

GUIDELINES

on State aid in the sector of short-term export-credit insurance

Under the provisions of Article 27 paragraph (1) of Competition Law no. 21/1996 with subsequent amendments and of Article 30 paragraph (1) of Law no. 143/1999 on State Aid, with subsequent amendments,

The Competition Council adopts the present Guidelines.

1. Introduction

1.1. The establishing of a juridical framework of regulating the State aid discipline represents the following up of the harmonization process of the Romanian legislation with the European legislation, which is part of the Romania's pre-accession process to the European Union.

1.2. The purpose for which the Competition Council authorizes the aids granted by State or by administrative-territorial units in the sector of short-term export-credit insurance is to observe the extent to which the State aid is compatible with the normal competition environment existing in a market economy in which the product prices and the services tariffs are established based on the demand/offer report.

2. The scope

2.1. The purpose of these Guidelines is to remove distortions of competition due to State aid granting in the sector of the export-credit insurance, in which there is competition between public and private export-credit insurers. This commercial sector of export-credit insurance is the sector of insurance of the short-term export-credit risks (marketable credits) on export within the countries listed in the Annex below.

2.2. This Guidelines will not deal with the insurance of medium and long-term export-credit risks (which are non-marketable at the present time).

3. Terms used in the sector of short-term export-credit insurance

3.1. According to the present Guidelines, the 'official' export-credit insurers may be government departments, State-owned or State-controlled companies or wholly privately-owned and controlled companies, that insure the short, medium or long-term export-credit risks for the account or with the guarantee of the State.

3.2. On the other hand, some private export-credit insurers that only provide short-term insurance may be supported by State through guarantees or equivalent reinsurance arrangements for some segments of their business. These insurers, can be also categorized as 'public or publicly supported'.

3.3. Export-credit insurers, mainly or exclusively engaged in the short term that do not operate for the account or with the guarantee of the State or with equivalent reinsurance arrangements for any of their business will be termed 'private export-credit insurers'.

3.4. A public debtor is an entity that represents the public authority itself and cannot either judicially or administratively be declared insolvent; in this category are included: the Central Bank, public institution sub-ordinated to the Government (Ministry of Public Finances) and institutions sub-ordinated to national, regional and local public authorities and

others alike. A public/governmental buyer (debtor) is also the entity of whom obligations are entirely and unconditionally guaranteed by an institution considered public/governmental.

3.5. 'Marketable' risks are defined as commercial and political risks on public afferent to the exports made by public and non-public debtors established in the countries listed in the Annex. For such risks the maximum risk period (that is, manufacturing plus credit period with normal Berne Union starting point and usual credit term) is of two years. The definition of the 'marketable' risks can be reviewed by the Competition Council, having in view the harmonization with relevant community legislation in the sector of export-credit insurance.

3.6. 'Commercial risks' are defined for the purposes of these Guidelines as:

a) arbitrary repudiation of a contract by a debtor, that is, any arbitrary decision by a non-public debtor to interrupt or suspend the contract without legitimate reason;

b) arbitrary refusal by a non-public debtor to accept the goods covered by the contract without legitimate reason;

c) insolvency of a non-public debtor or his guarantor;

d) non-payment by a non-public debtor or by his guarantor of a debt resulting from the contract, that is, protracted default.

3.7. Political risks are represented by:

a) difficulties and delays in transfer of foreign currencies from the debtor's country, following a general moratory regarding the external debt, issued by the Government of the debtor's State or by the Government of a third country, through which the payment must be done;

b) any other actions taken by the Government of the importer, that make impossible for him to pay, partially or entirely, the goods that are subject of the contract;

c) any other actions taken by foreign Governments, that impede the carrying out of the credit covenant or determine delays in money transfer;

d) war, civil war, revolutions and other similar events, excepting Romania, that impede importer from paying, partially or entirely, the goods that are subject of the contract;

e) any losses related to public debtors;

f) any losses resulted from the impossibility of establishing legal procedures in the debtor's country, due to a lack or a bad functioning of the legal or judiciary system within the related country.

3.8. All other risks (that is, catastrophe risks and others are considered not yet to be marketable), not being the result of market mechanism.

3.9. The escape clause is a provision contained by a bilateral or multilateral commercial agreement, through which the signing country may suspend the tariff or other concessions (this is, to temporarily infringe its obligations), when the imports may produce serious damages to domestic producers of competitive goods.

4. Factors distorting competition in the sector of short-term export-credit insurance

4.1. The reinsurance facilities whereby the State only participates in or supplements a private-sector reinsurance treaty may also give insurers benefiting from them an advantage over private insurers not receiving such cover, thereby distorting competition.

