EU State Aid rules and export credit framework

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DG Competition

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Introduction

Why do we control State aid?

- Art. 107(1) TFEU: notion of aid and general prohibition of State aid

"… *any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, insofar as it affects trade between Member States, be incompatible with the internal market*"

- **Reasons** for State aid control, amongst others:
  - **prevents a fragmentation of the internal market**
  - avoid harmful subsidy races
  - avoid crowding out of private investments.
  - Internal market safeguard: crucial for **maintaining a level playing field** in the internal market

How do we control State aid?

- **State aid in principle prohibited** (Art. 107(1) TFEU) = incompatible with the internal market
- However, there is **room to grant certain exemptions** from this general ban, if they can be justified by specific overarching policy objectives, necessary for a well-functioning and equitable economy (Art. 107(2) and 107(3) TFEU) – aid compatible with the internal market rules
- **Commission** carries out a **control of compatibility**
- In principle all **State aid must be notified to the Commission before being implemented** ("**standstill obligation**")
- Ex ante control by neutral body – counter-balance to regional interests
- Ensures consistent and equal application of rules
- Under judicial control of EU Courts

Elements of the notion of aid (cumulative)

- **Undertaking**: any entity engaged in an economic activity
  - Relevant: nature of the activity; not the legal form of the entity
  - Economic activity = offering goods or services on a market. Whether market exists depends on the situation in the MS
- **State origin**: State **resources** and **imputability**
  - What is "the state"? Central, regional or local authorities as well as other public or private bodies designated or established by the state
- **Advantage**
  - Capable of favouring an undertaking if it produces an economic advantage that the company would not have obtained under normal market conditions or prevents it from getting worse.
- **Selectivity**
  - Not selective: general measures (apply to all companies in all sectors of a MS, no discretionary power: rate of corporate tax)
- **Effect on trade**: Potential effect on cross-border trade is sufficient
- **Distortion of competition**: Liable to improve the competitive position vs. competitors

EU State aid Framework and Export Credit:

2021 Short Term Export Credit Communication

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Principles of export aid under EU State aid rules

- What is export aid? "*aid granted to export-related activities towards third countries or Member States, namely aid directly linked to the quantities exported, the establishment and operation of a distribution network or other current expenditure linked to the export activity*"*

- Export subsidies can adversely affect competition in the marketplace among:
  - private and public – or publicly supported – **export credit insurers** (level 1: **financial** market)
  - **exporters** (actual or potential rival suppliers of goods/services) (level 2: **product** market)

- That is why the Commission, as the guardian of competition under the Treaty has, in principle, condemned export aid for intra-Union trade and for exports outside the Union.

* Article 1(e) of Commission Regulation (EU) No. 2023/2831 of 13 December 2023 on the application of Articles 107 and 108 of the TFEU to de minimis aid, OJ 2023

2021 STEC. Objectives and Scope

- **Objective:** Clarify the Commission's assessment of Member State support for export credit insurance under Union State aid rules.
- Applicable since **1 January 2022**
- **Scope:**
  - **Temporal:** Risk period <2 years
  - **Risks:** "Marketable risks" = commercial, political or both
  - **Geographical (see Annex):** Public and non-public **buyers** in: 27 EU MS  + OECD countries

Australia Canada Iceland Japan New Zealand Norway Switzerland United Kingdom United States of America

- Risks that are in principle "<u>non-marketable</u>" are <u>outside the scope</u> of this Communication (point 7 STEC)

2021 STEC. General principles and prohibition (Section 3)

- “*If **State insurers provide export credit insurance**, such insurance **involves State resources**. The involvement of the State may give the insurers or the exporters a **selective advantage** and could thereby **distort or threaten to <u>distort competition</u>** and **affect trade** between Member States*” (Point 12 STEC)

- “*If State insurers have certain advantages compared with private credit insurers, **<u>State aid may be involved</u>***”. (Point 13 STEC)

- “*The **advantages for State insurers** with regard to marketable risks **affect intra-Union trade** in credit insurance services*” (Points 14 and 15 STEC).

  - Variations in insurance cover available for marketable risks in different MS ⇨ distortion of competition at level 1 (financial market)

  - Advantages for State insurers are passed on (at least partially) to exporters ⇨ distortion of competition at level 2 (product market) ⇨ constitutes State aid: Article 107(1) TFEU.

Conclusion: State insurers should not be able to insure marketable risks. **Transactions** need to be in line with **market conditions** (Reference Rate Communication, Guarantee Notice)

However, when…

CERTAIN RISKS on buyers established in countries in the Annex are considered **TEMPORARILY NON-MARKETABLE**

+

CONDITIONS are met

+

PROCEDURES (including submission of evidence) are followed

Section 4 STEC (points 19 – 20)

Section 4 STEC (points 21 – 30)

Section 5 STEC (points 31 – 41)

=

State aid can be deemed **COMPATIBLE** with the internal market

Exceptions to the scope of marketable risks: Temporarily non-marketable risks (Point 19 STEC)

Removal of one or more countries from the list of marketable countries

- Point 19(a) STEC
- Commission’s discretion and **no notification required**. Example: Greece (2013 – 31/12/2019)
- Capacity of private insurance market is insufficient to cover risks

Risks incurred by SMEs with total annual export turnover < EUR 2.5 million

- Point 19(b) STEC
- **Notification required (scheme)**. In case of doubt, pre-notification contact with DG COMP available
- Limited to **SME** exporters in the notifying MS (scheme). SMEs defined in Commission Recommendation 2003/361/EC

