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Subject: **State aid SA.38347 (2014/N) – Romania**

Short-term export-credit scheme

Sir,

I. PROCEDURE

- (1) Following pre-notification contacts, Romania notified on 30 May 2014 a short-term export-credit scheme (hereinafter referred to as "the Scheme") aimed at publicly providing short-term export-credit insurance in cases where cover for marketable export credit risks is temporarily unavailable.
- (2) The Scheme falls under the scope of the Communication from the Commission to the Member States on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to short-term export-credit insurance¹ (hereinafter "the 2012 Export-credit Communication") adopted in December 2012. The Romanian authorities intend to consider temporarily non-marketable certain commercial and political risks on buyers established in the countries listed in the Annex of the 2012 Export-credit Communication, in accordance with the provisions of point 18(b) and (c) of the said Communication.

¹ OJ C 392, 19.12.2012, p. 1.

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II. CURRENT MARKET FOR SHORT-TERM EXPORT CREDIT INSURANCE IN ROMANIA

- (3) According to the Romanian authorities, the financial crisis affected the economies of EU Member States and OECD countries differently, resulting in increasing or decreasing the underwriting limits imposed by the private insurers. The Romanian authorities observe that private insurers cover mostly the total export turnover and "*not that often*" sales to a single foreign buyer or a single contract with a single buyer (so-called "single-risk cover"). Due to the fact that private export-credit insurers have decreased their credit limits related to different Members States and/or OECD member countries and/or do not provide single-risk cover, Romanian exporters which carry out financially sound transactions may experience lack of cover against the risks associated to their partners located in those countries.
- (4) The Romanian authorities submit that they took all necessary steps to determine whether cover for the risks specified in point 18(b) and (c) of the 2012 Export-credit Communication is available in Romania. They concluded that cover for those risks is not available.
- (5) Banca de Export-Import a Romaniei EXIMBANK SA (hereinafter "Eximbank"), which is the "State insurer", i.e. the official Romanian agency that provides export-credit insurance with the support of, on behalf and for the account of the State, first contacted private insurers Coface and Euler Hermes.
- (6) The choice of those insurers was based on the fact that, according to a Commission study², there are 3 large insurers, namely *Euler Hermes, Atradius and Coface*, which currently dominate the short-term credit insurance world and have a dominant presence in almost every EU Member State³. Since only Coface and Euler Hermes (not Atradius) have authorised branches in Romania, it had been assumed that the market for short-term export-credit in Romania would be dominated by these insurers.
- (7) However, Euler Hermes merely replied that it provides single-risk cover "only exceptionally"⁴, while Coface did not answer at all.
- (8) Therefore, Eximbank decided to consult the Financial Surveillance Authority (hereinafter "ASF") and the National Union of Insurers and Re-insurers in Romania (hereinafter "UNSAR"), which informed that private insurers Groupama and Garanta are in a duopoly in the credit insurance market in Romania (with about 49% each). According to the replies provided by ASF and UNSAR, Euler Hermes and Coface are not present on the Romanian credit insurance market.

² "Study on short-term trade finance and credit insurance in the European Union" February 2012, prepared by International Financial Consulting Ltd at the request of the Commission .

³ Page 11 of the study referred to in footnote 2. Euler Hermes, Atradius and Coface are known as the 'Big 3' in the short-term credit insurance world..

⁴ "...asiguram [...] in mod exceptional "single transaction"".

- (9) Eximbank then sent requests for information to Groupama and Garanta. Only Garanta answered, saying that it does not cover commercial credit risk.
- (10) Finally, at the request of the Commission, Eximbank also asked Euler Hermes information about the main players in the Romanian market for the two temporarily non-marketable risks concerned and for short-term export-credit in general.
- (11) On 6 May 2014, more than one month after the question had been sent to Euler Hermes, the Commission was informed by the Romanian authorities that Euler Hermes did not reply.
- (12) Consequently, the Romanian authorities submit that the existence of a market failure, which prevents Romanian exporters from obtaining cover for the risks specified in point 18(b) and (c) of the 2012 Export-credit Communication, has been demonstrated.
- (13) In order to fill in the alleged gap of short-term export-credit in the private market, and give the possibility to Romanian exporters to cover temporarily non-marketable risks, Romania decided to set up the Scheme.

