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PROPOSAL

From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
date of receipt:	15 October 2024
To:	Ms Thérèse BLANCHET, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2024) 459 final
Subject:	Proposal for a COUNCIL DECISION on the position to be taken on behalf of the Union at the meetings of Participants to the OECD Arrangement on Officially Supported Export Credits in relation to common lines on the minimum down payment requirement

Delegations will find attached document COM(2024) 459 final.

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Proposal for a

COUNCIL DECISION

on the position to be taken on behalf of the Union at the meetings of Participants to the OECD Arrangement on Officially Supported Export Credits in relation to common lines on the minimum down payment requirement

EXPLANATORY MEMORANDUM

1. SUBJECT MATTER OF THE PROPOSAL

This proposal concerns the decision establishing the position to be taken on the Union's behalf at the meetings of Participants to the OECD Arrangement on Officially Supported Export Credits ("Arrangement") in relation to future common lines presented by Participants on the minimum down payment requirement.

2. CONTEXT OF THE PROPOSAL

2.1. The Arrangement on Officially Supported Export Credits

The Arrangement is a gentlemen's agreement 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 ('official support'). The Arrangement entered into force in April 1978 and it is of indefinite duration.

The Arrangement is administratively embedded in the OECD and receives support from the OECD Credit Secretariat. Nevertheless, it is not an OECD Act[1].

The European Union – and not the Member States – is a Participant to the Arrangement and its text has 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] Therefore, the Arrangement is legally binding as a matter of Union law.

2.2. The Participants to the Arrangement

There are currently eleven Participants to the Arrangement ('Arrangement Participants'): Australia, Canada, the European Union, Japan, Korea, New Zealand, Norway, Switzerland, Türkiye, the United Kingdom and the United States.

The Arrangement Participants may take decisions on modifications of the Arrangement, including 'common lines' in accordance with Chapter IV, Section 5 of the Arrangement. Decisions are taken by consensus, so that, if any Participant objects, the modification of the Arrangement or the common line cannot be adopted.

The European Commission represents the Union for decision-making purposes, whether in meetings of the Arrangement Participants or in written procedures.

A common line is an instrument under the Arrangement that allows the Participants, on an exceptional basis, to diverge from the Arrangement's provisions either for a specific transaction or temporarily for a non-specific number of transactions. The procedures for reaching agreement on common lines are set out in Articles 54 to 59 of the Arangement. Common lines may be accepted in written procedure by remaining silent because a Participant remaining silent shall be deemed to have accepted the common line proposal. The same applies for a Participant which advises that it has no position. Responses to a common line proposal must be made in principle within 20 calendar days, with a possible extension by eight calendar days. The OECD Export Credit Secretariat is required to inform the

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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).

Participants whether the common line has been accepted, with the agreed common line taking effect three calendar days after this announcement.

2.3. Position to be taken on the Union's behalf

Several common lines in relation to the down payment required from buyers in transactions under Arrangement rules have been adopted in the past years. On 5 November 2021, a common line, proposed by the EU, lowering the down payment requirement to 5% (as opposed to the 15% requirement as set out in Article 11 a) of the Arrangement) and increasing the maximum official support limit to 95 % of the export contract value (as opposed to the 85% as set out in Article 11 c) of the Arrangement) was adopted by the Participants. The measure was validated by the Participants as an urgent and exceptional step required to react to the economic downturn resulting from the Covid-19 health crisis. The 2021 common line, originally effective until 4 November 2022, was extended for an additional year, and thus expired on 4 November 2023.

On 14 December 2023, another common line on the minimum down payment requirement was adopted by the Participants following a proposal by the UK. While the rationale for the flexibility at the time of the 2021 common line no longer applied, the UK advanced that there were nonetheless, at the time of the common line proposal, specific difficulties regarding access to finance for public/sovereign buyers in low and medium income countries in operation, such as increased interest rates and continuing inflationary pressures. The common line, which applies until 13 December 2024, covers official export credit support for transactions with sovereign/public buyers in Category II countries with a country risk classification between 5 and 7, inclusive, as established under Article 22 of the Arrangement. For such transactions, the minimum required down payments is lowered to 5% of the export contract, and the limit for maximum official support that the Participants can provide is raised to 95%.

Considering the objective need for the Union to be able to act expeditiously and flexibly at the international level following common line proposals, the Commission proposes that the Council allows the Commission to draw up a position to be adopted on behalf of the Union in the meetings of the Participants to the OECD Arrangement on Officially Supported Export Credits in relation to future common lines proposed by Participants on the minimun down payment requirement. More particularly, the position to be taken on behalf of the Union shall be to reject any future common line on the minimum down payment proposed by a Participant to the Arrangement, as long as the common line is horizontal in nature and applies to more than one specific transaction.

The EU does not believe a quasi-permanent change to the terms of the Arrangement’s down payment rules should be achieved by the constant renewal of common lines. Instead any such adjustment should be addressed by deliberative discussions among Participants. (Such dicussions were launched in March 2023 and will look into all the parameters of any possible change to Arrangement rules on down payment. A separate Commission proposal for an Council Decision to accommodate such a permanent change is in preparation.)

