 73/391 and 76/641), Council Directive 78/338 on aid to shipbuilding, and the notification machinery

resulting from the Community's participation in the Understanding. With regard to the last point, the Commission proposes applying the procedures already agreed to in connection with the application of the Arrangement on guidelines for officially supported export credits (the Consensus).

PROPOSAL FOR A  
COUNCIL DECISION

concluding the OECD Understanding on  
export credits for ships and establishing  
arrangements for its implementation

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 it is necessary to minimize counterproductive competition  
in the field of officially supported export credits for ships and to  
strengthen international cooperation to prevent a worsening of the  
terms of such credits;

Whereas the Community is a party to the Understanding on export  
credits for ships, approved by the Resolution of 30 May 1969 of the  
Council of the Organization for Economic Cooperation and Development  
(OECD) and amended by the Resolution of 30 January 1980 of that Council;

Whereas Council Directive 78/338/EEC of 4 April 1978 on aid to shipbuilding<sup>1</sup>  
stipulates that the aid and intervention referred to in that Directive  
must comply with the OECD Understanding on export credits for ships;

Whereas the Council issued directives in accordance with which the  
Commission was to state the Community's position in the international  
negotiations for the amendment of the Understanding on export credits  
for ships;

<sup>1</sup>OJ No L 98, 11.4.1978, p. 19.

Whereas the revised Understanding resulting from those negotiations is in conformity with the said directives;

Whereas most of the shipbuilding and credit-giving non-member countries which are members of the OECD intend to adopt the measures necessary to apply the revised Understanding;

Whereas, in the interests of the Community, and in order to give effect to the principle of international cooperation, the Understanding on export credits for ships should be applied in the Community;

Whereas, therefore, the Council Decision of 14 December 1979 should be repealed;

Whereas it is desirable that the revised Understanding should be applied in the Community for a limited period only, thus enabling the Community to participate in any amendment of the Understanding and to review the situation in the light of its experience of such application,

HAS DECIDED AS FOLLOWS:

#### Article 1

The Understanding on export credits for ships negotiated at the OECD on 30 September 1980 is hereby concluded on behalf of the European Economic Community.

The text of the Understanding is annexed hereto.

#### Article 2

The Commission shall give the notification provided for in Clause 11 of the Understanding as soon as this Decision enters into force.

Article 3

Application of the Understanding by the Community shall take effect as from a date to be determined in accordance with Clause 11 of the said Understanding.

Article 4

Where a non-member country which is a party to the Understanding informs its partners of its intention to invoke Clause 12 thereof, a consultation meeting shall be convened by the Policy Coordination Group for Credit Insurance, Credit Guarantees and Financial Credits of the Council of the European Communities. The Commission shall, if necessary, submit an appropriate proposal to the Council.

Should a Member State of the Community or the Commission consider that the interests of the Community would justify invoking Clause 12 of the Understanding, the following procedure shall apply :

- the Member State concerned shall notify the other Member States and the Commission accordingly; if the initiative comes from the Commission, the Commission shall notify all Member States accordingly;
- a meeting of the Policy Coordination Group for Credit Insurance, Credit Guarantees and Financial Credits shall be convened within three working days of receipt of the said notification;
- the Commission shall, within five working days of the end of the meeting of this Group, submit an appropriate proposal to the Council, which shall act without delay.

Should the Council decide to seek to amend the Understanding or decide on the withdrawal of the Community therefrom, the Commission shall notify the Secretary-General of the OECD forthwith.



Article 5

The Decision of 14 December 1979 is hereby repealed.

Article 6

This Decision shall apply until 31 May 1981.

Done at Brussels,

For the Council

The President

UNDERSTANDING ON EXPORT CREDITS FOR SHIPS

## I

1. For any contract relating to any new sea-going ship or the conversion of a ship<sup>1</sup> to be negotiated from 1st December 1979 onwards, participants in this Understanding agree to abolish existing official facilities<sup>2</sup> and to introduce no new official facilities for export credits on terms providing :

(i) a maximum duration exceeding 8.5 years from delivery and repayment other than by equal instalments at regular intervals of normally six months and a maximum of 12 months;

(ii) payment by delivery of less than 20% of the contract price;

(iii) an interest rate of less than 8% net of all charges<sup>3</sup>.

2. This minimum interest rate of 8% will apply to the credit granted with official support by the shipbuilder to the buyer (in a supplier credit transaction) or by a bank or any other party in the shipbuilder's country to the buyer or any other party in the buyer's country (in a buyer-credit transaction), whether the official support is given for the whole amount of the credit or only part of it.

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<sup>1</sup> Ship conversion means the conversion of sea-going vessels on condition that conversion operations entail radical alterations to the cargo plan, the hull or the propulsion system.

