COMMISSION OF THE EUROPEAN COMMUNITIES

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Proposal for a
<u>COUNCIL DIRECTIVE</u>

on harmonization of the main provisions concerning export credit insurance for transactions with medium- and long-term cover

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(presented by the Commission)

EXPLANATORY MEMORANDUM

Credit insurance is an instrument extensively used by governments to promote exports. By providing cover for their exporters against the risk of default, whether on commercial or political grounds, they encourage them to do business in markets presenting an element of risk which enterprises are unwilling or unable to bear themselves. A great deal of money is involved: each year, Member States' credit insurance agencies cover some 25 billion SDRs' worth of new contracts with a credit period in excess of a year. Over the last fifteen years or so the cost to national budgets has been particularly high (totalling ECU 7 billion for the Community over the last three years) because of claims arising from political contingencies, including the debt crisis, the Gulf War, and the collapse of the former Soviet Union.

Each Member State has its own credit insurance system, with different guarantee arrangements, premiums and cover policies. The result is that Community exporters are not competing for business on a level playing-field.

Concerned about the effects of government interference in markets at the taxpayer's expense, OECD countries have bound themselves to disciplines restricting official support with regard to credit terms. The OECD has now started negotiations aimed at reducing the distortions of competition on premiums caused by the existence of different export credit systems.

In the Community itself it was apparent from the outset that the Member States' systems for granting aid for exports to third countries needed to be harmonized, and indeed this objective is explicitly set out in Articles 112 and 113 of the Treaty establishing the European Community.

The Council set up a Policy Coordination Group for Credit Insurance, Credit Guarantees and Financial Credits in 1960. Its brief was to frame proposals for harmonizing Member States' credit insurance arrangements.

The Coordination Group has mainly been involved with issues of consultation and cooperation between credit insurers, and has also been active in connection with the various OECD negotiations.

On the harmonization front a technical committee was given a mandate in the late 1960s to draft common credit insurance policies for all Community credit insurers, and such terms were indeed enacted in a Council Directive adopted on 29 October 1970, which, however, remained a dead letter. None of the initiatives mooted since then, including the establishment of a European credit insurance system and, more recently, the creation of a credit insurance pool for Eastern Europe, has borne fruit.

It is plain from the experience of the last thirty years that Member States are exceedingly reluctant to give an inch of their freedom of manoeuvre on officially supported export credits, partly on political grounds, since they regard export policy to some extent as a foreign policy tool, and partly for financial reasons, since the cost of claims to the public purse is considerable (one credit insurance body has paid out 20 billion SDRs in claims over the past eight years).

Notwithstanding this reluctance, the Coordination Group mandated a group of experts on 15 May 1991 to look at ways of harmonizing medium- and long-term export credit insurance. The Expert Group duly reported to the Council on 27 March 1992 and 11 June 1993.

The initial proposals for guidelines now being presented by the Commission represent an even-handed approach balancing the interests of exporters, the requirements of the Member States and the Community's international obligations.

As an example of this balanced approach, consider the following. Eleven of the Member States offer less than 100% cover, so obviously this should be the basis on which harmonization would take place. This is likely to be unpalatable to the twelfth Member State; nevertheless, its exporters will find their competitive position improved in that they will no longer be competing with firms from other Member States covered under systems charging purely nominal premiums. We realize that the point of some of the provisions will be more obvious to experts than to the layman; all, however, are logical and necessary components of the overall balance sought. It is hoped that exporters studying the proposals will find that the common denominator does not have to be the lowest denominator. Again, treasury ministers may well feel, after years of considerable losses , that harmonization is not going to staunch the flow, but neither should it make matters more difficult.

In addition to laying down certain ground rules, the draft Directive also envisages that further rules and decisions will be needed in three areas:

- as it stands the Directive applies to the bulk of medium- and long-term credit insurance activity, but cover terms for public works and construction contracts, bonds and leasing contracts also need to be harmonized. The groundwork needed in these areas will require the same cooperation from the Community's credit insurers that they provided in laying the foundations for this first Directive;

- a number of decisions need to be taken in connection with the implementation of the Directive. A common model for setting premiums needs to be accepted; experts from the credit insurance bodies have made progress in this direction, but the matter has not yet come up for discussion by the supervisory authorities;

- numerous day-to-day decisions have to be taken under pressure from competition from outside the Community or external political or economic developments and on transactions which for some reason or other require derogations.

The draft Directive provides for a conventional committee procedure, which should not be a bar to rapid decision-making, since the committee will be geared to the requirements of daily management tasks with an electronic mailing system (OLIS) enabling written procedures to run to very tight deadlines.

To sum up, this admittedly belated draft Directive is at any rate a first step towards fulfilment of the duty of harmonization laid on us by the Treaty. It reflects the interests of both credit insurers and traders, striking a balance between aspirations to a European approach and the need to keep an effective insurance system in being. It represents a foundation for the further work necessary in this field.

Proposal for a
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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European 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 medium- and long-term export credit insurance plays a crucial role in international trade and constitutes a major commercial policy instrument;

Whereas the differences between the official medium- and long-term export credit insurance systems currently operating in the Community with regard to the main constituents of cover, premiums and cover policy result in distortions of competition among Community undertakings;

Whereas, in order to lessen the existing distortions of competition, it is desirable that the different official export credit insurance systems be harmonized, as envisaged in Article 112 of the Treaty, on the basis of uniform principles and in such a way as to form an integral part of the common commercial policy;

Whereas such harmonization would foster cooperation among the credit insurers acting on behalf of the State or with State support, and thus enhance cooperation among Community undertakings;

Whereas such cooperation is a major and indeed crucial factor in the competitiveness of Community exports on non-Community markets;

Whereas medium- and long-term export credit insurance plays an important part in trade with developing countries and thus fosters their integration into the world economy, which is an objective of Community development policy;

Whereas the Commission White Paper on completing the internal market (adopted by the European Council in June 1985) stresses the importance of an environment conducive to cooperation among European firms;

Whereas, by a Decision[1] dated 27 September 1960, the Council set up a Policy Coordination Group for Credit Insurance, Credit Guarantees and Financial Credits;

Whereas on 15 May 1991 the said Policy Coordination Group mandated experts from each of the Member States who, as the Single Market 1992 Experts' Group, submitted two reports containing a set of proposals to the Council on 27 March 1992 and 11 June 1993;

Whereas the said harmonization requires that the premiums charged by credit insurers should correspond to the risk insured;

Whereas, pursuant to the third paragraph of Article 3b of the Treaty, harmonization is necessary to ensure that export policy is based on uniform principles and that competition between Community undertakings is not distorted;

Whereas this initial harmonization should be followed by subsequent steps for the elimination of any remaining forms of distortion of competition;

Whereas Council Directive 70/509/EEC[2], as last amended by the adjustment decision of 1 January 1973[3], and Council Directive 70/510/EEC[4], as amended by the adjustment decision of 1 January 1973, should be repealed,

HAS ADOPTED THIS DIRECTIVE:

Article 1

1. Member States shall ensure that export credit insurance bodies providing cover on behalf of or with the support of the State, hereinafter referred to as "Insurers", insure transactions covered by this Directive in accordance with the terms set out in Annexes A, B and C.

2. Member States shall ensure that Insurers who intend to derogate from the common principles set out in Annexes A, B and C shall follow the notification, consultation and derogation procedures laid down in Annex D.

Article 2

1. The common principles set out in Annex A (main constituents of cover) and Annex B (premiums) shall apply to the following export transactions where cover is given directly

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(1) OJ No 66, 27.10.1960, p. 1339/60.
(2) OJ No L 254, 23.11.1970, p. 1.
(3) OJ No L 2, 1.1.1973, p. 1.
(4) OJ No L 254, 23.11.1970, p. 26.

or indirectly with the support, in whatever form, of one or more Member States, but excluding exports of agricultural products:

(a) transactions financed by buyer credit, without reference to the type of export, involving a credit reimbursement period of twenty-four months or more;

(b) transactions on cash terms or financed by supplier credit involving a manufacturing period of twelve months or more, a credit period of twenty–four months or more, or a manufacturing period and a credit period of twenty-four months or more in total, provided the contracts are:

- supply contracts for the delivery of capital goods or quasi-capital goods (machinery or equipment intended to be used in an industrial process or for commercial use); such contracts may also include a service element (e.g. the supplier's responsibility for installation),

- turnkey contracts for the realization of complete plants, where the proportion of services and/or constructional works included does not exceed 25% of the total contract amount.

This Directive does not apply to other cover arrangements for commercial contracts (for example, public works, services or leasing contracts) or to cover for bonds.

