Council of the
European Union

Brussels, 23 January 2018
(OR. en)

10853/1/15
REV 1

Interinstitutional File:
2015/0155 (NLE)

CCG 14
ENV 480
ENER 278

PROPOSAL

From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2015) 353 final/2
Subject:	Proposal for a COUNCIL DECISION on the position to be taken by the European Union within the OECD Export Credit Committees on modifications of the OECD Arrangement on officially supported export credits

Delegations will find attached a **new version** of document COM(2015) 353 final/2.

Encl.: COM(2015) 353 final/2

EUROPEAN
COMMISSION

Brussels, 20.7.2015
COM(2015) 353 final/2

2015/0155 (NLE)

Desensitised on 19.01.2018

Proposal for a

COUNCIL DECISION

on the position to be taken by the European Union within the OECD Export Credit Committees on modifications of the OECD Arrangement on officially supported export credits

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

Since the 1970s, the OECD has been addressing export credit issues, with a view to providing a framework for the orderly use of officially supported export credits, and hence foster a level playing field and fair competition between exporters at a global scale. The principal instrument used in these efforts to regulate international trade is the OECD Arrangement on Officially Supported Export Credits ("The Arrangement"), a gentlemen's agreement between the EU, the United States, Canada, Japan, Korea, Norway, Switzerland, New Zealand and Australia.

The Arrangement is subject to regular updates, to take into account new technical and policy developments affecting export credits in various sectors. The Arrangement has been transposed, and hence been made legally binding in the EU by Regulation (EU) No 1233/2011 of the European Parliament and of the Council[1] [2]. Updates such as the current one are incorporated into EU legislation through delegated Acts pursuant to Article 2 of this Regulation.

Currently, an update is under discussion that mainly aims at introducing among the Participants financial disciplines applying to export credits for coal-fired power plants. These financial disciplines are supposed to encourage climate-friendly exports and are fully in line with the EU's policy on fighting climate change. The OECD Council in its meeting in Paris on 6-7 May 2014 adopted the "2014 OECD Ministerial Statement on Climate Change", which states among the means to implement further work on climate change also

"- Continuing discussions on how export credits can contribute to our common goal to address climate change".

There are two OECD Export Credit Committees: 1. The "*Working Party on Export Credits and Credit Guarantees*", which deals with the OECD Recommendations on Export Credits and Common Approaches on Environmental and Social Due Diligence, on Bribery and on Sustainable Lending; 2. The "*Participants to the Arrangement on Officially Supported Export Credits*", which are responsible for discussing modifications to the OECD Arrangement. Intense discussions on export credits and climate change have been taking place, notably on the question of export credits and coal-fired power plants. The Chairman of the Working Party on Export Credits following the 135th Meeting of the Working Party (June 2014) issued conclusions which include a *"Chairman's Framework for Export Credits and Climate Change"*, whose aim is *"for the Export Credit Committees to agree a set of measures that encourage and support climate friendly exports, including best available technologies. The Framework may, in this regard, include both incentives and conditions for support.". This* is considered as a priority issue for the Export Credit Committees' meetings in 2014 and 2015. The present proposal for a decision only concerns the modifications to the OECD Arrangement (agreed by the "Participants") and not any modifications to the "Common Approaches on Environment" (the latter are not made binding in EU law and hence out of the scope of the present decision).Following detailed discussions in the OECD Export Credit Committees, on 7 April 2015 a *"Revised Chairman's proposal for an agreement on export credits and climate change"* (see OECD document TAD/XCR(2015)1/PROV – annexed to

---

1. 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).
2. In the past, earlier versions of the OECD Arrangement had already been transposed into EU law by Council Decisions.

the present decision) has been circulated for the consideration of the Members of the Working Party on Export Credits and Credit Guarantees and the Participants to the Arrangement on Officially Supported Export Credits for discussion at their meetings to be held on 9-12 June 2015.

