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COVER NOTE

From: Secretary-General of the European Commission,
signed by Mr Jordi AYET PUIGARNAU, Director

date of receipt: 26 September 2017

To: Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of
the European Union

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Subject: COMMISSION DELEGATED REGULATION (EU) .../... of 25.9.2017
amending 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 document C(2017) 6315 final.

Encl.: C(2017) 6315 final



Brussels, 25.9.2017
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COMMISSION DELEGATED REGULATION (EU) .../...

of 25.9.2017

**amending 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.

The Commission has exercised this delegated power so far twice, namely when adopting the Delegated Regulation (EU) No 727/2013 of 14 March 2013 (incorporating the September 2012 version of the OECD Arrangement into EU law) and Commission Delegated Regulation (EU) 2016/155 of 29 September 2015 (incorporating the January 2015 version of the Arrangement into EU law).

The Arrangement has been subject to further modifications since, some of which are rather substantial. It seems therefore the appropriate moment to launch another delegated act procedure.

On 1 February 2017, the OECD has issued an updated version of the Arrangement (OECD Document Code TAD/ PG (2017) 1). This version of the Arrangement completely reflects all modifications agreed by the OECD Participants in the last two years, including inter alia the new Sector Understanding on Export Credits for Coal-Fired Electricity Generation Projects, the new rules on market benchmark pricing, modifications to the Sector Understanding on Export Credits for Civil Aircraft and to the Annexe on Project Finance, as well as the introduction of rules on smart grids projects into the Sector Understanding on Export Credits for Renewable Energies, Climate Change Mitigation and Water Projects.

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 of 1 February 2017 (text in Annex) 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 29 August 2017. 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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of 25.9.2017

amending 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

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 provides that the guidelines contained in the Arrangement on Officially Supported Export Credits of the Organisation for Economic Cooperation and Development ('OECD') ("the Arrangement") apply in the Union. The text of the Arrangement is set out in Annex II to that Regulation.
- (2) The Participants to the Arrangement have agreed upon a substantial number of amendments to it. On 1 February 2017, the OECD published a revised version of the Arrangement which takes into account all those amendments. The text of the Arrangement in the Annex to Regulation (EU) No 1233/2011 should therefore be replaced by that consolidated revised version.
- (3) 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 in the Annex to this Regulation.

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*.

¹ OJ L 326, 8.12.2011, p. 45.

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

Done at Brussels, 25.9.2017

For the Commission
The President
Jean-Claude JUNCKER