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(Acts whose publication is not obligatory)

COUNCIL

COUNCIL DECISION

of 3 December 1973

on consultation and information procedures in matters of credit insurance, credit guarantees and financial credits

(73/391/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

HAS DECIDED AS FOLLOWS:

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

Having regard to the proposal from the Commission;

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

Whereas, by a Decision of 26 January 1965 ⁽²⁾, the Council set up a consultation procedure in matters of credit insurance, credit guarantees and financial credits;

Whereas it is advisable that, on the basis of the experience acquired in applying this consultation procedure, certain amendments be made thereto,

Article 1

The provisions of the Annex shall apply as from 1 January 1974.

These provisions shall be substituted for those formerly adopted by the Council as regards the procedure for consultation in matters of credit insurance, credit guarantees and financial credits.

Article 2

This Decision is addressed to the Member States.

Done at Brussels, 3 December 1973.

For the Council

The President

I. NØRGAARD

⁽¹⁾ OJ No 66, 27. 10. 1960, p. 1339/60.

⁽²⁾ OJ No 19, 5. 2. 1965, p. 255/65.

ANNEX

CONSULTATION AND INFORMATION PROCEDURES IN MATTERS OF
CREDIT INSURANCE, CREDIT GUARANTEES AND FINANCIAL CREDITS

TITLE I

GENERAL PROCEDURE

Section I

Scope

Article 1

Consultation in accordance with the procedure laid down in Section II shall take place where it is proposed — by the State, any other State organization or any body for credit insurance or finance — to grant or guarantee, fully or partially, foreign credits:

- linked to exports of goods or services
- which depart from the norms listed in Annex I or from any other norm adopted by the Member States.

Article 2

The consultation procedure shall be applicable:

- whether it concerns supplier credits or financial credits
- whether these credits form the subject-matter of individual contracts or global credit arrangements as described in Article 3
- whether the credits are purely private or are sponsored fully or partially, out of public funds.

Mixed credits combining public and private funds and global private credit arrangements combined with public fund interest subsidies shall for the purpose of this procedure be considered as public credits.

Article 3

1. 'Global credit arrangement' shall mean any understanding or statement, in whatever form, whereby the intention to guarantee supplier or financial credits or to open financial credits, up to a specified or ascertainable ceiling, and in respect of a connected series of transactions, is made known to a third country or to exporters or to financial institutions.

The consultation procedure shall be applicable to these global arrangements even where the nature of the transactions has not been specified and no formal commitment has been entered into, without prejudice to the right to decide on each particular contract.

2. If, in the course of a consultation on the granting of a global arrangement — whether public or private in nature — a Member State or the Commission should request oral consultation and if in the course of this oral consultation five Member States should request that all or some of the individual contracts to be charged to this global arrangement constitute the subject of prior consultations, consultation shall be applicable to such contracts.

3. Any Member State which has granted a global arrangement shall, at a date subsequent thereto, and every six months thereafter, give notification of the use made of that arrangement.

Section II

Procedure

Article 4

In the case of an individual contract, the Member State initiating consultation shall supply the following information:

- (a) country of destination;
- (b) location of the transaction or, failing that, address of head office of the contracting party in the country of destination;
- (c) characteristics of the transaction:
 - nature of transaction: type of material and approximate number of items to be supplied,
 - value rating according to the scale given in Annex 2,
 - whether buyers and any guarantors are public or private,
 - if transaction is to be put for international tender, closing date for submission of tenders;

- (d) principal credit terms applied for by proposed recipient;
- (e) credit terms the authorities in the exporting country propose to offer:
- percentage payable on credit,
 - duration of credit and starting-point thereof (e.g. each delivery, last delivery, commissioning),
 - repayment rate,
 - where repayment is not to be effected by equal instalments at regular intervals between the starting-point and termination of the credit, exact details of how this is to be effected (percentage of each instalment and exact date of payment),
 - amount of effective interest subsidy, where it differs from that receivable under the normal system; interest rate if the credit is to be granted out of public funds,
 - credit insurance charges, where these differ from those payable under the normal system,
 - scope and terms of any support for local expenditure;
- (f) precise grounds cited for not applying, or departing from, the norms set out in Article 1. Where they obtain, the following circumstances must be specified: aid credit; competition from a third country (with indication whether or not supported); transaction to be charged to a global arrangement which has been the subject of previous consultation.

