

COMMISSION OF THE EUROPEAN COMMUNITIES

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Brussels, 17 February 1976

PROPOSAL FOR A COUNCIL REGULATION (EEC)

setting up a European Export Bank

(submitted to the Council by the Commission)

A EUROPEAN EXPORT BANK - THE NEXT STEP

1. In July last year, the Commission sent to the Council a communication examining the opportunity of creating a European Export Bank (EEB) and the objectives and methods which such a Bank might adopt (COM (75) 500). In doing so, it stated that it intended to consult export credit insurers, banking and industrial circles in the Community. This has now been done. In the light of these consultations, the Commission now sends to the Council a proposal for the creation of an EEB.

The general analysis

2. In its communication last July, the Commission drew attention to the probable increase in the volume and number of large multinational projects, and to the increasing competition there would be for such projects. It pointed to the wide divergences between the practices of the national export credit organizations of the Member States, and thus to the desirability - without adding in any way to international competition on the terms of export credits - to improve the coherence of the export credit facilities available to Community exporters in this field of multinational projects. It pointed to the limitations inherent in any effort at present to find a solution by recourse to existing national systems, and therefore concluded that it seemed desirable to create an EEB which, as its main task, would be able to offer both to the Community exporters and to foreign buyers of capital goods and services produced within the Community, credit and insurance on terms comparable to those available to the exporters of other major trading countries.

The consultations

3. During the second half of 1975, the Commission took steps to consult export credit insurers and industrial and banking

circles in the Community. This was done both directly, in a series of ad hoc meetings, and through the appropriate representative bodies - the Banking Federation, the Permanent Conference of Chambers of Commerce and Industry and UNICE - from whom written opinions were received (copies attached). The Commission also received a preliminary comment from the European Investment Bank (EIB). The Commission is very grateful to the organizations and individuals consulted for the helpful advice they gave.

4. The consultations of industrial and banking circles unanimously confirmed that the existing difference of national practice already pose real problems to Community exporters and those concerned with the financing of exports. The consultations also confirmed the prospect of growth in the number and volume of multinational contracts in the future, although it was not possible to give any meaningful indication of the size of this growth. It was thus common ground that the present situation is an inadequate base for the future growth of Community exports of this kind.

5. As to the means of correcting this situation, however, there was less unanimity:

- UNICE concludes in favour of the creation of a European banking organization with a broad measure of financial autonomy which would concentrate on lending, financing exchange transactions and trade-linked investments. As concerns insurance they would see the organization as serving initially as a coordinating and liaison body between the various national insurance organizations but which might in the longer term take over the role of reinsurance body for harmonized national systems. The organization would concentrate particularly on all multinational contracts or contracts of benefit to the Community involving anything in the region of or exceeding one million u.a.
- The permanent Conference wonders whether national systems could not be extended, notes the problems for an EEB of supplying single currency financing and the limits on its action if - as it must - it is to leave scope for financing by banks, and concludes that, in the absence of a more detailed explanation from the Commission, it would be difficult to

resolve present problems by way of an EEB but rather that greater efforts should be made to harmonize national practices.

- The banking Federation questions whether multicurrency financing is the most important difficulty and stresses the problems of loss of time resulting from the need for separate discussions between each bank and its national export credit organization, and therefore underlines the need for "closer cooperation by all the bodies concerned". It continues that, while some members feel an EEB would be useful others doubt whether an EEB will be created with means sufficient to improve on the present situation. It therefore concludes that the first step should be co-operation, which could pave the way for the later creation of an EEB.
- Banking circles, in individual consultations, stressed in addition the need for an EEB to work with the banks, suggested that while the volume of business which could come to the Bank was extremely uncertain it could be large, and doubted whether single currency financing was very important.
- Industrial circles, in individual consultations, were inclined to seek to extend the role of an EEB (beyond multinational contracts which were only a relatively small part of total exports), or to press for harmonisation as a more far-reaching alternative.

6. In addition to these consultations, there has also been a preliminary discussion of the Commission paper in the Policy Coordination Group for Credit Insurance, Credit Guarantees and Financial Credits of the Council. In this discussion, most speakers felt that the present situation was inadequate, of whom some accepted that an EEB could be useful and others wished further study of the idea. The others felt that the present situation was not inadequate and that an EEB would not be useful. In this connection, particular stress was laid on the consequences of introducing specific export

.../credit

credit terms at Community level when the economic conditions of the Member States were so divergent, because this might lead to the softening of terms provided for exports by some Member States. In addition, it would be difficult to restrict the new terms to the limited area envisaged for an EEB because pressure would develop for comparable terms to be granted nationally in other areas.

7. The EIB, in its preliminary comments, referred to the uncertainties as the size of business which might be undertaken by an EEB and drew attention to the possibility that the EIB itself might contribute, under Article 18(1) of the EIB's Statute, to financing packages arranged by national credit institutions and banks in the form of buyers' credits, either granted directly to an enterprise outside the Community or channelled through a Community participant.

