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2018/0289 (NLE)

Proposal for a

COUNCIL DECISION

**on the position to be taken on behalf of the European Union in the Meeting of the
Participants to the Arrangement on Officially Supported Export Credits**

EXPLANATORY MEMORANDUM

1. SUBJECT MATTER OF THE PROPOSAL

This proposal concerns the decision establishing the position to be taken on the Union's behalf in the Meeting of the Participants to the Arrangement on Officially Supported Export Credits (the Meeting of the Participants) in connection with the envisaged adoption of a decision concerning the expansion of the scope of Annex V of the Arrangement on Officially Supported Export Credits (Sector Understanding on Export Credits for Rail Infrastructure (RSU)) to include cable cars and trolleybuses.

2. CONTEXT OF THE PROPOSAL

2.1. The Arrangement on Officially Supported Export Credits

The Arrangement is a Gentlemen's Agreement between the EU, the US, Canada, Japan, Korea, Norway, Switzerland, Australia and New Zealand which aims to provide a framework for the orderly use of officially supported export credits. In practice, this means providing for a level playing field (whereby competition is based on the price and quality of the exported goods and not on the financial terms provided) and working to eliminate subsidies and trade distortions related to officially supported export credits. The Arrangement entered into force in April 1978, it is of indefinite duration and although it receives the administrative support of the OECD Secretariat, is not an OECD Act¹.

The Arrangement is subject to regular updates, to take into account new technical and policy developments affecting export credits in various sectors. The guidelines contained in the Arrangement have been incorporated in Union legislation, and hence been made legally binding in the EU by Regulation (EU) No 1233/2011 of the European Parliament and of the Council²³. Updates are regularly incorporated into EU legislation through delegated Acts pursuant to Article 2 of this Regulation.

2.2. The Meeting of the Participants to the Arrangement on Officially Supported Export Credits

The European Commission represents the Union in the Participants meeting, where decisions on all modifications to the Arrangement are taken by consensus among the 9 Participants. The positions of the Union are prepared in consultation with the Member States represented in the Council Working Group on Export Credits⁴.

Article 67 of the Arrangement provides that "The Participants shall review regularly the functioning of the Arrangement. In the review the Participants shall examine, inter alia, notification procedures, implementation and operation of the DDR system, rules and procedures on tied aid, questions of matching, prior commitments and possibilities of wider participation in the Arrangement".

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).

³ In the past, earlier versions of the OECD Arrangement had already been transposed into EU law by Council Decisions.

⁴ Council Decision setting up a Policy Co-ordination Group for Credit Insurance, Credit Guarantees and Financial Credits, (OJ 66, 27.10.1960, p. 1339/60).

2.3. The envisaged act of the Meeting of the Participants to the Arrangement on Officially Supported Export Credits

During the 136th and 137th Meetings of the Participants on the 16th of November 2017, the Participants discussed the Union's proposal to expand the scope of the RSU to include cable cars and trolleybuses. At the 137th Meeting of the Participants the Union was asked to provide additional information on the financial rationale to expand the scope of the RSU to cover these infrastructures, this information was provided by the EU delegates during the 138th Meeting of the Participants, which took place on the 14th and 15th of March 2018. During that meeting no Participant opposed the proposed expansion of the scope.

On the week of the 14 November 2018, during its 140th session, the Meeting of the Participants is to adopt a decision drafted by the Secretariat on the basis of the proposal put forward by the Union ('the envisaged act').

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

The current scope of the RSU is limited to rail infrastructure projects. However, there are other transportation systems which are not based on rail infrastructure but which form an integrated part of public transportation systems, especially in urban areas. Cable cars and trolleybuses are such an example of non-rail-based public transportation systems which are becoming increasingly interesting in urban transport infrastructure of large cities, in particular, in emerging countries. Currently, however, these projects cannot benefit from the terms and conditions of the RSU which are more adapted to the nature of these projects. EU manufacturers of this type of infrastructure would benefit from the expansion of the scope, being able to provide better terms and conditions to their clients.

Cable car and trolleybuses projects usually have building costs above the minimum RSU overall contract value of SDR 10 millions, and the useful life of their infrastructure is normally longer than 20 years. Therefore they are similar to other rail infrastructure projects currently under the scope of the RSU and therefore benefiting from longer repayment terms.

Cable car and trolleybuses projects are primarily commissioned by public entities with often limited access to financial commercial markets. Expanding the scope of the RSU to include cable car and trolleybuses would allow the use of officially supported export credits for these projects under the specific RSU terms and conditions, providing longer repayment terms which would facilitate the implementation of these projects.

Therefore, it is recommended that the EU supports the expansion of the scope of the RSU in order to include cable cars and trolleybuses.

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’⁵.

4.1.2. Application to the present case

The act which the Meeting of the Participants is called upon to adopt constitutes an act having legal effects. The envisaged act has legal effects because, by virtue of Article 2 of Regulation (EU) No 1233/2011,, the Commission is required to adopt delegated acts in the Union’s legislation the result of amendments to the guidelines agreed by the Participants to the Arrangement.

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. If the envisaged act pursues two aims or has two components and if one of those aims or components is identifiable as the main one, whereas the other is merely incidental, the decision under Article 218(9) TFEU must be founded on a single substantive legal basis, namely that required by the main or predominant aim or component.

4.2.2. Application to the present case

The main objective and content of the envisaged act relate to the regulation of officially supported export credits, which fall within the scope of the common commercial policy. Therefore, the substantive legal basis of the proposed decision is Article 207.

4.3. Conclusion

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

5. PUBLICATION OF THE ENVISAGED ACT

As the act of the Meeting of the Participants will amend the Arrangement on Officially Supported Export Credits, it is appropriate to publish it in the Official Journal of the European Union after its adoption.

⁵ 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.

Proposal for a

COUNCIL DECISION

on the position to be taken on behalf of the European Union in the Meeting of the Participants to the Arrangement on Officially Supported Export Credits

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 207 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 ('the Arrangement') apply in the Union by virtue of Regulation (EU) No 1233/2011 of the European Parliament and of the Council⁶⁷.
- (2) The 140th session of the Meeting of the Participants to the Arrangement, to take place in the week the 14th November 2018, is to adopt a decision to expand the scope of Annex V of the Arrangement on Officially Supported Export Credits (Sector Understanding on Export Credits for Rail Infrastructure) to include cable cars and trolleybuses, as proposed by the Union.
- (3) It is appropriate to establish the position to be taken on the Union's behalf in the Meeting of the Participants to the Arrangement in respect of that proposal.
- (4) Cable cars and trolleybuses are currently not covered by Annex V to the Arrangement. To facilitate the financing of these types of infrastructure, especially in emerging countries, it would be appropriate to expand the scope of Annex V taking into account the difficulties of the public entities normally developing these projects to access finance, the useful life of these infrastructures and their environmental benefits.

HAS ADOPTED THIS DECISION:

Article 1

The position of the Union shall be to support the expansion of the scope of Annex V of the Arrangement on Officially Supported Export Credits (Sector Understanding on Export Credits for Rail Infrastructure) to include cable cars and trolleybuses.

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, earlier versions of the OECD Arrangement had already been transposed into EU law by Council Decisions.

Article 2

This Decision is addressed to the Commission.

Done at Brussels,

*For the Council
The President*