The European Union is a very active member in the OECD Export Credit Committees and has been a Participant to the OECD Arrangement on Officially Supported Export Credits ("the Arrangement") since its inception in the 1970s. To this day, the Arrangement remains the most important set of international rules on export credits. Approximately two thirds of the OECD export credit providers are from the European Union.

The OECD's above-described efforts on export credits are fully in line with the EU's policy priorities. The "Revised Chairman's proposal" will play a pivotal role in the continued discussions at OECD level and forms the basis for a possible amendment to the OECD Arrangement as regards coal-fired power plants. Political pressure to complete this process in time for the 21st Conference of the Parties of the UN Framework Convention on Climate Change (Paris 30 November to 12 December 2015) will increase in the coming months.

The OECD Export Credit Committees will be called to adopt modifications to the OECD Arrangement during one of their next sessions (either at a special session in September 2015, alternatively at another meeting in autumn 2015.). It is therefore crucial that the European Union can take a position in those upcoming OECD meetings on the Chairman's proposal and the modifications to the OECD Arrangement in the light of the Chairman's proposal.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

The OECD Arrangement is a gentlemen's agreement between the EU and the 8 other Participants (United States, Canada, Japan, Korea, Norway, Switzerland, New Zealand and Australia). The Arrangement and its successive modifications are incorporated into EU law by virtue of Articles 1 and 2 of Regulation (EU) No 1233/2011 of the European Parliament and of the Council. Regulation (EU) No 1233/2011 states that "[t]he Commission shall adopt delegated acts in accordance with Article 3 to amend Annex II as a result of amendments to the guidelines agreed upon by the Participants to the Arrangement". The Arrangement and its amendments thus have legal effects for the purposes of Article 218(9) TFEU.[3] On substance, as set out in its paragraph 1, the Arrangement aims at providing a framework for the orderly use of officially supported export credits, and seeks to foster a level playing field and fair competition between exporters at a global scale; hence to facilitate and regulate international trade, and in particular export policy, within the meaning of Article 207 TFEU. For these reasons, a Council decision based on Articles 207 TFEU and Article 218(9) TFEU is required to establish the position to be adopted, on behalf of the European Union, in the OECD Export Credit Committees.

Formally speaking, the chair's text, as far as the Arrangement is concerned, should be implemented in the form of a set of proposed modifications to the Arrangement.

[3] See in particular judgment of the Court of 7 October 2014 in case C-399/12 - Germany v Council (OIV), paragraph 63.

3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

No impact evaluation with regard to the present proposal has been carried out as the proposed modifications are a continuation of a long-standing EU policy on export credits, implemented after the modifications to the Arrangement into EU law by delegated Act.

4. BUDGETARY IMPLICATIONS

The budgetary implications limit themselves to the administrative expenditure.

5. OTHER ELEMENTS

DETAILED EXPLANATION OF THE SPECIFIC PROVISIONS OF THE PROPOSAL - SUMMARY OF PROPOSED MODIFICATIONS TO THE OECD ARRANGEMENT AND RECOMMENDED POSITION OF THE EUROPEAN UNION

The Chairman's compromise proposal does not explicitly specify the modifications to the Arrangement, which his text implies. They can however be summarized as follows:

– *Export support to new Coal Fired Power Plants in High Income Countries may only be provided for plants with operational Carbon Capture and Storage (i.e. projects eligible for financing under the already existing OECD Sector Understanding on Export Credits for Renewable Energy, Climate Change Mitigation and Adaptation, and Water Projects).*

– *No export support to new Coal Fired Power Plants with "subcritical technology" (i.e. pressure < 221 bar) shall be possible in High Income Countries.*

– *In all other countries:*

  for new Coal Fired Power Plants with "supercritical and better technology"(i.e. pressure > 221 bar and a steam temperature of 550 Degree Celsius) the maximum repayment term is set at 12 years

  for new Coal Fired Power Plants with subcritical technology, no export credit support should be possible unless such plants have operational Carbon Capture and Storage or fall otherwise under the existing Climate Change Sector Understanding

  in the case of small projects (with an installed capacity of 300 MWp or less) however, new Coal Fired Power Plants may receive export credit support even if they are built in subcritical technology and to set the maximum repayment term in such cases at 10 years

