



EUROPEAN
COMMISSION

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Proposal for a

COUNCIL DECISION

establishing the position to be adopted on the Union's behalf with regard to the Decision of the Participants to the Arrangement on Officially Supported Export Credits to integrate the provisions of the Agreement on Untied ODA Credits Transparency into the OECD Arrangement on Officially Supported Export Credits

EXPLANATORY MEMORANDUM

1. SUBJECT MATTER OF THE PROPOSAL

This proposal concerns a Council decision establishing the position to be taken on the European Union's behalf by the Commission on the amendment of the OECD Arrangement on Officially Supported Export Credits (the 'Arrangement') to integrate credits transparency requirements from the Agreement on Untied Official Development Assistance ('the Agreement').

2. CONTEXT OF THE PROPOSAL

2.1. The Arrangement on Officially Supported Export Credits

The Arrangement is a "gentlemen's agreement" between the EU, the US, Canada, Japan, Korea, Norway, Switzerland, Australia, New Zealand, Türkiye and the United Kingdom, which provides a framework for the orderly use of officially supported export credits. In practice, this means it sets rules which aim to eliminate subsidies and trade distortions related to officially supported export credits. The Arrangement entered into force in April 1978, it is of indefinite duration and although it receives the administrative support of the OECD Secretariat, is not an OECD Act¹.

The Arrangement is subject to regular updates in response to market and policy developments. The Arrangement has been transposed, and hence been made legally binding, in the EU by Regulation (EU) No 1233/2011 of the European Parliament and of the Council.² Revisions of the terms and conditions of the Arrangement are incorporated into EU law through delegated Acts pursuant to Article 2 of this Regulation.

2.2. The Participants to the Arrangement on Officially Supported Export Credits

The European Commission represents the Union in meetings of the Participants to the Arrangement, as well as in the written procedures for decision-making by the Participants to the Arrangement. Decisions on all amendments of the Arrangement are taken by consensus. The position of the Union is adopted by the Council and is discussed by Member States in the Council Working Group on Export Credits³.

2.3. The Agreement on Untied Official Development Assistance ('ODA') Credits Transparency

The Agreement on Untied ODA Credits Transparency was finalised in 2004 and is a separate informal instrument to which Participants to the Arrangement also adhere. It was finalised in 2004 and has a validity of two-years only, requiring regular renewal. It contains transparency requirements, to ensure that ODA that is reported by the providing Participant as untied does not circumvent the Arrangement's disciplines and is truly fully accessible to all potential bidders. It contains both ex ante and ex-post reporting requirements. There are separate reporting requirements regarding aid that is tied to exports under the Arrangement itself.

¹ As defined in Article 5 of the OECD Convention.

² Regulation (EU) No 1233/2011 of the European Parliament and of the Council of 16 November 2011 on the application of certain guidelines in the field of officially supported export credits and repealing Council Decisions 2001/76/EC and 2001/77/EC (OJ L 326, 8.12.2011, p. 45).

³ Council Decision setting up a Policy Co-ordination Group for Credit Insurance, Credit Guarantees and Financial Credits, (OJ 66, 27.10.1960, p. 1339).

2.4. The envisaged act of the Participants

The existence of two, sometimes overlapping, requirements has created confusion for reporting governments and for stakeholders, as has the uncertainty of the two-year renewal approach.

One of the reasons for continuing with the separate approach up to now was that the Arrangement had no ex-post reporting requirements while the Agreement did. However, changes to the Arrangement in 2023 have introduced ex-post reporting obligations for the first time. In light of this, and given that the Agreement has always been renewed, it is no longer necessary to keep these two sets of reporting disciplines separate and to require that the Agreement be renewed every two years. The OECD Secretariat has therefore proposed to integrate the Agreement's requirements into the Arrangement. It is in the EU's interest to reduce administrative complexity, improve legal certainty and have more readable OECD texts.

3. THE POSITION TO BE TAKEN ON THE UNION'S BEHALF

The European Union should support a modification of the Arrangement to include the substance of the Agreement on Untied ODA Credits Transparency into the Arrangement.