On this basis the EU must be in a position to reject future proposals to use the common line procedure to further extend the flexibilities. Accounting for the fact that the policy context at both the international and EU level is likely to evolve over time, the proposed Decision shall be applicable until three years after its adoption, after which the Council will be able to revise the policy as established in this Decision.

3. LEGAL BASIS

3.1. Procedural legal basis

3.1.1. 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].

3.1.2. Application to the present case

The rules of an agreed common line supersede the rules of the Arrangement only for the transaction or in the circumstances specified in the common line. While common lines are soft law for other Participants to the Arrangement, for the EU, common lines constitute acts having legal effects 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."* As common lines are agreed by the Participants following the procedure set out in Articles 54 to 59 of the Arrangement involving the OECD Export Credit Secretariat, they also constitute acts adopted by an international body within the meaning of Article 218(9) TFEU.

Therefore, the procedural legal basis for the proposed decision is Article 218(9) TFEU.

3.2. Substantive legal basis

3.2.1. 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.

3.2.2. 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.

3.3. Conclusion

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

4. PUBLICATION OF THE ENVISAGED ACT

As the act of the Participants to the Arrangement 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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[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.

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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 ('Arrangement') are transposed, and hence made legally binding in the European Union by Regulation (EU) No 1233/2011 of the European Parliament and of the Council[4].

(2) A common line is an instrument under the Arrangement that allows the Participants, on an exceptional basis, to diverge from the Arrangement's provisions, either for a specific transaction or temporarily for a non-specific number of transactions, for example with regard to the minimum down payment pursuant to Article 11 a) of the Arrangement.

(3) The Participants to the Arrangement ('Participants') decide, in a written procedure, on common lines in accordance with Chapter IV, Section 5 of the Arrangement. Common lines may be accepted in written procedure by remaining silent because a Participant remaining silent shall be deemed to have accepted the common line proposal. The same applies for a Participant which advises that it has no position. Responses to a common line proposal must be made in principle within 20 calendar days, with a possible extension by eight calendar days. The short period of time given to react to a common line proposal, coupled with the fact that silence implies approval, justifies the need for a framework Decision under Article 218(9) TFEU.

(4) It is appropriate to establish the position to be taken on the Union's behalf regarding proposed common lines in the written procedure by the Participants, as proposed common lines, once agreed, will be capable of decisively influencing the content of Union law by virtue 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.

[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).

(5) In view of the expedited procedure established under the Arrangement to adopt this common line, it is in the interest of the Union that such positions be established at EU level in an expeditious manner to allow the Union to exercise effectively its rights under the Arrangement. Hence, this Decision establishes an efficient and expedited procedure for the establishment of the position to be taken on the Union's behalf with regard to any future common line on the minimum down payment proposed by a Participant to the Arrangement, as long as the common line is horizontal in nature and applies to more than one specific transaction.

(6) The EU does not believe that a quasi-permanent change to the terms of the Arrangement's down payment rules should be achieved by the constant renewal of common lines. Instead any such adjustment should be addressed by deliberative discussions among Participants. On this basis this Decision establishes that as a general rule the EU should be in a position to reject future proposals to use the common line procedure to further extend the flexibilities relating to the down payment rules in Article 11(a) of the Arrangement.

(7) If during the discussions in the Council Working Group on Export Credits, it is concluded that a deviation from the position established in this Decision is appropriate, the Commission has always the possibility to submit a proposal for a Council decision establishing the position to be adopted on the Union's behalf which deviates from the position established in this Decision. Indeed, this Decision remains without prejudice to the right of the Commission to submit, also on its own initiative, a proposal for a Council decision establishing the position to be adopted on the Union's behalf which deviates from the general position established in this Decision.

(8) To ensure that the Council is able to assess and, where appropriate, revise the policy in this Decision on a regular basis, and in the spirit of the sincere cooperation among the Union institutions enshrined in Article 13(2) of the TEU, this Decision may be periodically reviewed,

HAS ADOPTED THIS DECISION:

Article 1

The position to be adopted on the Union's behalf in the written procedure by the Participants to the Arrangement on Officially Supported Export Credits as regards future proposals by other Participants for common lines on the minimum down payment requirement shall be to reject any future common line presented by a Participant in relation to the minimum down payment requirement pursuant to Article 11 a) of the Arrangement if the common line is horizontal in nature and applies to more than one specific transaction.

Article 2

The Commission shall transmit in sufficient time before each meeting of the Participants a document containing proposed common lines referred to in Article 1 to be discussed at that meeting to the Council Working Group on Export Credits for discussion.

Article 3

This Decision shall be assessed and, where appropriate, revised by the Council upon a proposal from the Commission, at the latest three years after the adoption of this Decision.

Article 4

This Decision shall enter into force on the date of its adoption.

It shall apply until three years after its adoption.

Done at Brussels,

For the Council
The President