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2025/0025 (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 Sector Understanding on Export Credits for Civil Aircraft

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 Sector Understanding on Export Credits for Civil Aircrafts, Annex III of the OECD Arrangement on Officially Supported Export Credits ("Arrangement") regarding amendments of the Sector Understanding on Export Credits for Civil Aircrafts ("Aircraft Sector Understanding" or "ASU").

2. CONTEXT OF THE PROPOSAL

2.1. The Arrangement on Officially Supported Export Credits and the Aircraft Sector Understanding

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 Act[1].

Some of the rules laid out in the Arrangement are sector-specific and detailed in the sectoral annexes of the Arrangement (called "Sector Understandings"). The ASU is a self-contained agreement for officially supported export credits relating to civil aircraft. It operates independently from the Arrangement.

The ASU is managed by its own Participants, which are Australia, Brazil, Canada, the European Union, Japan, Korea, New Zealand, Norway, Switzerland, United Kingdom and the United States.

The ASU is subject to regular updates, taking into account financial market and policy developments affecting the provision of officially supported export credits. The ASU 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 2011[2]. 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 Aircraft Sector Understanding and decision-making

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

2.3. The envisaged act of the ASU Participants

Although the ASU is focused on export credits related to the exports of civil aircraft, Participants also provide support under the ASU for transactions involving the provision of

[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).

maintenance and other services, as well as the export of spare parts and engine kits. However, practice in the ASU over the years has shown ambiguities regarding the application of the rules to transactions of this type. Therefore, it has been proposed that specific terms and conditions for maintenance and service contracts as well as spare parts and engine kits (related to aircraft covered by the ASU) are included in the ASU. The rules would ensure a coherent application and interpretation of the ASU terms for these transaction, contributing to a more level playing field.

Specifically, the rules would:

- allow for longer repayment terms for transactions above a certain contract value;
- reduce the minimum down payment from 30% to 15% of the export contract value; and
- and adapt the definition of starting point of credit (which is today focused on the moment the buyer receives the main aircraft as opposed to the services dimension) to comply with the delivery milestones typically observed in those contracts.

Discussions have been taking place among the ASU Participants on the addition of these rules since 2022, and an outcome is expected in the first quarter of 2025.

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 ASU regarding the support of maintenance and service contracts, spare parts and engine kits related to aircrafts covered by the ASU. The new specific rules would help ensure a coherent application of the ASU regarding those transactions and strengthen the level playing field between ASU Participants.

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, such as the ASU.

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 act of the ASU Participants 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') including those in the Sector Understanding on Export Credits for Civil Aircraft ('Aircraft Sector Understanding, ASU') in Annex III to 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 Council[4].

(2) The envisaged decision on an amendment to the ASU aims at establishing specific rules providing legal certainty and strengthening the level playing field between ASU Participants regarding the support of maintenance and service contracts, spare parts and engine kits exports related to aircrafts covered by the ASU.

(3) It is appropriate to establish the position to be taken on the Union's behalf regarding the amendments of the ASU, as the envisaged decision of the ASU 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 adopted on the Union's behalf shall be to support a decision of the ASU Participants regarding the amendment to the ASU aiming at establishing specific rules regarding the support of maintenance and service contracts, spare parts and engine kits exports in line with the annex to this Decision.

[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).

Article 2

This Decision is addressed to the Commission.

Done at Brussels,

For the Council
The President