4. LEGAL BASIS

4.1. Procedural legal basis

4.1.1. Principles

Article 218(9) of the Treaty on the Functioning of the European Union (TFEU) provides for decisions establishing *'the positions to be adopted on the Union's behalf in a body set up by an agreement, when that body is called upon to adopt acts having legal effects, with the exception of acts supplementing or amending the institutional framework of the agreement.'*

The concept of *'acts having legal effects'* includes acts that have legal effects by virtue of the rules of international law governing the body in question. It also includes instruments that do not have a binding effect under international law, but that are *'capable of decisively influencing the content of the legislation adopted by the EU legislature'*⁴.

4.1.2. Application to the present case

The envisaged act is capable of decisively influencing the content of EU legislation, namely Regulation (EU) No 1233/2011 of the European Parliament and of the Council of 16 November 2011 on the application of certain guidelines in the field of officially supported export credits and repealing Council Decisions 2001/76/EC and 2001/77/EC. This is because of Article 2 of this Regulation, which states that *'[t]he Commission shall adopt delegated acts in accordance with Article 3 to amend Annex II as a result of amendments to the guidelines agreed by the Participants to the Arrangement'*. This includes amendments of annexes to the Arrangement.

Therefore, the procedural legal basis for the proposed decision is Article 218(9) TFEU.

⁴ Judgment of the Court of Justice of 7 October 2014, Germany v Council, C-399/12, ECLI:EU:C:2014:2258, paragraphs 61 to 64.

4.2. Substantive legal basis

4.2.1. Principles

The substantive legal basis for a decision under Article 218(9) TFEU depends primarily on the objective and content of the envisaged act in respect of which a position is taken on the Union's behalf.

4.2.2. Application to the present case

The objective and content of the envisaged act relate to export credits, which is within the scope of the common commercial policy. Therefore, the substantive legal basis of the proposed decision is Article 207 TFEU.

4.3. Conclusion

The legal basis of the proposed decision should be Article 207(4), first subparagraph, TFEU in conjunction with Article 218(9) TFEU.

5. PUBLICATION OF THE ENVISAGED ACT

As the act of the Participants to the Arrangement will amend the Arrangement on Officially Supported Export Credits which forms Annex II to the Regulation (EU) No 1233/2011, it is appropriate to publish it in the Official Journal of the European Union after its acceptance.

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 207(4), first subparagraph, in conjunction with Article 218(9) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) The Arrangement on Officially Supported Export Credits (the 'Arrangement') was concluded by the European Community as a gentlemen's agreement negotiated within the framework of the OECD in 1978.
- (2) The guidelines contained in the Arrangement have been transposed, and hence been made legally binding in the Union by virtue of Regulation (EU) No 1233/2011 of the European Parliament and of the Council⁵.
- (3) Since the Agreement on Untied ODA Credits Transparency has been renewed every two years since 2004, without any modification, it is in the interest of the European Union to simplify the OECD texts and procedures and integrate the requirements in the permanent Arrangement.
- (4) The [name of the body], during its [...] session/meeting on [date], is to adopt this modification to the arrangement.
- (5) It is appropriate to establish the position to be taken on the Union's behalf, as the envisaged decision of the Participants to the Arrangement will be binding on the Union and capable of decisively influencing the content of Union law, namely by virtue of Article 2 of Regulation (EU) No 1233/2011,

⁵ Regulation (EU) No 1233/2011 of the European Parliament and of the Council of 16 November 2011 on the application of certain guidelines in the field of officially supported export credits and repealing Council Decisions 2001/76/EC and 2001/77/EC (OJ L 326, 8.12.2011, p. 45) ('Regulation (EU) No 1233/2011').

HAS ADOPTED THIS DECISION:

Article 1

The position to be adopted on the Union's behalf shall be to support the decision of the Participants to amend the OECD Arrangement on Officially Supported Export Credits Arrangement to integrate some of the transparency requirements of the agreement on untied ODA credits transparency, in line with the annex to this Decision.

Article 2

This Decision shall enter into force on the date of its adoption.

Done at Brussels,

*For the Council
The President*