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2025/0310 (NLE)

Proposal for a

COUNCIL DECISION

on the position to be taken on behalf of the Union with regard to the decision of the Participants to the Sector Understanding on Export Credits for Civil Aircraft on the obligor risk classification in *de minimis* transactions involving agricultural aircrafts

EXPLANATORY MEMORANDUM

1. SUBJECT MATTER OF THE PROPOSAL

This proposal concerns the position to be taken on the Union's behalf regarding the obligor risk classification in transactions of an export contract value of less than USD 5 million (*de minimis* transactions) involving agricultural aircrafts under the Sector Understanding on Export Credits for Civil Aircraft ('Aircraft Sector Understanding' or 'ASU') in the Arrangement on Officially Supported Export Credits ('the Arrangement').

This proposal suggests an amendment to the rules set out in the ASU regarding determining the pricing of official support for a transaction subject to the ASU, in particular obligor risk classification procedures. ASU stipulates that the Participants to the ASU must, before any use of an alternative or new risk classification of obligors, request an update of the list of risk classifications of obligors. Given significant administrative burden that this requirement brings, the OECD Secretariat proposed on 30 July 2025 to amend the ASU by excluding *de minimis* transactions involving agricultural aircraft from the obligor risk classification process. This proposal sugggests to accept that proposed amendment.

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 aims to provide a framework for the orderly use of officially supported export credits. In practice, this means establishing a level playing field (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 came into effect in April 1978 and is of indefinite duration. The Arrangement is administratively embedded in the OECD, and receives support from the OECD Secretariat, but it 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 contained in Annex III to the Arrangement and 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 4(a) of the ASU. The ASU seeks to foster a level playing field for such export credits. The ASU became effective on 1 February 2011.

Both the Arrangement and the ASU have been transposed, and hence been made legally binding in the Union by virtue of the 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.

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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).

2.2. The Participants to the Aircraft Sector Understanding and decision making

The ASU has eleven Participants ('ASU Participants'), which are Australia, Brazil, Canada, the Union, Japan, Korea, New Zealand, Norway, Switzerland, United Kingdom and the United States.[3]

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

The envisaged act aims to amend the risk classification procedures as set out in Appendix II, Section 1 of the ASU. Appendix II sets out the procedures to be used when determining the pricing of official support for a transaction subject to the ASU. Section 1 sets out the risk classification procedures.

ASU Participants have agreed on a list of risk classifications for obligors. Such risk classifications reflect the senior unsecured credit rating of obligors using a common rating scale such as that of the credit rating agencies.

Appendix II, Section 1.II of the ASU stipulates that any ASU Participant shall, before any use of an alternative or new risk classification, send a request to the OECD Secretariat for updating the list of risk classifications on the basis of an alternative or new risk classification. That has in general proven to be administratively burdensome.

Under the current rules, ASU Participants in *de minimis* transactions are allowed to bypass the updating of the risk classification list by assigning to the obligor the risk classification '8'. That option, however, seems overly strict.

In that sense, the OECD Secretariat sent to ASU Participants on 30 July 2025 a proposal for approval by written procedure by 3 November 2025 to amend the text of the ASU and provide more flexibility as regards the obligor rating process in *de minimis* transactions involving agricultural aircrafts, which represent 89% of all *de minimis* transactions committed between 2011 and 2023. This proposal suggests that for such transactions, ASU Participants would not need to request updating of the list of risk classifications, but be free to apply the classification they deem appropriate without having to assign overly strict risk class of '8' to the obligor.

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

The risk classification process requires a significant amount of the OECD Secretariat's time. It is also administratively burdensome for the ASU Participants. Moreover, it is worth noting that over 99.9% of *de minimis* proposals submitted since 2011 were accepted without challenge.

Given this, the EU supports the proposal to amend the ASU by simplifying the risk classification process for *de minimis* transactions involving agricultural aircrafts.

Therefore, it is recommended that the Union supports in the written procedure by the Participants to the ASU the proposal to exclude *de minimis* transactions involving agricultural aircrafts from the obligor risk classification process, in line with the Annex to this proposal.

[3] The participation is largely the same as in the Arrangement, with a difference that Brazil is an ASU Participant but not an Arrangement Participant, while Türkiye does not participate in the ASU though it is an Arrangement Participant.

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'[4].

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. That is because of Article 2 of that 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". That 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. If the envisaged act pursues two aims or has two components and if one of those aims or components is identifiable as the main one, whereas the other is merely incidental, the decision under Article 218(9) TFEU must be founded on a single substantive legal basis, namely that required by the main or predominant aim or component.

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.

[4] 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.

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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, 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[5].

(2) The envisaged decision on an amendment to the ASU aims at excluding transactions with an export contract value of less than USD 5 million (*de minimis* transactions) involving agricultural aircraft from the obligor risk classification process pursant to Appendix II, Section 1 of the ASU. That should decrease the administrative burden for the Participants to the ASU and simplify the obligor risk rating.

(3) It is appropriate to establish the position to be taken on the Union's behalf in the written procedure of the ASU Participants, as the envisaged decision 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 excluding *de minimis* transactions involving agricultural aircraft from the obligor risk classification process, in line with the annex to this Decision.

[5] 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