III. DESCRIPTION OF THE SCHEME

3.1 Objective

- (14) As explained in recitals 4 to 13 above, the Romanian authorities came to the conclusion that cover for the risks specified in point 18(b) and (c) of the 2012 Communication, namely:

- 1) the short-term risks incurred by small and medium-sized enterprises (hereinafter "SMEs") with a total annual export turnover not exceeding EUR 2 million, and
- 2) single-risk cover with a risk period (manufacturing period plus credit period) of at least 181 days and less than two years,

is unavailable in Romania from private export-credit insurers.

- (15) The objective of the Scheme is therefore to provide short-term export-credit insurance to exporters established in Romania for the risks specified in point 18(b) and (c) of the 2012 Export-credit Communication.

3.2 Implementing body and legal basis

- (16) The national legal basis of the notified Scheme is:

- 1) the Law n° 96/2000 regarding the organization and operating of Eximbank;
- 2) the Government Decision n° 534/2007 regarding the setting up, responsibilities, abilities and operating mode of the Inter-Ministerial

Committee for Financing, Guarantee and Insurance and the regulations of the financing, guarantee and insurance operations provided by Eximbank on behalf and for the account of the Romanian State;

- 3) the Norm on short term export credit insurance for non-marketable and temporarily non-marketable risks⁵.
- (17) Export-credit insurance in accordance with the Scheme is provided by the State insurer Eximbank, which is entitled to act both as a commercial bank and insurer, on its own account, and on behalf and for the account of the Romanian State. The purpose of Eximbank is to provide financing, guarantees and insurance to companies established in Romania in order to promote the development of priority projects, of SMEs and of international transactions.

3.3 Products offered under the Scheme

- (18) Eximbank will cover the receivables resulting from the export transactions of goods and services against non-marketable and temporarily non-marketable risks, over a risk period of less than two years (manufacturing period plus credit period).
- (19) The Romanian law⁶ already enables Eximbank to cover short-term risks that are temporarily non-marketable according to point 18(a) of the 2012 Export-credit Communication^{7 8}.
- (20) The Romanian authorities would like to extend the activities of Eximbank so that it can also cover temporarily non-marketable risks according to point 18(b) and (c) of the 2012 Export-credit Communication.
- (21) The insurance covers a maximum of 85% of losses occurring during the pre-shipment or post-shipment period due to political and/or commercial risks. The claims waiting period is 90 days.
- (22) The insurance policy can cover the exports made through intermediaries or associated companies if the documents stipulate that the intermediary/associated company is liable to pay to the exporter depending on the payments received from the foreign buyer. The payment is considered effective as soon as the respective amount was received by the intermediary/associated company, and at the level of that amount.
- (23) The insured loss during the pre-delivery period is represented by the difference between the manufacturing costs until the occurrence of the risk and the amount received, including the amounts received from the reselling of the

⁵ Published in Official Gazette of Romania, part I, n° 21, 13.01.2014.

⁶ Decision of the Inter-Ministerial Committee for Financing, Guarantee and Insurance n°208, 16.12.2013, published in the Official Gazette of Romania n°21, 13.2.2014.

⁷ I.e. short-term risks in one or more countries that the Commission decides to temporarily remove from the list of marketable risk countries because the capacity of the private insurance market is insufficient to cover all economically justifiable risks in the countries or country concerned. The Communication from the Commission amending the Annex to the Communication from the Commission to the Member States on the application of Article 107 and 108 of the Treaty on the Functioning of the European Union to short-term export-credit insurance (OJ C 372, 19.12.2013, p. 1) temporarily removed Greece from the list of marketable risk countries.

⁸ No notification to the Commission is required from the Member State to cover the risks specified in point 18(a) of the 2012 Export-credit Communication.

goods that have not been delivered and the selling of the raw materials related to the export, but without exceeding the amount of the insured export.

(24) The insured loss during the post-delivery period is represented by the outstanding invoices, without exceeding the approved credit limit.

(25) Under the scheme, Eximbank covers both commercial risks and political risks. Eximbank may cover only the political risks provided that the commercial risks are guaranteed by other means.

(26) The insurance policy does not cover:

- 1) the export of goods mentioned in the so-called "List of export goods" that cannot benefit of the foreign trade support instruments offered by Eximbank;
- 2) the exports made without the necessary licenses or authorizations;
- 3) deliveries made to natural persons or to associated economic operators as final buyers;
- 4) deliveries made by the exporter at his own risk;
- 5) losses:
 - due to a dispute between the insured party and the debtor based on a breach by the insured party of the terms and conditions of the contract⁹;
 - which exceed the credit limit approved by Eximbank;
 - registered after Eximbank's cancellation of the credit limit and
 - representing interest on overdue amounts or penalties.

