Council of the European Union

Brussels, 21 April 2021
(OR. en)

8031/21

Interinstitutional File:
2021/0101(NLE)

UK 120
CCG 25
AVIATION 91

PROPOSAL

From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
date of receipt:	21 April 2021
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2021) 195 final
Subject:	Proposal for a COUNCIL DECISION on the positions to be taken on behalf of the European Union by written procedure by the Participants to the Arrangement on Officially Supported Export Credits and the Participants to the Sector Understanding on Export Credits for Civil Aircraft ("ASU") regarding the requests by the United Kingdom to become a Participant thereto

Delegations will find attached document COM(2021) 195 final.

Encl.: COM(2021) 195 final

EUROPEAN
COMMISSION

Brussels, 21.4.2021
COM(2021) 195 final

2021/0101 (NLE)

Proposal for a

COUNCIL DECISION

on the positions to be taken on behalf of the European Union by written procedure by the Participants to the Arrangement on Officially Supported Export Credits and the Participants to the Sector Understanding on Export Credits for Civil Aircraft ("ASU") regarding the requests by the United Kingdom to become a Participant thereto

EXPLANATORY MEMORANDUM

1. SUBJECT MATTER OF THE PROPOSAL

This proposal concerns the decision establishing the position to be taken on the Union's behalf by written procedure by the Participants to the Arrangement on Officially Supported Export Credits ('Arrangement') and the Participants to the Sector Understanding on Export Credits for Civil Aircraft ('Aircraft Sector Understanding' or 'ASU') regarding the requests by the United Kingdom of Great Britain and Northern Ireland ('the United Kingdom') to become a Participant to the Arrangement and in the ASU.

2. CONTEXT OF THE PROPOSAL

2.1. The Arrangement and the Aircraft Sector Understanding

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 Aircraft Sector Understanding forms 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 4a) of the ASU. Thus, also the ASU seeks to foster a level playing field for the exports in aircraft sector and elimination of subsidies and trade distortions related to the official support. The Aircraft Sector Understanding became effective on 1 February 2011.

The Arrangement, including the Aircraft Sector Understanding, is administratively embedded in the OECD, and receives support from the OECD Credit Secretariat. Nevertheless, neither the Arrangement nor the Aircraft Sector Understanding are OECD Acts[1].

The European Union – and not the Member States – is a Participant to the Arrangement and the Aircraft Sector Understanding and both have been transposed into the acquis communautaire by virtue of the Regulation (EU) No 1233/2011 of the European Parliament and of the Council of 16 November 2011.[2] Hence the Arrangement and the Aircraft Sector Understanding are legally binding as a matter of Union law.

2.2. The Arrangement Participants and the ASU Participants

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

The Aircraft Sector Understanding has ten Participants ('ASU Participants') and participation in the ASU is largely the same as in the Arrangement. The only differences are that Brazil is an ASU Participant (but not an Arrangement Participant), while Turkey does not participate in the ASU (though it is an Arrangement Participant).

---

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 of).

Both the Arrangement and the ASU Participants take decisions on modifications of the Arrangement, or the ASU, by consensus.

In accordance with Article 3 of the Arrangement, other OECD Members and non-members may be invited to become Participants by the current Participants. A non-Participant may become a Participant to the ASU in accordance with the procedures set out in Appendix I of the ASU.

The European Commission represents the Union in the meetings of the Arrangement Participants and the ASU, as well as in the written procedures for decision-making by the Arrangement Participants and ASU.

2.3. The envisaged act of the Arrangement Participants and the ASU Participants

The envisaged act would be the granting to the UK of the status of the Participant to the Arrangement and to ASU, following the United Kindgom ('UK') requests to become a Participant both in the Arrangement and in the ASU.

As a result of leaving the EU, the UK is no longer represented in the Arrangement and in the ASU. In a letter of 28 January 2021, the UK requested that the relevant Participants formally agree to the UK becoming a Participant to both instruments. The Chairman of the Arrangement and the ASU Participants circulated the UK requests on 29 January and set a deadline of 31 March 2021 for the existing Participants to formally respond. In the Chairman's message of 11 February 2021, the deadline was extended until the end of May 2021.

The confirmation of participation of the UK in the Arrangement and in the ASU would require a change to Article 3 of the Arrangement and to Article 3 of the ASU, i.e. the provisions that list the relevant Participants.

In light of the above, it is appropriate to establish the Union's position to be taken on the Union's behalf in a body set up by an agreement, because the decision will be binding on the Union and it will affect Union law, by virtue of Article 1 of Regulation (EU) No 1233/2011, 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."

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

The envisaged acts would permit the UK to become a Participant to the Arrangement and an ASU Participant.

The Chairman's message of 29 January 2021 states: "The UK was one of the original countries involved in establishing financial disciplines for officially supported export credits in the 1970s and, since then, has been a significant provider of both standard export credits and export credits for aircraft. It is also an active Member of the Working Party on Export Credits and Credit Guarantees. As a result, it would be logical and of mutual benefit for the UK to continue to be a Participant. I hope, therefore, that the Participants will support this request." Indeed, it is expected that all Participants to the Arrangement and ASU Participants will support the UK requests.