Consideration of the results of these consultations

8. The Commission has given careful thought to the points made in these consultations. It notes the widespread view that the present situation is an inadequate base for the expected future growth of multinational exports, and that improvements are essential. Two forms of improvement emerge from the consultations - the idea of an EEB, welcomed by some, and the possibility of increased national cooperation based on extensive harmonisation preferred by others at least as a starting point.

9. The Commission sympathises with the view that the long term answer for export credits of all types of business must lie in the harmonisation of national practices. It has for many years pursued this objective, but can only note that despite its repeated efforts, little progress has been made. The Commission intends to press ahead with its efforts to secure general harmonisation. It has been fortified in this approach by the recent Opinion of the Court of Justice which stressed the need for rigorous uniformity in export credit practices within the Community as part of the common commercial policy. But its experience to date, and the wide divergences in national practices on many technical points of importance, enshrined in national legislation, rules out any

early improvement by this route. The Commission does not therefore wish improvements which are urgently needed for multinational contracts to be dependent on harmonisation which can only be achieved progressively. It therefore considers that the idea of an EEB remains valid.

10. On more detailed points the Commission accepts the comments which have been made that lack of single currency financing is not at present a major obstacle. It therefore does not think that an EEB should be required to provide finance in a single currency. It notes however that some consulted believe that single currency financing may become important in the future and considers that an EEB should judge in the light of its own experience the extent of this need and do its best to respond accordingly, including recourse as appropriate to the use of the European unit of account. It also accepts, indeed it was its intention from the outset, that an EEB should work closely with banks involved in export finance who would continue to have a major role to play, a role which would reduce the amount of financing that an EEB would be called on to provide. It is doubtful about the prospects of progress through greater cooperation between existing national bodies in view of the present inadequacies in this area. It is also doubtful whether it would be sensible for an EEB to take on a wide range of export credit business from the outset although this would not rule out the possibility of later development.

11. The Commission has given particular attention to the problem of possible softening of export credit terms suggested as implicit in the idea of an EEB at the present time. This objection is of a very general character and could be raised not only to an EEB but to any harmonisation (as opposed to adoption of minimum levels) of export credit terms within the Community. The Commission finds it hard to accept this argument as a valid objection to harmonisation of Community practice, particularly in the light of the Court Opinion referred to above. It must repeat its often stated support for an end to competition in export credit terms. In pursuing the idea of an EEB, it is concerned to improve the facilities available to exporters wherever they may be in the Community, not to soften the terms which are given. In the context of an EEB and more generally, it considers that the

Community should in no sense be leaders in the provision of terms below market rates. It therefore considers that the principle should be adopted whereby an EEB would supply credit at market rates; in line with universal practice in the export credit field, Community terms should be capable, however, of being aligned downwards (within the limits of our international obligations) to match conditions likely to be granted to exporters in third countries.

12. It should be recalled that the extent of international competition in the terms of export credits is at the moment the subject of international negotiations, with the object of reaching a "Gentleman's Agreement" which will set minima to the degree of concessional terms provided for export credits. If these negotiations can be brought to a successful conclusion, as the Commission very much hopes*, the scope for financing below normal market rates will be limited, and so the maximum possible degree of concessional financing will be known and restricted. In these circumstances, the Commission considers that the principle referred to in the previous paragraph is an adequate reply to the problem of softening of export credit terms as an objection to the idea of an EEB.

13. The Commission has also taken careful note of the possibility for the EIB to undertake financing of buyer credits in certain circumstances. It has concluded that a separate organization is nevertheless needed to undertake export finance. This is because this activity is of different nature from that of the EIB's present tasks and because the management of a Community export credit system is one of the means of the common commercial policy and must therefore be closely linked with Community procedures in this area. There will however be possibilities of cooperation between the EIB and the EEB which should be kept in mind.

.../The Commission's

* The Commission has recently sent to the Council a recommendation for negotiating directives for these discussions.

The Commission's proposal

14. In the light of these considerations, the Commission remains of the view that an EEB as conceived in its communication of July 1975 is the best way to deal with a growing area of business of particular importance and for which existing national systems by common accord do not provide adequately. It therefore submits to the Council a draft regulation (attached) for the establishment of an EEB. The details of this proposal are commented on below.

15. The EEB will be created by a Council regulation. It is envisaged that it should be a new and separate organization, managed by a management committee and responsible to a board of directors which would take decisions on all borrowing and lending operations (within the financial ceiling determined for the EEB). This board would be composed of suitably qualified people nominated by the Member States, and by the Commission.

16. Because of the need to link an organization dealing with export credits closely to the Community institutions dealing with the common commercial policy generally, it is envisaged that the Commission would be able to issue directives to the EEB which would be binding on it, and which would reflect the principles in the proposed regulation and the considerations based on the Community's general common commercial policy. These directives would be notified to the Council which could annul or amend them by qualified majority. The Commission would also have a right of veto in the board of directors, which would be able to bring a matter on which there was dispute before the Council; the Council would then have to decide within a short, fixed period.

17. The EEB would deal both with industry and with banking and other organizations in the export credit field; it would work very closely with the banks which would continue to be responsible for at least a part of the finance of each project.