(27) The insurance comes into force at the signing date of the policy but not before receiving the payment of the premium.

(28) The currency of the insurance policy is RON or other freely convertible currency.

3.4 Scope and eligibility

(29) As regards the cover of risks defined in point 18(b) and (c) of the 2012 Export-credit Communication, undertakings established in Romania are entitled to apply for export-credit insurance under the Scheme, regardless of the sector or group of products, as well as of the origin of the products/services exported, provided that they are SMEs with a total annual export turnover not exceeding EUR 2 million or that they are applying for "single risk cover".

(30) The exporters applying for export credit insurance should not be subject to insolvency proceedings. In addition, there should be no dispute between the

⁹ In such a case, the insurance policy is suspended until resolution of the dispute in favour of the insured party.

exporter as defendant and the Ministry of Public Finance, the National Agency for Fiscal Administration, or Eximbank.

(31) The Romanian authorities introduce particular criteria for covering the temporarily non-marketable risks in general, as well as particular criteria for covering the risks defined in point 18(b) and (c) of the 2012 Export-credit Communication, such as:

- 1) If a business relationship exists with a buyer, the exporter must have experienced a positive payment record;
- 2) The information reports about a buyer should not indicate an inconsistent payment record;
- 3) The financial rating of a buyer should be acceptable;¹⁰
- 4) The exporter shall provide evidence of refusal from two of the most important export-credit insurers for underwriting the risks of the underlying transaction.

(32) Eximbank'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. Eximbank will only provide cover for exporters who have been refused cover with a private insurer. Each exporter 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.

3.5 Level of remuneration

(33) The remuneration of the risks assumed by the Romanian State under the Scheme will be ensured through premium rates established so as to meet the requirements laid down under Section 4.3.3., points 22 to 25, of the 2012 Export-credit Communication.

(34) The pricing of Eximbank's cover includes the "safe-harbour premium" laid down in point 23 of the 2012 Export-credit Communication.

(35) The remuneration to be paid by the exporter to Eximbank is a premium, covering both political and commercial risks. Eximbank will conduct its own assessment of the risk relating to the foreign buyer.

(36) The following premium levels will apply depending on the overall creditworthiness of the buyer and the length of the risk period:

Risk Category as defined in the 2012 Export-credit Communication	Annual total premium
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¹⁰ For the debtor without a rating issued by an international credit rating agency or a rating allocated by a bank from its country, Eximbank can allocate a rating, on the basis of information publicly available in the debtor's country.

Excellent	0.51% - 1.299%
Good	0.825% - 2.049%
Satisfactory	1.575% - 4.149%
Weak	3.675% - 7.449%

(37) The annual total premium also includes an administration fee.

3.6 Budget and duration

(38) Romania indicated that the budget for the Scheme is RON 35.65 million (approximately EUR 8 million).

(39) The duration of the notified Scheme is from the date of approval of the Commission until 31 December 2016. New insurance policies shall not be signed after this date.

3.7 Transparency and reporting

(40) Romania has committed to publish information on the Scheme, specifying all applicable conditions, on the official website of Eximbank. It will provide every year an annual report on the use of the Scheme in accordance with Section 4.3.4. of the 2012 Export-credit Communication.

IV. ASSESSMENT

4.1 Existence of State Aid

(41) According to Article 107(1) of the Treaty, 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, in so far as it affects trade between Member States, be incompatible with the internal market.

(42) The short-term export-credit insurance is provided by State insurers, and therefore involves State resources. The involvement of the State may give the insurers and/or the exporters a selective advantage and could thereby distort or threaten to distort competition and affect trade between Member States.

(43) As regards the aid to the State insurer, Section 3.2., point 12, of the 2012 Export-credit Communication states that if State insurers have certain advantages compared to the private credit insurers, State aid may be involved. In this context Eximbank has an advantage as the State guarantees its borrowing and losses. The advantage for Eximbank with regard to marketable risks affects intra-Union trade in credit insurance services. This leads to variations in the insurance cover available for marketable risks in different

Member States. This distorts competition among insurers in different Member States and has secondary effects on intra-Union trade regardless of whether intra-Union exports or exports outside the Union are concerned¹¹.

