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COVER NOTE

from:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
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to:	Mr Uwe CORSEPIUS, Secretary-General of the Council of the European Union

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Subject:	COMMISSION DELEGATED REGULATION (EU) No .../.. of 14.3.2013 amending Annex II to Regulation (EU) No 1233/2011 of the European Parliament and of the Council on the application of certain guidelines in the field of officially supported export credits

Delegations will find attached Commission document C(2013) 1378 final.

Encl.: C(2013) 1378 final



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COMMISSION DELEGATED REGULATION (EU) No .../..

of 14.3.2013

amending Annex II to Regulation (EU) No 1233/2011 of the European Parliament and of the Council on the application of certain guidelines in the field of officially supported export credits

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE DELEGATED ACT

1.1. Grounds for the proposal

The OECD Arrangement on Officially Supported Export Credits (the "Arrangement") is a Gentlemen's Agreement between the European Union, the United States, Canada, Japan, Korea, Norway, Switzerland, Australia and New Zealand, which aims to provide a framework for the orderly use of officially supported export credits. Brazil, although not an OECD member, is a Participant to the Arrangement's Sector Understanding on Export Credits for Civil Aircraft.

The Arrangement seeks to foster a level playing field for official support, in order to encourage competition among exporters based on the quality and price of goods and services exported rather than on the most favourable officially supported financial terms and conditions.

The Arrangement, which was initially created in the 1970s, remains the only detailed international rulebook on officially supported export credits. It is subject to regular modifications reflecting the constant evolution of international financing techniques and the need to develop special rules for export financing in certain industrial sectors (such as civil aircraft, ships, nuclear power plants, renewable energies, climate change mitigation and water projects).

In the past, the OECD Arrangement and its subsequent modifications were regularly incorporated into EU law by Council Decisions. However, as a result of the difference of speed in the decision-making procedures between the EU and OECD, the incorporation of changes to the OECD Arrangement into EU law was always subject to considerable delays. The consequence of these delays was substantial divergences between the version of the Arrangement committing the EU and the other Participants at a given moment at OECD level and the version formally being in force under EU law.

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 not only adopted the last incorporation proposal tabled by the Commission before the entry into force of the Lisbon Treaty, but has also entitled the Commission to henceforth incorporate amendments to the Arrangement agreed by the OECD Participants by delegated act into EU law.

On 27 August 2012, the OECD has issued an updated version of the Arrangement applicable as of 1 September 2012 (OECD Document Code TAD/ PG (2012) 9). This version of the Arrangement completely reflects all modifications agreed by the OECD Participants in recent years, including inter alia the "Malzkuhn-Drysdale package" on premia (a modification to the premia system of the OECD Arrangement agreed in 2010, which introduces a common framework for the pricing of buyer risk and new minimum premium rates for country credit risk), the 2011 Sector Understanding on Export Credits for Civil Aircraft and the Sector Understanding on Export Credits for Renewable Energies, Climate Change Mitigation and Water Projects (finalised in spring 2012).

No further major modifications to the OECD Arrangement are expected to be agreed by the Participants in the near future.

The Commission therefore considers this to be the appropriate moment to proceed with an update of EU law, by incorporating the version of the OECD Arrangement applicable as of 1 September 2012 (text in Annexe) via the present Delegated Regulation.

1.2. Legal Background

Regulation (EU) No 1233/2011 of the European Parliament and of the Council of 16 November 2011 contains as its Annex II, the OECD Arrangement on Officially Supported Export Credits in the version attached to the Commission's proposal for a Council Decision on the application of certain guidelines on officially supported export credits of 10 August 2006 (COM 2006/456 final). Regulation (EU) No 1233/2011 in its Article 1 stipulates that the Arrangement shall apply in the Union.

Recital 14 of Regulation (EU) No 1233/2011 states: "In order to smoothly and promptly incorporate into Union legislation the amendments to the guidelines set out in the Arrangement as agreed upon by the Participants to the Arrangement, the Commission should adopt delegated acts to amend Annex II where this is necessary. Therefore the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in respect of amendments to the guidelines as agreed upon by the Participants to the Arrangement....."

Article 2 of the Regulation stipulates that the Commission shall adopt delegated acts "to amend Annex II as a result of amendments to the guidelines agreed by the Participants to the Arrangement."

The present delegated act has as a legal basis Article 2.

2. CONSULTATIONS PRIOR TO THE ADOPTION OF THE ACT

Consultations with interested parties and negotiations have already taken place during the negotiations that led to the adoption of this new version of the Arrangement at OECD level.

As Recital 14 in Regulation (EU) No 1233/2011 stresses the particular importance of appropriate consultations during the preparation of delegated acts, a special experts' level consultation has been carried out on 5 July 2012. The experts showed full support to the Commission's approach.

3. LEGAL ELEMENTS OF THE DELEGATED ACT

3.1. Summary of the proposed action

The purpose of the draft Commission delegated Regulation is to amend Annex II of Regulation (EU) No 1233/2011, replacing it with the updated version of the OECD Arrangement on Officially Supported Export Credits applicable as of 1 September 2012.

3.2. Legal basis

The draft Commission delegated Regulation is based on Regulation (EU) No 1233/2011 and in particular Articles 2 and 3.

3.3. Subsidiarity principle

The proposal falls under the exclusive competence of the EU. The subsidiarity principle therefore does not apply.

3.4. Proportionality principle

In accordance with the principle of proportionality, this measure does not go beyond what is necessary to achieve the objective.

The form of the measure is a Commission delegated Regulation which is directly applicable in all Member States. This ensures that national and EU administrations will not incur any costs for transposition of the legislation into national legislation.

3.5. Choice of instrument

Proposed instrument: Commission delegated Regulation

Other means would not be adequate for the following reasons: Regulation (EU) No 1233/2011 establishes delegated acts as the standard instrument for incorporating modifications to the OECD Arrangement in EU law.

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THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to 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/EC¹ and in particular Article 2 thereof,

Whereas:

- (1) Regulation (EU) No 1233/2011 lays down that the guidelines contained in the Arrangement on Officially Supported Export Credits of the Organisation for Economic Cooperation and Development ('OECD') ("the Arrangement") is to apply in the Union, the text of the Arrangement being contained in Annex II to that Regulation.
- (2) Regulation (EU) No 1233/2011 requires the Commission to adopt delegated acts to amend Annex II as a result of amendments to the guidelines agreed upon by the Participants to the Arrangement.
- (3) The Participants to the Arrangement have agreed upon a substantial number of amendments to it as compared with the version of the Arrangement contained in Annex II to Regulation (EU) No 1233/2011.
- (4) On 27 August 2012, the OECD published a revised version of the Arrangement which takes into account all those amendments and which is applicable as from 1 September 2012. It is appropriate and necessary to incorporate the said amendments into Union legislation.
- (5) Regulation (EU) No 1233/2011 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

Annex II to Regulation (EU) No 1233/2011 is replaced by the text set out in the Annex to this Regulation.

¹ OJ L 326, 8.12.2011, p. 45.

Article 2

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 14.3.2013

For the Commission
The President
José Manuel BARROSO