2. The common principles set out in Annex C (cover policy) shall apply to the following export transactions where cover is given directly or indirectly with the support of one or more Member States:

(a) transactions financed by buyer credit, without reference to the type of export, involving a credit reimbursement period of twenty-four months or more;

(b) transactions on cash terms involving a manufacturing period of twelve months or more;

(c) transactions financed by supplier credit involving a manufacturing period of twelve months or more, a credit period of twenty-four months or more, or a manufacturing period and a credit period of twenty-four months or more in total.

Article 3

1. The common principles set out in Annexes A, B and C shall apply to the transactions defined in Article 2 for public or private buyers or borrowers.

For the purposes of these common principles, a public buyer (or borrower) is one which, in one form or another, represents the public authority itself (States, regional or local authorities having a subordinate status such as provinces or local government units, public undertakings) and which cannot, either judicially or administratively, be made insolvent.

2. Where it is necessary to interpret the definition set out in paragraph 1, the Member States shall take the following factors into account in establishing the status of the buyer (or borrower):

- a public buyer (or borrower) may be a sovereign State or central government entity or any other public entity which is subordinate to central government, such as regional, municipal or parastatal authorities;

- the acts of a public buyer (or borrower) may commit the central government or State and payment due under the commercial contract (or buyer credit agreement) will either be met from central budgetary funds or guaranteed by the State (e.g. acting through the ministry of finance or central bank);

- a public buyer (or borrower) may make repayments from sources which are not related to central government funds, e.g. through revenue raised by local taxation or by providing a public service.

In any case it shall be necessary to determine:

- the legal status of the buyer (or borrower);

- the real efficacy of any legal action against the buyer (borrower);

- the buyer's (borrower's) sources of finance or revenue;

- the degree of influence or control that can be exercised by central government.

Article 4

1. A management committee is hereby established composed of the representatives of the Member States and chaired by the representative of the Commission.

The representative of the Commission shall submit to the committee a draft of the measures to be taken to implement this Directive in the following fields in particular:

(a) formulation of a common model for assessing debtor country risk and classification of such countries in categories from 1 to 6, category 1 being the best risk and category 6 the poorest risk;

(b) forumlation of a common model for setting minimum and reference rates for premiums;

(c) drawing up of a list of national or international financial institutions whose involvement is deemed to improve the country risk;

(d) formulation of guidelines to be used by Insurers for assessment of buyer risk;

(e) formulation of guidelines to be used by Insurers for assessment of manufacturing risk.

2. The committee shall deliver its opinion on the draft within a time limit which the chairman may lay down according 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 measures which apply immediately. However, if these measures are not in accordance with the opinion of the committee, they shall be communicated by the Commission to the Council forthwith.

In that event, the Commission may defer application of the measures which it has decided for a period of not more than one month from the date of such communication.

The Council, acting by a qualified majority, may take a different decision within the time limit referred to in the third subparagraph.

Article 5

By 31 December 1996, the Commission shall submit to the European Parliament and the Council a report on the experience gained in applying the common principles laid down in this Directive and, where appropriate, shall propose changes or new common principles, as it consider necessary, inter alia, in the following fields:

(a) possible substantive changes to Annexes A, B, C and D to eliminate distortions of competition between Community insured persons;

(b) new common principles extending the scope of Annex A to include e.g. for banks, direct cover for supplier credit and cover for confirmed letters of credit and, for exporters, cover for construction and public works contracts, pure service contracts, leasing and bonds, and also short-term risks not falling within the definition of marketable risk nor within the scope of Annex A.

Article 6

Where Annex D requires notification for an opinion the notifying Member State may apply the derogation in question provisionally. The derogation shall be deemed to have been approved eight working days after the notification unless the Commission informs the Member State that it considers the matter should be referred to the committee provided for in Article 4, either on its own initiative or at the request of another Member State. The committee shall proceed in accordance with Article 4. In that event the notifying Member State may continue to apply the derogation provisionally until the final decision is taken.

Article 7

The procedures laid down by this Directive supplement those already prescribed by Council Decision 73/391/EEC[5].

Article 8

In critical situations where decisions need to be taken more rapidly than provided for in Article 4 or Article 6, consultation shall take place by means of an expedited written procedure using the OLIS system.

Article 9

Directives 70/509/EEC and 70/510/EEC are hereby repealed.

Article 10

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 31 December 1994. They shall immediately inform the Commission thereof.

When Member States adopt these provisions, these shall contain a reference to this Directive or shall be accompanied by such reference at the time of their official publication. The procedure for such reference shall be adopted by Member States.

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(5) OJ No L 346, 17.12.1973, p. 1.

Article 11

This Directive shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Communities.

Article 12

This Directive is addressed to the Member States.

Done at Brussels,

For the Council
The President

COMMON PRINCIPLES FOR THE MAIN CONSTITUENTS OF COVER

1. COVER OF BUYER CREDIT AGREEMENTS[1]

1.1 GENERAL PRINCIPLES

1.1.1 The common principles established in sections 1.2 and 1.3 shall apply where:

- the cover is given to financial institutions, irrespective of their nationality, for loans provided under a buyer credit agreement signed with one or more public or private borrower or borrowers, provided that:
  - such loans are made to finance one or more export contracts,
  - drawings from the loans are made either on completion of the export contract or by means of progress payments;
- the terms and conditions of the commercial contract to be financed have been approved by the Insurer;
- the buyer credit agreement constitutes an unconditional obligation on the borrower to repay its debt, irrespective of the performance of the commercial contract to be financed.

1.1.2 The common principles provide for cover of all the risks concerned. Nevertheless, the Insurer may decide in each individual case to limit its cover to certain risks only. Where appropriate, the procedures set out in Annex D shall apply.

1.1.3 Buyer credit agreements may be covered in a foreign currency or currencies [a currency other than the national currency of the lender]. In that case cover may be given either in the foreign currency or currencies or in the national currency of the Insurer.

1.1.4 When all the obligations of a private borrower are wholly and unconditionally covered by a public entity, the common principles for public borrowers set out in section 1.2 shall apply.

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(1) Agreement whereby one or more financial institutions undertake to pay cash to the exporter on behalf of a buyer who will reimburse the lending institution on credit.

1.2 PUBLIC BORROWER

1.2.1 Definitions of covered risk and claim waiting period

The covered risk is the credit risk. The loss covered under that risk arises three months after the due date if the Insured has been unable to obtain payment of all or part of its claim during this period, provided that such non-payment is caused directly and exclusively by the occurrence of one or more of the causes of loss listed in point 1.2.2.

1.2.2 Causes of loss

1.2.2.1 Default of the borrower and, if any, of its guarantor.

1.2.2.2 General moratorium decreed by the government of the country of the borrower or by that of a non-member country through which payment must be effected.

1.2.2.3 Any other measure or decision of the government of a foreign country which prevents performance of the buyer credit agreement (including acts of public authorities which are deemed to constitute government interventions and also Community legislative measures).

1.2.2.4 Political events, economic difficulties arising outside the country of the Insurer or legislative or administrative measures taken outside the country of the Insurer which prevent or delay the transfer of funds paid over in respect of the buyer credit agreement.

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

1.2.2.6 Cases of force majeure occurring outside the country of the Insurer, for example war (including civil war), revolution, riot, civil disturbances, cyclone, flood, earthquake, volcanic eruption, tidal wave, nuclear accident.

1.2.3 General exclusion of liability

The Insurer shall have no liability if the loss is attributable directly or indirectly to:

1.2.3.1 any action or omission by the Insured, or by any person acting on its behalf, which makes the buyer credit agreement wholly or partially unenforceable;

1.2.3.2 the inclusion in the buyer credit agreement, or in any associated document including any document relating to the guarantee or security arrangements involved in the agreement of any provision restricting the Insured's rights;

1.2.3.3 any further agreement between the Insured and the borrower, or a guarantor, after conclusion of the buyer credit agreement which prevents or delays the payment of the debt.

1.2.4 <u>Effective date of cover</u>

The insurance takes effect when the conditions precedent stipulated in the credit insurance policy have been met, provided that all other conditions precedent to use, by the borrower, of the credit supplied by the Insured have also been fulfilled.

1.2.5 <u>Extent of cover</u>

1.2.5.1 <u>Insured amounts</u>

- The insurance covers exclusively the following amounts which are due from the borrower under the buyer credit agreement: principal, interest (including post-maturity interest) and banking fees. Sums corresponding to penalties or damages owed by the borrower are excluded.

- Post-maturity interest covered is limited to that accruing between the due date and the end of the claim waiting period.

- Banking fees covered are the standard banking fees charged for the buyer credit agreement (commitment fee, agency fee, management fee).

