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Proposal for a

COUNCIL DECISION

**on the position to be taken on behalf of the European Union in meetings of the
Participants to the OECD Arrangement on Officially Supported Export Credits
regarding down payment and maximum official support requirements**

EXPLANATORY MEMORANDUM

1. SUBJECT MATTER OF THE PROPOSAL

This proposal concerns a decision establishing the position to be taken on the Union's behalf at the meetings of Participants to the OECD Arrangement on Officially Supported Export Credits (“Arrangement”) regarding the decrease of the minimum down payment and the increase of the maximum official support in Article 11 of the Arrangement.

2. CONTEXT OF THE PROPOSAL

2.1. The Arrangement on Officially Supported Export Credits

The Arrangement is a gentlemen's agreement between the Union, the US, Canada, Japan, Korea, Norway, Switzerland, Australia, New Zealand, Türkiye and the United Kingdom (the ‘Participants’), which provides a framework for the orderly use of officially supported export credits. In practice, this means establishing a level playing field between Participants (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 the OECD Secretariat provides support for its implementation, is not an OECD Act¹.

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 has 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 Council of 16 November 2011². Revisions of the terms and conditions of the Arrangement are incorporated into EU law through Delegated Acts pursuant to Article 2 of that Regulation.

2.2. The Participants to the Arrangement and decision making

The European Commission represents the Union in meetings of the Participants, as well as in the written procedures for decision-making by the Participants. Decisions on all amendments of the Arrangement are taken by consensus (of all Participants).

2.3. The envisaged act of the Participants

Temporary derogations from Article 11 (a) and (c) of the Arrangement regarding the minimum down payment and maximum official support obligations have been in operation since November 2021. These have been put in place via the Arrangement’s “common line” procedure. A common line is an instrument under the Arrangement that allows the Participants, on an exceptional basis, to diverge from the Arrangement’s provisions. The procedures for reaching agreement on common lines are set out in Articles 54 to 59 of the Arrangement.

The flexibility based on the common line procedures since November 2021 allows Participants to lower the minimum down payment from 15% of the export contract value to 5% for specified lower income countries was initially proposed by the EU and originally linked to the Covid-19 health crisis but has been extended on proposals of the UK. The flexibility will end on 13th December 2024. As the common line procedure is intended to be

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).

used in exceptional, crisis situations the EU has made clear that it will oppose and block any further extension of the temporary flexibilities.

Accordingly, discussions are taking place among the Participants on a possible permanent change to the minimum down payment and maximum official support requirement in the Arrangement. Indeed, this issue was discussed at the March 2024 and June 2024 meetings of the Participants, and an outcome is expected at the November 2024 meeting considering the expiry of the common line on 13th December 2024. This permanent change could address the underlying issues driving the desire of some Participants for flexibilities in this area and would probably take the form of an amendment to Article 11 of the Arrangement. The envisaged act would thus aim at establishing a general, more flexible rule on those requirements than currently stipulated in the text of the Arrangement.

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

The proposed Union position would be to support a change in the text of the Arrangement regarding the down payment rules (and maximum official support rules). The flexibility would help secure projects in a competitive financial landscape. It would be limited to specified countries and to project transactions with public buyers, and further adequate guardrails to focus the amendments on needs should be considered during the negotiations. This ring-fenced approach would avoid market distortions.

The amendments would also encompass “green” projects that are laid down in a specific sector understanding (Sector Understanding on Export Credits for Climate Change) and would focus on social and transformational projects with a development impact. The amendments would also improve European exporters’ competitiveness with regard to non-OECD countries and allow gaps in financing to be filled. Finally, the flexibility would contribute to the materialization of important infrastructure projects, particularly in Sub-Saharan Africa, having a development impact.

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’*³.

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. Indeed, Article

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.

1 of this Regulation states that “[t]he 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.”. Equally relevant is 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. The use of Article 218(9) for the adoption of these amendments is also justified by the fact that the Arrangement modifications are adopted within a specific body set up under the OECD framework.

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 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.

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 guidelines contained in the Arrangement on Officially Supported Export Credits (the ‘Arrangement’) are transposed, and hence made legally binding in the Union by virtue of Regulation (EU) No 1233/2011 of the European Parliament and of the Council⁴.
- (2) The envisaged decision on an amendment to Article 11 of the Arrangement enhancing the flexibility regarding minimum down payment and maximum official support requirements in the Arrangement is also in line with the agenda of the modernization of the Arrangement, which entered into force on 15 July 2023, improving European exporters’ competitiveness with regard to non-OECD countries.
- (3) The flexibility would help finance projects in a competitive financial landscape while being framed in a ring-fenced manner to fill specific financial gaps and to avoid market distortions.
- (4) The flexibility would also encompass “green” projects that are laid down in a specific sector understanding (Sector Understanding on Export Credits for Climate Change) and it would focus on social and transformational projects with a development impact.
- (5) It is appropriate to establish the position to be taken on the Union's behalf regarding the down payment and maximum official support requirements, 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, by virtue of Article 2 of Regulation (EU) No 1233/2011,

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 adopted on the Union's behalf shall be to support the decision of the Participants to the Arrangement regarding minimum down payment and maximum official support requirements in the Arrangement and other related articles in line with the annex to this Decision.

Article 2

This Decision is addressed to the Commission.

Done at Brussels,

*For the Council
The President*