COMMISSION DECISION

of 16 April 2008

on the measure C 29/07 (ex N 310/06) which Hungary is planning to implement in the form of a short-term export-credit guarantee for SMEs with limited export turnover

(notified under document number C(2008) 1332)

(Only the Hungarian version is authentic)

(Text with EEA relevance)

(2008/718/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community, and in particular the first subparagraph of Article 88(2) thereof,

Having regard to the Agreement on the European Economic Area, and in particular Article 62(1)(a) thereof,

Having called on interested parties to submit their comments pursuant to the provisions cited above [1] and having regard to their comments,

Whereas:

1. PROCEDURE

(1) By electronic notification dated 17 May 2006, the Hungarian authorities notified the above-mentioned measure (hereinafter referred to as the measure) pursuant to Article 88(3) of the EC Treaty. The notification was supplemented by letter dated 21 June 2006, registered at the Commission on 22 June 2006.

(2) By letters dated 1 August 2006, 30 October 2006 and 30 April 2007, the Commission requested additional information, which was provided by Hungary by letters dated 12 September 2006, 21 March 2007 and 30 May 2007, registered at the Commission on the same days.

(3) By letter dated 18 July 2007 (hereinafter referred to as the decision initiating proceedings), the Commission informed Hungary that it had decided to initiate the procedure laid down in Article 88(2) of the EC Treaty in respect of the measure.

(4) The Commission decision to initiate the procedure was published in the *Official Journal of the European Union* [2]. The Commission invited interested parties to submit their comments on the aid.

(5) The Commission received no comments from interested third parties. The comments of the Hungarian authorities were received by letter dated 21 September 2007.

2. DESCRIPTION OF THE MEASURE

2.1. Objective

(6) The objective of the measure is to provide short-term export-credit guarantees to finance export transactions by SMEs [3] with an annual export turnover not exceeding EUR 2 million (hereinafter referred to as SMEs with limited export turnover). Hungary wishes to implement the measure under point 2.5 of the Communication of the Commission to the Member States pursuant to Article 93(1) of the EC Treaty applying Articles 92 and 93 of the Treaty to short-term export-credit insurance [4] (hereinafter referred to as the 'Communication on short-term export-credit insurance' or 'Communication').

2.2. Terms and conditions of the guarantee

(7) The guarantee in relation to the repayment of a loan to finance export transactions can be given:

(a) to an exporting domestic SME with limited export turnover in order to enhance its ability to take out a loan from a commercial bank. In such a case, the risks may be associated directly with the seller (i.e. the exporting SME), and indirectly with the buyer;

(b) to a foreign buyer purchasing goods and services from a domestic SME with limited export turnover, in order to enhance the ability of the buyer to take out a loan from a commercial bank. In such a case, the risks are associated directly with the buyer. There is no restriction as to the country of the buyer, i.e. the buyer can be located either in one of the countries listed in the Annex to the Communication or in another country. Nor is there any restriction as regards the size of the foreign buyer (i.e. it can be a large enterprise).

[1] OJ C 234, 6.10.2007, p. 18.
[2] Idem.
[3] As defined in the Hungarian Act XXXIV of 2004. This definition of SMEs is in line with the relevant criteria contained in the Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises (OJ L 124, 20.5.2003, p. 36).
[4] OJ C 281, 17.9.1997.

(8) The Hungarian authorities state that in both the above cases the guarantee must finance an export transaction. The maximum maturity of the guarantee is two years.

(9) The amount of the guarantee may not exceed 70 % of the value of the export contract (reduced by an advance payment of at least 15 %) or 70 % of the underlying loan.

(10) Exporting SMEs with limited export turnover are not eligible for the guarantee if they are involved in bankruptcy or liquidation proceedings or are in receivership. No information has been submitted as to the existence of any such restrictions regarding guarantees given to foreign buyers.

