Council of the European Union

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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) 456 final Annex
Subject:	ANNEX to the Proposal for a Council Decision establishing the position to be adopted on the Union's behalf by the Participants to the Arrangement on Officially Supported Export Credits (“Arrangement”) with regard to the modernisation of the Arrangement

Delegations will find attached document COM(2022) 456 final Annex.

Encl.: COM(2022) 456 final Annex

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Brussels, 15.9.2022
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ANNEX

ANNEX

to the

Proposal for a Council Decision

establishing the position to be adopted on the Union's behalf by the Participants to the Arrangement on Officially Supported Export Credits ("Arrangement") with regard to the modernisation of the Arrangement

ANNEX

PROPOSAL

The position of the European Union is to support the changes in the Arrangement on Officially Supported Export Credits ('Arrangement') set out in Parts 1-4 of this Annex. References below are made to Articles and Annexes of the Arrangement. Additions are in **bold underline**. Deletions are in ~~strikethrough~~.

Part 1

Maximum repayment terms

The sector understanding on export credits for civil aircraft (ASU) and the sector understanding on export credits for ships (SSU) remain unchanged.

Annex V and VI will be completely deleted as the future "standard" terms and conditions on repayment term and repayment profile will be more "attractive" than the ones currently under these two annexes.

[…]

13. MAXIMUM REPAYMENT TERMS

Without prejudice to Article 14, the maximum repayment term **is 20 years. In any case, the maximum repayment terms shall not exceed the useful life of goods being exported.** ~~varies according to the classification of the country of destination determined by the criteria in Article 11.~~

~~a) For Category I countries, the maximum repayment term is eight-and-a-half years.~~

~~b) For Category II countries, the maximum repayment term is ten years.~~

~~c) In the event of a contract involving more than one country of destination the Participants should seek to establish a Common Line in accordance with the procedures in Articles 56 to 61 to reach agreement on appropriate terms.~~

[…]

~~ANNEX V: SECTOR UNDERSTANDING ON EXPORT CREDITS FOR RAIL INFRASTRUCTURE~~

~~The Participants to this Sector Understanding agree that the financial terms and conditions of the Sector Understanding, which complements the Arrangement, shall be implemented in a way that is consistent with the Purpose of the Arrangement.~~

~~CHAPTER I: SCOPE OF THE SECTOR UNDERSTANDING~~

~~1. SCOPE OF APPLICATION~~

~~a) This Sector Understanding sets out the financial terms and conditions that apply to officially supported export credits relating to contracts for rail and other specified track-bound transportation infrastructure assets essential to operating trains, including control (e.g. signalling and other IT) systems, electrification, tracks, overhead wires and cables, pylons, rolling stock, cable cars, trolley buses, and related construction work.~~

~~b) The specific types of track-bound transportation systems that are eligible for support according to the terms and conditions of this Annex are: 1) Any type of rail~~

transportation system. 2) Trolleybus transportation systems. 3) Cable car transportation systems[1].

CHAPTER II: PROVISIONS FOR EXPORT CREDITS

2. MAXIMUM REPAYMENT TERMS

a) For officially supported export credits relating to contracts included within the scope of application of this Sector Understanding, the maximum repayment term is set out as follows: 1) For contracts in Category I countries (as defined in Article 10 of the Arrangement): 12 years. 2) For contacts in Category II countries (as defined in Article 10 of the Arrangement): 14 years.

b) To qualify for the repayment terms set out in paragraph a) above, the following conditions shall apply:

1) The transaction shall involve an overall contract value of more than SDR 10 million; and

2) The repayment terms shall not exceed the useful life of the track-bound transportation infrastructure asset financed; and

3) For transactions in Category I countries, the transaction involves/is characterised by:

Participation in a loan syndication with private financial institutions that do not benefit from Official Export Credit Support, whereby:

i) The Participant is a minority partner with pari passu status throughout the life of the loan; and

ii) Official export credit support provided by the Participants comprises less than 50% of the syndication.