– *For existing Coal Fired Power Plants, including retrofits and modernisations, the standard financing conditions of the Arrangement (maximum repayment term of 5 - in certain 8.5 - years where High Income OECD countries are concerned, 10 years for all other countries) shall apply.*

– *After two years of implementation, a substantial review of the new provisions on export credits and climate change is foreseen, in order to assess the extent to which the objectives have been achieved, whether amendments to better meet these objectives should be agreed and whether any new objective should be defined.*

The Commission considers the "Revised Chairman's proposal" as representing in principle a balanced package and recommends that the EU supports the finding of a compromise between OECD Participants on that basis. To the extent possible, the EU should endeavour to further strengthen the proposal on the basis of the recommendations set out below. In case this should not be possible, a compromise on the basis of the main orientations of the "Revised Chairman's proposal" should be supported.

Recommended position on individual points:

Proposal that export support to new Coal Fired Power Plants in High Income Countries may only be provided for plants with operational Carbon Capture and Storage (*i.e. projects eligible for financing under the already existing OECD Sector Understanding on Export Credits for Renewable Energy, Climate Change Mitigation and Adaptation, and Water Projects****) and Proposal that no export support to new Coal Fired Power Plants with subcritical technology shall be possible in High Income Countries***

Recommended Position: While these two measures would already limit the scope for export finance to coal fired power plants substantially (based on the World Bank definition of a "high-income economy" as a country with a Gross National Income (GNI) per capita of 12,746 USD this would already cover 75 countries), the EU should support a strengthening of the overall effect, which the proposed measure is likely to have, by at the same time introducing a differentiation according to technologies and a widening of its geographical scope: 1. It seems indeed appropriate to limit the possibility to provide export credits for new plants that are built in supercritical technology (pressure above 221 bar, steam temperature 550 Degree Celsius) to cases where the plant in question has operational Carbon Capture and Storage (CCS). The maximum repayment term should be fixed at 18 years in accordance with the terms set in the Climate Change Sector Understanding. For ultrasupercritical plants (pressure above 221 bar, steam temperature around 600 Degree Celsius and more), it would make sense to allow export credit support if they are suitable for future application of CCS technology. The maximum repayment term should be fixed at 10 years. 2. An extension of these measures to all "Middle income economies" is proposed as well. Middle-income economies are defined by the World Bank as those with a GNI from 1,045 to 12,745 USD. This would cover altogether 180 countries (including all 28 EU Member States, all OECD Members as well as Brazil, China, India, Indonesia, the Russian Federation, South Africa, Vietnam and many countries in the Balkans, the Mediterranean, the Middle East, in Asia and in Latin America).

Some Middle Income Countries (particularly South Africa, India, Vietnam, Indonesia and Turkey) have been in the last decade the main recipients of export credit support for new Coal Fired Power Plants, while there are indications and announcements for the construction of major Coal Fired Power Plants in India, Indonesia and Vietnam in the coming years. However, High Income and Middle Income Countries are already in a position to further decarbonize their energy systems through adequate access to more climate-friendly alternative technologies; hence it is considered that the continuation of official export credit support to carbon-intensive power production in those countries dis-incentivizes their low carbon energy transition by potentially encouraging the displacement of private sector financed alternatives and of more climate-friendly alternative technologies. The proposed measures would provide the world with a clear policy signal that the EU and the other eight Participants of the OECD Arrangement cannot anymore support export credit projects with a carbon lock-in effect that would derail the world from the goal of stopping the growth in greenhouse gas emissions by 2020 and reduce them by 60% by 2050 compared with 2010. In the case of Low Income Countries - under reserve of the below position recommended - their energy access imperatives in combination with their macroeconomic situation and the limited availability of alternative comparable gas and/or renewables options could potentially justify the provision of export support to new Coal Fired Power Plants, also given their extremely limited contribution of Low Income Countries to global emissions in current terms.