18. The EEB would provide a full range of export credit insurance. To the extent that the EEB was in addition called upon to provide finance, it would do so from borrowed funds. It would raise its funds on the basis of a Community guarantee of its borrowings. This guarantee would be fixed annually in the Community Budget. The Community Budget will also be called upon to provide the initial costs of setting up the EEB,
.../ and to

and to stand ready to finance to the extent necessary any operational deficit which could arise, this also being the ultimate support for insurance provided (though the EEB would normally wish to seek to reinsure the risks it assumes). However, the EEB would be endowed with a small capital - of 100 MUC - from the Community Budget. This mixed capital structure is designed for maximum flexibility in a situation when it is difficult to tell in advance the scale of business to be undertaken, while it provides the same degree of control to the Council and the European Parliament of the scale of the EEB's commitments. However, once the EEB is established and has gained experience this capital structure should be reviewed to see whether a new capital structure would be a better base for its future activity.

19. As to terms of finance, this would be governed by the principle already mentioned (para 11). The normal securities would be required as protection for finance provided.

How the EEB might work

20. The details above describe the essential elements to be incorporated in the Council regulation. The specific way in which the EEB would carry out its functions, within the framework of the principles and institutional structure laid down, would be a matter for later decision, in which the management committee and the board of directors of the EEB would play a part. The following paragraphs however are intended to show how the EEB might operate on the basis of the attached draft regulation.

21. The EEB should establish an independent operational standing, and be open to approach both by firms engaged in multinational projects of Community interest and by the commercial bankers who are acting for such firms. In each case, the EEB will wish to appraise the project in conjunction with the banks involved, who will be required to find a part of the financing in each case. The EEB will also wish to take account of the normal considerations of risk and exposure in its own operations.

22. The EEB's assistance, in the light of this appraisal of the project, may on one hand take the form of credit insurance within certain limits laid down in a directive from the Commission. This would be in the form of a direct insurance of payment given to the banks which are advancing finance. The insurance could cover the commercial and political risks involved, including those of transfer. To avoid a situation in which the EEB accumulated .../all such

all such risks, it would seek to reinsure itself in part or whole with public and private sector insurers. A premium would be charged for the EEB's insurance, which would take account of the actuarial risk.

23. On the other hand the EEB may provide a part of the export finance up to whatever limit may be adopted by the council of administration. This would be in the form of either buyer or supplier credits. It would be provided in cases where a complementary action by the EEB seemed appropriate. It would be supplied on terms in accordance with the principle proposed in paragraph 9, from funds borrowed by the EEB on the basis of the Community's guarantee of its operations. The finance supplied by the EEB would in principle be in the currencies of its borrowings; but as far as possible the EEB would seek to arrange its borrowing programme so as to be able to supply currencies sought. It would not, at least initially, undertake exchange risks, though it would seek to develop practices which would best meet the evolving problems found in this area by Community exporters.

24. The EEB would need to establish close cooperation with the national export credit organizations. It would also need to keep in touch with Community organizations concerned with aid expenditure, not because the EEB should provide aid funds, but because many projects requiring export credit finance are linked to projects financed separately on aid terms.

Conclusion

25. The Commission hereby submits its proposal for an EEB to the Council. It does so with openness of spirit to any constructive modifications which may be suggested which may help to improve present arrangements to the benefit of Community exporters.

Proposal for a Council Regulation (EEC)
setting up a European Export Bank

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Articles 113 and 235 thereof;

Having regard to the proposal from the Commission;

Having regard to the Opinion of the European Parliament;

Having regard to the Opinion of the Economic and Social Committee;

Whereas the common commercial policy entails Community action in respect of export credit,

Whereas the export policy instruments available in the Member States do not always enable multinational export contracts to be financed and insured on the best terms;

Whereas a Community instrument should therefore be created to facilitate, through financing and credit insurance, exports of capital goods and of services to third countries where such exports involve two or more undertakings located in different Member States;

Whereas the most appropriate instrument for this purpose is a European Export Bank with legal personality set up within the framework of the European Communities, and whereas the necessary provision must be made for that Bank to act in accordance with the guidelines given it by the Institutions in the field of the common commercial policy;

Whereas the Treaty does not provide the requisite powers therefore;

HAS ADOPTED THIS REGULATION:

Article 1

A European Export Bank, hereinafter called "the Bank", is hereby set up.

The Bank shall have legal personality. It shall enjoy in each of the Member States the most extensive legal capacity accorded to legal persons.

The Bank shall operate solely in the general interest of the Community. It shall be non-profit-making. It shall operate in accordance with principles of sound business management.

Article 2

The purpose of the Bank shall be to facilitate the export of goods and services by undertakings located in two or more Member States to third countries, where such exports constitute operations of common European interest.

The Bank may give its assistance by way of finance or by way of credit insurance, where appropriate in cooperation with credit insurance institutions in the Member States.

The provision of finance by the Bank shall be conditional on the availability of other financing facilities.

The Bank shall operate within the framework of the general guidelines of the commercial policy and the economic and financial policy adopted under the Treaty by the Council, and in accordance with such directives as the Commission may give it.

When the Commission adopts such directives, it shall forthwith inform the Council, which may, by a qualified majority, amend or rescind them within two months.