Article 5

In the case of global credit arrangements, the Member State initiating consultation shall supply the following information:

- (a) country of destination;
- (b) ceiling of global credit arrangement;
- (c) purpose of credit:
- if known, place where transaction is to be carried out,
 - type of material, the supply of which is contemplated,
 - whether borrowers and any guarantors are public or private;

- (d) credit terms as under Article 4 (e) and eligibility requirements for individual contracts (e.g. closing dates for charging to global credit arrangement, minimum contract prices to be set, if any);
- (e) precise grounds cited for not applying, or departing from, the norms set out in Article 1. Where they obtain, the following circumstances must be specified: aid credit; competition from a third country (with indication whether or not supported).

Article 6

The following numbering shall be observed when transmitting information:

- individual contracts: letter corresponding to the consulting Member State followed by a serial number for each year; where a contract is charged to a global arrangement, the numbering of such global arrangement shall also be indicated;
- global private credit arrangements: letter 'X' followed by the letter corresponding to the consulting Member State and a serial number for each year;
- public or mixed credits: letter 'A' followed by the letter corresponding to the consulting Member State and a serial number for each year.

Article 7

In order to enable Member States to coordinate their attitudes in due and proper time, the information prescribed under Articles 4 and 5 must be transmitted as soon as possible after initiation of the study either of the guarantees and the proposed credits proper, or of any other decision which, under the terms of national regulations or national administrative practices, would constitute a prerequisite for the subsequent examination of such guarantees or credits.

Article 8

Where there are changes in the factors justifying departure from the norms or if new basic terms of the credit are proposed which differ from those initially specified by the consulting Member State, renewed consultation shall take place under a revised reference.

If, however, the new terms proposed are more restrictive, the Member State concerned shall be committed only to direct information under the initial reference.

Article 9

The information specified in Articles 4 and 5, the replies specified in Article 10 and the notification referred to in Article 15 shall be transmitted by telex to recipients designated by each Member State, the Commission and the Secretariat of the Council respectively.

All correspondence relating to a consultation shall bear the latter's number and an indication of the country of destination.

Article 10

1. Member States and the Commission may:

- indicate that the terms proposed by the consulting Member State do not call for any comments;
- request the consulting Member State to provide additional details;
- make comments and reservations or express an unfavourable opinion; only an opinion expressly stated to be an 'unfavourable opinion' shall be considered to be such;
- request a consultative meeting.

2. Where transactions subject to consultation receive an unfavourable opinion from five Member States, consultative meetings shall take place automatically.

3. Except where Article 13 applies, the consulting Member State shall suspend its decision until the expiry of the periods prescribed in Article 11, or, where a consultative meeting is due to take place automatically under paragraph 2, until such meeting has been held.

Article 11

The procedure prescribed in Article 10 (1) must be initiated within a period of 7 calendar days from the date of the introductory communication from the consulting Member State.

Where requests for additional details are addressed to the consulting Member State, by the date of expiry of the 7 calendar-day time limit at the latest, the latter must reply within 5 calendar days at the latest.

Participants in the aforementioned procedure shall be allowed a maximum period of three working days following receipt of such additional details within which to express their opinion.

Article 12

Failure on the part of the Member States consulted or of the Commission to reply within the periods prescribed in Article 11 shall be deemed an absence of comments as defined in Article 10 (1) (1).

As soon as a Member State requesting additional details has notified the recipients referred to in Article 9 of failure to receive a reply by the date of expiry of the period prescribed in Article 11 (2) a consultative meeting shall take place automatically and Article 10 (3) shall apply.

Article 13

As an exceptional measure, the consulting Member State may take an immediate decision on the transaction proposed if it considers that such decision can no longer be delayed.

However, except in the case of public credits, this provision shall not apply:

- in the case of the decision to grant or guarantee the credit being based only on intra-Community competition. However, the possibility of taking an immediate decision on transactions shall be permitted on terms which another Member State has already decided to support;
- to the extent that any procedure laid down in an international context and to which all Member States are parties affords all participants, only the sole alternative, in cases of urgency, of reducing the normal periods for reply.

Article 14

Consultative meetings shall be held on the occasion of any meeting of the Policy Coordination Group for Credit Insurance, Credit Guarantees and Financial Credits set up by the Council Decision of 27 September 1960, or of its subgroups. Further, if any Member State so requests, special meetings shall be convened in between meetings of the Group or of its subgroups.

Member States and the Commission shall communicate to the recipients referred to in Article 9, if possible four calendar days before the consultative meetings, lists of the matters which they intend to submit for discussion.

Consultative meetings shall be held at the seat of the Secretariat of the Council.