Risk assessment

(11) In case of guarantees covering domestic risks (i.e. guarantee for the exporting SME), the fee depends on the credit-worthiness of the exporting SME and is set on the basis of a five-grade rating system based on objective criteria as well as subjective evaluation, carried out in line with commercial bank practice.

(12) In the case of guarantees covering foreign risks (i.e. guarantee for the foreign buyer), the buyers are assigned to risk categories on the basis of their countries.

Guarantee fee

(13) As for the guarantee fee, the Hungarian authorities specified that it would be in the range of 0,5 %-2,0 % annually.

(14) In addition to the above, a one-off management fee of 0,1 % of the guaranteed amount is also payable.

(15) The Hungarian authorities claim that revenues from the fees will cover the operating costs of the scheme and the guarantee claims. The fees are subject to quarterly review.

(16) The Hungarian authorities have also indicated that guarantee cover for the type of risks in question is not available on the Hungarian market. In order to substantiate this, Hungary submitted declarations by two Hungarian commercial banks having an international background stating that guarantee provision to finance export activities of SMEs with limited export turnover does not distort the market activity of commercial banks and enhances their willingness to take risks. Moreover, Hungary also submitted declarations by two large international export-credit insurers and one national credit insurer confirming the market gap and stating that they are not active in this segment of the market.

2.3. **Implementing body**

(17) The guarantee is issued by the Hungarian Export-Import Bank (hereinafter referred to as Eximbank), a fully state-owned export-credit agency.

(18) Eximbank benefits from state support in the form of a guarantee covering any liability resulting from the implementation of the measure.

2.4. **Legal basis**

(19) The measure is based on Article 6(1)(b) of Act XLII of 1994 on the Hungarian Export-Import Bank Corporation and the Hungarian Export Credit Insurance Corporation as well as on Articles 1(2) and 11/A(13) of Government Decree 85/1998 (V.6.).

2.5. **Budget**

(20) The total amount of guarantee cover to be given by Eximbank over the two-year period of the measure is HUF 15 billion (EUR 60 million).

2.6. **Duration**

(21) The duration of the measure is limited to two years after its approval by the Commission.

2.7. **Grounds for initiating the formal investigation procedure**

(22) In the decision initiating proceedings the Commission considered that the measure raised doubts since the export guarantee to be given by Eximbank and the export-credit insurance covered by the Communication appeared to differ in a number of respects, in particular:

(a) they cover different types of risk. While export-credit insurance always covers risks associated with the buyer (i.e. the risk that the buyer might not pay the supplier), the guarantee to be given by Eximbank to an exporting SME with limited export turnover covers the risks of non-repayment of a loan by the exporter itself, which is in fact a support for export activities of SMEs with limited export turnover not exclusively linked to the risks of the buyer. The Eximbank guarantee can also be provided for the buyer (including large companies), covering risks associated with the buyer. However, these risks involve the non-repayment of a commercial loan by the buyer, whereas export-credit insurance covers risks of non-payment for the purchased goods and services by the foreign buyer. It follows that the guarantee given to the foreign buyer enhances its ability to take out loans on more favourable terms, whereas export-credit insurance has no such effect;

(b) in Hungary the legal bases of the two activities concerned are well defined and different: a guarantee is a financial service which can be provided solely by financial institutions whereas insurance activity can only be performed by an insurer falling under the scope of the Insurance Act. This fact might explain the declarations submitted by the export-credit insurers stating that they do not operate in the segment of export-credit guarantees (in fact, they cannot do so under the law). The declarations made by two Hungarian banks are also ambiguous since the guarantee by Eximbank would decrease the risks they would have to bear without it and thus they seem to benefit from such a measure.

(23) In so far as the Communication is not applicable, the measure might rank as State aid directly linked to export (within as well as outside the Community), which is incompatible with the common market. The Commission has always strictly condemned export aid in intra-Community trade, and support for export outside the Community can also affect competition within the Community.