For the purpose of its operations the Bank shall have authority inter alia:

- (i) to conduct or take part in negotiations on behalf or in the interest of undertakings in connection with the export of capital goods and related services for multinational projects;
- (ii) to provide supplier and buyer credit;
- (iii) to conclude contracts in any negotiable currency or in units of account;
- (iv) to issue guarantees and engage in insurance, reinsurance and coinsurance transactions in respect of political, commercial and transfer risks;
- (v) to provide credit on the terms of the market or, within the limits set by international agreements and arrangements binding upon the Community, on the terms comparable with such terms as may be granted to exporters established in third countries;
- (vi) to grant loans and refinancing facilities to banks or other financial institutions in connection with multinational export contracts to be financed by them.

Article 4

The initial capital of the Bank shall be one hundred million units of account, placed at its disposal by the Community and entered in the Community budget.

Article 5

The Bank may borrow on international financial markets the funds needed to discharge its duties.

The Bank may borrow on the financial markets of a Member State in accordance with the legal provisions applying to domestic issues, or, should there be no such provisions in a Member State, when that State and the Bank have reached agreement on the loan to be raised by the Bank.

The competent authorities in the Member State may refuse their assent only if serious disruption of the financial markets of that State is to be feared.

Article 6

The Bank's borrowings shall be guaranteed by the Community up to a maximum amount fixed annually by the Budget in a special subdivision.

Article 7

The Bank shall be able to dispose of the proceeds of premiums, interest payments and administrative charges received, of sums recovered by it, of the proceeds of the placing of any available funds not immediately required to meet its obligations and of all other funds and revenues received in connection with its operations.

Article 8

The Bank shall be directed by a board of directors and managed by a management committee.

Article 9

The board of directors shall consist of ten regular members and ten alternates, who shall be persons whose competence in the field of the Bank's work is beyond doubt.

Each Member State and the Commission shall appoint one regular member and one alternate.

The term of the members of the board of directors shall be five years, renewable. At the expiry of their term or in the event of their resignation, members shall remain in office until reappointed or replaced.

The board of directors shall appoint one of its members to be chairman and two to be vice-chairmen for a term of one year.

The decisions of the board of directors shall be by absolute majority of its members.

The Commission representative may veto decisions in the interest of the Community. In such cases the board of directors may by an absolute majority of its members refer the issue to the Council, which shall decide by qualified majority. If the Council has not acted within a fortnight, the veto shall stand.

Article 10

The board of directors, ensuring that the Commission's directives are complied with:

- shall, on proposals from the management committee, decide upon the Bank's borrowings and finance or credit insurance operations;
- shall adopt the rules of procedure of the Bank;
- shall approve the annual report submitted by the management committee;
- shall approve the annual balance sheet and profit and loss account.

Article 11

The management committee shall consist of a chairman and four other members whose independence and competence is beyond doubt. They shall be appointed by the board of directors for a term of six years, renewable. Their appointment may be terminated. The management committee shall prepare the decisions to be taken by the board of directors and shall ensure their proper execution.

Article 12

The staff of the Bank shall be responsible to the chairman of the management committee for the proper performance of their duties.

The Bank's staff regulations shall be adopted by the Council, by a qualified majority, upon a proposal from the Commission.

Article 13

By 31 March at the latest the board of directors shall adopt, on the basis of a draft prepared by the management committee, the annual general report on the activities and financial situation of the Bank, and shall forward it to the Commission.

Article 14

1. The Bank's financial year shall commence on 1 January and end on 31 December.
2. The board of directors shall draw up estimates of the Bank's administrative expenditure which shall be submitted to the Commission by 31 March at the latest. Where necessary, such expenditure shall be met from the Budget of the Communities.
3. The Bank shall each year draw up a balance sheet for the past financial year, to which shall be annexed an operating account. These documents, certified by an approved auditor, shall be submitted by 1 March at the latest to the audit board referred to in the first paragraph of Article 206 of the Treaty. The audit board shall draw up a report on the Bank's accounts as provided in the second paragraph of Article 206 of the Treaty.

The balance sheet and the audit board's report, together with the Commission's comments, shall be submitted by the Commission to the Council and the European Parliament by 31 October at the latest. The Council and the European Parliament shall give a discharge to the board of directors of the Bank as provided in the fourth paragraph of Article 206 of the Treaty.
4. Any debit balance on the Bank's operating account shall be met from the Budget of the Communities.

Article 15

The members of the board of directors and the management committee, the staff and all persons taking part in the operations of the Bank shall retrain, even after relinquishing their duties, from disclosing information of the kind covered by the obligation of professional secrecy.

Article 16

The language arrangements of the European Communities shall apply to the Bank.

Article 17

The Protocol on the Privileges and Immunities of the European Communities shall apply to the Bank, to the members of its governing bodies and to its staff.

Article 18

The contractual liability of the Bank shall be governed by the law applicable to the contract in question.

The Court of Justice of the European Communities shall have jurisdiction to give judgment by virtue of any arbitration clause contained in a contract concluded by the Bank.