<sup>2</sup> Official facilities are those which enable credits to be insured, guaranteed or financed by governments, by governmental institutions, or with any form of direct or indirect governmental participation.

<sup>3</sup> Interest rate, net of all charges, means that part of the credit costs (excluding any credit insurance premia and/or any banking charges) which is paid at regular intervals throughout the credit period and which is directly related to the amount of credit.

3. The minimum interest rate will also apply to the credit granted with support by governments participating in the Understanding, in the shipbuilder's country to the shipbuilder or to any other party, to enable credit to be given to the shipowner or to any other party in the shipowner's country, whether this official support is given for the whole amount of the credit or only part of it.

4. Insofar as other public bodies participate in measures to promote exports, participants agree to use all possible influence to prevent the financing of exports on terms which contravene the above principles.

5. Participants, recognizing that it is highly desirable to set a limit to credit terms for export, also agree to make their best endeavours to ensure that no more favourable terms than those set out above will be offered to buyers by any other means.

6. Any participant in the Understanding which wishes, for genuine aid reasons, to concede more favourable terms in a particular case is not precluded from doing so, provided that adequate notice of this decision is given to all the parties to the Understanding in accordance with the procedure established for this purpose. For these cases 'adequate notice' shall be interpreted as requiring that notification be made to all participants if possible six weeks before a promise is given, at any stage of the negotiations, to commit the use of funds for that purpose, and in any case at least six weeks before authorization is given so to commit them.

7. Prior notice shall also be given in accordance with the procedure agreed between the participants of any decision taken for exceptional reasons other than those specified in Clause 6, to support terms more favourable in any way than those of the Understanding. Support (including the provision of aid) will be

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refused for any order finally placed<sup>1</sup> on more favourable terms before all other participants in the Understanding have been given prior notice in accordance with the procedure agreed.

8. Any participant in the Understanding may, provided that it applies the procedures agreed between the participants, support more favourable terms of officially supported transactions or contravention of the above terms by other participants, or competition from non-participating countries.

II

9. Any participant in the Understanding may obtain information from any other participant on the terms of any official support for an export contract in order to ascertain whether the terms contravene this Understanding. Participants undertake to supply all possible information requested with all possible speed. According to the rules and practices of the OECD, any participant may ask the Secretary-General to act on its behalf in the aforementioned matter and to circulate the information obtained to all participants in the Understanding.

10. Each participant undertakes to notify the Secretary-General of its system for the provision of official support and of the means of implementation of the Understanding.

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<sup>1</sup> An order shall be deemed to have been finally placed as soon as the buyer has committed himself irrevocably under a written and signed agreement to buy from the exporter and to pay according to specified terms, even if the agreement is subject to reservations which can be withdrawn only by the exporter.

III

11. This Understanding becomes effective as soon as all members of Working Party No 6 have notified the Secretary-General of their adherence to it or as soon as participants having so notified the Secretary-General decide that they constitute a representative majority of members of Working Party No 6; any participant which disagrees as to what constitutes a representative majority would not be bound by the others' decision. The Understanding is open to other member countries of the OECD.

12. This Understanding shall be subject to review as often as requested by participants, and in any case at intervals not exceeding one year. Any participant may withdraw from this Understanding upon giving to its partners three calendar months' notice of its intention to do so. Within this period, at the request of any of these partners, there shall be a meeting of Working Party No 6 to review this Understanding, and any other participant, on notification to its partners, may withdraw from this Understanding at the same effective date as the participant which first gave notice.

Procedure to be applied where Clauses 7 and 8 are invoked by a participant in the Understanding on export credits for ships

7. If a participant intends to take the initiative to support terms not in conformity with this Understanding, the participant will notify all other participants of the terms it intends to support at least ten calendar days before issuing any commitment. If any other participant requests a discussion during this period, the initiating participant will delay an additional ten calendar days before issuing any commitment on such terms. Normally this discussion shall be by telex. In extreme cases face-to-face discussion may be requested and would be arranged, preferably in the country intending to derogate. If the initiating participant moderates or withdraws its intention to support non-conforming terms, it must inform the other participants accordingly.

8. (i) If a participant intends to support terms not in conformity with the Understanding, matching (identical or by other support) by another participant will have to comply with the following procedure.

On and after the expiry of the first ten-day period referred to in 7. above; if no discussion is requested (or on and after the expiry of the second ten-day period if discussion is requested) and unless the matching participant has received notice from the initiating participant that the latter has withdrawn its intention to support non-conforming terms, any participant shall have the right to support :

- with respect to identical matching, terms which include the identical non-conforming element but which otherwise conform to the Understanding provided that the matching participant notifies, as early as possible, its intention to do so; or
  - with respect to other support prompted by the initial derogation, any other non-conforming element of the terms, provided that the responding participant introduces a fresh derogation, initiating a
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five calendar day prior notification and five calendar day discussion procedure, and awaits its completion. This period can run concurrently with that of the prior notification and discussion procedure initiated by the derogating participant, but cannot elapse before the end of the ten or twenty days period referred to under Clause 7. above.