(24) Finally, even if export-credit insurance and the Eximbank guarantee were equivalent and the Communication was applicable, some concerns would remain. Since the Commission's approval on 22 January 2007 of the measure N 488/06 — 'Export credit insurance for SMEs with limited export turnover' for a period of two years, MEHIB (the other Hungarian state-owned export-credit agency) has already been providing short-term export-credit insurance for the risks incurred by SMEs with limited export turnover, so that such cover is already available on the market. Moreover, allowing two state-supported export-credit agencies to provide services and establish their client base in this segment might defer the entry of potential market players.

3. COMMENTS FROM HUNGARY

(25) No third parties commented on the Commission decision initiating proceedings. The comments submitted by the Hungarian authorities can be summarised as follows:

(a) Hungary agrees that, whereas insurance always covers risks associated with the buyer, the guarantee to be given by Eximbank to an exporting SME with limited export turnover covers the risks of non-repayment of a loan by the exporter itself. However, Hungary considers that even in that case the risks are primarily associated with the buyer, since the repayment of the loan taken out by the exporting SME depends primarily on the buyer paying for the purchased goods;

(b) Hungary agrees that the risks covered by export-credit insurance and those covered by the Eximbank guarantee that is given to the foreign buyer are different. Moreover, Hungary also refers to commercial bank practice which appraises guarantees more favourably than insurance as loan collateral since insurers often refuse to pay by designating the case as a commercial dispute;

(c) Hungary points to the fact that it submitted the declarations made by insurers, which the Commission had already accepted for measure N 488/06. Hungary furthermore agrees that the guarantee given by Eximbank would decrease the risks commercial banks would have to bear without it, which is why the banks provided their declarations as interested parties;

(d) Hungary indicates that the scheme would not be applied in parallel to the already existing export-credit insurance scheme N 488/06 with regard to the same transaction. Hungary also emphasises that a single export-credit agency cannot cover all SMEs with limited export turnover and this may lead to harmful selection among them. Hungary also claims that the Eximbank guarantee scheme would allow commercial banks to gather experience concerning the risks involved and to build up a commercial export-credit guarantee market over a period of 2-3 years;

(e) Hungary claims that the rules concerning medium and long-term export-credit [1] apply to export-credit insurance, guarantees and refinancing as well. Therefore, it is not appropriate to interpret the Communication setting out the rules on short-term export-credit insurance so that it only covers insurance and leaves out other short-term transactions, since that would discriminate against export-credit guarantee institutions.

4. ASSESSMENT OF THE MEASURE

(26) The notification concerns only one part of the public activities of Eximbank, namely the guarantee scheme for export contracts. Therefore, the assessment of this guarantee scheme is without prejudice to any Commission position on the overall relation between the State and Eximbank and on any other product of Eximbank.

4.1. Applicability of the Communication on short-term export-credit insurance

(27) The arguments put forward by the Hungarian authorities (summarised in paragraph 25 above) do not dispel the Commission's initial doubts. In particular:

(a) the decision initiating proceedings stated that, in contrast to export-credit insurance, Eximbank guarantees given to exporting SMEs with limited export turnover are not exclusively linked to the risks of the buyer. This difference seems to be confirmed by the Hungarian authorities, since according to them the risk of non-repayment of a loan by the exporting SME is not exclusively but only primarily linked to the buyer;

(b) the decision initiating proceedings also indicated that the risks covered by the Eximbank guarantee given to the foreign buyer and the risks covered by export-credit insurance are different. The arguments put forward by Hungary do not refute this;

(c) the decision initiating proceedings stated that the declarations submitted by commercial insurers confirming that they do not operate in this specific segment of the guarantee market are irrelevant, since they are not allowed to grant guarantees by law. In case N 488/06 the same declarations were relevant, since that measure concerned short-term export-credit insurance;

(d) the decision initiating proceedings stated that even though the two instruments (guarantee and insurance) would not be applied for the same transaction, a second measure might provide further benefits to Hungarian exporting SMEs with limited export turnover. This seems to be confirmed since the Hungarian authorities indicated that commercial banks are in general more willing to accept a guarantee as collateral, which means that the availability of such guarantees entails additional benefits for the SMEs;