Article 15

In all cases the final decision taken in respect of each transaction shall be made known to the other Member States. The notification of such decision shall be accompanied by a statement of the reasons for which the consulting Member State was unable to take account of any comments, reservations or unfavourable opinions expressed by the partners consulted.

TITLE II

SPECIAL PROCEDURES

Article 16

Any Member State may ask any other Member State whether it has knowledge of a transaction which until then has not been the subject of consultation and, in particular, of the credit terms alleged by an exporter or a financial institution. Should no reply to these requests for details be forthcoming within seven calendar days, the enquiring Member State shall be entitled to consider that the Member State consulted has knowledge of this matter and that the alleged credit terms are deemed to have been established. In accordance with the procedure prescribed under Title I, the enquiring Member State shall have the right to institute a consultation while indicating expressly that it is motivated by a competitive situation which is deemed to have been established.

If consultation has already been initiated by a Member State and another Member State which is called upon to support the same transaction questions the first-mentioned State as to its final position, failure to reply to such questioning on the expiry of a period of five working days shall authorize the enquiring Member State to consider that the Member State thus questioned has supported the matter on the terms indicated during consultation.

Article 17

Untied credits departing from the norms set out in Annex I or from any other norm adopted by the

Member States shall, within the framework of the Policy Coordination Group for Insurance Credit, Credit Guarantees and Financial Credits, entail notification:

- of the basic components of credits granted in the course of the preceding quarter;
- of the use made of untied credits at the close of the preceding year.

Article 18

When a Member State concludes with a third country an agreement which refers to the possible grant of credits without specifying the precise terms thereof:

- in the case of tied credits, it shall on conclusion of the agreement communicate the main features thereof to the recipients referred to in Article 9;
- in the case of untied credits, the notifications provided for in Article 17 shall equally apply to such credits.

Where grants of untied credits are concerned, these shall also be subject to notification as provided in Article 17.

TITLE III

PERIODIC REPORTS

Article 19

The Policy Coordination Group for Credit Insurance, Credit Guarantees and Financial Credits shall submit half-yearly reports on the application of the procedure referred to in Titles I and II.

These periodic reports notwithstanding, supplementary reports shall also be drawn up, if the nature and importance of the difficulties encountered in the application of the relevant procedure so require.

ANNEX 1

COMMUNITY NORMS WHICH CANNOT BE DEPARTED FROM WITHOUT CONSULTATION

A. Duration of credits

The duration of any credit granted, whether supplier credit or financial credit, must not exceed five years calculated from the following starting-points:

1. *Capital goods consisting of individual items usable in themselves:*

(for example, locomotives): the mean date, or actual dates, on which the buyer is to take physical possession of the goods in his own country;

2. *Capital goods for complete plants or factories:*

the date on which the buyer is to take physical possession of the entire goods (excluding spare parts) supplied under the contract;

3. *Construction or installation contracts:*

the earlier of the following:

- either the date on which the seller should have constructed or completed the installation of the plant; or
- twelve months after the date on which the entire goods (excluding spare parts) to be supplied under the contract have been delivered on site.

B. *Percentage of local expenditure*

In the case of guaranteed private credits, the balance of the local portion payable on credit must not exceed 5 % of the contract price:

- however, consultation shall not be instituted in the case of contracts which provide for payment of the local portion to be made, at the latest, upon the expiry of a period of three months calculated from the final completion of the works or deliveries;
- for the proper interpretation of this rule:
 - 'balance payable on credit' shall mean the balance outstanding after charging against the local portion all payments made on account in connection with the contract;
 - 'local portion' shall mean that portion of the contract price representing the expenditure the exporter expects to incur on the spot in the way of payments to employees and others and payments for goods and materials;
 - 'contract' shall mean any type of contract for the supply of goods and materials; for the carrying out of work; mixed (i.e., supply and works) contracts;
 - 'payments on account' shall mean all the sums payable between the placing of the order and final completion of the works or deliveries.

C. *Leasing contracts*

For the purposes of application of the rules, which are the subject of the present Decision, leasing contracts shall be treated as credits. Where their total duration is not expressly restricted, such duration shall be regarded as being in excess of five years.

ANNEX 2

SCALE OF VALUES TO BE USED

category I:	up to 750 000 u.a.
category II:	from 600 000 to 1 500 000 u.a.
category III:	from 1 250 000 to 3 000 000 u.a.
category IV:	from 2 500 000 to 5 000 000 u.a.
category V:	from 4 500 000 to 10 000 000 u.a.
category VI:	from 8 000 000 to 22 000 000 u.a.
category VII:	from 20 000 000 to 44 000 000 u.a.
category VIII:	over 40 000 000 u.a.