- (44) As regards the aid to the exporters, Section 3.2., point 14, of the 2012 Export-credit Communication states that advantages for State insurers are also sometimes passed on to exporters, at least in part. Such advantages may distort competition and trade and constitute State aid within the meaning of Article 107(1) of the Treaty. However, if the conditions for the provision of export-credit insurance for marketable risks, as set out in Section 4.3. of the 2012 Export-credit Communication are fulfilled, the Commission will consider that no undue advantage has been passed on to exporters.

4.2 Compliance with the 2012 Export-credit Communication

- (45) The Commission examined whether the notified Scheme complies with the conditions laid down by the 2012 Export-credit Communication.

i) Separation of accounts between marketable and non-marketable risks

- (46) According to Section 4.1., point 15, of the 2012 Export-credit Communication, if State insurers have any advantages compared to private credit insurers, as described in point 12 of the Communication, they must not insure marketable risks. If State insurers or their subsidiaries wish to insure marketable risks, it must be ensured that in so doing, they do not directly or indirectly benefit from State aid. To this end, they must have a certain amount of own funds (a solvency margin, including a guarantee fund) and technical provisions (an equalisation reserve) and must have obtained the required authorisation in accordance Council Directive 73/239/EEC of 24 July 1973 on the coordination of laws, regulations and administrative provisions relating to the taking-up and pursuit of the business of direct insurance other than life assurance¹². They must also at least keep a separate administration account and separate accounts for their insurance of marketable risks and non-marketable risks for the account of or guaranteed by the State, to show that they do not receive State aid for their insurance of marketable risks. The accounts for businesses insured on the insurer's own account should comply with Council Directive 91/674/EEC of 19 December 1991 on the annual accounts and consolidated accounts of insurance undertakings¹³, as amended.

¹¹ In its judgment in Case C-142/87 *Belgium v Commission* ([1990] ECR I-959, see point 35), the Court held that not only aid for intra-Union exports, but also aid for exports outside the Union, can influence intra-Union competition and trade. Both types of operation are insured by export-credit insurers and aid for both can therefore affect intra-Union competition and trade.

¹² OJ L 228, 16.8.1973, p. 3–19.

¹³ OJ L 374, 31.12.1991, p. 7.

- (47) In the case at hand, Eximbank is only covering non-marketable risks while all insurance of marketable risks is left to the private market.
- (48) Furthermore, the operation of the Scheme is based on the principle of self-sufficiency. In principle, the premiums charged under the Scheme will cover claims expenditure and administration costs.
- (49) Since Eximbank does not insure marketable risks, it does not need to keep a separate administration account for the Scheme or separate accounts for its insurance of non-marketable risks for the account of or guaranteed by the State.

ii) Unavailability of cover

- (50) According to point 37 of the 2012 Export-credit Communication "*The evidence currently available to the Commission suggests that there is a market gap as regards the risks specified in point 18 (b) and (c) [namely short-term risks incurred by SME with a total annual export turnover not exceeding EUR 2 million and single-risk cover with a risk period at least 181 days and less than two years, on buyers established in the countries listed in the Annex to the 2012 Export-credit Communication] and that those risks are therefore non-marketable*".
- (51) For the countries listed in the Annex to the 2012 Export-credit Communication, the Member State may demonstrate the non-marketable of the risks specified in point 18 (b) and (c) by providing sufficient evidence of the unavailability of cover for the risk in the private insurance market.
- (52) The Scheme at hand provides short-term export-credit insurance to Romanian exporters regarding debtors established in all countries. Insofar as countries not listed in the Annex to the 2012 Export-credit Communication are concerned, such risks are 'non-marketable' within the meaning of the said Communication and public support for insuring them is in compliance with the 2012 Export-credit Communication.
- (53) As referred to in recitals 5 to 11 above, the Romanian authorities gave the main credit insurers and brokers an opportunity to provide evidence that cover for the risks concerned is available in Romania. However, the credit insurers concerned did not provide information demonstrating that they cover the types of risks that Romania wishes to cover¹⁴.
- (54) In accordance with point 38 of the 2012 Export-credit Communication, the Commission considers that the risks specified in point 18(b) and (c) of the 2012 Export-credit Communication are temporarily non-marketable in Romania.