(e) as regards the rules on medium- and long-term export-credit referred to by Hungary, those provisions are based on Treaty provisions relating to external trade (Article 132 of the Treaty). As the Court of Justice has confirmed, they can therefore not preclude the application of the State aid provisions of the EC Treaty [2]. Moreover, the Communication on short-term export-credit insurance has the declared aim of removing distortion of competition due to State aid in the sector of export-credit insurance business where there is competition between public and private export-credit insurers, i.e. the Communication refers and is applicable only to insurance.

(28) The comments of the Hungarian authorities confirm the interpretation set out in the decision initiating proceedings that the guarantee to be granted by Eximbank differs in important respects from export-credit insurance. Therefore, the measure cannot be assessed under the Communication on short-term export-credit insurance.

4.2. Presence of State aid

(29) Since the measure cannot be assessed under the Communication on short-term export-credit insurance, it has to be established whether it can be considered State aid within the meaning of Article 87(1) of the EC Treaty [3].

[1] Council Directive 98/29/EC of 7 May 1998 on harmonisation of the main provisions concerning export-credit insurance for transactions with medium and long-term cover.

[2] Case C-142/87 *Belgium* v *Commission* ('Tubemeuse'), [1990] ECR I-959, paragraph 32.

[3] The Commission notes that the scheme also does not fall under the 'guarantee notice' (OJ C 71, 11.3.2000). Point 1.2 of the guarantee notice states that it does not apply to export-credit guarantees. Since the measure provides guarantee against the non-repayment of loans which have been contracted to finance an export transaction, the Commission considers that the guarantee notice is not applicable.

(30) In order for a measure to fall within the scope of Article 87(1) of the EC Treaty, four criteria must all be met:

— the measure must involve the use of State resources,

— the measure must confer a selective advantage on the beneficiary,

— the measure must affect trade between Member States,

— the measure must threaten to distort competition.

Transfer of State resources

(31) The measure is imputable to the State since it is implemented by a fully state-owned export agency set up with the funds of the State, carrying out transactions as required by State regulations and benefiting from a state counter-guarantee for the types of risks in question.

Economic advantage

(32) The guarantee fee is set on the basis of a risk-rating system which should normally result in a higher fee for riskier clients. It should be noted in this respect that the risk rating system takes into account a wide range of factors as regards domestic risks but relies on only one criterion (i.e. the country of the buyer) as regards foreign risks.

(33) The Hungarian authorities claim that the fees to be charged are in line with the market fee charged by international commercial insurers or guarantors for the type of risks in question. However, Hungary has not demonstrated (e.g. through independent data or an independent study) that the fees resulting from the risk assessment are in fact aligned with the market level.

(34) The claim that the guarantee fees cover the operating costs of the scheme and the guarantee claims must be viewed as a positive aspect. However, this claim by Hungary has not been substantiated with data.

(35) Moreover, the Hungarian authorities argue that no guarantee cover for the type of risks in question is available on the Hungarian market. Therefore, the measure at hand provides an economic advantage also through the provision of guarantee cover which would otherwise not be available on the market.

(36) The Hungarian authorities have not provided comments on these aspects. The Commission therefore considers that the measure confers an economic advantage on the beneficiaries.

Selectivity

(37) The measure is selective since it concerns only export transactions carried out by SMEs with limited export turnover and because the annual Budget Act sets an overall limit to the amount of guarantee given by Eximbank and counter-guaranteed by the State.

Effect on competition and trade

(38) The measure has a potential effect on competition and trade between Member States since it is directly linked to export transactions of SMEs with limited export turnover. In addition, intra-Community export is not excluded.

(39) Consequently, the measure is to be considered State aid within the meaning of Article 87(1) of the EC Treaty.