Considering that the the commercial viability of CCS technology has not yet been fully proven and its use is not obligatory under relevant EU legislation such as the CCS and the IED Directives, it should be required that ultrasupercritical coal fired power plants are are suitable for future application of CCS technology rather than equipped with operational CCS. A coal power plant that is suitable for future application of CCS technology is defined under Article 33 of the CCS Directive[4] and Article 36 of the IED Directive as a plant that meets all of the following conditions: i) suitable CO2 storage sites are available; ii) CO2 transport facilities are technically and economically feasible; iii) it is technically and economically feasible to retrofit for CO2 capture; and iv) suitable space for the equipment necessary to capture and compress CO2 is set aside on the installation site.

Proposal that in all other countries for new Coal Fired Power Plants with "supercritical and better technology"(i.e. pressure > 221 bar and a steam temperature of 550 Degree Celsius) the maximum repayment term is set at 12 years

<u>Recommended Position: </u>The proposal goes in the right direction as it is based on the notion of differentiating financing conditions according to the technology class used. The EU should support the general approach and seek an improved outcome in two respects: 1. Further refinement of the differentiation, with additional technology classes; 2. In the view of the Commission, more rigid maximum repayment terms for coal plants than for other, less polluting plants such as those using gas (currently, the maximum repayment term for all non-nuclear plants is already set at 12 years).

It is therefore recommended that for all countries not fulfilling the criteria for High Income or Middle-income economies (according to World Bank definitions), for new Coal Fired Power Plants with supercritical technology (pressure above 221 bar, steam temperature 550 Degree Celsius) the maximum repayment term shall be 8 years. For new plants with ultrasupercritical technology (pressure above 221 bar, steam temperature around 600 Degree Celsius and more) the maximum repayment term shall be set at 10 years.

Proposal that in all other countries for new Coal Fired Power Plants with subcritical technology (i.e. pressure below 221 bar) no export credit support should be possible unless such plants have operational Carbon Capture and Storage or fall otherwise under the existing Climate Change Sector Understanding:

<u>Recommended Position:</u> Upon the re-definition of the scope of "all other countries" as explained above, the EU should support an outcome based on this proposal.

Proposal that in all other countries, for small projects with an installed capacity of 300 MWp or less, new Coal Fired Power Plants may receive export credit support even if they are built in subcritical technology and to set the maximum repayment term in such cases at 10 years

<u>Recommended Position: </u>Exceptionally, for new Coal-Fired Power plant units with subcritical technology and with electrical capacity of 300 MWe or less the maximum repayment term shall be set at 8 years.

While historical data exhibit that zero export finance for coal has gone to Low Income Countries, their energy access imperatives in combination with their macroeconomic situation and the limited availability of alternative comparable gas and/or renewables options could

[4] OJ L 140, 5.6.2009 and OJ L 334, 17.12.2010.

potentially justify the provision of export support to new Coal Fired Power Plants, as long as low-carbon alternatives are fully evaluated. In such cases the rationalization of export credit subsidies could be the first step to consider in the short term. An approach to their rationalization could be the differentiation of the terms of the subsidy according to the level of carbon intensiveness of the key fossil fuel technologies, i.e. differentiated repayment terms. Also, as the International Energy Agency establishes with its *2013 World Energy Outlook Special Report Redrawing the Energy and Climate Map* and the *2012 Technology Roadmap for High-efficiency Low-emissions Coal-fired Power Generation* respectively, new Coal Fired Power Plant units with subcritical technology, or with electrical capacity of 300 MW_e or less, should no longer be built, hence it is justified to avert from any further export credit support to such plants. However, there could be cases in Low Income Countries where a small Coal Fired Power Plant unit with electrical capacity of 300 MW_e or less is proven to be the only viable option for electricity production. In these exceptional cases export credit support should be possible.