4.2. The factors that may distort competition in favour of public or publicly supported export-credit insurers insuring marketable risks include:

a) de jure or de facto State guarantees of borrowing and losses registered by the insurers. Such guarantees enable insurers to borrow at rates lower than the normal market rates or make it possible for them to borrow money at all. Furthermore, they obviate the need for insurers to reinsure themselves on the private market;

b) any difference in obligations, between public and private insurers, to maintain adequate provisions. In order to insure short-term commercial risks, public or publicly supported insurers must have a certain amount of own funds for establishing the solvency margin, including guarantee fund and technical provisions (notably and equalization reserve);

c) relief or exemption from taxes normally payable (such as company taxes and taxes levied on insurance policies);

d) awards of aid or provisions of capital by the State. With regard to the latter, the principle should be observed that, unless the State is acting as would a private investor in a market economy, capital injections involve State aid;

e) provision by the State of services in kind, such as access to and use of State infrastructure, public facilities or privileged information (for instance, information about debtors gathered by embassies) on terms not reflecting their cost;

f) and reinsurance by the State, either directly, or indirectly via a public or publicly supported export-credit insurer, on terms more favourable than those available from the private reinsurance market, if these lead either to under-pricing of the reinsurance or to the artificial creation or maintaining of reinsuring capacity that would not be forthcoming from the private market.

4.3. The types of treatment listed in paragraph 4.2. give, or may give, the export-credit insurers that receive them a financial advantage over other export-credit insurers. Such financial advantages granted to certain enterprises distort competition and constitute State aid within the meaning of the Law no.143/1999, with subsequent amendments.

5. Action required to eliminate distortions of competition in the sector of short-term export-credit insurance with respect to marketable risks

5.1. The public or publicly supported export-credit insurers will have to keep a separate administration and separate accounts for their insurance of marketable risks and non-marketable risks for the account or with the guarantee of the State.

5.2. The Competition Council will, on the basis of the half-year reports made by the State aid suppliers, exercise a permanent control over the insurance and reinsurance national system of short-term credit-export.

6. Authorizing conditions of State aid in the sector of short-term export-credit insurance

6.1. the State aids mentioned in paragraph 4.2. can be authorized by the Competition Council if one of the following conditions are fulfilled:

a) the State reinsurance is a minority element in the insurer's overall reinsurance package;

b) where the reinsurance treaties of the insurer cover marketable and non-marketable risks, the level of State reinsurance for marketable risks must not exceed that which would have been available from the private reinsurance market if reinsurance had been sought for those risks in isolation;

c) the State reinsurance does not act so as to enable the insurer to insure the debtors beyond the limits set by the participating private-market reinsurers;

d) the premium for State reinsurance demonstrably reflects the risk, is calculated using commercial market techniques and, where an equivalent market premium rate is available, is at least equal to that rate;

e) the State reinsurance for marketable risks is open to all export-credit insurers who are able to satisfy the common eligibility criteria.

6.2. The principle that export-credit insurance for marketable risks should be provided by public or publicly supported export-credit insurers only if the financial advantages listed in paragraph 4.2 are withdrawn from them may be departed from in the circumstances set out below.

6.2.1. The cover for marketable export-credit risks may be temporarily unavailable from private export-credit insurers or from public or publicly supported export-credit insurers operating for their own account, owing to a lack of insurance or reinsurance capacity. Therefore those risks are temporarily considered to be non-marketable.

In such circumstances, those temporarily non-marketable risks may be taken on to the account of a public or publicly supported export-credit insurer for non-marketable risks insured for the account of or with the guarantee of the State. The insurer should, as far as possible, align its premium rates for such risks with the rates charged elsewhere by private export-credit insurers operating on other markets for the type of risk in question.

Any intention of using the escape clause must be immediately notified to the Competition Council. That notification should contain a market report demonstrating the unavailability of cover for the risks in the private insurance market by producing evidence thereof (from two large, well-known international private export-credit insurers as well as a national credit insurer), thus justifying the use of the escape clause. It should, moreover, contain a description of the conditions which the public or publicly supported export-credit insurer intends to apply in respect of such risks.

After the receipt of such notification, the Competition Council will examine whether the use of the escape clause is in conformity with the above conditions and compatible with the Law no. 143/1999, with subsequent amendments.

If the Competition Council finds that the conditions for the use of the escape clause are fulfilled, its decision on compatibility is limited to two years from the date of the decision, provided that the market conditions justifying the use of the escape clause do not change during that period.

6.2.3. The Competition Council may revise the conditions for the use of the escape clause; it may also decide to discontinue it or replace it with another appropriate system.

7. Transitory and final provisions

7.1. The provisions of these Guidelines are not against the other regulations issued in applying the Law no. 143/1999, with subsequent amendments.

7.2. The present Guidelines are applying to State aids granted in the sector of short-term export-credit insurance notified after their entering into force, as well as in the case when the State aids were notified before their entering into force, but the Competition Council's decision is given after this date or did not issued any decision so far.

7.3. According to the provisions of art. 29 paragraph (1) of the Law on Competition no. 21/1996, with subsequent amendments, and of the art. 22 paragraph (5) of the Law no.

143/1999, with subsequent amendments, the present Guidelines are to be put into force through the Order of the Competition Council' President and it will be issued in the Romanian Official Journal, Part I.

ANNEX

LIST of marketable risk countries

European Union

Countries which are members of the OECD
and which are considered to be marketable
risk countries

All Member States

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