4.3. **Compatibility of the measure**

(40) State aid can be declared compatible with the common market if it complies with one of the exceptions provided for in the EC Treaty. Article 87(2) provides for automatic exemptions from the general ban on State aid; however, it is clear that in the case at hand none of these exemptions apply.

(41) Article 87(3) specifies four types of cases in which State aid can be considered compatible with the common market. Article 87(3)(a) covers aid to promote the economic development of disadvantaged regions. It should be noted in this respect that, in the case at hand, the conditions of the guarantee are not modulated according to the level of backwardness of the region where the exporting SME operates. Also, the scheme covers the whole territory of Hungary whereas under the current Hungarian regional aid map 2007-2013 ([1]), only part of Hungary is eligible for aid under Article 87(3)(a). The measure does not fulfil other conditions of the Guidelines on national regional aid for 2007-2013 ([2]) either. Consequently, this exemption does not apply in the present case.

([1]) N 487/06 — Commission letter of 13.9.2006, OJ C 256, 24.10.2006, p. 7.
([2]) OJ C 54, 4.3.2006, p. 13.

(42) Article 87(3)(b) provides that aid to promote the execution of an important project of common European interest or to remedy a serious disturbance in the economy of a Member State could be considered compatible with the common market. This provision is not applicable in the case at hand. Nor does Article 87(3)(d) covering aid to promote culture and heritage conservation apply.

(43) Article 87(3)(c) provides that aid to facilitate the development of certain economic activities or of certain economic areas can be considered compatible with the common market, where such aid does not adversely affect trading conditions to an extent contrary to the common interest. The Commission has developed various guidelines and communications setting out how it intends to implement this article. Since none of these apply to the present case, any State aid involved in the measure at hand is to be assessed directly under Article 87(3)(c) of the Treaty.

(44) In this context, it should be noted that an export insurance scheme benefiting export transactions of SMEs with limited export turnover already exists and has been approved by the Commission [1] in accordance with the provisions of the Communication on short-term export-credit insurance. The Commission considers that Hungary has not demonstrated the necessity of an additional instrument benefiting export transactions of SMEs with limited export turnover.

(45) Moreover, it is recalled that the Commission has in principle strictly condemned export aid in intra-Community trade, since export subsidies directly affect competition in the market between rival potential suppliers of goods and services. Since it is closely and inseparably linked to the underlying trade transaction, such export aid is likely to adversely affect trading conditions to a considerable extent. In its previous decisions [2] the Commission clearly indicated that guarantees offered at below market price in the context of export contracts within the Community constitute export aid which is incompatible with the common market. Moreover, Member States' support for their exports outside the Community can also affect competition within the Community.

5. **CONCLUSION**

(46) For the reasons set out above, the Commission concludes that the measure entails State aid within the meaning of Article 87(1) of the EC Treaty. Since it does not facilitate the development of certain economic activities or of certain economic areas without adversely affecting trading conditions to an extent contrary to the common interest, the measure cannot be justified under Article 87(3)(c) of the EC Treaty and is therefore not compatible with the common market. Since the measure has not been implemented, there is no need for recovery of state aid,

HAS ADOPTED THIS DECISION:

Article 1

The state aid which Hungary is planning to implement in the form of a short-term export-credit guarantee for SMEs with limited export turnover is incompatible with the common market.

The aid may accordingly not be implemented.

Article 2

Hungary shall inform the Commission, within two months of notification of this Decision, of the measures taken to comply with it.

Article 3

This Decision is addressed to the Republic of Hungary.

Done at Brussels, 16 April 2008.

For the Commission

Neelie KROES

Member of the Commission

[1] State aid N 488/06.

[2] Commission Decision of 17 May 1982 concerning the subsidising of interest rates on credits for exports from France to Greece after the accession of that country to the European Economic Community (OJ L 159, 10.6.1982, p. 44); Commission Decision of 27 June 1984 concerning the French Government's intention to accord special exchange risk cover to French exporters in respect of a tender for the construction of a power station in Greece (OJ L 230, 28.8.1984, p. 25).