It is in the Union's interest that the UK participates in both the Arrangement and the ASU. Both instruments provide a framework for the orderly and transparent use of officially supported export credits in their respective areas of application and seek to foster a level playing field for officially supported export credits. Over recent years, the UK has become increasingly active in official support. In 2018, UK Export Finance ('UKEF', UK government's export credit support

department) provided less than EUR 2 billion of official support. In 2019, it was already approximately EUR 5.5 billion. As a Participant to the Arrangement and the Aircraft Sector Understanding, the UK would have to follow the rules thereof.

In addition, with regard to the Aircraft Sector Understanding specifically, it is important to bear in mind the UK's continuing stake in Airbus. The official export credits regulation in the aircraft manufacturing sector therefore relates to a common interest of the EU Member States and the UK.

Considering that the purpose of the envisaged decision is to ensure the level playing field for the EU export industry as well as to take due account of the alignment of specific economic interests between the EU and the UK in the aircraft manufacturing sector, the positions to be taken on the Union's behalf should be to agree that the UK becomes a Participant to the Arrangement and in the Aircraft Sector Understanding.

4. 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 two acts, which the Arrangement Participants and the ASU Participants are called upon to adopt (i.e. to decide on the UK requests to become a Participant to the Arrangement and in the ASU), constitute acts having legal effects. The envisaged acts have 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."

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

---

[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.

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).

5. PUBLICATION OF THE ENVISAGED ACT

As the acts of the Partipants in the Arrangement and the Participants in the ASU will amend the Arrangement and the Aircraft Sector Undertaking, it is appropriate to publish them in the Official Journal of the European Union after their acceptance.

2021/0101 (NLE)

Proposal for a

COUNCIL DECISION

on the positions to be taken on behalf of the European Union by written procedure by the Participants to the Arrangement on Officially Supported Export Credits and the Participants to the Sector Understanding on Export Credits for Civil Aircraft ("ASU") regarding the requests by the United Kingdom to become a Participant thereto

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') have been transposed, and hence been made legally binding in the Union by Regulation (EU) No 1233/2011 of the European Parliament and of the Council.[4] [5]

(2) The Participants to the Arrangement are Australia, Canada, the European Union, Japan, Korea, New Zealand, Norway, Switzerland, Turkey and the United States.

(3) The Sector Understanding on Export Credits for Civil Aircraft ('Aircraft Sector Understanding' or 'ASU') forms Annex III of the Arrangement and in accordance with Article 2 of the ASU is an integral part of the Arrangement. As such, the ASU has also been transposed, and made legally binding in the Union, by virtue of Regulation (EU) No 1233/2011 of the European Parliament and of the Council.[6] [7]

(4) The Participants to the ASU are Australia, Brazil, Canada, the European Union, Japan, Korea, New Zealand, Norway, Switzerland and the United States.

(5) Both the Arrangement and the Aircraft Sector Understanding provide a framework for the orderly and transparent use of officially supported export credits in their respective areas of application. They seek to foster a level playing field for officially supported export credits, in order to encourage competition among exporters based on quality and price of goods and services exported rather than on the most favourable officially supported financial terms and conditions.

---

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 the past, through Council Decisions earlier versions of the OECD Arrangement have been transposed into EU law.

6 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).

7 In the past, through Council Decisions earlier versions of the OECD Arrangement have been transposed into EU law.

(6) The United Kingdom of Great Britain and Northern Ireland ('the United Kingdom) withdrew from the Union with effect on 31 January 2020. [8]

(7) In accordance with Article 3 of the Arrangement, other OECD Members and non-members may be invited to become Participants by the current Participants. A non-Participant of the ASU may become a Participant to the ASU pursuant to the procedures set out in Appendix I of the ASU.

(8) In a letter of 28 January 2021, the United Kingdom requested that the Participants to the Arrangement and the Participants to the Aircraft Sector Understanding agree to the United Kingdom becoming a Participant to the Arrangement and the Aircraft Sector Understanding, respectively. The Participants to the Arrangement and the Participants to the ASU are to decide by written procedure on these requests.

(9) It is appropriate to establish the position to be taken on the Union's behalf by the Participants to the Arrangement, as well as the position to be taken on the Union's behalf by the Participants to the Aircraft Sector Understanding, as the decisions of the Arrangement Participants and of the ASU Participants will be binding on the Union by virtue of Article 2 of Regulation (EU) No 1233/2011,

HAS ADOPTED THIS DECISION:

Article 1

The position to be taken on the Union's behalf in the written procedure by the Participants to the Arrangement on Officially Supported Export Credits regarding the request by the United Kingdom to become a Participant to the Arrangement is to support this request.

Article 1a

The position to be taken on the Union's behalf in the written procedure by the Participants to the Sector Understanding on Export Credits for Civil Aircraft regarding the request by the United Kingdom to become a Participant to this Sector Understanding is to support this request.

Article 2

This Decision is addressed to the Commission.

Done at Brussels,

For the Council
The President

[8] Council Decision (EU) 2020/135 of 30 January 2020 on the conclusion of the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community (OJ L 29, 31.1.2020, p. 1).