Premium rates for any official support that do not undercut available private market financing and that are commensurate with the corresponding rates being charged by other private financial institutions that are participating in the syndication.

c) A Participant may request a waiver of the condition set out in paragraph b) 3) above, through use of a Common Line, in accordance with Articles 56 to 61 of the Arrangement. In such cases, the Participant proposing the Common Line shall provide, either in the proposed Common Line or in each individual transaction thereafter notified, a comprehensive explanation for the support, including specific data on pricing, and a rationale for the need to waive the provisions of paragraph b) 3) above.

3. REPAYMENT OF PRINCIPAL AND INTEREST

The repayment of principal and interest shall be provided according to Article 15 of the Arrangement except that the maximum weighted average life of the repayment period under paragraph d) 4) of that Article shall be: a) For transaction in a Category I countries, six-and-a-quarter years; and b) For transaction in a Category II countries, seven-and-a-quarter years.

CHAPTER III: PROCEDURES

4. PRIOR NOTIFICATION

[1] Cable car transportation systems associated with recreational activities such as skiing are not eligible for support under this Annex.

a) A Participant shall give prior notification in accordance with Article 45 of the Arrangement at least ten calendar days before issuing any commitment if it intends to provide support for a transaction in a Category I country. Such notifications shall include a comprehensive explanation for the official support, including specific data on pricing.

b) A Participant shall give prior notification in accordance with Article 46 of the Arrangement at least ten calendar days before issuing any commitment if it intends to provide support for: 1) A transaction in a Category II country; or 2) A transaction supported pursuant to a Common Line set out in accordance with Article 2 c) of this Sector Understanding. Such prior notification may be made concurrently with, and subject to the approval of, the Common Line proposal.

5. VALIDITY OF COMMON LINES

Notwithstanding the provisions of Article 61 a) of the Arrangement, all agreed Common Lines shall cease to be valid on 31 December 2023, unless the Participants agree to the extension of this Sector Understanding in accordance with Article 6 d) of this Sector Understanding.

CHAPTER IV: MONITORING AND REVIEW

6. MONITORING AND REVIEW

a) The Secretariat shall report annually on the implementation of this Sector Understanding.

b) After 31 December 2023, and subject to paragraph c) below, the less than 50% syndication requirement set out in sub-paragraph ii) of the first tiret of Article 2 b) 3) of this Sector Understanding shall be replaced by a maximum 35% syndication requirement unless the Participants agree otherwise.

c) The Participants shall undertake a review of this Sector Understanding by the end of 2023 with a view to assessing the market conditions and other factors to determine whether the terms and conditions should be continued and or amended.

d) After 31 December 2023, the terms and conditions of this Sector Understanding shall be discontinued unless the Participants agree otherwise.

[…]

ANNEX VI: TERMS AND CONDITIONS APPLICABLE TO PROJECT FINANCE TRANSACTIONS

CHAPTER I: GENERAL PROVISIONS

1. SCOPE OF APPLICATION

a) This Annex sets out terms and conditions that Participants may support for project finance transactions that meet the eligibility criteria set out in Appendix 1.

b) Where no corresponding provision exists in this Annex, the terms of the Arrangement shall apply.

CHAPTER II: FINANCIAL TERMS AND CONDITIONS

2. MAXIMUM REPAYMENT TERMS The maximum repayment term is 14 years, except when official export credit support provided by the Participants comprises more than 35% of the syndication for a project in a High Income OECD country, the maximum repayment term is ten years.