1.2.5.2 <u>Foreign supplies</u>

When the commercial contract financed by the buyer credit agreement includes goods and services from non-member countries, the portion of the financing related to these goods and services may be covered provided that they have been declared to and agreed by the Insurer. Subcontracts with parties in one or more Member States are automatically included in the cover in accordance with Council Decision 82/854/EEC[(2)]

1.2.6 <u>Percentage of cover and maximum liability</u>

1.2.6.1 The percentage of cover and the maximum amount of the indemnity for which the Insurer may be liable must be expressly laid down in the credit insurance policy supplied by the Insurer.

1.2.6.2 The maximum percentage of cover is 95%.

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

1.2.6.3 The Insured shall retain exclusively for his own account a portion of the uninsured percentage, equivalent to at least 2% of the insured amount, irrespective of the percentage of the risk insured. The difference between the portion retained by the Insured for his own account and the uninsured percentage is transferred to the exporter. Nevertheless, the Insured may also transfer to the syndicate members, or subparticipants in the loan, the part of the portion of the uninsured percentage retained by him corresponding to their participation in the loan. Transfer of the uninsured percentage requires the Insurer's express consent.

1.2.7 <u>General principles and conditions for the payment of claims</u>

1.2.7.1 The Insured is entitled to indemnification at the end of the claim waiting period as defined in point 1.2.1 provided that the conditions precedent to the insurance have been satisfied, the Insured has managed the risk with all reasonable and usual care, skill and forethought and the claim is legally valid.

1.2.7.2 Provided that the Insurer has received in good time all necessary information, documents and evidence in order to establish that there is a valid claim, the claim shall be paid within 45 days of the later of the following dates as the case may be:

- end of the claim waiting period, or
- date of approval by the Insured of the amount of the claim.

1.2.7.3 If the insured amount is included in a bilateral debt consolidation agreement, the Insurer shall waive the 45-day period provided for in point 1.2.7.2, once the bilateral agreement is effective.

1.2.7.4 If the losses for which the Insured applies to be indemnified relate to rights which are in dispute, the Insurer may defer the claim until the dispute is settled in favour of the Insured by the court or arbitration body provided for in the buyer credit agreement. In addition, the Insurer may require the arbitration ruling or court decision to have become enforceable in the debtor's country.

1.2.7.5 If the borrower's obligations to the Insured have been secured by means of a guarantee, or other security, all necessary measures must have been taken by the Insured to ensure not only that the guarantee, or other security, is valid but also that he is able to trigger it.

1.2.7.6 In calculating the payment of a claim, the Insurer may not pay the Insured an amount greater than the actual amount of its loss, and/or greater than the amount which it was actually entitled to receive from the borrower under the buyer credit agreement .

1.2.8 Bilateral debt consolidation agreement

In the event that the insured loan is subject to a bilateral debt consolidation agreement, the Insured must follow the conditions of the consolidation agreement in respect of both the insured and the uninsured portions of that loan and he must give any assistance to the Insurer which is necessary for the performance of the consolidation agreement.

1.2.9 Additional costs

Provided that they have been approved by the Insurer, the insurance shall cover additional costs resulting from action to minimize or avoid loss, in proportion to the percentage of cover under the policy. These costs include costs of court action and any other legal expenses.

However, if such costs relate to amounts or maturities not covered by the Insurer, they shall be attributed proportionately to the insured and uninsured amounts or maturities.

1.3 PRIVATE BORROWER

Points 1.2.3 to 1.2.9 (forming part of the section on public borrowers) shall apply to private borrowers.

1.3.1 Definitions of covered risk and claim waiting period

The covered risk is the credit risk. The loss covered under that risk arises three months after the due date if the Insured has been unable to obtain payment of all or part of its claim during this period, provided that such non-payment is caused directly and exclusively by the occurrence of one or more of the causes of loss listed in point 1.3.2.

When the non-payment of the debt is due to the cause of loss indicated in point 1.3.2.1, the Insurer shall waive the claim waiting period.

1.3.2 Causes of loss

1.3.2.1 Insolvency of the borrower and, if any, of its guarantor, either de jure or de facto.

1.3.2.2 Default of the borrower and, if any, of its guarantor.

1.3.2.3 General moratorium decreed by the government of the country of the borrower or by that of a non-member country through which payment must be effected.

1.3.2.4 Any other measure or decision of the government of a foreign country which prevents performance of the buyer credit agreement (including acts of public authorities which are deemed to constitute government interventions, and also Community legislative measures).

1.3.2.5 Political events, economic difficulties arising outside the country of the Insurer or legislative or administrative measures taken outside the country of the Insurer which prevent or delay the transfer of funds paid over in respect of the buyer credit agreement.

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

1.3.2.7 Cases of force majeure occurring outside the country of the Insurer, for example war (including civil war), revolution, riot, civil disturbances, cyclone, flood, earthquake, volcanic eruption, tidal wave and nuclear accident.

2. COVER OF SUPPLIER CREDIT CONTRACTS(3)

2.1 GENERAL PRINCIPLES

2.1.1 The common principles established in points 2.2 and 2.3 shall apply where the cover is given to one or more Community enterprises concluding a commercial contract with one or more public or private buyers.

2.1.2 The common principles provide for cover of all the risks concerned. Nevertheless, the Insurer may decide in each individual case to limit its cover to certain risks only. Where appropriate, the procedures set out in Annex D shall apply.

2.1.3 The common principles shall apply in accordance with Article 2(1) of this Directive and shall in particular apply to cover given to an exporter for a commercial contract financed under a buyer credit agreement or any other financing arrangement.

2.1.4 When all the obligations of a private buyer are wholly and unconditionally guaranteed by a public entity, the common principles for public buyers set out in point 2.2 shall apply.

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(3) The term "supplier credit" is used with a general connotation and covers both contracts for cash transactions and those involving credit terms.

2.2 PUBLIC BUYER

2.2.1 Definitions of covered risk and claim waiting period

2.2.1.1 Manufacturing risk

Loss covered under the manufacturing risk arises when the performance of the contractual obligations of the Insured, or the manufacture of the goods ordered, has been suspended for a period of six consecutive months, provided the direct and exclusive cause of such suspension is the occurrence of one or more of the causes of loss listed in point 2.2.2.

2.2.1.2 Credit risk

Loss covered under the credit risk arises six months after the due date if the Insured has been unable to obtain payment of all or part of its claim during this period, provided that such non-payment is caused directly and exclusively by the occurrence of one or more of the causes of loss listed in point 2.2.2.

2.2.2 Causes of loss

2.2.2.1 Repudiation[4] of the contract by the buyer.

2.2.2.2 Arbitrary refusal of the buyer to accept the delivery of goods without having the legal right to do so.

2.2.2.3 Default of the buyer and, if any, of its guarantor.

2.2.2.4 General moratorium decreed by the government of the country of the buyer or by that of a non-member country through which payment must be effected.

2.2.2.5 Any other measure or decision of the government of a foreign country which prevents performance of the contract (including acts of public authorities which are deemed to constitute government interventions, and also Community legislative measures).

2.2.2.6 Political events, economic difficulties arising outside the country of the Insurer or legislative or administrative measures taken outside the country of the Insurer which prevent or delay the transfer of funds paid over in respect of the contract.

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(4) The term "repudiation of the contract" means an arbitrary decision of the public buyer to interrupt or to cancel the contract without having the legal right to do so.

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

2.2.2.8 Cases of <u>force majeure</u> occurring outside the country of the Insurer, for example war (including civil war), revolution, riot, civil disturbances, cyclone, flood, earthquake, volcanic eruption, tidal wave, nuclear accident.

2.2.2.9 Any measure, or decision, of the government of the country of the Insurer[5] specifically relating to foreign trade, such as a ban on exports, in so far as the reason for this measure or decision is to be found in the conduct of international affairs and its effects are not covered by some other means by the government concerned.

2.2.3 General exclusions of liability

The Insurer shall have no liability if the loss is attributable directly or indirectly to:

2.2.3.1 any action or omission by the Insured, or by any person acting on its behalf, which makes the contract wholly or partially unenforceable;

2.2.3.2 failure of subcontractors, co-contractors or other suppliers to perform their obligations, provided that such failure is not a consequence of political events as described in the causes of loss listed in points 2.2.2.4 to 2.2.2.9;

2.2.3.3 the inclusion in the contract, or in any associated document including any document relating to the guarantee or security arrangements involved in the contract of any provision restricting the Insured's rights;

2.2.3.4 any further agreement between the Insured and the buyer, or a guarantor, after conclusion of the contract which prevents the payment of the debt.

2.2.4 Effective date of cover

Provided that all conditions precedent stipulated in the credit insurance policy, including e.g. any down payment required with the order, have been met:

2.2.4.1 cover of the manufacturing risk shall take effect on the date of entry into force of the contract;

2.2.4.2 cover of the credit risk shall take effect on the date on which, by the terms of the contract, complete performance of the contractual obligations of the Insured entitles the latter to payment.