In the case of non-contractual liability, the Bank shall, in accordance with the general principles common to the laws of the Member States, make good any damage caused by it or by its servants in the performance of their duties.

The Court of Justice shall have jurisdiction in disputes relating to compensation for any such damage.

The personal liability of the Bank's servants to the Bank shall be provided for in the Bank's staff regulations.

Article 19

Member States, members of the board of directors and third parties directly and personally involved may refer to the Commission any act of the Bank whether express or implied, for the Commission to examine the legality of that act.

Referral shall be made to the Commission within a fortnight of the day on which the party concerned first became aware of the act in question.

The Commission shall take a decision within one month. If no decision has been taken within this period the case shall be deemed to have been dismissed.

Article 20

The Commission shall have authority to take all necessary steps to ensure the establishment and proper working of the Bank and its governing bodies.

The Bank's starting-up expenses shall be met from the budget of the Communities.

Article 21

This Regulation shall enter into force on the third 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

The President

STANDING CONFERENCE OF CHAMBERS OF COMMERCE AND INDUSTRY
OF THE EUROPEAN ECONOMIC COMMUNITY

Secretariat

36 avenue de Tervueren
1040 Brussels

19 December 1975

Annex I

Sir,

I refer to your letter of 29 July 1975 to Sir Robin Brook, President of the Standing Conference of Chambers of Commerce and Industry of the European Economic Community, requesting the Standing Conference's opinion on the Commission communication to the Council on the establishment of a European Export Bank.

The Standing Conference's opinion is duly enclosed.

I would add that, notwithstanding the reservations expressed in it, the opinion should be regarded as a constructive contribution to the scheme for a European Export Bank, not an adverse verdict.

Pray accept, Sir, the expression of my high consideration.

Encl 1

(Signed) Buchholz
Secretary-General

Sir Christopher Soames
Vice-President of the Commission
of the European Communities
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STANDING CONFERENCE OF CHAMBERS OF COMMERCE AND INDUSTRY
OF THE EUROPEAN ECONOMIC COMMUNITY

Brussels, 15 December 1975

OPINION

on

COMMISSION COMMUNICATION TO COUNCIL ON
ESTABLISHMENT OF A EUROPEAN EXPORT BANK

1. In the future the economically advanced industrialized countries will be obliged to concentrate their exports more than in the past on high-technology products, which will necessitate increasingly complex operations. For this reason, and also to control the trend towards new high-technology operations, international cooperation in the export field is essential. Such cooperation is also a component in European economic integration.

2. Long-term export financing has always been troublesome. Also, the differences in export financing and export credit insurance arrangements between the European Community countries and between them and non-Community countries have a great deal to do with the differences in international competitive capacity between enterprises. So far all efforts at harmonization in this connection have proved abortive.

3. It must be acknowledged in principle to be praiseworthy to wish to make improvements in export financing and export credit insurance (notably by enabling contracts covering exchange risks to be made out in a single currency) in respect of a major sector of Community exports. But it does seem open to question whether a European Export Bank needs to be set up in order to do so, and whether it is feasible to follow this course on the lines indicated by the Commission.

- (a) The communication to the Council on the establishment of a European Export Bank touches only here and there on the question of broadening national rules on joint financing and co-insurance of subcontracting operations or partial deliveries from other EEC countries. Now this is something that needs to be fully clarified right away before setting out to establish a new institution. So too does the question whether the European Investment Bank could not do the work of the projected European Export Bank, if it was found absolutely necessary to have an institution for the purpose. The problem of mobilizing substantial capital would not in itself warrant the establishment of a special institution: the financing arsenal proposed for the European Export Bank is already available to all the agencies, private and otherwise, hitherto dealing with export finance. To tackle difficulties in connection with the use of this arsenal, the first thing to do would be to alter the rules in force. (This applies principally to financing via the international capital market.) In addition, the Commission does really take a rather unduly gloomy view of the Euro-currency market.

- (b) Our information to date indicates that the instances referred to in the communication of business having been lost to the Community owing to export financing difficulties are the exception. In export operations by consortia it is very seldom that financing difficulties are so serious as to cause the whole transaction to come to grief. At the present time large-scale projects are usually divided into tranches which are financed and insured separately.
- (c) Besides long-term financing, a crucial point in the Commission's proposal for a European Export Bank is conclusion of transactions by consortia in a single currency. Now for it to be possible to conclude the transaction in one currency and for the exchange risks involved in such an operation to be eliminated as far as possible, the currency selected for the operation must tally with that employed for the financing of the European Export Bank. And this would in fact not really be feasible in practice, since financing by borrowings needs to be planned on a long-term basis and effected at a time when it is not yet known in what currencies the transactions will be concluded. Actually, the currencies can only tally if the financing is built up in parallel with the different operations concluded, which would be impossible if the European Export Bank is financed on a long-term basis. The present safeguards in respect of exchange risk are stated to be "not sufficiently effective", but it is not said why, and no attention is devoted, nor even mention made, of the possibility of appropriate alterations to the arrangement for insurance against exchange risk by the State.