¹⁴ According to point 38 of the 2012 Export-credit Communication, "*If the credit insurers concerned do not give the Member State or the Commission information about the conditions of cover and insured volumes for the type of risks the Member State wants to cover within 30 days of receiving a request from the Member State to do so, or if the information provided does not demonstrate that cover for the risks concerned is available in that Member State, the Commission will consider the risks temporarily non-marketable.*"

iii) Adequate pricing

- (55) In order to minimise the crowding out of private credit insurers, risk-carrying in the export-credit insurance contract must be remunerated by an adequate premium¹⁵. To this end, average premiums under publicly supported schemes must be higher than the average premiums charged by private credit insurers for similar risks. This requirement safeguards the phasing out of State intervention, because the higher premium will ensure that exporters return to private credit insurers as soon as market conditions allow them to do so and the risk becomes marketable again.
- (56) Under the notified measure, Eximbank will apply pricing principles in line with Section 4.3.3., of the 2012 Export-credit Communication. The premium to be paid by the exporter to Eximbank is a premium covering both political and commercial risks.
- (57) The Commission finds the premiums level applied by Eximbank, which depend on the overall creditworthiness of the buyer, to be adequate and in line with the 2012 Export-credit Communication. The minimum annual total premium charged by Eximbank includes the "safe-harbour premium" required by point 23 of the 2012 Export-credit Communication.
- (58) The annual total premium also includes an administration fee.
- (59) Consequently, the Commission considers the pricing of Eximbank to be in line with the conditions set out in Section 4.3.3 of the 2012 Export-credit Communication for the temporarily exempted marketable risks.

iv) Quality of cover and underwriting principles

- (60) The 2012 Export-credit Communication further indicates in its Sections 4.3.1., 4.3.2. and 4.3.4., the conditions and principles to fulfil regarding quality of cover, underwriting, transparency and reporting.
- (61) Romania undertakes to follow the principles set out in point 20 of the 2012 Export-credit Communication. This means that quality of cover offered by the State insurer Eximbank must be consistent with market standards. In particular, only economically justified risks will be covered.
- (62) The maximum percentage of loss cover offered by Eximbank will be 85% for commercial risks and political risks and the claims waiting period will be 90 days, which is in line with the conditions laid down in point 20 of the 2012 Export-credit Communication.
- (63) In order to ensure that no financially unsound transactions are covered under the Scheme, Eximbank will conduct its own risk assessment of the risk relating to the foreign buyer. On the basis of this assessment, only risk relating to the sound buyers will be covered. Therefore, credit information is a prerequisite for

¹⁵ Pricing is considered adequate if the minimum premium ("safe-harbour" premium) as set out in table in point 23 of the 2012 Export-credit Communication is charged.

the underwriting of short-term risks under the scheme and buyers with payment delays are not accepted for the cover.

(64) In addition, the Commission notes that Eximbank will publish on its website information on the Scheme put in place for the risks specified in point 18(b) and (c) of the 2012 Export-credit Communication, specifying all applicable conditions, thereby allowing private credit insurers and any other market player wishing to enter the market to view market activity in these particular segments.

(65) Finally, Romania will provide annual reports on the development of market conditions and on the use of the products offered under the Scheme.

(66) The conditions of Section 4.3.1., 4.3.2. and 4.3.4. on quality of cover, underwriting principles, transparency and reporting are therefore fulfilled.

v) Conclusion

(67) On the basis of the above, the Commission concludes that the Scheme meets all the relevant requirements laid down in the 2012 Export-credit Communication.

V. DECISION

The Scheme is compatible with the internal market until 31 December 2016. The Commission has accordingly decided not to raise any objections against the measure.

The Commission reminds the Romanian authorities that, in accordance with Article 108(3) of the Treaty, all plans to alter or change the Scheme have to be notified to it.

Romania will submit at the end of each year a report on risks which are considered temporarily non-marketable in accordance with point 18(b) and (c) of the 2012 Export-credit Communication and are covered under the Scheme, as well as on the use of the Scheme.

If this letter contains confidential information, which should not be disclosed to third parties, please inform the Commission within fifteen working days of the date of receipt. If the Commission does not receive a reasoned request by that deadline, you will be deemed to agree to the disclosure to third parties and to the publication of the full text of the letter in the authentic language on the Internet site:

<http://ec.europa.eu/competition/elojade/isef/index.cfm>

Your request should be sent by registered letter or fax to:

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Yours faithfully,
For the Commission,

Joaquín ALMUNIA
Vice-President