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(5) Including measures, or decisions, of the Community.

However, cover of the credit risk may take effect on the date of each delivery (or partial dispatch) where, by the terms of the contract, such delivery (or partial dispatch) entitles the Insured to payment to a fixed and definitive amount corresponding to the goods delivered (or dispatched)(6).

2.2.5 Extent of cover

2.2.5.1 Manufacturing risk:

Cover of the manufacturing risk shall extend, within the limit of the contract amount, to the amount of the costs incurred by the Insured in performing its contractual obligations or in manufacturing the goods which have been ordered, provided that such costs are properly attributable to performance of the contract.

It shall not extend to:

- expenditure relating to goods in respect of which cover of the credit risk has taken effect in accordance with point 2.2.4.2,
- the credit insurance premiums paid by the Insured to the Insurer,
- sums paid by the Insured consequent upon the calling of a bond issued in respect of the covered contract(7).

2.2.5.2 Credit risk

Cover of the credit risk shall extend exclusively to the amount owed under the commercial contract by the buyer. Such amount may include, where a transaction is financed by supplier credit, the principal and interest (excluding post-maturity interest). Sums corresponding to bonds(7), penalties or damages paid by the Insured are excluded.

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(6) For example:
- the handing over of accepted bills, or of promissory notes, is insufficient to bring the cover of the credit risk into force;
- where supply contracts, or turnkey contracts, include the performance of particular services (for example, installation work), cover of the credit risk may take effect on the date on which performance of these services gives rise to a right to payment.

(7) However, this does not mean that the Insurer may not give cover for such a risk.

2.2.5.3 Foreign supplies

When the commercial contract includes goods and services from non-member countries, they may be covered provided that they have been declared to and agreed by the Insurer. Subcontracts with parties in one or more Member States are automatically included in the cover in accordance with Decision 82/854/EEC.

2.2.6 Percentage of cover and maximum liability

2.2.6.1 The percentage of cover and the maximum amount of the indemnity for which the Insurer may be liable must be expressly laid down in the credit insurance policy supplied by the Insurer.

2.2.6.2 The maximum percentage of cover is 90%.

2.2.6.3 The Insured shall retain exclusively for his own account the uninsured percentage. Nevertheless, the Insured may, with the express consent of the Insurer, transfer to the subcontractors the part of the uninsured percentage corresponding to the subcontracted parts of the contract. Moreover, if the uninsured percentage exceeds 10%, the Insured may cover the portion exceeding 10% with a third party.

2.2.7 General principles and conditions for the payment of claims

2.2.7.1 The Insured is entitled to indemnification at the end of the claim waiting period as defined in point 2.2.1 provided that the conditions precedent to the insurance have been satisfied, the Insured has managed the risk with all reasonable and usual care, skill and forethought and the claim is legally valid.

2.2.7.2 Provided that the Insurer has received in good time all necessary information, documents and evidence in order to establish that there is a valid claim, the claim shall be paid:

- in the case of a manufacturing risk, within 45 days of the latest of the following dates as the case may be:
  - end of the claim waiting period,
  - date of receipt of the expert's report, where relevant, or
  - date of approval by the Insured of the amount of the claim,
- in the case of a credit risk, within 45 days of the later of the following dates as the case may be:
  - end of the claim waiting period, or
  - date of approval by the Insured of the amount of the claim.

2.2.7.3 If the insured amount is included in a bilateral debt consolidation agreement, the Insurer shall waive the 45-day period provided for in point 2.2.7.2, once the bilateral agreement is effective.

2.2.7.4 If the losses for which the Insured applies to be indemnified relate to rights which are in dispute, the Insurer may defer the claim until the dispute is settled in favour of the Insured by the court or arbitration body provided for in the contract. In addition, the Insurer may require the arbitration ruling or court decision to have become enforceable in the debtor's country.

2.2.7.5 If the buyer's obligations to the Insured have been secured by means of a guarantee, or other security, all necessary measures must have been taken by the Insured to ensure not only that the guarantee, or other security, is valid but also that he is able to trigger it.

2.2.7.6 In calculating the payment of a claim, the Insurer may not pay the Insured an amount greater than the actual amount of its loss, and/or greater than the amount which it was actually entitled to receive from the buyer under the contract.

2.2.8 <u>Bilateral debt consolidation agreement</u>

In the event that the insured contract is subject to a bilateral debt consolidation agreement, the Insured must follow the conditions of the consolidation agreement in respect of both the insured and the uninsured portions of the contract and he must give any assistance to the Insurer which is necessary for the performance of the consolidation agreement.

2.2.9 <u>Additional costs</u>

Provided that they have been approved by the Insurer, the insurance shall cover additional costs resulting from action to minimize or avoid loss, in proportion to the percentage of cover under the policy. These costs include costs of court action and any other legal expenses.

However, if such costs relate to amounts or maturities not covered by the Insurer, they shall be attributed proportionately to the insured and uninsured amounts or maturities.

2.3 PRIVATE BUYER

Points 2.2.3 to 2.2.9 (forming part of the section on public buyers) shall apply to private buyers.

2.3.1 Definitions of covered risk and claim waiting period

2.3.1.1 Manufacturing risk

Loss covered under the manufacturing risk arises when the performance of the contractual obligations of the Insured, or the manufacture of the goods ordered, has been suspended for a period of six consecutive months, provided the direct and exclusive cause of such suspension is the occurrence of one or more of the causes of loss listed in point 2.3.2.

2.3.1.2 Credit risk

Loss covered under the credit risk arises six months after the due date if the Insured has been unable to obtain payment of all or part of its claim during this period, provided that such non-payment is caused directly and exclusively by the occurrence of one or more of the causes of loss listed in point 2.3.2.

When the non-payment of the debt is due to the cause of loss indicated in point 2.3.2.3, the Insurer shall waive the claim waiting period.

2.3.2 Causes of loss

2.3.2.1 Repudiation[8] of the contract by the buyer.

2.3.2.2 Arbitrary refusal of the buyer to accept delivery of the goods without having the legal right to do so.

2.3.2.3 Insolvency of the borrower and, if any, of its guarantor, either de jure or de facto.

2.3.2.4 Non-payment[9] by the buyer and, where relevant, by its guarantor.

2.3.2.5 General moratorium decreed by the government of the country of the buyer or by that of a non-member country through which payment must be effected.

2.3.2.6 Any other measure or decision of the government of a foreign country which prevents performance of the contract (including acts of public authorities which are deemed to constitute government interventions, and also Community legislative measures).

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(8) The term "repudiation of the contract" means an arbitrary decision of the private buyer to interrupt or to cancel the contract without having the right to do so.

(9) In this context the term "non-payment" covers no more than all the financial obligations of the buyer, and/or its guarantor, and in particular the completion of all formalities for conversion and transfer in favour of the Insured of payments which the buyer has made in local currency.

2.3.2.7 Political events, economic difficulties arising outside the country of the Insurer or legislative or administrative measures taken outside the country of the Insurer which prevent or delay the transfer of funds paid over in respect of the contract.

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

2.3.2.9 Cases of force majeure occurring outside the country of the Insurer, for example war (including civil war), revolution, riot, civil disturbances, cyclone, flood, earthquake, volcanic eruption, tidal wave and nuclear accident.

2.3.2.10 Any measure, or decision, of the government of the country of the Insurer[10] specifically relating to foreign trade, such as a ban on exports, in so far as the reason for this measure or decision is to be found in the conduct of international affairs and its effects are not covered by some other means by the government concerned.

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(10) Including measures, or decisions, of the Community.

ANNEX B

COMMON PRINCIPLES FOR SETTING PREMIUM SYSTEMS

1. GENERAL PRINCIPLES

1.1. Each Insurer shall adjust its premium system in line with the common principles set out in this Annex.

1.2. When using the principles set out in this Annex, each Insurer shall work on the basis that the premium charged must correspond to the risks covered and, where possible, offer suitable remuneration for such risks.

1.3. Each Insurer shall set premium rates to be charged using all the information drawn up in accordance with Article 4 of this Directive.

2. TERMS USED IN SETTING MINIMUM AND REFERENCE PREMIUM RATES

2.1 The 'commercial risk' is defined in Annex A, points 1.3.2.1, 1.3.2.2 and 2.3.2.1 to 2.3.2.4.

2.2 The 'political risk' is defined in Annex A, points 1.2.2.1 to 1.2.2.6, 1.3.2.3 to 1.3.2.7, 2.2.2.1 to 2.2.2.9, and 2.3.2.5 to 2.3.2.10.

2.3 The 'manufacturing risk' is defined in Annex A, points 2.2.1.1, 2.2.5.1, and 2.3.1.1.

2.4 The 'credit risk' is defined in Annex A, points 1.2.1, 1.3.1, 2.2.1.2, 2.2.5.2 and 2.3.1.2.

2.5 The status of buyer (or guarantor).

The definition of a public buyer (or guarantor) is as set out in Article 3(1) of this Directive.