(d) The European Export Bank's financing policy cannot be viewed in dissociation from the short-term economic situation in the Community. It could be that the future will continue to see different cyclical trends and different financial and credit policies from one Community country to another, at any rate unless and until there is some sign of movement towards economic and monetary union. The business policy of a European Export Bank could not ignore these differences in economic policies. They would affect the Bank's margin of discretion in selecting export operations to finance, and its prospects of finding the "right" currencies in the capital market to ensure talliance. Both its debit and its credit operations would suffer severely from marked differences in interest rates and from controls on capital movements with split currency markets.

4. The proposal for a European Export Bank suggests that the Commission would like this to be an instrument doing duty for the unsuccessfully-attempted harmonization in respect of export credit insurance and basic data for export financing. While this is indeed regrettable, and it is most proper that efforts should be made to mend matters, nevertheless there is a real danger of taking action to deal with one export sub-sector which looks clearly needed there but which is misconceived from the point of view of future overall harmonization. The miscalculation would probably only become apparent when that overall harmonization took place, not when the European Export Bank was first set up.

5. As a matter of principle, the European Export Bank would act only in a subsidiary capacity, and if possible in cooperation with merchant banks and other national agencies engaging in export financing and insurance.

In other words it would assume only part of the financing and insurance of the export operation concerned. But all the points adduced in support of the need for a European Export Bank hold good also for that part of the operation which it would not be financing or insuring. So the problems the Commission mentions are not thereby disposed of, merely reduced to smaller proportions. This could only be solved by having the European Export Bank finance the whole, or at any rate the great bulk, of each export operation concerned, which would put paid to the principle of "subsidiarity".

6. The use of interest subsidies to boost enterprises' international competitive capacity also appears dubious. Not only would this amount to positively massive market intervention, but, still worse, the European Community would thereby be furnishing massive export aid which, given the rocky state of many third countries' trade balances and balances of payments, could trigger an export-aid race which in its turn would be only the preliminary to import restrictions no industrialized country could afford.

7. The Commission's proposal for a European Export Bank is couched only in general terms: no details whatever are given as to what the various components of the system would actually be. This being so, it is not apparent either what account would be taken in the planning of a European Export Bank of the agreement reached on harmonization of export credit insurance prior to the enlargement of the Community. Yet it would be well to take account of that agreement, particularly as there would be no direct difficulties with the different national systems of export credit insurance.

8. The Commission hints at extension of the scope of the European Export Bank beyond export financing and export credit insurance, but too vaguely for any opinion to be offered on this aspect at present.

9. All in all, the Commission's ideas in principle for better export financing and export credit insurance are fine, but the issues involved are such that it would be very difficult to deal with them satisfactorily by means of a European Export Bank, and the fact that the arrangement would offer only a partial solution is open to objection. However, definitive assessment must await the provision of details not yet to hand.

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ANNEX IIUNICE comments

10 November 1975

CREATION OF A EUROPEAN EXPORT BANK (EEB)Preliminary remarks

Since the 1973 oil crisis major structural changes are becoming necessary not only in the industrialized economies of the West but also in those developing countries which are poor in natural resources and foodstuffs and have had to reduce their imports.

The industrial capacity of the oil-producing countries has continued to rise as they follow the West's example and use their resources to transform their social structures and traditional way of life.

The Community therefore faces the problem in the near future of concluding major contracts involving international cooperation, which means that it must act as a single economic entity able to offer potential buyers straightforward, uniform terms, procedures and types of contract.

UNICE has therefore examined with great interest the Commission's proposal to set up a European Export Bank (EEB).

European industry feels that at the present stage in discussion of this Community plan, it should first review the problems involved in an international "deal" in the absence of an appropriate multinational body, and then comment on the role the Bank should play and/or the advantages which it might bring industry in the Community.

A. Main problems arising in the absence of an EEB

I. Contractual problems

1. Prices

When the buyer refuses to agree to the price being split up into its various component parts for each supplier, the problem arises of how to express the price in a single currency.

(a) The currency is chosen by the customer: it may be the currency of one of the suppliers or a "third" currency, which generally means that the parties negotiate among themselves on how to convert the various prices into the single currency of the contract. Here, there is an exchange risk if the currency of the contract is neither the currency of the supplier nor of his sub-contractors but is that of payment.

When a payment is to be made in one or more currencies which are not the currency of the contract, exchange risks would arise at the actual time of cashing of the relevant sum.

(b) When the customer insists on the supplier choosing a single currency, the same problems arise.

2. Invoicing and credit documents

If the buyer insists on having a single opposite party with which to negotiate, there must also be a single invoice and possibly even a single series of credit documents. This means that the person responsible for invoicing must also assume responsibility vis-à-vis the buyer for all the contractual commitments and must, in addition, pay any taxes generated because of the re-invoicing.

The problem thus arises of how to share out the payment and before this can be solved an answer must be found to the question of how to allocate shares in the same type of loan, when each supplier wishes to hold his own documents of title in respect of the credit.

With regard to payments made to a single country whereas in fact several countries are creditors, a consolidation agreement may have been concluded to which only some of the countries concerned have subscribed or which has been established on differing bases from country to country.