(ii) The participant which intends to meet non-conforming terms offered by a non-participant will follow the prior notification and discussion procedure determined by 7. and 8 (i) above. Before considering meeting non-conforming terms, the participant should normally make every effort to verify that the non-conforming terms are receiving official support. The participant shall inform all other participants of the nature and outcome of these efforts.

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Draft statement to be entered in the minutes  
of the Council of the Communities when the  
OECD Understanding on export credits for ships is adopted  
(revised following the inclusion of provisions relating  
to the procedures in clauses 7. and 8.)

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- I. With reference to the second paragraph of Article 1 and the procedure referred to in clauses 7. and 8. of the Understanding, the Council hereby agrees to the application of the procedure set out in Document No ...../80 (CCG .....)
- II. With reference to Article 2, the Council requests the Commission to specify in the notification required pursuant to clause 11. of the Understanding that the procedure agreed between the participants to the Understanding, referred to in clauses 7. and 8., is an integral part of that Understanding.
- III. As regards Article 4 of the Council Decision :
- A. The Council notes that, without prejudice to the application of clause 11 of the Understanding, the circumstances of application and observance of the Understanding by the other participants to it should be examined at regular intervals in order to safeguard the Community's interests.
- B. The Council agrees that, without prejudice to the possible application of Article 4 of this Decision, the decisions to be taken by the Council following the above-mentioned examination, on a proposal from the Commission, will continue to be taken half-yearly. Where the need arises, the last paragraph of Article 4 of this Decision will apply.

In the event of withdrawal, the last paragraph of Article 4 of this Council Decision will apply.



C. If no decision is taken after any of the six-month periods referred to in B., the Council will agree :

- to take a decision to extend the provisions for one month;
- that, if at the end of a further two-month period the situation still remains unchanged, the Commission will, pursuant to Article 4 of the Decision, give notice that the Community is withdrawing from the Understanding.

In the course of the examination referred to in Article 4, account should be taken not only of problems relating to export credits but also of matters coming under the industrial, competition and shipping policies.

IV. As regards tied aid credits, the Council notes that the text of the Understanding on export credits for ships resulting from the negotiations also comprises provisions on tied aid credits. It recalls that these credits are in part subject to the provisions of Council Decision 73/391/EEC.

The Council states that although the present Decision concerns the Understanding as a whole, the fact that this text includes, as a result and inter alia, provisions on tied aid credits shall be without prejudice to any problems connected with such credits and, in particular, to the legal basis to be adopted with a view to solving them later.

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V. As regards the application of clauses 7. and 8. of the OECD Understanding on export credits for ships, the Council agrees that :

- (i) the present Decision affects neither Council Decision 73/391/EEC of 3 December 1973 on consultation and information procedures in matters of credit insurance, credit guarantees and financial credits<sup>1</sup>, as amended by Decision 76/641/EEC<sup>2</sup>, nor Council Directive 78/338/EEC of 4 April 1978 on aid to shipbuilding<sup>3</sup>;
- (ii) where a Member State intends to depart from the Understanding, it must immediately notify the other Member States and the Commission, in order to initiate the periods fixed in the Annex to the Understanding, inform the other credit-supplying countries which are parties to the Understanding;
- (iii) the format and content of the aforementioned notification (see (ii)) must be such as to enable consultation to be initiated simultaneously in the case of transactions falling within the scope of Decision 73/391/EEC;

At the request of the Member State intending to derogate, such notification may also give rise to an exchange of views within the Policy Coordination Group for Credit Insurance, Credit Guarantees and Financial Credits where the transaction does not fall within the scope of Decision 73/391/EEC;

- (iv) the Member State concerned shall immediately notify the other Member States and the Commission of its final decision to derogate. The Commission shall forthwith notify the other credit-supplying countries who are participants to the Understanding;

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<sup>1</sup> OJ No L 346, 17.12.1973, p. 1  
<sup>2</sup> OJ No L 233, 16.03.1976, p. 25  
<sup>3</sup> OJ No L 98, 11.04.1978, p. 19

(v) as regards the procedure applicable in cases of intentions to derogate notified by a Member State and of intentions notified by other credit-supplying countries parties to the Understanding, the Council agrees to supply, in this case, the procedural arrangements contained in I/99/77 (CCG), sections I and II, relating to the procedures for applying the Understanding on guidelines for officially supported export credits.

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