However, in the specific matter of premiums, rates depend not only on whether the buyer is public or private but also on what type of public or private buyer it is, viz:

2.5.1 public:
- monetary authorities (generally the finance ministry or central bank);
- other sovereign buyers (or guarantors);
- non-sovereign buyers (or guarantors);

2.5.2 private:
- first–class buyers (or banks);
- standard banks;
- standard private buyers.

These concepts of sovereign or non–sovereign public buyer, and of first-class or standard private buyer or bank are defined in the guidelines to be used by Insurers for the assessment of buyer risk drawn up in accordance with Article 4 of this Directive.

3. <u>COMMON PRINCIPLES</u>

3.1 <u>Matching premiums to the status of the buyer (or guarantor)</u>

3.1.1 <u>Private buyer (or guarantor)</u>

The Insurer may cover either the commercial risk or the political risk or both together.

If the Insurer decides to limit cover to only one such risk, only the premium corresponding to the risk covered shall be charged.

If it decides to limit cover (of the commercial and/or political risk) to certain causes of loss, the premium rate shall not be lowered accordingly.

3.1.2 <u>Public buyer (or guarantor)</u>

3.1.2.1 Where the buyer (or guarantor) is regarded as a monetary authority, any limit on coverage by the Insurer to certain causes of loss shall not result in the premium rate being lowered accordingly.

3.1.2.2 Where the buyer (or guarantor) is regarded as a sovereign body (other than the monetary authority) or a non-sovereign body, the Insurer may exclude risks on this buyer (or guarantor). In such cases, the Insurer shall charge the premium rate applicable to the relevant country risk. Exclusion of certain other causes of loss shall not result in the premium being lowered.

3.2 <u>Matching the premium to securities</u>

3.2.1 <u>Credit risk</u>

3.2.1.1 Where the payment obligations on the buyer are covered by an unconditional guarantee (or an irrevocable letter of credit) which improves the risk <u>de facto</u>, the Insurer shall use the rates set for the guarantor (or for the bank issuing the letter of credit) if:

- it recognizes the bank issuing the irrevocable letter of credit (whether or not the letter is confirmed by another bank) and if use of the credit is in no way dependent upon the buyer;

- it recognizes the bank (or any other public or private entity) issuing the unconditional guarantee.

Where the premium rate for the guarantor[11] is lower than that for the buyer (because of the guarantor's country), the Insurer shall use the rate set for the guarantor provided that the transfer risk inherent in the buyer's country has been removed.

3.2.1.2 Where only some of the payment obligations on the buyer are covered by an unconditional guarantee (or irrevocable letter of credit), the Insurer shall reduce the premium in proportion to the amount borne by the guarantor[11].

3.2.2 Manufacturing risk

3.2.2.1 Where all payments, except for the down payment on order, are made using an irrevocable letter of credit issued and usable as soon as the commercial contract covered enters into effect (whether or not the letter of credit is confirmed by another bank), the Insurer shall use the rates set for the bank issuing the letter of credit if:

- it recognizes the bank issuing the letter of credit, and

- use of the credit is in no way dependent on the buyer and may be obtained in the country of the exporter on presentation of evidence (such as a warehouse certificate) which removes the risk on the buyer and on the buyer's country.

3.2.2.2 Where all payments, except for the down payment on order, are covered by an unconditional guarantee callable on first request, issued and available as soon as the covered contract enters into effect, the Insurer shall use the rate for the guarantor if it recognizes the bank (or any other public or private body) issuing the said guarantee.

3.2.2.3 Where the Insurer is satisfied that all the buyer's contractual obligations are covered by a guarantee issued by a public or private body other than a bank (so that the manufacturing risk is transferred from the buyer to the guarantor), the premium for the guarantor shall be used.

3.3 Matching the premium to the country risk

3.3.1 Where the contract to be covered is financed wholly by one of the international financial institutions (IFI)[12] or national institutions recognized in accordance with Article 4 of this Directive, the country risk shall be deemed to have been improved as long as:

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(11) General term which also refers to the bank issuing an irrevocable letter of credit.

(12) Whilst most IFI are banks, point 3.2 does not apply to cases where an export contract is financed by one of these IFI. Conversely, it does apply to IFI payments guaranteed by a bank.

(a) payments by IFI are made direct to the exporter;

(b) the borrower (or its country) is not in arrears with the IFI.

3.3.2 Where the contract is covered by guarantees (excluding that referred to in point 3.2), which bring the payment risk wholly outside the debtor's or guarantor's country (externalization of the risk), the country risk shall be deemed to have been improved.

3.3.3 Where the factors in points 3.3.1 and 3.3.2 are combined, the country risk shall be deemed to have been improved.

3.3.4 Where an IFI finances only part of the contract, the country risk for that portion shall be deemed to have been improved provided that:

(a) the conditions laid down in point 3.3.1.(a) and (b) are satisfied;

(b) the outstanding portion is wholly financed by other bodies also covered by the Insurer or at least recognized by it.

The same goes for securities externalizing the risk and/or the combination of financing by an IFI with such complementary securities which cover only part of the contract.

3.3.5 Where the country risk is improved in line with points 3.3.1 to 3.3.4, the Insurer shall use the rates set for the next country category up from that of the debtor country. However, it shall add on all the premium supplements which it would have included had the country risk remained in the category of the debtor's country, or which it does include for other business in that category.

3.4 <u>Matching the premium to the duration of the risk</u>

3.4.1 <u>Calculating the risk period for the cover given to banks in the case of buyer credits</u>

In calculating the premium, the Insurer shall take into account the total duration of the risk. This corresponds to the average risk period from the first disbursement to the date of final repayment, weighted by the sums actually at risk. To apply the weighting to the period from the first disbursement to the starting-point of repayment, the Insurer shall take account solely of the principal, exclusive of interim (pre-commissioning) interest and banking fees. To apply the weighting to the period from the starting-point of repayment to the date of final repayment, the Insurer shall take account solely of the principal and repayment interest, exclusive of post maturity interest.

The average weighted period from the first disbursement to the starting point of repayment (the average weighted disbursement period) shall be determined on the basis of an estimated drawdown schedule prepared by the lending bank when it issues its insurance policy. If necessary, the Insurer shall revise the amount of the premium in line with the actual final drawdown schedule.

The Insurer shall not revise the amount of the premium if the average disbursement period weighted by actual final drawings does not vary by more than 10% of the average obtained from the estimated drawdown schedule or by more than six months either side of the schedule.

3.4.2 Calculating the risk period for the cover given to exporters

3.4.2.1 Manufacturing period

In calculating the premium, the Insurer shall take account of the manufacturing period. This corresponds to the period between the entry into effect of the commercial contract and the date when the Insured has completed performance of his contractual obligations.

Nevertheless, in the case of partial deliveries which, under the commercial contract, are considered separately and have their own starting-points for repayment, the manufacturing period corresponds to the period between the entry into effect of the commercial contract and the average weighted date of the deliveries.

3.4.2.2 Credit period

In calculating the premium, the Insurer shall take account of the total duration of the credit risk, i.e. the period between the date on which the credit risk cover took effect for the exporter to the date the last payment was made by the buyer, weighted by the amount of the principal and repayment interest actually at risk.

3.4.2.3 The manner in which the commercial contract is financed shall have no bearing on the premium rate. As a result, the overall premium rate shall remain the same whether the commercial contract is financed by supplier credit or buyer credit.

3.5 Matching the premium to the cover base

3.5.1 Only that portion of the contract covered by the Insurer shall be taken into account when calculating the premium (i.e. no premium shall be payable for that portion of the contract not covered).

3.5.2 The premium shall be proportional to the percentage of cover on the amount actually covered by the Insurer in accordance with points 3.5.3 and 3.5.4.

3.5.3 Cover for banks in the case of buyer credit

The cover base shall comprise the following elements.

3.5.3.1 Principal amount of the loan

This is the whole portion of the commercial contract (including additional amounts) financed by the loan, provided that the Insurer has agreed to cover that portion (and any additional amounts).

3.5.3.2 Interim interest and repayment interest

Where the interest rate(s) is (are) variable, the Insurer shall calculate the premium on the basis of the interest payable as estimated by the lending bank (when it issues the policy) provided that the corresponding amount has been agreed by the Insurer. This amount shall constitute the Insurer's maximum liability. The Insurer shall not adjust the amount of the premium in line with the rates the lending bank actually charges the borrower save where the Insurer agrees to increase its maximum liability.

