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COVER NOTE

From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
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To:	General Secretariat of the Council
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Subject:	COMMISSION DELEGATED REGULATION (EU) .../... of 7.9.2022 amending Annex II to Regulation (EU) No 1233/2011 of the European Parliament and of the Council on the application of certain guidelines in the field of officially supported export credits

Delegations will find attached document C(2022) 6181 final.

Encl.: C(2022) 6181 final



EUROPEAN
COMMISSION

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COMMISSION DELEGATED REGULATION (EU) .../...

of 7.9.2022

amending Annex II to Regulation (EU) No 1233/2011 of the European Parliament and of the Council on the application of certain guidelines in the field of officially supported export credits

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE DELEGATED ACT

1.1. Grounds for the proposal

The Arrangement on Officially Supported Export Credits (“the Arrangement”) is a gentlemen's agreement between its Participants – the European Union, Australia, Canada, Japan, Korea, New Zealand, Norway, Switzerland, Turkey, the United Kingdom and the United States – which provides a framework for the orderly use of officially supported export credits. In practice, this means establishing guidelines to foster a level playing field, whereby competition is based on the price and quality of the exported goods and services and not on the support provided, while working to eliminate subsidies and trade distortions related to officially supported export credits.

The Arrangement entered into force in April 1978. It was amended and expanded over time, including through sectorial agreements – its Sector Understandings – that establish specific rules in certain industrial sectors. It is of indefinite duration and although it receives the administrative support of the OECD Secretariat, is not an OECD Act. Brazil, although not an OECD member and not a Participant to the Arrangement, is a Participant to the Sector Understanding on Export Credits for Civil Aircraft.

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 states that the guidelines contained in the Arrangement shall apply in the Union. According to the Regulation, the Commission shall adopt delegated acts to amend Annex II of the said Regulation, which contains the text of the Arrangement, as a result of the amendments to the Arrangement agreed upon by its Participants.

The Commission has exercised this delegated power several times to update the text of the Arrangement in accordance with the Regulation (Commission Delegated Regulations No 727/2013 of 14 March 2013, No 155/2016 of 29 September 2015 and No 179/2018 of 25 September 2017) and, as a result, the current Arrangement text annexed to the Regulation is the version from February 2017. The Arrangement has been subject to amendments since, some of which substantial, making it appropriate to launch a new delegated act procedure.

On 10 January 2022, the OECD published an updated version of the Arrangement and its Sectors Understandings (TAD/PG(2022)1), taking into account all the amendments agreed upon by their Participants until end 2021.

The main changes adopted by the Participants to the Arrangement and its various Sectors Understanding from February 2017 to January 2022 are: an update in the Participants list, to add Turkey and the United Kingdom; a review of the Commercial Interest Reference Rates; a change in local cost provisions to allow for an increase of local cost support; and a ban on export credits and tied aid support for unabated coal-fired power plants. The latter led to a deletion of the Sector Understanding on Export Credits for Coal-Fired Electricity Generation, following the incorporation in the Arrangement of the ban. There are also various other modifications in many parts of the Arrangement and its Sector Understandings, which for example take into account technical considerations – such as changes in financial benchmarks – or extensions of review and sunset clauses agreed by the Participants. As noted below, the EU positions during these negotiations have been established through Council Decisions in accordance with Article 218(9) of the Treaty on the Functioning of the European Union (TFEU).

In view of the above, the purpose of this Delegated Regulation by the Commission is to amend Annex II to Regulation (EU) No 1233/2011 to reflect the amendments agreed by the Participants to the Arrangement since February 2017. In concrete terms, this means updating Annex II using the Arrangement text in its January 2022 version.

1.2. Legal Background

Regulation (EU) No 1233/2011 of the European Parliament and of the Council of 16 November 2011 in its Article 1 stipulates that the Arrangement shall apply in the Union.

