



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 10.3.2004
COM(2004) 159 final

2004/0056 (CNS)

Proposal for a

COUNCIL DECISION

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

(Codified version)

(presented by the Commission)

EXPLANATORY MEMORANDUM

1. In the context of a people's Europe, the Commission attaches great importance to simplifying and clarifying Community law so as to make it clearer and more accessible to the ordinary citizen, thus giving him new opportunities and the chance to make use of the specific rights it gives him.

This aim cannot be achieved so long as numerous provisions that have been amended several times, often quite substantially, remain scattered, so that they must be sought partly in the original instrument and partly in later amending ones. Considerable research work, comparing many different instruments, is thus needed to identify the current rules.

For this reason a codification of rules that have frequently been amended is also essential if Community law is to be clear and transparent.

2. On 1 April 1987 the Commission therefore decided¹ to instruct its staff that all legislative acts should be codified after no more than ten amendments, stressing that this is a minimum requirement and that departments should endeavour to codify at even shorter intervals the texts for which they are responsible, to ensure that the Community rules are clear and readily understandable.
3. The Conclusions of the Presidency of the Edinburgh European Council (December 1992) confirmed this², stressing the importance of codification as it offers certainty as to the law applicable to a given matter at a given time.

Codification must be undertaken in full compliance with the normal Community legislative procedure.

Given that no changes of substance may be made to the instruments affected by codification, the European Parliament, the Council and the Commission have agreed, by an interinstitutional agreement dated 20 December 1994, that an accelerated procedure may be used for the fast-track adoption of codification instruments.

4. The purpose of this proposal is to undertake a codification of Council Decision 73/391/EEC of 3 December 1973 on consultation and information procedures in matters of credit insurance, credit guarantees and financial credits³. The new Decision will supersede the various acts incorporated in it⁴; this proposal fully preserves the content of the acts being codified and hence does no more than bring them together with only such formal amendments as are required by the codification exercise itself.

¹ COM(87) 868 PV.

² See Annex 3 to Part A of the Conclusions.

³ Carried out pursuant to the Communication from the Commission to the European Parliament and the Council – Codification of the Acquis communautaire, COM(2001) 645 final.

⁴ See Annex III to this proposal.

5. The codification proposal was drawn up on the basis of a preliminary consolidation, in all official languages, of Decision 73/391/EEC and the instruments amending it, carried out by the Office for Official Publications of the European Communities, by means of a data-processing system. Where the Articles have been given new numbers, the correlation between the old and the new numbers is shown in a table set out in Annex IV to the codified Decision.

↓ 73/391/EEC (adapted)

2004/0056 (CNS)

Proposal for a

COUNCIL DECISION

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

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article \boxtimes 133 \boxtimes thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament⁵,

Having regard to the opinion of the European Economic and Social Committee⁶,

Whereas:

↓

- (1) Council Decision 73/391/EEC of 3 December 1973 on consultation and information procedures in matters of credit insurance, credit guarantees and financial credits⁷ has been substantially amended⁸. In the interests of clarity and rationality the said Decision should be codified.

↓ 73/391/EEC Recital 1

- (2) By a Decision of 27 September 1960⁹, the Council set up a Policy Coordination Group for Credit Insurance, Credit Guarantees and Financial Credits.

⁵ OJ C

⁶ OJ C

⁷ OJ L 346, 17.12.1973, p. 1. Decision as amended by Decision 76/641/EEC (OJ L 223, 16.8.1976, p. 25).

⁸ See Annex III.

⁹ OJ 66, 27.10.1960, p. 1339/60.

↓ 73/391/EEC Recitals 2 and 3
(adapted)

(3) A consultation procedure in matters of credit insurance, credit guarantees and financial credits is called for ,

↓ 73/391/EEC

HAS ADOPTED THIS DECISION:

TITLE I

GENERAL PROCEDURE

SECTION I

SCOPE

↓ 73/391/EEC Art. 1 (adapted)

Article 1

This Decision concerns the procedure for consultation in matters of credit insurance, credit guarantees and financial credits.

↓ 73/391/EEC Annex, Art. 1
(adapted)
→₁ Corrigendum 73/391/EEC
(OJ L 74, 19.3.1974, p. 31)

Article 2

1. Consultation in accordance with the procedure laid down in Section II shall take place where it is proposed →₁ — by the State, any other State organisation or any State body for credit insurance or finance — ← to grant or guarantee, fully or partially, foreign credits:

(a) linked to exports of goods or services ;

(b) which depart from the norms listed in Annex I or from any other norm adopted by the Member States.

↓ 73/391/EEC Annex, Art. 2 (adapted)

- ⊗ 2. ⊗ The consultation procedure shall be applicable:
- ⊗ (a) ⊗ whether it concerns supplier credits or financial credits ⊗ ; ⊗
 - ⊗ (b) ⊗ whether these credits form the subject-matter of individual contracts or global credit arrangements as described in Article 3 ⊗ ; ⊗
 - ⊗ (c) ⊗ whether the credits are purely private or are sponsored fully or partially out of public funds.
- ⊗ 3. ⊗ Mixed credits combining public and private funds and global private credit arrangements combined with public fund interest subsidies shall for the purpose of ⊗ the consultation ⊗ procedure be considered as public credits.