3. Bank guarantees

The problems of devising a way of allocating commitments and the exchange risk arise again in connection with the guarantee to be provided for the buyer expressed in a single currency (fidelity bond, performance bond).

4. Administrative obstacles

Member States at present impose lower limits on the permissible percentage of foreign finished products for incorporation than those laid down under Community rules, thus reducing the possibility of participation agreements.

II. Credit insurance

In specific cases of multinational projects, the agreements concluded among Community insurers for the automatic inclusion of "external" products or the provision of joint cover have not yielded the results hoped for.

Since the national systems have not yet been harmonized, it is impossible to achieve the necessary standardization of conditions which would put the suppliers on an equal footing with the buyer.

This is particularly true when only one supplier represents all the others in dealings with the buyer and where there is therefore a particular need for a single insurer. This applies to covering credit risks and is even more relevant in the case of other types of cover.

Where insurance is an essential prerequisite for obtaining finance, it is possible that the insurance guarantee of one country may not be recognized as valid for the purpose of obtaining finance in another.

III. Finance

All the difficulties listed above have a cumulative and maximum impact when it comes to financing the contract, particularly where one of the suppliers is not the leader of the operation and therefore does not hold the credit documents or the insurance policy in his own right.

In this field, even more than in the field of insurance, standardized and concerted rules in respect of interest rates, duration of loans and, in particular, implementing procedures and criteria are still a long way off.

Under these circumstances, even if one cannot, on the basis of experience so far, determine exactly the degree to which each of these problems has a negative effect in each Member State, it can be seen that the transactor has no choice but to assume a much greater burden of responsibility than he would in a normal commercial operation. This strengthens the case for setting up a European Export Bank in which most of these problems could be partly solved or solved completely.

B. The role of an EEB

An export bank could support and generate multinational European transactions in the following ways:

I. Monetary aspects

The Bank would be responsible, in the framework of a common monetary policy, for implementing agreements between the Community and non-member countries and would help, within the Community itself, to solve the problems relating to the currency of the contract and the resulting exchange risks for those involved.

Sharing the burden of the exchange risk (either by equalization operations between the debts incurred and the claims arising as a result of the imports, or by encouraging increasing use of the composite EUA as the currency of the contract) would not prevent the EEB at a later stage from going further than merely lessening the risk and assuming the risk itself by using the monetary or insurance and reinsurance instruments which the Bank itself would determine depending on the nature and scale of the transactions.

This means that the Community's coordinating facilities should already be available to the parties when the contract is being negotiated.

When the contract is subsequently drafted, the best solution would be to offer the buyer a loan (even an inter-bank loan) which could be used by all those involved to make cash payments when the various instalments of the loan are due. This would help to solve the main problems with regard to prices, invoicing, credit documents, administration and finance.

Once agreement has been reached on the object of the contract and the responsibilities of those involved, the Bank could then grant the buyer a loan which would incorporate directly the terms and arrangements for repayment.

As regards cases of lack of performance which might be relied upon by the debtor to account for his failure to comply with the repayment plan laid down by the EEB, on the grounds of the suppliers' failure to implement the contract properly, contractual guarantees (fidelity bonds, performance bonds) could be issued to the buyer by the Bank on behalf of the suppliers; the EEB would thus have complete and automatic freedom of action in civil law because of the guarantees provided to it by each supplier.

2. If the intervention machinery described above were adopted, the EEB's activities would have to be extended to include both loans and the risks involved.

If a premium had to be paid as a counterpart to the risk, it could be claimed directly from the buyer following the usual practice. If, for practical reasons, the premium was paid by the suppliers, it would have to be included in the price.

3. Financial resources

The banks involved in a financial transaction in conjunction with the EEB would pay a reserve not to the buyer but to the Bank, which would then add to this its own resources, and make available to the buyer, through the same banks, the funds to be used to pay the exporters.

If this solution were adopted, the contract would be implemented simultaneously by the buyer and the procedure for the exporters simplified. The same advantages would be obtained as regards the terms of finance (period of repayment, single rate, representative nature of the loan and guarantees involved).

The problem of providing the Bank with its capital and how this should be shared out is essentially a political question which must be solved even if a different system - less satisfactory from the point of view of European industry - from the one described here were adopted.

In any event the Bank's capital must enable it to pursue from the outset its role as a fund-raiser which, given the economic situation of the Member States, it would find difficult to accomplish on the international capital markets (increase in resources).

4. Economic relations

The autonomy which the EEB should be granted vis-à-vis Member States in matters of financial or economic policy should help to improve:

- the negotiation of agreements with non-member countries;
- the "moralization" of export credit policies (insurance, financing) introduced by Member States or their main competitors.

C. Conclusions

In view of the foregoing, European industry advocates the creation of a European banking organization with a broad measure of financial autonomy. The EEB should concentrate on lending, financing exchange transactions and

trade-linked investments.

As regards insurance, UNICE would like the Bank to serve initially as a coordinating and liaison body between the various national insurance organizations for projects involving firms from various Community countries and in the longer term to take over the role of reinsurance body for the harmonized national systems.

From the very outset, the EEB's activities should be based on standard policies and premiums and a uniform classification of countries.