3.5.3.3 Post maturity interest

This is interest charged from the due payment date to the end of the claim waiting period. The premium shall be calculated on the basis of the amount of post maturity interest as estimated by the lending bank (when it issues the policy) provided that the corresponding amount has been agreed by the Insurer. This amount shall constitute the Insurer's maximum liability. The Insurer shall not adjust the amount of the premium in line with the post maturity interest the lending bank actually charges the borrower save where the Insurer agrees to increase its maximum liability.

3.5.3.4 Banking fees

These are charges usually levied on the borrower by the lending bank (although payment of such fees shall not constitute a condition precedent to the entry into effect of the buyer credit agreement). The premium shall be calculated on the basis of the amount of the fees as estimated by the lending bank (when it issues the policy) provided that the corresponding amount has been agreed by the Insurer. This amount shall constitute the Insurer's maximum liability. The Insurer shall not adjust the amount of the premium in line with the fees the bank actually charges the borrower save where the Insurer agrees to increase its maximum liability.

3.5.4 <u>Cover for exporters</u>

The cover base shall comprise the following elements.

3.5.4.1 Manufacturing risk

This equals the total amount of the commercial contract less the down payment on order.

However, at the exporter's request, the cover base may be reduced to a maximum level of risk set by the exporter (when its insurance policy is issued) provided that the Insurer agrees. The amount set by the exporter constitutes the Insurer's maximum liability. The Insurer shall not adjust the amount of the premium in line with the maximum level of risk actually incurred save where the Insurer agrees to increase its maximum liability.

3.5.4.2 Credit risk

This equals the outstanding amounts for which the credit risk has taken effect.

- For contracts on cash terms, it means the sums due when the exporter has wholly met all contractual obligations.

  It may also mean the sums due when partial deliveries are made (or a service is performed) giving entitlement under the commercial contract to payment of their own price (within the meaning of point 2.2.4.2 of Annex A).

- For financed contracts (supplier credits), it means the principal amount of the credit plus repayment interest. Post maturity interest is not included in the cover base. If the interest rate(s) is (are) variable, the principle referred to in point 3.5.3.2 shall apply.

3.6 <u>Basic principles for setting premium rates</u>

In accordance with Article 4 of this Directive, the premium rates to be used by Insurers for the various categories of countries and risks shall be set periodically using a standard model incorporating the following basic principles.

3.6.1 Risk score

3.6.1.1 <u>For monetary authorities and other public sovereign or non–sovereign buyers or guarantors</u>

- Where the buyer (or guarantor) is the monetary authority itself, the premium for the credit risk shall be lower than that for other sovereign buyers or guarantors, which shall in turn be lower than that for non-sovereign buyers or guarantors.

- The premium for the manufacturing risk shall be 70% of that for the credit risk for the full risk period. The premium rate applicable shall in all cases be that of the non-sovereign public buyer whatever the status of the buyer (monetary authority, sovereign or non–sovereign entity).

3.6.1.2 For private buyers or guarantors

- Credit risk premium.

  . The premium shall be the same whether for a buyer or first-class bank.

  . The premium for a first-class bank (or buyer) shall be lower than that for a standard bank.

  . The premium for a standard bank shall be lower than that for a standard buyer.

- Manufacturing risk premium

  . For the political risk, the premium shall be 70% of the credit risk premium for the full risk period.

  . For commercial risks, the premium shall equal that for the credit risk for the full risk period.

3.6.2 Premium rates

3.6.2.1 Rates for political risks (country weighting and monetary authorities)

The premium rate set for each category of country shall be a minimum.

For category six countries, two minimum rates shall apply:

- one for transactions with the private sector and covered in accordance with point 2.3.6 of Annex C;

- a higher level for transactions covered for reasons of national interest.

Until 31 December 1997, the Insurer may set rates above the minimum for certain countries[13] by virtue of:

- the state of its risk portfolio (greater or lesser spread of risks);

- the concentration of its risks on certain countries;

- its desire to balance its accounts over time;

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(13) In such instances, the Insurer shall follow the appropriate procedures set out in Annex D.

- the poor payment record of some countries in its experience.

The rates thus set may not exceed those set in accordance with Article 4 of this Directive for the next category up, except in the case of category six countries, where there is no limit.

3.6.2.2 Rates for political risk (public buyers other than monetary authorities)

The premium rates for public buyers, both sovereign (except monetary authorities) and non-sovereign, shall be minimum rates.

The Insurer may set rates above the minimum for certain sovereign or non-sovereign public buyers[13] by virtue of:

- the degree of inherent risk it sees in a particular buyer;

- the concentration of its risks on certain buyers;

- its desire to balance its accounts over time.

No such increase shall exceed 40% of the relevant minimum.

3.6.2.3 Rates for commercial risk (first-class buyer or bank)

The rates for first–class buyers or banks shall be minimum rates.

The Insurer may set rates above the minimum for certain first–class buyers or banks[13], by up to 40% of the difference between the rate for that category of buyer and the reference rate for standard banks.

3.6.2.4 Rates for commercial risk (standard buyer)

The rates for standard buyers shall be reference rates.

The Insurer may set[13] rates below or above the reference rates set in accordance with Article 4 of this Directive for certain standard buyers by virtue of:

(a) in the case of higher rates

- the degree of inherent risk it sees in a particular buyer;

- the concentration of its risks on certain buyers or sectors;

- its desire to balance its accounts over time;

(b) in the case of lower rates, a more accurate assessment of the risk.

No reduction or increase by the Insurer may exceed 40% of the difference between the rate for the category and the reference rate for standard banks.

3.6.2.5 Rates for commercial risk (standard banks)

The rates for standard banks shall be reference rates.

The Insurer may set rates below or above the reference rates set in accordance with Article 4 of this Directive for certain standard banks[13] by virtue of:

(a) in the case of higher rates

- the degree of inherent risk it sees in a particular bank;
- the concentration of its risks on certain buyers or sectors;
- its desire to balance its accounts over time;

(b) in the case of lower rates, a different assessment of the risk.

No reduction shall exceed 5% of the reference rate.

No increase by the Insurer shall exceed 40% of the difference between the rate for the category and the rate for standard banks.

3.7 Payment of the premium

The premium shall be payable in full on the date the insurance policy is issued.

3.7.1 For insurance policies issued to banks to cover a buyer credit, the Insurer may accept payment of the premium by instalments provided that:

3.7.1.1 15% of the amount of the premium is paid in cash on the date of issue of the policy;

3.7.1.2 interest is charged on the remaining amount (the Insurer shall apply the appropriate commercial rate starting from the date of issue of the policy);

3.7.1.3 the aggregate amount of premium collected at any one time corresponds to the Insurer's actual risk (as and when drawings are made on the credit).

3.7.2 For insurance policies issued to exporters, the Insurer may accept payment of the premium by instalments provided that:

3.7.2.1 15% of the amount of the premium is paid in cash on the date of issue of the policy;

3.7.2.2 interest is charged on the remaining amount (the Insurer shall apply the appropriate commercial rate starting from the date of issue of the policy);

3.7.2.3 the premium corresponding to the credit risk is paid in full before the credit risk takes effect.

3.8. Refund of the premium

3.8.1 The manufacturing risk premium is earned by the Insurer as soon as the manufacturing risk has taken effect within the meaning of point 2.2.4.1 of Annex A.

3.8.2 In the case of cover of a supplier credit, if all or part of the credit risk has not taken effect within the meaning of point 2.2.4.2 of Annex A, the Insurer shall not charge the premium corresponding to that risk or part thereof. If the premium has already been paid, the Insurer shall refund it to the Insured provided there is no claim or threat of loss under the credit risk. The Insurer shall retain a flat-rate sum from the refundable amount to cover his administrative costs.

3.8.3 In the case of cover of a buyer credit, the Insurer shall not charge the premium corresponding to that part of the loan which has not been disbursed to the Insured. If the premium has already been paid, the Insurer shall refund it to the Insured provided there is no claim or threat of loss under the credit risk. The Insurer shall retain a flat-rate sum from the refundable amount to cover his administrative costs.

COMMON PRINCIPLES FOR ESTABLISHING POLICY WITH REGARD TO COUNTRY COVER

1. The Insurer shall base its policy with regard to country cover on an assessment of the risk by country, its total outstanding exposure on each country and the nature of the countries making up its risk portfolio.

2. In setting its credit policy, the Insurer shall take account of each country's classification as determined in accordance with Article 4 of this Directive. Nevertheless, it shall be free to stop covering business on a particular country for reasons of, for example, a bilateral nature, regardless of the country's category.

   In determining whether and under what conditions a country may be offered cover, the Insurer shall use the following common principles.

2.1 For countries in category one (best risk), there shall be no restriction on the Insurer's cover policy.

2.2 For countries in categories two, three, four and five, the Insurer's cover policy shall be calculated on the basis of the following principles.