↓ 73/391/EEC → ₁ Act of Accession of A, FIN and S Art. 29 and Annex I
--

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 →₁ seven ← 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:
-

↓ 73/391/EEC (adapted)

- ⊗ (i) ⊗ nature of transaction: type of material and approximate number of items to be supplied,
 - ⊗ (ii) ⊗ value rating according to the scale given in Annex ⊗ II ⊗ ,
 - ⊗ (iii) ⊗ whether buyers and any guarantors are public or private,
 - ⊗ (iv) ⊗ if transaction is to be put for international tender, closing date for submission of tenders;
-

↓ 73/391/EEC

- (d) principal credit terms applied for by proposed recipient;
 - (e) credit terms the authorities in the exporting country propose to offer:
-

↓ 73/391/EEC (adapted)

- ⊗ (i) ⊗ percentage payable on credit,
- ⊗ (ii) ⊗ duration of credit and starting-point thereof (e.g. each delivery, last delivery, commissioning),
- ⊗ (iii) ⊗ repayment rate,
- ⊗ (iv) ⊗ 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),

- ⊗ (v) ⊗ 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,
 - ⊗ (vi) ⊗ credit insurance charges, where these differ from those payable under the normal system,
 - ⊗ (vii) ⊗ 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 ⊗ 2(1) ⊗ . Where they obtain, the following circumstances must be specified:
- ⊗ (i) ⊗ aid credit;
 - ⊗ (ii) ⊗ competition from a third country (with indication whether or not supported);
 - ⊗ (iii) ⊗ 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:
 - ⊗ (i) ⊗ if known, place where transaction is to be carried out,
 - ⊗ (ii) ⊗ type of material, the supply of which is contemplated,
 - ⊗ (iii) ⊗ whether borrowers and any guarantors are public or private;
-
- ↓ 73/391/EEC
- (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);
-
- ↓ 73/391/EEC (adapted)
- (e) precise grounds cited for not applying, or departing from, the norms set out in Article ⊗ 2(1) ⊗ . Where they obtain, the following circumstances must be specified:

☒ (i) ☒ aid credit;

☒ (ii) ☒ competition from a third country (with indication whether or not supported).

↓ 73/391/EEC

Article 6

The following numbering shall be observed when transmitting information:

↓ 73/391/EEC (adapted)

☒ (a) ☒ 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;

☒ (b) ☒ global private credit arrangements: letter “X” followed by the letter corresponding to the consulting Member State and a serial number for each year;

☒ (c) ☒ public or mixed credits: letter “A” followed by the letter corresponding to the consulting Member State and a serial number for each year.

↓ 73/391/EEC

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:

↓ 73/391/EEC (adapted)

- (a) indicate that the terms proposed by the consulting Member State do not call for any comments;
- (b) request the consulting Member State to provide additional details;
- (c) 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;
- (d) request a consultative meeting.

↓ 73/391/EEC (adapted) → ₁ Act of Accession of A, FIN and S Art. 29 and Annex I
--

- 2. Where transactions subject to consultation receive an unfavourable opinion from →₁ seven ← 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 seven 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 seven calendar-day time-limit at the latest, the latter must reply within five 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.

↓ 73/391/EEC (adapted)

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 point (a) of Article 10(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 the second paragraph of Article 11 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, the first paragraph shall not apply:

- (a) 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;
 - (b) 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.
-

↓ 73/391/EEC

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 authorise 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:

↓ 73/391/EEC (adapted)

☒ (a) ☒ of the basic components of credits granted in the course of the preceding quarter;

☒ (b) ☒ 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:

☒ (a) ☒ 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;

☒ (b) ☒ in the case of untied credits, the notifications provided for in Article 17 shall equally apply to such credits.

↓ 73/391/EEC

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.

↓

TITLE IV

FINAL PROVISIONS

Article 20

Decision 73/391/EEC is repealed.

References to the repealed Decision shall be construed as references to this Decision and shall be read in accordance with the correlation table in Annex IV.

Article 21

This Decision is addressed to the Member States.

Done at Brussels, [...]

For the Council
The President
[...]

ANNEX I

**COMMUNITY NORMS WHICH CANNOT BE DEPARTED FROM WITHOUT
CONSULTATION**

A. DURATION OF CREDITS

The duration of any credit granted, whether supplier credit for 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 where the supplier has no responsibility for commissioning:*
 - the date on which the buyer is to take physical possession of the entire goods (excluding spare parts) supplied under the contract.
3. *Construction contracts where the contractor has no responsibility for commissioning:*
 - the date on which construction has been completed.
4. *Installation (or construction) contracts where the supplier (or contractor) has a contractual responsibility for commissioning:*
 - the date on which the supplier (or contractor) has completed installation (or construction) and preliminary tests to ensure that it is ready for operation, whether or not the installation (or construction) is handed over to the buyer at that time in accordance with the terms of the contract and irrespective of any continuing commitment which the supplier (or contractor) may have entered into, for example to guarantee its effective functioning or to train local personnel.
5. *In the case of points 2, 3 and 4, where the contract involves the separate execution of individual parts of a project:*
 - the date of the starting-point for each separate part, or the mean date of those starting-points or, where the supplier has entered into a contract not for the whole project but for an essential part of it, the starting-point appropriate to the project as a whole.