The Bank should be involved right from the negotiating stage, preferably using a supranational European currency, in respect of all multinational contracts or contracts of benefit to the Community involving anything in the region of or exceeding one million ECUs.

Financing costs should match those of major competitors and be related to current interest rates, the type of product to be exported and the country of destination. Fixed rates could be offered representing the average of the cost of using own resources and capital invested on the international and national capital markets.

To make the system as flexible as possible, the new body (the EEB or a special branch of the EIB) should not normally be closed to the financial institutions and insurance companies of the Member States.

FEDERATION BANCAIRE
DE LA
COMMUNAUTE ECONOMIQUE EUROPEENNE

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Annex III

OPINION OF THE BANKING FEDERATION
ON THE POSSIBLE CREATION OF A EUROPEAN
EXPORT BANK

1. In very general terms, the Federation considers that the degree of development of the Community makes it difficult to envisage the substitution of a unified European system for the different existing national systems of guarantees for exports and even more so in the case of financing.

Specific though it may be, export credit is only one of many elements which together form the overall liquidity position of exporting businesses. However, these elements differ significantly from one country to another. It is as necessary to avoid the situation where the national export credit mechanisms can be used to distort competition as it is desirable to leave each of these, at the technical functional level, free to use the most appropriate forms of intervention, taking into account the methods of financing made available to businesses by the banking and financial systems as a whole.

Consequently, the Federation considers that, if any initiative is to be taken, it should only concern the completely particular case of the guarantees and the financing of major contracts for the export of capital goods in which businesses from several members states are participating.

2. With regard to these, it is certain that the necessity of dividing these contracts into national shares, guaranteed and financed by distinct national systems, is at present a considerable source of difficulties which should not be underestimated.

It can sometimes happen that none of the national systems is prepared to guarantee certain peripheral elements of a contract with the result that these remain exposed to risk of non-payment and are not eligible for the most favourable conditions of finance.

It can also be the case that all the national systems concerned will not accept identical conditions as to the duration and particularly the rate of interest on the credit.

Finally, it may happen that certain national contributions to a contract can only be billed in the currency of the country in question, which makes it impossible to offer the foreign purchaser a global contract expressed in a single currency.

It is, however, important to note that these difficulties, like those which result from exchange risks - for exports billed in a currency other than that of the exporter - are not peculiar to multinational contracts. Billing in several currencies is not always considered a disadvantage by the foreign purchaser; finally, in the case where certain national shares are subject to, for example, different terms of credit, the important point for the purchaser is that the average cost resulting from the different credit terms applied should be satisfactory.

Insofar as the multinational operations of the industries in the Community may be handicapped vis-à-vis external competition, this handicap may be partially attributed to the difficulties listed above but many experts consider that this is even more the result of the extreme complication involved in mounting the operations and the often excessive time involved in agreeing upon all the financial clauses of the contract.

These complications and the time factor are essentially due to the need for the industrial and banking negotiators of multinational operations to discuss, successively and separately, the guarantee and financing conditions of the contract with the national institutions whose natural tendency is to limit their contributions as far as possible to the strictly national participation. In the case of contracts which include supplies which are difficult to classify into national categories, the negotiation of financial clauses acceptable to these institutions, the suppliers and the purchasers require of the negotiators a series of contacts, discussions and coming and going which may take a considerable period of time. During this process, the foreign purchaser, not knowing what will be finally decided, may be tempted to accept an offer which, although perhaps less interesting, is nevertheless more immediate and more certain it is the excessive prolongation of this period when the contract is being mounted and the resulting uncertainty constitute the principal difficulty in multinational contracts.

Consequently, the Federation considers that one essential improvement to be made to the present state of affairs would be to simplify and accelerate negotiations by the strengthening of cooperation between those concerned.

3. Subject to the essential role which must be left to the banks, certain members of the Federation are of the opinion that a European Export Bank could, to a limited degree which remains to be defined, fulfil a useful rôle and - over and above its direct functions - contribute to convergence of certain aspects of the insurance and possibly also of the financing of export credit. The majority, however, consider that the Commission proposals go beyond the established needs. They have doubts as to whether a European Export Bank could be effectively provided with the means which would permit it to extend to businesses involved in multinational operations many more facilities than those presently available. They fear, finally, that the creation of an institution specialising in multinational operations might create distortion between operations at a European level and those at the national level which could be detrimental to the overall coherence of the Community's export aid policy.

These factors lead the Federation to believe that the suggestion made in the last paragraph of section 2 above would at the present stage of integration, amount to appreciable progress. It would be the task of the bodies concerned to define, in liaison with the Commission and the interested sectors, the most appropriate forms of cooperation to facilitate the arranging of multinational contracts capable of effectively facing up to competition from outside the Community. The initiative of this nature already taken by the credit-insurers shows the way which could be followed by all who are involved.

The Federation does not exclude the possibility of this pragmatic approach leading in time to the creation of a European body for guaranteeing and financing multinational exports. It is, for this reason that, at this stage, such an approach seems to the Federation to meet the views of both those who consider the creation of a European Export Bank totally premature and those who have no fundamental objection to the idea, but consider that its implementation requires further examination.