Council of the European Union

Brussels, 16 September 2022
(OR. en)

12512/22

Interinstitutional File: 2022/0276(NLE)

CCG 38

PROPOSAL

From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
date of receipt:	15 September 2022
To:	General Secretariat of the Council
No. Cion doc.:	COM(2022) 455 final
Subject:	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 expand the scope of the Sector Understanding on Export Credits for Renewable Energy, Climate Change Mitigation and Adaptation and Water Projects

Delegations will find attached document COM(2022) 455 final.

Encl.: COM(2022) 455 final

EUROPEAN
COMMISSION

Brussels, 15.9.2022
COM(2022) 455 final

2022/0276 (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 expand the scope of the Sector Understanding on Export Credits for Renewable Energy, Climate Change Mitigation and Adaptation and Water Projects

EXPLANATORY MEMORANDUM

1. SUBJECT MATTER OF THE PROPOSAL

This proposal concerns a decision, establishing the position to be taken on the Union's behalf regarding the expansion of the scope of application of the Sector Understanding on Export Credits for Renewable Energy, Climate Change Mitigation and Adaptation and Water Projects ('Climate Change Sector Understanding' or 'CCSU') which is an integral part of the Arrangement on Officially Supported Export Credits.

2. CONTEXT OF THE PROPOSAL

2.1. Climate Change Sector Understanding

The purpose of the CCSU 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. The CCSU was adopted in 2012 and last updated in 2014.

The Participants to the CCSU agreed that the financial terms and conditions of the CCSU shall be implemented in a way that is consistent with the purpose of the Arrangement on Officially Supported Export Credits ('Arrangement'). The CCSU is an integral part and forms Annex IV of the Arrangement which is administratively embedded in the OECD, and receives support from the OECD Credit Secretariat. Nevertheless, neither the Arrangement nor the CCSU are OECD Acts[1].

The European Union is a party to the Arrangement and to the CCSU and both have been transposed into the acquis communautaire by virtue of Regulation (EU) No 1233/2011 of the European Parliament and of the Council of 16 November 2011.[2] Hence the Arrangement and the CCSU are legally binding as a matter of Union law.

2.2. The CCSU Participants

There are currently eleven Participants to the Arrangement, including the CCSU ('Participants'): Australia, Canada, the European Union, Japan, Korea, New Zealand, Norway, Switzerland, Turkey, the United Kingdom and the United States. The Participants take decisions on modifications to the CCSU by consensus.

The European Commission represents the Union in the meetings of the Participants, including when the Participants take decisions.

2.3. The envisaged act of the Participants

The Participants envisage adopting a decision to expand the scope of application of the CCSU and to extend the maximum repayment terms for CCSU transactions, i.e. the maximum amount of time for repayment of all credit provided to the buyer.

The CCSU has the general objective to offer more advantageous financing terms and conditions for climate-friendly projects in third countries than are stipulated in the horizontal rules of the Arrangement, and so incentivise exports of climate-friendly technologies. However, the CCSU was last updated in 2014, and today the coverage of exports that can

---

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).

benefit from the its rules is too narrow compared to the climate change goals it pursues. In particular, the scope of the CCSU focuses on the sectors of energy generation and transmission. The limited impact resulting from the narrow coverage does not effectively support the Participants'commitments asumed under the Paris Agreement and the EU ambitions as expressed in its Green Deal agenda. In this context, the Participants have agreed to broaden the scope of the CCSU and have agreed on a number of sectors that should be included in the CCSU, namely:

- Storage of electricity, including the manufacture and recycling of batteries.
- Zero emissions transport, including enabling infrastructure.
- Production of clean hydrogen, transmission, distribution and storage of hydrogen.
- Transmission and distribution of low carbon electricity.
- Low carbon manufacturing.

The detailed proposal for the expansion of the scope of application of the CCSU, with the necessary technical specifications for all projects included in the scope, is in the Annex of the proposed Decision. That Annex would become a new Appendix 1 of the CCSU and replace the existing Appendices 1 and 2 of the CCSU.

The proposed expansion of CCSU coverage would be a significant deliverable for the 27th session of the Conference of the Parties to the United Nations Framework Convention on Climate Change ('COP 27'), which is due to take place on 7-18 November 2022, because it would enable export credit agencies ('ECAs') to play a greater role in supporting the green transition and contribute to the achievement of the objectives of the Paris Agreement. It would also boost EU businesses in future-oriented sectors with strong potential to support the EU's economic growth and jobs.