<u>Additional Recommended Positions on new fossil-fuel power plants:</u>

- For new non-coal-fired, non-nuclear plants the maximum repayment term shall remain at 12 years.
- Under reserve of the above conditions, export credit support to new fossil-fuel power plants, including coal-fired and non-coal-fired power plants, may be considered only when an evaluation of alternative comparable less carbon-intensive options is carried out and submitted as part of an export credit commitment application. A common evaluation methodology should be provided by the Export Credit Agencies to project proponents. When alternative options are technically feasible at moderately higher cost, commensurate financial solutions should be explored before the export credit commitment application. Furthermore, such export credit support may only be granted if the project in question is compatible with the country's national climate mitigation policy and strategy.

Proposal that support for existing Coal Fired Power Plants, including retrofits and modernisations, the standard financing conditions of the Arrangement shall apply:

<u>Recommended Position:</u>

The EU should support the application of standard financing conditions of the Arrangement for the provision of export credit support to existing Coal Fired Power Plants, including retrofits and modernisations, under the condition that the efficiency of the particular coal fired power plant will increase to a minimum level of 38 % (LHV, net) based on steam parameters of 165 bar and 540 degree Celsius/540 degree Celsius reheat. In the case of CCS retrofit, such projects will be eligible for financing under the OECD Sector Understanding on Export Credits for Renewable Energy, Climate Change Mitigation and Adaptation, and Water Projects.

<u>Rationale:</u> There is considerable mitigation potential in operating Coal Fired Power Plants around the world. Investments that exploit that mitigation potential may be an alternative to new Coal Fired Power Plants at the same level of efficiency and longer carbon lock-in effect, therefore such investments may be supported as long as they achieve minimum efficiency standards.

Proposal to have a substantial review within two years:

<u>Recommended Position:</u> The creation of a strong review clause has always been a key objective of the European Union, it will allow to adapt the new set of rules in a dynamic

manner already in the near future to further developments in the field of climate policy. The preferred EU position should be that the review should be prepared by an analytical study of the impact of export credits on climate change by the OECD and the IEA.

2015/0155 (NLE)

Proposal for a

COUNCIL DECISION

on the position to be taken by the European Union within the OECD Export Credit Committees on modifications of the OECD 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) An international framework for the orderly use of export credits is essential for a global level playing field and for facilitating international trade. Such a framework has to be regularly updated to take account of technological and societal developments and needs, such as, in this year's update dealing with coal-fired power plants, the fight against climate change.

(2) The Organisation for Economic Co-operation and Development (OECD) Council in its 2014 Ministerial Statement on Climate Change of 6/7 May 2014 committed to pursue discussions on how export credits can contribute to the common goal to address climate change.

(3) Extensive discussions on export credits and climate change have taken place in 2014 and 2015 in the OECD's Export Credit Committees (the "*Working Party on Export Credits and Credit Guarantees*" and the "*Participants to the Arrangement on Officially Supported Export Credits*"). A "Revised Chairman's Proposal for an Agreement on Export Credits and Climate Change" has been circulated to the Members of the Export Credit Committees on 7 April 2015, in view of facilitating a compromise.

(4) The rules to be agreed on will have to be implemented through modifications to the OECD Arrangement on Officially Supported Export Credits ('the Arrangement'). These modifications are expected to be adopted in time for the 21st Conference of the Parties of the UN Framework Convention on Climate Change.

(5) The modifications to the Arrangement have legal effects in the Union by virtue of Article 2 of Regulation (EU) No 1233/2011 of the European Parliament and of the Council[5] which states that "[t]he Commission shall adopt delegated acts in accordance with Article 3 to amend Annex II as a result of amendments to the guidelines agreed upon by the Participants to the Arrangement".

[5] 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).

(6) Accordingly, it is necessary to establish the position to be taken by the Union within the Export Credit Committees of the OECD on the modifications to the OECD Arrangement.