3. REPAYMENT OF PRINCIPAL AND PAYMENT OF INTEREST The principal sum of an export credit may be repaid in unequal instalments, and principal and interest may be paid in less frequent than semi-annual instalments, as long as the following conditions are met: a) No single repayment of principal or series of principal payments within a six-month period shall exceed 25% of the principal sum of the credit. b) The first repayment of principal shall be made no later than 24 months after the starting point of credit and no less than 2% of the principal sum of the credit shall have been repaid 24 months after the starting point of credit. c) Interest shall be paid no less frequently than every 12 months and the first interest payment shall be made no later than six months after the starting point of credit. d) The weighted average life of the repayment period shall not exceed seven-and-a-quarter years, except when official export credit support provided by the Participants comprises more than 35% of the syndication for a project in a High Income OECD country, the weighted average life of the repayment period shall not exceed five-and-a-quarter years. e) The Participant shall give prior notification according to Article 4 of this Annex.

CHAPTER III: PROCEDURES

4. PRIOR NOTIFICATION FOR PROJECT FINANCE TRANSACTIONS

A Participant shall notify all Participants of the intent to provide support according to the terms and conditions of this Annex at least ten calendar days before issuing any commitment. The notification shall be provided in accordance with Annex VII of the Arrangement. If any Participant requests an explanation in respect of the terms and conditions being supported during this period, the notifying Participant shall wait an additional ten calendar days before issuing any commitment.

APPENDIX 1: ELIGIBILITY CRITERIA FOR PROJECT FINANCE TRANSACTIONS

I. BASIC CRITERIA

The transaction involves/is characterised by: a) The financing of a particular economic unit in which a lender is satisfied to consider the cash flows and earnings of that economic unit as the source of funds from which a loan will be repaid and to the assets of the economic unit as collateral for the loan. b) Financing of export transactions with an independent (legally and economically) project company, e.g. special purpose company, in respect of investment projects generating their own revenues. c) Appropriate risk-sharing among the partners of the project, e.g. private or creditworthy public shareholders, exporters, creditors, off-takers, including adequate equity. d) Project cash flow sufficient during the entire repayment period to cover operating costs and debt service for outside funds. e) Priority deduction from project revenues of operating costs and debt service. f) A non-sovereign buyer/borrower with no sovereign repayment guarantee (not including performance guarantees, e.g. off-take arrangements). g) Asset-based securities for proceeds/assets of the project, e.g. assignments, pledges, proceed accounts; h) Limited or no recourse to the sponsors of the private sector shareholders/sponsors of the project after completion.

II. ADDITIONAL CRITERIA FOR PROJECT FINANCE TRANSACTIONS IN HIGH INCOME OECD COUNTRIES

The transaction involves/is characterised by: a) Participation in a loan syndication with private financial institutions that do not benefit from Official Export Credit Support, whereby:

- The Participant is a minority partner with pari passu status throughout the life of the loan and;
- Official export credit support provided by the Participants comprises less than 50% of the syndication. b) Premium rates for any official support that do not undercut

~~available private market financing and that are commensurate with the corresponding rates being charged by other private financial institutions that are participating in the syndication.~~

Part 2

Repayment profile

15. REPAYMENT OF PRINCIPAL AND PAYMENT OF INTEREST

a) The repayment of the principal sum of an export credit shall be justified based on the timing of the funds available to the obligor and shall comply with the following criteria:

1) Interest shall be paid no less frequently than every 12 months and the first interest payment shall be made no later than 12 months after the starting point of credit.

2) The maximum weighted average life of the repayment period shall not exceed 12 years, equalling 60% of the maximum repayment period and, for transactions involving support for non-nuclear power plants according to Article 14, six and a quarter years, equalling 60% of the maximum repayment period.

3) The Participant shall give prior notification in accordance with Article 46 in case the repayment of principal is not in equal and regular instalments.

b) Interest due after the starting point of credit shall not be capitalised.

