

COUNCIL DECISION

of 16 December 1970

on the rules applicable, in the fields of export guarantees and finance for export, to certain sub-contracting in other member countries of the European Communities or in non-member countries

(70/552/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

HAS DECIDED AS FOLLOWS:

Having regard to the Council Decision of 27 September 1960¹ setting up a Policy Co-ordination Group for Credit Insurance, Credit Guarantees and Financial Credits;

Having regard to the first report of the Policy Co-ordination Group for Credit Insurance, Credit Guarantees and Financial Credits, approved by the Council at its meeting of 14/15 May 1962;

Having regard to the principles approved by the Council relating to automatic inclusion of sub-contracts with parties in other member countries of the European Communities or in non-member countries; in the cover which may be granted to the principal contractor;

Having regard to the proposal from the Commission;

Whereas, after the transitional period has ended, the common export policy is to be based on uniform principles; whereas this Decision will, consequently, only apply to relations with third countries;

Whereas it is necessary to specify the conditions and procedure for application of those principles;

Article 1

The rules applicable in each Member State to the automatic inclusion, of sub-contracts with parties in other member countries of the European Communities or in non-member countries in the cover which may be granted to the principal contractor, are defined in the provisions set out in the Annex to this Decision.

Article 2

Those provisions shall apply to the sub-contracting described in that Annex and relating to export transactions concluded on the basis of privately guaranteed credits. They shall also apply, as regards Sections I, II and IV, to sub-contracting relating to export transactions concluded on the basis of credits involving any form of financial support from a Member State.

Article 3

This Decision shall enter into force on 1 January 1971.

Done at Brussels, 16 December 1970.

For the Council

The President

H. LEUSSINK

¹ OJ No 66, 27.10.1960, p. 1339/60.

ANNEX

Rules applicable to the automatic inclusion of sub-contracts with parties in other member countries of the European Communities or in non-member countries in the cover which may be granted to the principal contractor

SECTION I — DEFINITION OF 'SUB-CONTRACT'

'Sub-contract' means a contract concluded by an undertaking (hereinafter called the 'principal contractor') with another undertaking (hereinafter called the 'sub-contractor') under which it is agreed that, in performance of another contract made between the principal contractor and a third undertaking (hereinafter called the 'buyer'), the sub-contractor will deliver goods or perform services which the principal contractor must incorporate or use in performing the subject-matter of the contract or contracts which the buyer has made with him, it being understood that:

(a) *Position in law*

The sub-contractor is not a co-signatory to the contract concluded between the principal contractor and the buyer, and

the principal contractor has sole responsibility to the buyer for performance of the contract and bears all the risks which may be guaranteed in relation to the latter.

(b) *Technical and economic position*

Supplies from the sub-contractor cover goods (other than raw materials or semi-finished goods) and/or services which, from the technical and economic point of view, constitute for the buyer essential ancillaries to performance of the contract by the principal contractor.

SECTION II — AUTOMATIC INCLUSION OF SUB-CONTRACTING

1. Sub-contracts exclusively with parties in one or more Member States shall be automatically included in the cover which may be granted to the principal contractor where the amount of such sub-contracts is equal to or less than:

- 40% for contracts of a value less than 7 500 000 units of account,
- 3 000 000 units of account for contracts of a value between 7 500 000 and 10 000 000 units of account,
- 30% for contracts of a value over 10 000 000 units of account.

However, where the principal contractor's credit insurer is unable, because the risk inherent in the transaction is particularly heavy, to support cover for the whole of the transaction, consultation between the interested credit insurance organisations shall take place with a view to resolving the problem by means of joint insurance or, if possible, re-insurance.

2. Where export contracts involve sub-contracting both in member countries of the European Communities and in non-member countries, the sub-contracting in member countries shall be automatically included, in so far as the total sub-contracting in all countries does not exceed the percentages and the limits as fixed in paragraph 1 by reference to the value of the contract.

3. It is understood that, on a reciprocal basis, the foreign origin of the sub-contracted items which are included according to the procedure referred to will not lead to discrimination where financing of these items is concerned.

SECTION III — EXCHANGE OF INFORMATION

1. A subsequent exchange of information shall take place within the framework of the Policy Co-ordination Group for Credit Insurance, Credit Guarantees and Financial Credits as regards individual contracts in respect of which the sub-contracting in non-member countries exceeds 30% and, in respect of mixed sub-contracting both in member and non-member countries where their total value exceeds that percentage.

Such exchange of information shall, however, only take place for individual contracts exceeding 500 000 units of account in value and involving credit for a period of more than three years.

The following shall apply:

- such individual contracts are to be considered as exceptional;
 - a study may at any time be made within the Co-ordination Group of the difficulties which may arise in connection with certain individual contracts reported within the framework of the subsequent exchange of information;
 - if experience shows that the subsequent exchange of information procedure is unsatisfactory, the Commission and the Member States may request that ways and means be sought of remedying those aspects that are found to be unsatisfactory.
2. Where a Member State proposes to conclude with a non-member country an agreement relating to inclusion of sub-contracts on a reciprocal basis, the Member State concerned shall submit a preliminary notification to be followed by consultations within the framework of the Policy Co-ordination Group for Credit Insurance, Credit Guarantees and Financial Credits. The percentages relating to automatic inclusion allowable in such agreements may not—unless the Council decides otherwise—exceed 30% irrespective of whether the sub-contracting is in the non-member country with which the agreement has been made or whether sub-contracting in other countries is involved.

SECTION IV — BASIS OF CALCULATION

The percentages and amounts referred to shall be calculated in accordance with the following rules:

- costs incidental to export, i.e. transport and insurance, are included in the total amount of the contract on which these percentages and amounts are calculated;
- costs of financing are totally excluded from the amount of the contract, whether itemised or not;
- the non-repatriable portion of incidental local expenditure on supplies is not normally deducted from the amount of the contract, it being understood, however, that if this portion exceeds 15% of the amount of the contract less the costs of financing, the excess will be deducted.