Regulation (EU) No 1233/2011 contains as its Annex II the Arrangement on Officially Supported Export Credits in the version attached to the Commission's proposal for a Council Decision on the application of certain guidelines in the field of officially supported export credits of 10 August 2006 (COM 2006/456 final).

Recital 14 of Regulation (EU) No 1233/2011 states in particular that: "In order to smoothly and promptly incorporate into Union legislation the amendments to the guidelines set out in the Arrangement as agreed upon by the Participants to the Arrangement, the Commission should adopt delegated acts to amend Annex II where this is necessary. Therefore the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in respect of amendments to the guidelines as agreed upon by the Participants to the Arrangement."

The present delegated act has as a legal basis Article 2 of the Regulation, which stipulates that: "The Commission shall adopt delegated acts in accordance with Article 3 to amend Annex II as a result of amendments to the guidelines agreed upon by the Participants to the Arrangement."

2. CONSULTATIONS PRIOR TO THE ADOPTION OF THE ACT

Recital 14 in Regulation (EU) No 1233/2011 stresses the particular importance of appropriate consultations during the preparation of delegated act, including at expert level.

Consultations with interested parties have already taken place during the negotiations that led to the January 2022 version of the Arrangement. The adopted amendments to the Arrangement were agreed by all its Participants – including the European Union – at OECD level and the positions taken by the Union have been established through Council Decisions in accordance with Article 218(9) of the Treaty on the Functioning of the European Union (TFEU).

Consultation of the expert group has been carried out.

3. LEGAL ELEMENTS OF THE DELEGATED ACT

3.1. Summary of the proposed action

The purpose of the Commission Delegated Regulation is to amend Annex II of Regulation (EU) No 1233/2011, replacing it with the version of the OECD Arrangement on Officially Supported Export Credits applicable as of 10 January 2022.

3.2. Legal basis

The Commission delegated Regulation is based on Regulation (EU) No 1233/2011 and in particular its Articles 2 and 3.

3.3. Subsidiarity principle

The proposal falls under the exclusive competence of the European Union. The subsidiarity principle therefore does not apply.

3.4. Proportionality principle

In accordance with the principle of proportionality, this measure does not go beyond what is necessary to achieve the objective.

The form of the measure is a Commission Delegated Regulation which is directly applicable in all Member States. This ensures no costs for transposition of the legislation into national legislation.

3.5. Choice of instrument

The proposed instrument is a Commission Delegated Regulation in accordance with Regulation (EU) No 1233/2011.

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THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to 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/EC¹, and in particular Article 2 thereof,

Whereas:

- (1) Article 1 of Regulation (EU) No 1233/2011 lays down that the guidelines contained in the Arrangement on Officially Supported Export Credits (“the Arrangement”) shall apply in the Union, the text of the Arrangement being contained in Annex II to that Regulation.
- (2) The Participants to the Arrangement have agreed upon a substantial number of amendments to the Arrangement as compared with the currently applicable version of the Arrangement contained in Annex II to Regulation (EU) No 1233/2011.
- (3) The main changes adopted by the Participants to the Arrangement and its various Sectors Understanding from February 2017, the date of the currently applicable version, to January 2022 are: an update in the Participants list, to add Turkey and the United Kingdom; a review of the Commercial Interest Reference Rates; a change in local cost provisions to allow for an increase of local cost support; and a ban on export credits and tied aid support for unabated coal-fired power plants.
- (4) On 10 January 2022, the OECD published a revised version of the Arrangement which takes into account all amendments adopted by its Participants until end 2021. It is appropriate and necessary to incorporate the said amendments into Union legislation.
- (5) Regulation (EU) No 1233/2011 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

Annex II to Regulation (EU) No 1233/2011 is replaced by the text set out in the Annex to this Regulation.

Article 2

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

¹ OJ L 326, 8.12.2011, p. 45.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 7.9.2022

For the Commission
The President
Ursula VON DER LEYEN