(7) The OECD proposal may also refer to the concept of best available techniques, the resulting amendments to the Arrangement should not create prejudice to the existing EU legislation, notably the Best Available Techniques Reference Document for Large Combustion Plants (LCP BREF) under the Industrial Emissions Directive (IED).

(8) In order to ensure that the measures provided for in this Decision are effective, it should enter into force immediately,

HAS ADOPTED THIS DECISION:

Article 1

The position to be taken by the European Union within the Export Credit Committees of the OECD shall be to support and adopt a compromise modification to the OECD Arrangement on Officially Supported Export Credits concerning export credit support to coal-fired power plants on the basis of the basic orientations set out in the Revised Chairman's Proposal for an Agreement on Export Credits and Climate Change. To the extent possible, the Union should endeavour to further strengthen the proposal on the basis of the following elements:

(a) Export credit support to new Coal Fired Power Plants in High Income Economies and Middle-Income- Economies (as defined by the World Bank) should only be provided for

(i) plants built in supercritical technology (defined as plants with steam cycle operating parameters: pressure above 221 bar and temperature of approximately 550 degree Celsius) with operational Carbon Capture and Storage (these projects are eligible for financing under the already existing OECD Sector Understanding on Export Credits for Renewable Energy, Climate Change Mitigation and Adaptation, and Water Projects).

(ii) Ultrasupercritical plants (defined as plants with steam cycle operating parameters: pressure above 221 bar and temperature of 600 degree Celsius and more), which are suitable for future application of CCS technology. For such plants, the maximum repayment term is 10 years.

No export credit support in these countries should be possible for New Coal Fired Power Plants in subcritical technology (defined as plants with pressure below 221 bar).

(b) As regards export credit support to new Coal Fired Power Plants in all other countries (Low Income Economies, as defined by the World Bank), the maximum repayment term for plants in supercritical technology should be 8 years. For ultrasupercritical plants the maximum repayment terms should be 10 years.

(c) In Low Income Economies (as defined by the World Bank), export credit support for new Coal Fired Power Plants in subcritical technology should not be possible unless:

(i) these plants have operational Carbon Capture and Storage or fall otherwise under the rules of the existing Sector Understanding on Export Credits and Climate Change or

(ii) exceptionally for plant units with electrical capacity of 300 MWe or less (for such small plants the maximum repayment term should be 8 years)

(d) For new non-coal-fired, non-nuclear plants the maximum repayment term shall remain at 12 years;

(e) Under reserve of the conditions set out in Points (a) to (d), export credit support to new fossil-fuel power plants, including coal-fired and non-coal-fired power plants, may be considered only when an evaluation of alternative comparable less carbon-intensive options is carried out and submitted as part of an export credit commitment application. Furthermore, such export credit support may only be granted if the project in question is compatible with the country's national climate mitigation policy and strategy.

(f) Export credit support for all existing Coal Fired Power Plants, including retrofits and modernisations, should enjoy standard maximum repayment terms in the sense of Article 12 of the OECD Arrangement (5 or 8.5 years for High Income OECD countries, 10 years for all other countries) and be granted under the condition that the efficiency of the particular coal fired power plant will increase to a minimum level of 38 % (LHV, net), based on steam parameters of 165 bar and 540 degree Celsius/540 degree Celsius reheat.

(g) There should be an appropriate monitoring and reporting on export credit transactions involving Coal Fired Power Plants as well as a review after the first two-year period of implementation. An analytical study on the impact of export credits on climate change should be carried out in order to prepare this review in an optimal way.

A modification to the OECD Arrangement on Officially Supported Export Credits on the basis of the main orientations of the Revised Chairman's Proposal, including changes on individual points that do not change the main orientations, and/or the above elements may be agreed to by the representatives of the Union in the Export Credit Committees of the OECD without further decision of the Council.

Article 2

This Decision is addressed to the European Commission.

Done at Brussels,

For the Council
The President