~~a) The principal sum of an export credit shall normally be repaid in equal instalments or, when appropriate (e.g. when support is provided for lease transactions or for the export of stand-alone machinery or equipment), equal repayments of principal and interest combined.~~

~~b) Principal shall be repaid and interest shall be paid no less frequently than every six months and the first instalment of principal and interest shall be made no later than six months after the starting point of credit.~~

~~c) On an exceptional and duly justified basis, export credits may be provided on terms other than those set out in paragraphs a) and b) above. The provision of such support shall be explained by an imbalance in the timing of the funds available to the obligor and the debt service profile available under an equal, semi-annual repayment schedule, and shall comply with the following criteria:~~

~~1) No single repayment of principal or series of principal payments within a six-month period shall exceed 25% of the principal sum of the credit.~~

~~2) Principal shall be repaid no less frequently than every 12 months. The first repayment of principal shall be made no later than 12 months after the starting point of credit and no less than 2% of the principal sum of the credit shall have been repaid 12 months after the starting point of credit.~~

~~3) Interest shall be paid no less frequently than every 12 months and the first interest payment shall be made no later than six months after the starting point of credit.~~

~~4) The maximum weighted average life of the repayment period shall not exceed:~~

– For transactions with sovereign buyers (or with a sovereign repayment guarantee), four and a half years for transactions in Category I Countries and five and a quarter years for Category II Countries.

– For transactions with non-sovereign buyers (and with no sovereign repayment guarantee), five years for Category I Countries and six years for Category II Countries.

– Notwithstanding the provisions set out in the two previous tirets, for transactions involving support for non-nuclear power plants according to Article 14, six and a quarter years.

5) The Participant shall give prior notification in accordance with Article 46 that explains the reason for not providing support according to paragraphs a) through b) above.

d) Interest due after the starting point of credit shall not be capitalised

[…]

ANNEX II: SECTOR UNDERSTANDING ON EXPORT CREDITS FOR NUCLEAR POWER PLANTS

3. REPAYMENT OF PRINCIPAL AND PAYMENT OF INTEREST

The repayment of principal and interest shall be provided according to Article 15 of the Arrangement, except that the weighted average life of the repayment period shall not exceed 15 years, equalling 60% of the maximum repayment period for this sector understanding.

a) The Participants shall apply a profile of repayment of principal and payment of interest as specified in sub-paragraph 1) or 2) below:

1) Repayment of principal shall be made in equal instalments.

2) Repayment of principal and payment of interest combined shall be made in equal instalments.

b) Principal shall be repaid and interest shall be paid no less frequently than every six months and the first instalment of principal and interest shall be made no later than six months after the starting point of credit.

c) On an exceptional and duly justified basis, official support for goods and services mentioned in Articles 1) a) 1) and 2) of this Understanding may be provided on terms other than those set out in paragraphs a) and b) above. The provision of such support shall be explained by an imbalance in the timing of the funds available to the obligor and the debt service profile available under an equal, semi-annual repayment schedule, and shall comply with the following criteria:

1) The maximum repayment term shall be 15 years.

2) No single repayment of principal or series of principal payments within a six-month period shall exceed 25% of the principal sum of the credit.

3) Principal shall be repaid no less frequently than every 12 months. The first repayment of principal shall be made no later than 12 months after the starting point of credit and no less than 2% of the principal sum of the credit shall have been repaid 12 months after the starting point of credit.

~~4) Interest shall be paid no less frequently than every 12 months and the first interest payment shall be made no later than six months after the starting point of credit.~~

~~5) The maximum weighted average life of the repayment period shall not exceed nine years.~~

~~d) Interest due after the starting point of credit shall not be capitalised.~~

ANNEX IV: SECTOR UNDERSTANDING ON EXPORT CREDITS FOR RENEWABLE ENERGY, CLIMATE CHANGE MITIGATION AND ADAPTATION, AND WATER PROJECTS

6. REPAYMENT OF PRINCIPAL AND PAYMENT OF INTEREST

The repayment of principal and interest shall be provided according to Article 15 of the Arrangement, except that the weighted average life of the repayment period shall not exceed 15 years, equalling 60% of the maximum repayment period for this sector understanding.

