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Proposal for a

COUNCIL DECISION

**on the position to be taken on behalf of the European Union regarding the Sector
Understanding on Export Credits for Civil Aircraft**

EXPLANATORY MEMORANDUM

1. SUBJECT MATTER OF THE PROPOSAL

This proposal concerns the decision establishing the position to be taken on the Union's behalf regarding the Sector Understanding on Export Credits for Civil Aircraft ('Aircraft Sector Understanding' or 'ASU') in connection with the envisaged Common Line in accordance with Part 4, Section 3 of the ASU.

2. CONTEXT OF THE PROPOSAL

2.1. The Sector Understanding on Export Credits for Civil Aircraft

The Aircraft Sector Understanding aims to provide a framework for the predictable, consistent and transparent use of officially supported export credits for the sale or lease of aircraft and related goods and services specified in Article 4a) of the ASU. The Sector Understanding became effective on 1 February 2011.

The Aircraft Sector Understanding forms Annex III of the Arrangement on Officially Supported Export Credits ('Arrangement') which is administratively embedded in the OECD, and receives support from the OECD Credit Secretariat. Nevertheless, neither the Arrangement nor the Aircraft Sector Understanding are OECD Acts¹.

The European Union is a party to the Arrangement and the Aircraft Sector Understanding and both have been transposed into the *acquis communautaire* by virtue of the Regulation (EU) No 1233/2011 of the European Parliament and of the Council of 16 November 2011.² Hence the Arrangement and the Aircraft Sector Understanding are legally binding as a matter of Union law.

2.2. The ASU Participants

There are currently ten Participants to the Aircraft Sector Understanding ('ASU Participants'): Australia, Brazil, Canada, the European Union, Japan, Korea, New Zealand, Norway, Switzerland and the United States. The ASU Participants take decisions on the modifications to the ASU and can accept Common Lines in accordance with Part 4, Section 3 of the ASU. Decisions are taken by consensus, so that, if any Participant objects, the modification of the ASU or the Common Line cannot be adopted.

The European Commission represents the Union in the meetings of the ASU Participants, as well as in the written procedures for decision-making by the Participants.

A Common Line is an instrument under the ASU, which allows the Participants, on an exceptional basis, to divert from the ASU provisions with regard to a specific transaction or temporarily for a non-specific number of transactions. The Common Lines may be accepted in written procedure by remaining silent, as a Participant remaining silent shall be deemed to have accepted the Common Line proposal. The same applies for a Participant indication to have no position. The responses to a Common Line proposal shall be made in principle within 20 calendar days (Article 29 of the ASU). The OECD Export Credit Secretariat shall inform the Participants whether the Common Line was accepted and the agreed Common Line will take effect three calendar days after this announcement (Article 32 of the ASU).

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 of).

2.3. The envisaged act of the ASU Participants

The envisaged measure would be a proposal for a Common Line which would be submitted to the ASU Participants in accordance with Part 4, Section 3 of the ASU. The proposed Common Line would be an urgent and exceptional measure to react to the economic downturn resulting from the Covid-19 health crisis and reduce the severe impact of the crisis on the European civil aviation industry (see in more detail in section 3 below). The proposed Common Line, if agreed, would temporarily amend the ASU provision governing the repayment of principle (Article 13 of the ASU) which would consequently have legal effects in the EU as a matter of Union law (see in 2.1 above).

Considering the emergency nature of the measure, the proposal should be submitted as soon as possible, and, if agreed, the envisaged Common Line will have to become applicable for all Participants also as soon as possible. As result of the specific 20-day silence procedure stipulated in the ASU (see in 2.2 above), the Union proposal for the Common Line can be automatically agreed by the Participants as the final version of the Common Line, provided that no objection is raised, and should enter into effect three days after the end of the procedure.

In light of the above, it is appropriate to establish the Union's proposal as the position to be taken on the Union's behalf in a body set up by an agreement, because the decision will be binding on the Union and it will affect Union law, by virtue of Article 1 of Regulation (EU) No 1233/2011, which states that "The guidelines contained in the Arrangement on Officially Supported Export Credits ('the Arrangement') shall apply in the Union. The text of the Arrangement is annexed to this Regulation."