Single-risk cover with a risk period of ≥ 181 days and <2 years

- Point 19(c) STEC
- **Notification required (scheme)**. In case of doubt, pre-notification contact with DG COMP available
- Limited to exporters in the notifying MS
- Aimed at covering all sales to one buyer or a single contract with one buyer

Shortage of export credit insurance in a particular (notifying) MS

- Point 19(d) STEC
- **Notification required (scheme)**. In case of doubt, pre-notification contact with DG COMP available.
- Limited to exporters in the notifying MS

Examples of Application in Recent Practice of DG COMP

- SA. 51270 (Croatia) "…the limited capacity of short-term export-credit market in Croatia justifies the continuation of insurance of certain risks by HBOR under the point 18 (d). None of the private insurance companies, contacted with the purpose to indicate if their current activities compete with the activities of HBOR, submitted such indication…HBOR undertakes to demand from each applicant for cover the proof of impossibility of contracting the insurance with a private insurer…:"
- SA. 105152 (Latvia) STEC scheme for temporary non-marketable risks - point 19(d):

"…LV authorities provided the required evidence as regards the functioning of LV market for short-term export credit insurance and its persisting insufficient capacity to offer relevant products. In particular, the Study commissioned and submitted by LV authorities concluded, based on primary data, secondary publicly available statistical data, interviews with industry experts in banking and trade credit insurance brokerage industry, and based on survey of LV exporters, that there exist market gaps in provision of STEC insurance relevant for the proposed scheme……As the position of the associations reflects that of their constituents, it is safe to conclude that none of the relevant potential providers of STEC insurance has shown interest in bringing this product to LV market. ……ALTUM's intervention will only take place in the areas where the market is not functioning properly, i.e. in cases where the private sector does not have the capacity to offer customary credit risk cover. Each exporter with a total annual export turnover between EUR 2.5m and EUR 5m@ applying for cover has to provide a statement, signed by an authorized representative of the exporting company, concerning the refusal of cover by the private sector."

Conditions for providing cover for temporarily non-marketable risks (Points 21 - 30 STEC)

Quality of cover	• Consistent with market standards • Cover risks acceptable on the basis of **sound underwriting principles** • Maximum **95% coverage** for commercial + political risks (Guarantee Notice: max is 80%) • Claims waiting period: **minimum of 90 days**
Underwriting principles	• Financially **unsound transactions: not eligible**. Explicit risk acceptance criteria • Ex: exporters having a positive trading/payment experience with buyer / buyers with clean claims record, low default probability and acceptable financial ratings (internal and external)
Adequate pricing	• **Risk carrying** must be **remunerated**; **higher average premiums** (avoid crowding out private credit insurers) • Phasing out of State intervention: exporters incentivised to return to private market as soon as market conditions allow them ⟹ risk becomes "marketable" again. • Depends on relevant buyers' risk category (see table on next slide) • Administration fee added
Transparency and reporting	• Publication of schemes regarding temporarily non-marketable risks under point 19 STEC (websites) • Submit annual reports to the Commission (at the latest on 31 July of the year following the intervention) • Format: spreadsheet data

Conditions for providing cover for temporarily non-marketable risks – Adequate pricing (Point 24 STEC)

- "Safe harbour premiums": minimum annual risk premium to be charged **based on buyers' risk category** (on the basis of one-year CDS spreads, composite rating from S&P, Moody's and Fitch, for the years 2007 - 2011)
- Possibility for MS to provide evidence that such rates are inadequate for the risk in question

Risk category	**Minimum annual risk premium**[18] (% of insured volume)
Excellent[19]	0.2 – 0.4
Good[20]	0.41 – 0.9
Satisfactory[21]	0.91 – 2.3
Weak[22]	2.31 – 4.5

Procedures (Points 31 - 41 STEC)

- **Failure to fulfil** any of the conditions does not mean that export credit insurance is **automatically prohibited.**

- If MS wish to **deviate** or **in doubt** whether a scheme fulfills any of the conditions, **MS must contact / (pre)notify the scheme to the Commission**.

Procedures (Points 31 - 41 STEC)

Removal of one or more countries from the list of marketable countries

- COM on its own initiative OR at the **written request of at least three MS**
- **Evidence** over a **6-month period**: (a) contraction of private credit insurance capacity; (b) deterioration of sovereign sector ratings; (c) deterioration of corporate sector performance.
- **Process**: Consultation with stakeholders; **time-limit**: **maximum 20 WD**. Removals for at least 12 months (extendable)

Risks incurred by SMEs with total annual export turnover < EUR 2.5 million

Single-risk cover with a risk period of ≥ 181 days and <2 years

Shortage of export credit insurance in a particular (notifying) MS

Notification obligation Art 108(3) TFEU + standstill obligation

Time limit: **2 months** after **complete notification**; if not complete: information request (re-starts the clock)

Evidence: contacted main credit insurers and brokers (ex: representing min. 50% market) in MS providing them an opportunity to provide evidence that cover for risks is available. Response within max. 30 days following receipt of request.

Evidence: supply shock in private insurance market: withdrawal of a major credit insurer, reduced capacity or limited range of products compared with other MS

EU State aid Framework and Export Credit:

Beyond STEC

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Alternatives

- **Is risk period longer than 2 years? Yes, OECD Arrangement shall be respected**.

- **Is risk period shorter than 2 years but does not fall within STEC? Yes,** transactions need to be **in line with market conditions** (Reference Rate Communication, Guarantee Notice)

Thank you

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