This Commission proposal for the Council decision pursuant to Article 218(9) TFEU on the expansion of scope of the CCSU is linked to a parallel Commission proposal for a Council decision pursuant to Article 218(9) TFEU to agree on the modernised rules of the Arrangement (COM(2022) 456). An important part of the modernisation of the Arrangement is an adjustement to minimum premium rates for transactions with longer repayment terms (such as those evisaged to be allowed under the CCSU). This will address a key challenge related to the current terms of the CCSU, in that Participants have signalled that high premia have been a significant factor in the relatively limited uptake of the current flexibilities. Outside the wind power sector, there have been few CCSU transactions to date. Therefore, this modification is essential.

Finally, as a result of the extension of the maximum repayment terms in the modernisation of the Arrangement, it is also necessary to exend the repayment terms in the CCSU in order to ensure it continues to provide a meaningful incentive for climate-friendly transactions.

This proposal for a decision does not cover provisions related to climate change adaptation projects in the CCSU. These are addressed in a previous proposal (see Council document ST6650/22 of 28 February 2022).

It is appropriate to establish the Union's position because the decision to be adopted by the Participants to the Arranagement to amend the CCSU will have legal effects in the EU (see 2.1 above).

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

The proposed broadening of the scope of the CCSU would permit that a wider range of climate-friendly exports of the Participants may take advantage of the more beneficial terms and conditions of this Sector Undertaking, compared to the horizontal rules applicable under the Arrangement. This would make the CCSU a more effective means of supporting the green transition.

Taking into account the purpose and anticipated positive effects of the amended CCSU on the EU climate goals as well as on development of green technology and the economy in the EU, the position to be taken on the Union's behalf should be to support the draft proposal annexed to this Decision.

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 act, which the Participants will be called upon to adopt, constitutes an act having legal effects. The act shall be binding under Union law by virtue of Article 1 of 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, which states that "The 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."

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 the common commercial policy. Therefore, the substantive legal basis of the proposed decision is Article 207 TFEU.

---

[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.

4.3. Conclusion

The legal basis of the proposed decision should be the first subparagraph of Article 207(4) TFEU in conjunction with Article 218(9).

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.

2022/0276 (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 expand the scope of the Sector Understanding on Export Credits for Renewable Energy, Climate Change Mitigation and Adaptation and Water Projects

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular the first subparagraph of Article 207(4) in conjunction with Article 218(9) thereof,

Having regard to the proposal from the European Commission,

Whereas:

(1) The Sector Understanding on Export Credits for Renewable Energy, Climate Change Mitigation and Adaptation and Water Projects ('Climate Change Sector Understanding'), which is part of the Arrangement on Officially Supported Export Credits ('Arrangement') and forms Annex IV of the Arrangement, has been transposed, and hence been made legally binding in the European Union by 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..[4]

(2) The Participants to the Arrangement ('Participants') are to decide on expanding the scope of application of the Climate Change Sector Understanding to include exports from industry sectors not currently covered by its terms.

(3) It is appropriate to establish the position to be taken on the Union's behalf, because the decision to be taken by the Participants to the Arrangement to amend the the Climate Change Sector Understanding will have legal effects in the Union.

(4) The proposed amendment of the Climate Change Sector Understanding would allow exports meeting the applicable criteria from a broader range of industry sectors to benefit from the terms and conditions established under it. This would in turn enable export credit agencies from the European Union and other Participants to play a greater role in supporting the green transition and to contribute to the achievement of the objectives of the Paris Agreement. The broader coverage of the Climate Change Sector Understanding would boost EU businesses in future-oriented sectors with strong potential to promote economic growth and jobs in the Union.

[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).

HAS ADOPTED THIS DECISION:

Article 1

The position to be taken on the Union's behalf regarding the adoption by the Participants to the Arrangement on Officially Supported Export Credits ('Arrangement') of a decision to expand the scope of application of the Sector Understanding on Export Credits for Renewable Energy, Climate Change Mitigation and Adaptation and Water Projects contained in Annex 4 of the Arrangement shall be based on the Annex to this decision.

Article 2

Where new proposals regarding the subject matter in the Annex to this decision are made at, or before, a meeting of the Participants, on which there is not yet a Union position, the Union position shall be specified by means of Union coordination before the Participants are called upon to adopt an amendment to the Arrangement. In such cases, the Union position shall be in line with existing policies and legislation.

Article 3

This Decision is addressed to the Commission.

Done at Brussels,

For the Council
The President