The Common Line procedure in the ASU Participants is expected to be initiated in January 2021 and finalised in February 2021.

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

The envisaged Common Line would permit the ASU Participants to temporarily support their manufacturers of civil aircraft, whose business is threatened by short-term liquidity problems of the operators and buyers of new aircraft and engines in the wake of the Covid-19 fallout. Currently, most if not all airlines are facing substantial reductions in income and in the post-Covid recovery, these companies will still have fragile liquidity positions as they will have to deal with the financial aftermath of the crisis and with reduced demand.

Concretely, the proposed Common Line would allow the purchasers of new aircraft and engines to defer the beginning of repayments of the loan principal for 12 or, if certain conditions are satisfied, 18 months after the delivery while enabling manufacturers to receive payment for new aircraft and engines delivering in the next 12 months. The validity of the Common Line shall be 12 months.

Taken into account that the purpose of the envisaged Common Line is to reduce the severe impact of the Covid-19 health crisis on the European civil aviation industry, and that the Union envisages to make the proposal for this Common Line, the position to be taken on the Union's behalf should be to make and support the draft proposal in Annex to this Decision.

3.1. Procedural legal basis

3.1.1. 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’³.

3.1.2. Application to the present case

The act, which the ASU Participants will be called upon to adopt, constitutes an act having legal effects. The envisaged act has legal effects by virtue of Article 1 of 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, which states that "The guidelines contained in the Arrangement on Officially Supported Export Credits (‘the Arrangement’) shall apply in the Union. The text of the Arrangement is annexed to this Regulation."

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

3.2. Substantive legal basis

3.2.1. 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.

3.2.2. Application to the present case

The main objective and content of the envisaged act relate to the common commercial policy. Therefore, the substantive legal basis of the proposed decision is Article 207.

3.3. Conclusion

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

4. PUBLICATION OF THE ENVISAGED ACT

As the act of the ASU Participants will amend the Aircraft Sector Undertaking, it is appropriate to publish it in the Official Journal of the European Union after its acceptance.

³ 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.

Proposal for a

COUNCIL DECISION

on the position to be taken on behalf of the European Union regarding the Sector Understanding on Export Credits for Civil Aircraft

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the European Commission,

Whereas:

- (1) The Sector Understanding on Export Credits for Civil Aircraft ('Aircraft Sector Understanding' or 'ASU'), which forms Annex III of the Arrangement on Officially Supported Export Credits, has been transposed, and hence been made legally binding in the European Union by Regulation (EU) No 1233/2011 of the European Parliament and of the Council.⁴
- (2) The Participants to the Aircraft Sector Understanding ('ASU Participants') are to decide, in a written procedure, on the European Union proposal for a Common Line in accordance with Part 4, Section 3 of this Sector Understanding to allow for a temporary deferral of repayment of principal for buyers of new aircraft and engines in the light of the current and developing COVID-19 economic downturn.
- (3) It is appropriate to establish the Union's proposal as the position to be taken on the Union's behalf in the written procedure of the ASU Participants, as the decision will be capable of decisively influencing the content of Union law by virtue of 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.
- (4) The proposal for the Common Line would allow the purchasers of new aircraft as defined in Articles 8 a) (1) of the ASU, and of support for spare engines and spare parts as set out in Articles 20 a), b) and c) of the ASU to defer repayment of the loan principal for 12 months, or, if certain conditions are satisfied, 18 months after the delivery. This exceptional measure is necessary to react to the economic downturn resulting from the Covid-19 sanitary crisis and reduce the severe impact of the crisis on the civil aviation industry, whose business is threatened by short-term liquidity problems of the operators and purchasers of new aircraft and engines.

⁴ 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).

HAS ADOPTED THIS DECISION:

Article 1

The position to be taken on the Union's behalf concerning the proposal for the Common Line in accordance with Part 4, Section 3 of the Aircraft Sector Understanding shall be based on the Annex to this Decision.

Article 2

This Decision is addressed to the Commission.

Done at Brussels,

*For the Council
The President*