EUROPEAN
COMMISSION

Brussels, 9.7.2024
COM(2024) 282 final

2024/0156 (NLE)

Proposal for a

COUNCIL DECISION

on the position to be taken on behalf of the European Union on the review of Article 6 of the Arrangement on Officially Supported Export Credits

EXPLANATORY MEMORANDUM

1. SUBJECT MATTER OF THE PROPOSAL

This proposal concerns a decision establishing the position to be taken on the Union's behalf in the context of the review of Article 6 of the Arrangement on Officially Supported Export Credits (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 EU, 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 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 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 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.

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.

2.3. The envisaged act of the Participants

A mandated review of Article 6 of the Arrangement is under discussion at the level of the Participants to the Arrangement, on the basis of proposals from the Union and a number of other Participants. These proposals share the aim of aligning the Arrangement with international climate goals by extending an existing ban on support to unabated coal-fired power plants in Article 6 to the fossil fuel energy sector as a whole, except in limited and clearly defined circumstances.

The change is supported by the scientific evidence. According to the International Energy Agency (IEA) in its "Net Zero by 2050" analysis[3], no new investment into fossil fuel supply should happen after 2021 in a net zero pathway. Furthermore, commitments to make the necessary policy changes were already taken by many OECD governments and export credit agencies in different ways: at national level, with the adoption of phase-out policies, and also in multilateral statements such as the COP 26 Statement on International Public Support for

---

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 https://www.iea.org/reports/net-zero-by-2050

the Clean Energy Transition. In April 2023, G7 Climate, Energy and Environment Ministers recalled their commitment to align official international financing with the goals of the Paris Agreement, noting also the need to take account of national security and geostrategic interests. The value of IEA's analysis, along with that of the United Nations' intergovernmental Panel on Climate Change (IPCC) has been recognised by the Council in its Conclusions of March 2022 that state that Members States would, by the end of 2023 establish "their own science-based deadlines for ending officially supported export credits to fossil fuel energy sector projects, unless in limited and clearly defined circumstances that are consistent with a 1.5°C warming limit and the goals of the Paris Agreement."[4]

The envisaged act would establish a general rule that officially supported export credits and tied aid may not be granted for the fossil fuel energy sector except in limited and clearly defined circumstances that are consistent with a 1.5°C warming limit and the goals of the Paris Agreement. It would not set out the nature of those circumstances but allow discretion to Participants in their approach. Discipline as to the use of this flexibility would be ensured by transparency obligations.

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

As it is crucial that the OECD export credit community adequately translates climate policy objectives into the Arrangement rules and into practical measures, the Union will push for agreement on this phase out in the coming meetings. Several other Participants are likely to push in the same direction and others announced this year that they would end support to unabated fossil fuel energy sector. The Union should be able to take a position on the review of Article 6 to the Arrangement. The Annex to this proposal for a Council Decision contains the latest EU proposal for a landing zone of the agreement. The Union's position should be to join the consensus on an OECD Decision, if it is in line with this landing zone.

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'[5].

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

[4] Council Conclusions on export credits, approved by the Council (Economic and Financial Affairs) at its 3855th meeting on 15 March 2022 (https://data.consilium.europa.eu/doc/document/ST-7101-2022-INIT/en/pdf.)

[5] 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.

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.

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, TEFU in conjunction with Article 218(9) TFEU.

5. PUBLICATION OF THE ENVISAGED ACT

As the envisaged act will amend the Arrangement, it is appropriate to publish it in the Official Journal of the European Union after its adoption.

2024/0156 (NLE)

Proposal for a

COUNCIL DECISION

on the position to be taken on behalf of the European Union on the review of Article 6 of the Arrangement on Officially Supported Export Credits

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[6].

(2) In accordance with Article 6 of the Arrangement, the participants to the Arrangement (the 'Participants') should review this article with the objective of further strengthening its terms and conditions in order to contribute to the common goal of addressing climate change.

(3) The envisaged decision to review Article 6 of the Arrangement should be in line with the international commitments of the European Union pursuant to the Paris Agreement and the Union's climate policy.

(4) The Council of the European Union in its Conclusions on export credit of 15 march 2022 already announced the intention by the Member States to determine by the end of 2023 in their national policies their own science-based deadlines for ending officially supported export credits to fossil fuel energy sector projects, unless in limited and clearly defined circumstances that are consistent with a 1.5°C warming limit and the goals of the Paris Agreement.

(5) It is appropriate to establish the position to be taken on the Union's behalf regarding the review of Article 6 of the Arrangement, 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,

[6] 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 join the consensus of the Participants to the Arrangement regarding the review of the Article 6 of 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