2.2.2 Limits on the amount of cover for each country

2.2.2.1 An Insurer may wish to limit total outstanding exposure (as defined in point 3) for, inter alia, the following reasons:

- the country's degree of risk;
- the small scale of the country's economy;
- the need to diversify its risks when the amount on one country goes beyond an acceptable maximum.

2.2.2.2 For each category of countries, a risk ceiling shall be set, beyond which the Insurer has to take specific measures. These ceilings, being the highest degree of exposure an Insurer may risk on a single country as a percentage of its total outstanding exposure on all countries, shall be as follows:

- 4% for countries in category two,
- 3% for countries in category three,

- 2% for countries in category four,

- 1% for countries in category five.

2.2.2.3 Below the upper exposure limit for a particular country in the relevant category, there is generally no limit on cover policy, but should the Insurer wish to restrict the amount it covers, it may, until 31 December 1997, amend its cover policy by setting ceilings on one or more of the following:

- the total outstanding exposure on that country;

- the value of firm contracts covered (ceiling set annually, for example);

- the total value of undertakings to stand guarantor (ceiling set annually, for example);

- the maximum amount covered per transaction.

2.2.2.4 At or above the exposure limit for a particular country in the relevant category, the Insurer shall limit the total outstanding exposure on the country in question by setting ceilings on one or more of the following:

- the total value of firm contracts covered (ceiling set annually, for example);

- the total value of undertakings to stand guarantor (ceiling set annually, for example);

- the maximum amount covered per transaction.

2.2.3 <u>Adjustments to conditions for country cover</u>

For a particular country, the Insurer may routinely apply certain cover conditions[14] such as:

2.2.3.1 issue of a payment (and/or transfer) guarantee by the central bank or finance ministry of the relevant country;

2.2.3.2 issue of an irrevocable letter of credit or issue of a bank guarantee;

2.2.3.3 extension of the claim waiting period;

2.2.3.4 reduction in the percentage covered;

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(14) In such instances, the Insurer shall follow the relevant procedures set out in Annex D.

2.2.3.5 restriction of the cover to certain sectors of activity or types of project.

2.3 For countries in category six (worst risk) where the risk is deemed to be too high, the Insurer may only cover certain transactions for reasons of bilateral policy or national interest(14). It may also cover certain transactions in the following cases:

2.3.1 where the commercial contract is wholly financed by one of the IFI or national institutions recognized in accordance with Article 4 of this Directive provided that:

2.3.1.1 the IFI payments are made direct to the exporter;

2.3.1.2 the borrower (or its country) is not in arrears with the IFI;

2.3.2 where the commercial contract is wholly financed through concessionary funds, provided that the aid donor's payments are made direct to the exporter;

2.3.3 where the commercial contract is wholly financed by an IFI and by aid funds under the conditionslaid down in points 2.3.1 and 2.3.2;

2.3.4 where the commercial contract is covered by a set of securities placing the payment risk outside the debtor's country and enabling the Insurer to view the risk as having been improved;

2.3.5 where the commercial contract is partially financed by an IFI and concessionary funds and the balance is covered by a set of securities placing the corresponding payment risk wholly outside the debtor's country.

2.3.6 In accordance with the derogation procedures set out in Annex D, the Commission may also suggest on a case-by-case basis that coverage for specific commercial contracts with the private sector of a category six country should be allowed in exceptional cases where it feels the country in question has sufficient freely convertible foreign exchange.

3. Definition of total outstanding exposure

In order to determine total outstanding exposure, the Insurer shall take account of the amount for medium- and long-term business only, as defined in Article 2(2) of this Directive, within the limits of the percentage of cover. Total outstanding exposure consists of the followiwng elements.

3.1 The maximum amount at risk in principal and interest (plus, in respect of buyer credits only, the post maturity interest accruing during the claim waiting period) for firm contracts which the Insurer is committed to cover even if the insurance policy has yet to be issued.

Any amounts reinsured with other bodies are excluded if the Insurer is acting as prime Insurer but are included if the Insurer itself is acting as reinsurer.

3.2 The amount of outstanding claims awaiting recovery and not yet written off, whether such claims relate to materialization of a manufacturing loss and/or a credit loss.

3.3 The amount of non-repatriable costs (such as those relating to bonds and non-repossession risk cover) are included only once a claim has actually been paid and neither recovered nor written off.

3.4 Interest due from debtor countries under rescheduling arrangements, including capitalized interest.

3.5 When the Insurer gives details of the amount of its total outstanding exposure, in accordance with the relevant provisions set out in Annex D, he shall convert the foregoing aamounts into ecus on the basis of the last known exchange rate.

CONSULTATION, INFORMATION AND DEROGATION PROCEDURES

1. GENERAL PRINCIPLES

1.1 Each Insurer shall follow the procedures listed in this Annex when applying the common principles set out in Annexes A, B and C. These procedures supplement those drawn up by the Council in Decision 73/391/EEC.

1.2 On a case-by-cases basis, for a particular country or sector of activity, the Insurer may wish to depart from some of the common principles set out in Annexes A, B and C so as to bring its cover into line with international competition. In such cases, it shall notify the other credit insurers, hereinafter referred to as its "partners", of the principle(s) it plans to waive at least 15 working days before the date on which it plans to make its offer. At the same time, it shall provide all the information and evidence at its disposal concerning the content of rival offers.

1.3 An Insurer having recource to the provisions of this Annex shall notify its partners of this fact either for their information or to obtain their opinion.

1.3.1 Notification for opinion shall be required in the cases provided for in points 2.1.2, 2.2.2, 2.3.2, 2.4.2, 2.4.3, 3.1.4, 3.2.4, 3.3.3, 3.4.2, 3.5.2, and 4.6 of this Annex. The provisions of Article 6 of this Directive shall apply.

1.3.2 In all other cases notification for information shall be required.

2. CONSULTATION AND DEROGATION PROCEDURES RELATING TO THE COMMON PRINCIPLES PROVIDED FOR IN ANNEX A

2.1 Claim waiting period

2.1.1 In the light of its risk assessment concerning a particular transaction, the Insurer may, on a case-by-case basis, decide to extend the claim waiting period indicated in points 1.2.1, 1.3.1, 2.2.1.1, 2.2.1.2, 2.3.1.1 and 2.3.1.2 of Annex A. If so, it shall immediately notify its partners and the Commission of such departures from the common principles.

2.1.2 Each Insurer may, until 31 December 1997, propose to extend the claim waiting period indicated in points 1.2.1, 1.3.1, 2.2.1.1, 2.2.1.2, 2.3.1.1 and 2.3.1.2 of Annex A for all business with any one country. If so, it shall notify its partners and the Commission of its intention.

2.2 Causes of loss

2.2.1 In the light of its risk assessment concerning a particular transaction, the Insurer may, on a case-by-case basis, decide to exclude some of the political or commercial causes of loss set out in points 1.2.2, 1.3.2, 2.2.2 and 2.3.2 of Annex A. If so, it shall subsequently notify its partners and the Commission of such departures from the common principles. It shall do this at least twice a year (in June and December).

2.2.2 Each Insurer may, until 31 December 1997, propose to exclude or amend some of the political or commercial causes of loss set out in points 1.2.2, 1.3.2, 2.2.2 and 2.3.2 of Annex A for all business with any one country. If so, it shall notify its partners and the Commission of its intention.

2.3 Percentage of cover

2.3.1 In the light of its risk assessment concerning a particular transaction, the Insurer may, on a case-by-case basis, decide to reduce the percentage of cover set out in points 1.2.6.2 and 2.2.6.2 of Annex A. If so, it shall immediately notify its partners and the Commission of such departures from the common principles.

2.3.2 Each Insurer may, until 31 December 1997, propose to reduce the percentage of cover set out in points 1.2.6.2 and 2.2.6.2 of Annex A for all business with any one country. If so, it shall notify its partners and the Commission of its intention.

2.4 Status of buyer and/or borrower

2.4.1 Where it notifies its intention to cover a transaction by credit of over five years, the Insurer shall supplement the information it has to send its partners (Article 4 of the Annex to Decision 73/391/EEC) with the name and exact status of the public buyer and/or borrower, indicating whether it is the monetary authority or a sovereign or non–sovereign buyer (or guarantor) which is involved.

For private buyers and/or borrowers, the Insurer shall state whether they are first-class buyers (or banks), standard banks or standard private buyers.

Where a Member State has a different opinion as to the status of the buyer, borrower and/or guarantor from the one notified by one of its partners, it shall exchange information with the notifying partner in a bid to settle on a mutually agreed status.

