EUROPEAN
COMMISSION

Brussels, 21.5.2024
COM(2024) 209 final

2024/0114 (NLE)

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 update certain sunset clauses within the Sector Understanding on Export Credits for Climate Change

EXPLANATORY MEMORANDUM

1. SUBJECT MATTER OF THE PROPOSAL

This proposal concerns a decision establishing the position to be taken on the Union's behalf to change the date of two sunset clauses, regarding project classes G and I, respectively, of the Sector Understanding on Export Credits for Climate Change ('CCSU') of the Arrangement on Officially Supported Export Credits (the 'Arrangement').

2. CONTEXT OF THE PROPOSAL

2.1. The Arrangement

The Arrangement is a "gentlemen's agreement" between the EU, the US, Canada, Japan, Korea, Norway, Switzerland, Australia, New Zealand, Turkey and the United Kingdom, which provides a framework for the orderly use of officially supported export credits. In practice, this means it sets rules working 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 Act[1].

The Arrangement is subject to regular updates, taking into account 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 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 Regulation (EU) No 1233/2011.

The CCSU is an annex of the Arrangement which provides more flexible maximum repayment terms for climate friendly projects, to incentivise their financing and the purpose is to provide adequate financial terms and conditions to projects in selected sectors identified as significantly contributing to climate change mitigation, including renewable energy, greenhouse gas (GHG) emissions' reduction and high energy efficiency projects, climate change adaptation, as well as water projects.

2.2. The Participants to the Arrangement

The European Commission represents the Union in meetings of the Participants to the Arrangement ('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.

2.3. The envisaged act of the Participants

In 2023, the Participants added to the CCSU a number of new classes of project that could be supported under its terms. For two of these, project classes G (Low emission manufacturing) and I (Clean Energy Minerals and Ores), it was agreed that the ability to support transactions in these classes with the CCSU flexibilities would be assessed on an individual basis because it was not possible to agree on criteria to define these project classes, in particular as no existing internationally agreed criteria were available. In addition, with the intention to incentivise Participants to agree on criteria, sunset clauses were included for both project classes, as follows: "After 30 June 2024, this project class shall be discontinued unless

[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).

Participants agree otherwise. At the same time, Participants will review international standards developed by then and decide whether they will incorporate them in this entry."

Although no criteria have been agreed and no projects have been supported under the two project classes, it is in the EU's interest to maintain the possibility to approve individual projects under these project classes should they arise and allow further time for relevant criteria to develop in other international fora. All other Participants have expressed an interest to continue both classes, either as a new sunset clause or a review clause.

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

The European Union should support a modification of the Arrangement to include a new sunset clause until at least 30 June 2026. Other Participants may propose to move to a review clause or to have a longer deadline, which could also be acceptable.

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. 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.

4.2. 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.

[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.

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 will amend the CCSU, it is appropriate to publish it in the *Official Journal of the European Union* after its adoption.

6.

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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') 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 Council[4].

(2) The sunset clauses for project classes G and I of the Arrangement's Sector Understanding on Export Credits for Climate Change ('Climate Change Sector Understanding') will expire on 30 June 2024.

(3) It is in the interest of the Union that such projects could continue to benefit from the Climate Change Sector Understanding's favourable terms, and that the possibility of reaching agreement on criteria for these project classes remains. To this effect, the Union should support an extension of the sunset clause, or its replacement with a review clause, until at least 30 June 2026.

(4) It is appropriate to establish the position to be taken on the Union's behalf, because the envisaged decision of the Participants to the Arrangement ('Participants') 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,

HAS ADOPTED THIS DECISION:

Article 1

The position to be taken on the Union's behalf among the Participants to the Arrangement on Officially Supported Export Credits is set out in the Annex.

[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) ('Regulation (EU) No 1233/2011').

Article 2

This Decision is addressed to the Commission.

Done at Brussels,

For the Council
The President