↓ 73/391/EEC

B. PERCENTAGE OF LOCAL EXPENDITURE

↓ 73/391/EEC (adapted)

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:

- ⊗ (a) ⊗ “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;
- ⊗ (b) ⊗ “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;
- ⊗ (c) ⊗ “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;
- ⊗ (d) ⊗ “payments on account” shall mean all the sums payable between the placing of the order and final completion of the works or deliveries.

↓ 73/391/EEC

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.

↓ 73/391/EEC Annex 2

ANNEX II

↓ 76/641/EEC Art. 2

SCALE OF VALUES TO BE USED

Category I:	up to	750 000 special drawing rights.
Category II:	from	600 000 to 1 200 000 special drawing rights.
Category III:	from	1 000 000 to 2 200 000 special drawing rights.
Category IV:	from	2 000 000 to 3 200 000 special drawing rights.
Category V:	from	3 000 000 to 5 000 000 special drawing rights.
Category VI:	from	4 800 000 to 7 600 000 special drawing rights.
Category VII:	from	7 400 000 to 11 200 000 special drawing rights.
Category VIII:	from	10 000 000 to 22 000 000 special drawing rights.
Category IX:	from	20 000 000 to 44 000 000 special drawing rights.
Category X:	over	40 000 000 special drawing rights.



ANNEX III

Repealed Decision with its amendment

Council Decision 73/391/EEC¹⁰

(OJ L 346, 17.12.1973, p. 1)

Council Decision 76/641/EEC

(OJ L 223, 16.8.1976, p. 25)

¹⁰ Decision 73/391/EEC was also amended by the following acts which have not been repealed:
- Act of Accession of Spain and Portugal (OJ L 302, 15.11.1985, p. 23);
- Act of Accession of Austria, Finland and Sweden (OJ C 241, 29.8.1994, p. 21);
(adapted by Council Decision 95/1/EC, Euratom, ECSC) (OJ L 1, 1.1.1995, p. 1).

ANNEX IV

CORRELATION TABLE

Decision 73/391/EEC	This Decision
Article 1	Article 1
Article 2	Article 21
Annex, Article 1, introductory wording	Article 2(1), introductory wording
Annex, Article 1, first and second indents	Article 2(1)(a) and (b)
Annex, Article 2, first paragraph, introductory wording	Article 2(2), introductory wording
Annex, Article 2, first paragraph, first to third indents	Article 2(2)(a) to (c)
Annex, Article 2, second paragraph	Article 2(3)
Annex, Article 3	Article 3
Annex, Article 4(a) and (b)	Article 4(a) and (b)
Annex, Article 4(c), first to fourth indents	Article 4(c)(i) to (iv)
Annex, Article 4(d)	Article 4(d)
Annex, Article 4(e), first to seventh indents	Article 4(e)(i) to (vii)
Annex, Article 4(f)	Article 4(f)(i) to (iii)
Annex, Article 5(a) and (b)	Article 5(a) and (b)
Annex, Article 5(c), first to third indents	Article 5(c)(i) to (iii)
Annex, Article 5(d)	Article 5(d)
Annex, Article 5(e)	Article 5(e), (i) and (ii)
Annex, Article 6, introductory wording	Article 6, introductory wording
Article 6, first to third indents	Article 6(a) to (c)
Annex, Articles 7 to 9	Articles 7 to 9
Annex, Article 10(1), introductory wording	Article 10(1), introductory wording
Annex, Article 10(1), first to fourth indents	Article 10(1)(a) to (d)
Annex, Article 10(2) and (3)	Article 10(2) and (3)

Annex, Articles 11 and 12	Articles 11 and 12
Annex, Article 13, first paragraph	Article 13, first paragraph
Annex, Article 13, second paragraph, introductory wording	Article 13, second paragraph, introductory wording
Annex, Article 13, second paragraph, first and second indents	Article 13, second paragraph, points (a) and (b)
Annex, Articles 14 to 16	Articles 14 to 16
Annex, Article 17, introductory wording	Article 17, introductory wording
Annex, Article 17, first and second indents	Article 17(a) and (b)
Annex, Article 18, introductory wording	Article 18, introductory wording
Annex, Article 18, first and second indents	Article 18(a) and (b)
Annex, Article 19	Article 19
_____	Article 20
Annex 1, point A	Annex I, point A
Annex 1, point B, introductory wording	Annex I, point B, first paragraph
Annex 1, point B, first indent	Annex I, point B, second paragraph
Annex 1, point B, subindents 1 to 4 of the second indent	Annex I, point B, third paragraph, (a) to (d)
Annex 1, point C	Annex I, point C
Annex 2	Annex II
_____	Annex III
_____	Annex IV