2.4.2 Should this fail, the matter shall be put to the Commission.

2.4.3 For transactions financed by credits of between two years (24 months) and five years, the Insurers shall exchange information on the exact status of the buyer, borrower and/or guarantor where they see a need to do so. In the case of proven competition between Community exporters (or banks), the Insurers involved shall exchange information in a bid to settle on a mutually agreed status. Should this fail, the matter shall be put to the Commission.

3. CONSULTATION AND DEROGATION PROCEDURES RELATING TO THE COMMON PRINCIPLES PROVIDED FOR IN ANNEX B

3.1 Political risk rates (country weighting and monetary authorities)

3.1.1 Until 31 December 1997, the Insurer may charge a particular country a rate above the minimum set in accordance with Article 4 of this Directive provided that:

3.1.1.1 the higher rate is not more than 10% above the minimum rate;

3.1.1.2 the rate charged remains below the minimum rate set in accordance with Article 4 of this Directive for the next country category up;

3.1.1.3 the higher rate is charged for one of the reasons set out in point 3.6.2.1 of Annex B;

3.1.1.4 the country in question is in category one, two, three, four or five.

3.1.2 Until 31 December 1997, the Insurer may increase the rate for a given country by more than 10% over the minimum set in accordance with Article 4 of this Directive provided that:

3.1.2.1 the higher rate is charged for one of the reasons set out in point 3.6.2.1. of Annex B;

3.1.2.2 the rate charged is not more than the minimum rate set in accordance with Article 4 of this Directive for the next country category up;

3.1.2.3 the country in question is in category one, two, three, four or five;

3.1.2.4 its partners and the Commission are subsequently notified of the premium rates actually charged. This shall be done twice a year (in June and December).

3.1.3 Where the Insurer proposes to cover business in a category six country in accordance with Article 4 of this Directive, within the framework of points 4.4, 4.5 and 4.6, its partners and the Commission shall be notified immediately of the proposed premium rate.

3.1.4 In the case of proven competition between Community exporters (or banks), the Insurers involved shall exchange information in a bid to settle on a single premium for the transaction in question. Should this fail, the matter shall be put to the Commission.

3.2 <u>Political risk rates (all public buyers except for monetary authorities)</u>

3.2.1 Until 31 December 1997, the Insurer may charge a particular buyer or borrower a rate above the minimum set in accordance with Article 4 of this Directive provided that:

3.2.1.1 the higher rate is not more than 10% above the minimum rate;

3.2.1.2 the rate charged remains below the minimum rate set in accordance with Article 4 of this Directive for the next country category up;

3.2.1.3 the higher rate is charged for one of the reasons set out in point 3.6.2.2 of Annex B;

3.2.1.4 the country in question is in category one, two, three, four or five.

3.2.2 Until 31 December 1997, the Insurer may increase the rate for a particular buyer or borrower by between 10% and 40% over the minimum set in accordance with Article 4 of this Directive provided that:

3.2.2.1 the rate charged remains lower than the minimum rate set in accordance with Article 4 of this Directive for the next country category up;

3.2.2.2 the higher rate is charged for one of the reasons set out in point 3.6.2.2. of Annex B;

3.2.2.3 the country in question is in category one, two, three, four or five;

3.2.2.4 its partners and the Commission are subsequently notified of the premium rate actually charged. This shall be done twice a year (in June and December).

3.2.3 Where the Insurer proposes to cover business in a category six country in accordance with Article 4 of this Directive, within the framework of points 4.4, 4.5 and 4.6, its partners and the Commission shall be notified immediately of the proposed premium rate.

3.2.4 In the case of proven competition between Community exporters (or banks), the Insurers involved shall exchange information in a bid to settle on a single premium for the transaction in question. Should this fail, the matter shall be put to the Commission.

3.3 Commercial risk rates (first-class buyer or bank)

3.3.1 For first-class buyers or banks, the Insurer may charge a rate above the minimum set in accordance with Article 4 of this Directive. Such increase may be by up to 40% of the difference between the rate for the corresponding buyer category and the reference rate for standard banks provided that the country in question is in category one, two, three, four or five and its partners and the Commission are subsequently notified of the rate actually charged. This shall be done twice a year (in June and December).

3.3.2 Where the Insurer proposes to cover business in a category six country in accordance with Article 4 of this Directive, within the framework of points 4.4, 4.5 and 4.6, its partners and the Commission shall be notified immediately of the proposed premium rate.

3.3.3 In the case of proven competition between Community exporters (or banks), the Insurers involved shall exchange information in a bid to settle on a single premium for the transaction in question. Should this fail, the matter shall be put to the Commission.

3.4 Commercial risks (standard buyers)

3.4.1 For standard buyers, the Insurer may charge a rate below or above the reference rate set in accordance with Article 4 of this Directive. Such reduction or increase may be by up to 40% of the difference between the rate for standard buyers and the reference rate for standard banks.

3.4.2 In the case of proven competition between Community exporters (or banks), the Insurers involved shall exchange information in a bid to settle on a single premium for the transaction in question. Should this fail, the matter shall be put to the Commission.

3.5 Commercial risks (standard banks)

3.5.1 For standard banks, the Insurer may charge a rate below or above the reference rate set in accordance with Article 4 of this Directive. Such reduction or increase may be by up to 40% of the difference between the rate for standard banks and the reference rate for standard banks.

3.5.2 In the case of proven competition between Community exporters (or banks), the Insurers involved shall exchange information in a bid to settle on a single premium for the transaction in question. Should this fail, the matter shall be put to the Commission.

4. CONSULTATION AND DEROGATION PROCEDURES RELATING TO THE COMMON PRINCIPLES PROVIDED FOR IN ANNEX C

4.1 At the beginning of each year (and by 31 January at the latest), each Insurer shall report to its partners and the Commission on its cover policy for the year ahead for all debtor countries.

The report shall contain, for each of these countries, at least the following information:

4.1.1 total outstanding exposure as defined in section 3 of Annex C;

4.1.2 the total value of any undertakings to stand guarantor during that financial year and, where necessary:

4.1.2.1 the type and level of ceilings set for each country (on total outstanding exposure, value of firm contracts covered, value of undertakings to stand guarantor or maximum amount covered per transaction);

4.1.2.2 the conditions routinely imposed on cover for business with a particular country;

4.1.3 the premium rates the Insurer proposes to charge for political risks (country weighting, monetary authorities, public buyers other than monetary authorities, private first–class buyer or bank) where such rates are above the minimum rates set for each country category and type of risk;

4.1.4 the rate the Insurer charges for commercial risks (standard private buyer or bank) where different from the reference rates set in accordance with Article 4 of this Directive for each country category and type of risk;

4.1.5 where an Insurer decides to exclude a country from cover, its reasons (political and economic) for doing so.

4.2 At the end of each year (and by 31 January of the following year at the latest), each Insurer shall report to its partners and the Commission on its actual cover policy over the previous year for all debtor countries.

The report shall contain, for each of these countries, at least the following information:

4.2.1 total outstanding exposure as defined in section 3 of Annex C, at 31 December (stock);

4.2.2 the total value of any undertakings to stand guarantor during the year and, where necessary, the amount used of each ceiling, regardless of type;

4.2.3. the premium rates it has charged over the year for political and commercial risks where different from the minimum and/or reference rates set in accordance with Article 4 of this Directive.

4.3 Where the Insurer decides to limit its cover capacity for a particular country (in accordance with point 2.2.2 of Annex C) or to adjust its cover conditions (in accordance with point 2.2.3 of Annex C), it shall notify its partners and the Commission of its decision, stating the reasons for it.

4.4 Where the Insurer proposes to cover business in a country classified in category six in accordance with Article 4 of this Directive, for reasons arising from the bilateral policy of the Insurer's country towards the debtor country or for reasons of national interest, it shall notify its partners and the Commission of its intention 30 working days before taking any decision, giving reasons. It shall also state its proposed premium rate for the transaction and its conditions of cover.

4.5 Where the Insurer proposes to cover business in a country classified in category six in accordance with Article 4 of this Directive, in the circumstances provided for in points 2.3.1 to 2.3.5 of Annex C, it shall notify its partners and the Commission of its intention 30 days before taking any decision, stating clearly the financial arrangements which, de facto, place the credit risk outside the debtor country. Where necessary, it shall also set out the conditions under which it agrees to cover the manufacturing risk inherent in the transaction, and the proposed premium rate.

4.6 The Insurer may cover transactions with private buyers in a country classified in category six in accordance with Article 4 of this Directive only in the circumstances provided for in point 2.3.6 of Annex C. It shall notify its partners and the Commission of its intention, stating the premium rate it proposes to charge.

4.7 Each Insurer shall give detailed replies to any request for clarification and information on its cover policy for one or more countries or transactions. It shall address any such replies to its partners and the Commission.

4.8 Monetary amounts referred to by the Insurer in exchanges of information or in reports to its partners and the Commission shall be given in ecus.

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