~~a) The Participants shall apply a profile of repayment of principal and payment of interest as specified in sub-paragraph 1) or 2) below:~~

~~1) Repayment of principal shall be made in equal instalments.~~

~~2) Repayment of principal and payment of interest combined shall be made in equal instalments.~~

~~b) Principal shall be repaid and interest shall be paid no less frequently than every six months and the first instalment of principal and interest shall be made no later than six months after the starting point of credit.~~

~~c) On an exceptional and duly justified basis, official support may be provided on terms other than those set out in paragraphs a) and b) above. The provision of such support shall be explained by an imbalance in the timing of the funds available to the obligor and the debt service profile available under an equal, semi-annual repayment schedule, and shall comply with the following criteria:~~

~~1) No single repayment of principal or series of principal payments within a six-month period shall exceed 25% of the principal sum of the credit.~~

~~2) Principal shall be repaid no less frequently than every 12 months. The first repayment of principal shall be made no later than 18 months after the starting point of credit and no less than 2% of the principal sum of the credit shall have been repaid 18 months after the starting point of credit.~~

~~3) Interest shall be paid no less frequently than every 12 months and the first interest payment shall be made no later than six months after the starting point of credit.~~

~~4) The maximum weighted average life of the repayment period shall not exceed 60% of the maximum available tenor.~~

~~d) Interest due after the starting point of credit shall not be capitalised.~~

Part 3

Floating Interest Rates

New Article 22 shall be inserted in the Arrangement:

22. MINIMUM FLOATING INTEREST RATES UNDER OFFICIAL FINANCING SUPPORT

a) The Participants providing official financing support for floating rate loans shall apply minimum floating interest rates comprising:

1) a market-accepted floating rate benchmark for the currency and applicable interest payment period, and

2) a positive funding margin.

b) The minimum floating interest rates on official financing support applied by the Participants shall:

1) foster the level playing field for official support as outlined in Article 1.2 by ignoring the impact of Participants' competitive advantage in financing on the funding margin,

2) refer to commercial market data for the obligor or relevant comparable market sources and should not provide a subsidy,

3) apply to all sectors, including the sector understandings (except the Aircraft Sector Understanding),

4) be disclosed in a transparent manner as will assist verification.

c) The provision of official financing support shall not offset or compensate, in part or in full, for the appropriate credit risk premium to be charged for the risk of non-repayment pursuant to the provisions of Article 23.

Part 4

Minimum premium rate

ANNEX VIII: CALCULATION OF THE MINIMUM PREMIUM RATES FOR COUNTRY RISK CATEGORY 1-7 TRANSACTIONS

MPR Formula

The formula for calculating the applicable MPR for an export credit involving an obligor/guarantor in a country classified in Country Risk Categories 1-7 is:

MPR = { [(ai * HOR + bi) * max (PCC, PCP) / 0.95] * (1-LCF) + [cin * PCC / 0.95 * HOR * (1- CEF)] }* QPFi * PCFi *BTSF where:

- ai = country risk coefficient in country risk category i (i = 1-7)
- cin = buyer risk coefficient for buyer category n (n = SOV+, SOV/CCO, CC1-CC5) in country risk category i (i = 1-7)
- bi = constant for country category risk category i (i = 1-7)
- HOR = horizon of risk
- PCC = commercial (buyer) risk percentage of cover
- PCP = political (country) risk percentage of cover
- CEF = credit enhancements factor
- QPFi = quality of product factor in country risk category i (i = 1-7)
- PCFi = percentage of cover factor in country risk category i (i = 1-7)

- BTSF = better than sovereign factor
- LCF = local currency factor Applicable Country Risk Classification

Formula for term-adjusted MPR (MPR_{ta})

For risk with a value of BB+ and higher the MPR formula for country risk category 1-7 is:

$$MPR_{ta} = MPR \times (1 - Y \cdot T)$$

- **Y = 1,70**
- **T is the HoR beyond the Inception Point t0 at 12 years.**