



EUROPEAN  
COMMISSION

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Proposal for a

## **COUNCIL DECISION**

**on the position to be taken on behalf of the European Union regarding the envisaged  
decision of the Participants to the Arrangement on Officially Supported Export Credits  
on interest rate provisions**

## **EXPLANATORY MEMORANDUM**

### **1. SUBJECT MATTER OF THE PROPOSAL**

This proposal concerns a decision establishing the position to be taken on the European Union's behalf by the European Commission in the context of the Arrangement on Officially Supported Export Credits (the 'Arrangement') regarding an envisaged decision to amend the Arrangement's interest rate provisions. These provisions set the minimum Commercial Interest Reference Rates ('CIRRs') that apply to official financing support for export credits.

### **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 and Türkiye, which aims to provide a framework for the orderly use of officially supported export credits. In practice, this means establishing a level playing field (whereby competition is based on the price and quality of the exported goods and services and not on the financial terms provided), while working to eliminate subsidies and trade distortions related to officially supported export credits. The Arrangement entered into force in April 1978, is of indefinite duration and, although it receives the administrative support of the OECD Secretariat, is not an OECD Act<sup>1</sup>.

The Arrangement is subject to regular updates, taking into account financial market and policy developments affecting the provision of officially supported export credits. The Arrangement is legally binding in the EU, under Regulation (EU) No 1233/2011 of the European Parliament and of the Council<sup>2</sup>. 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 Commission represents the Union in meetings and decision-making procedures of the participants (the 'Participants') to the Arrangement. Decisions on 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 Group on Export Credits<sup>3</sup>.

#### **2.3. The envisaged act of the Participants to the Arrangement on Officially Supported Export Credits**

The CIRRs are fixed minimum interest rates that may be offered as part of a government-backed export finance contract. CIRRs are fixed for each currency of the Participants to the Arrangement. In 2021, the CIRR provisions were comprehensively reformed, covering operational aspects (e.g. modalities such as holding and fixing the interest rates), as well as structural aspects (e.g. base rates, margins and surcharges). The aim of the CIRR reform was to harmonise lending practices among Participants and bring the CIRRs closer to market rates.

Participants agreed that the CIRR should continue to be composed of a base rate, linked to government bond yields, and a margin. However, the margin should cease to be fixed at 100

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<sup>1</sup> As defined in Article 5 of the OECD Convention.

<sup>2</sup> 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).

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

basis points (bps) to become more market-reflective. The new CIRR margin was to be computed using the following formula:

$$\text{CIRR Margin} = 0.5 * (\text{three-month average of daily five-year swap spread yields}) + 80 \text{ basis points.}$$

The three-month average of the daily five-year swap spreads to be used was to be obtained by calculating the arithmetic mean of the daily five-year swap spread of the last three calendar months in the relevant currencies.

The London Interbank Offered Rate (LIBOR) was the rate used by many Participants as a benchmark rate for calculating swap spreads. However, following the discontinuation of LIBOR at the end of 2021, Participants agreed on 30 December 2022 to implement a temporary margin of 100 basis points for all currencies for one year as of the implementation of the new CIRR rules (until 14 July 2024). Subsequently, on 6 November 2023, Participants agreed to extend the temporary margin for another year, until 14 July 2025, or until Participants can agree to an alternative. Considering the upcoming expiration of the temporary 100 bps solution, a more stable way forward must now be found.

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

The discontinuation of LIBOR in 2021 disrupted the solution foreseen by Participants for the CIRR margin calculation for many currencies, as LIBOR was no longer an option to use as reference rate for calculating swap spreads.

Given this, the EU supports the use of 100 bps as the CIRR margin for all currencies on a permanent basis as a way forward beyond 14 July 2025. Using 100 bps on a permanent basis would simplify the CIRR system and provide business certainty. It is also an attractive solution in terms of transparency, which the swap spread solution often lacked, especially as regards benchmark rates used. Furthermore, while the return to the 100 bps approach is less market-reflective than the solution envisaged by the Participants, other key elements of the reform remain, including on the operational elements.

Should the Participants not agree on a permanent solution for the establishment of the CIRR margin, the EU would support the extension of the current temporary solution, namely the extension of a temporary margin of 100 basis points for all currencies for one or more years as of 14 July 2025.

Therefore, it is recommended that the position of the Union at the Participants meeting in June 2025 is to approve the envisaged decision of the Participants to the Arrangement to adopt new guidelines on the establishment of the CIRR margin.

### **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’<sup>4</sup>.

#### *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 by virtue 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”.

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

### **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. If the envisaged act pursues two aims or has two components and if one of those aims or components is identifiable as the main one, whereas the other is merely incidental, the decision under Article 218(9) TFEU must be founded on a single substantive legal basis, namely that required by the main or predominant aim or component.

#### *4.2.2. Application to the present case*

The main 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.

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<sup>4</sup> 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.

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**on the position to be taken on behalf of the European Union regarding the envisaged decision of the Participants to the Arrangement on Officially Supported Export Credits on interest rate provisions**

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 guidelines contained in the Arrangement on Officially Exported Export Credits (the ‘Arrangement’) have been transposed, and hence been made legally binding in the EU by virtue of Regulation (EU) No 1233/2011 of the European Parliament and of the Council<sup>5</sup>.
- (2) The Participants must decide on a solution to amend the provisions in the Arrangement on CIRR margin establishment, following the discontinuation of LIBOR.
- (3) The envisaged decision to amend the provisions on the CIRRs should provide greater clarity and harmonise lending practices, thereby enhancing the level playing field among Participants.
- (4) It is appropriate to establish the position to be taken on the Union's behalf in the written procedure of the Participants to the Arrangement, as the envisaged decision will be capable of decisively influencing the content of Union law, by virtue of Article 1 of Regulation (EU) No 1233/2011,

HAS ADOPTED THIS DECISION:

### *Article 1*

The position to be adopted on the Union's behalf in the context of the Arrangement on Officially Supported Export Credits regarding the review of the interest rate provisions of the Arrangement, particularly as regards the establishment of the margin, shall be in line with the annex to this Decision.

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<sup>5</sup> 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’).

*Article 2*

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

Done at Brussels,

*For the Council  
The President*