



Brussels, 17.12.2020
COM(2020) 847 final

2020/0376 (NLE)

Proposal for a

COUNCIL DECISION

**on the position to be taken on behalf of the European Union regarding the Sector
Understanding on Export Credits for Civil Aircraft**

EXPLANATORY MEMORANDUM

1. SUBJECT MATTER OF THE PROPOSAL

This proposal concerns the decision establishing the position to be taken on the Union's behalf regarding the Sector Understanding on Export Credits for Civil Aircraft ('Aircraft Sector Understanding' or 'ASU') in connection with the envisaged Common Line in accordance with Part 4, Section 3 of the ASU.

2. CONTEXT OF THE PROPOSAL

2.1. The Sector Understanding on Export Credits for Civil Aircraft

The Aircraft Sector Understanding 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. The Sector Understanding became effective on 1 February 2011.

The Aircraft Sector Understanding forms Annex III of the Arrangement on Officially Supported Export Credits ('Arrangement') which 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 Acts¹.

The European Union is a party 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 ASU Participants

There are currently ten Participants to the Aircraft Sector Understanding ('ASU Participants'): Australia, Brazil, Canada, the European Union, Japan, Korea, New Zealand, Norway, Switzerland and the United States. The ASU Participants take decisions on the modifications to the ASU and can accept Common Lines in accordance with Part 4, Section 3 of the ASU. Decisions are taken by consensus, so that, if any Participant objects, the modification of the ASU or the Common Line cannot be adopted.

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

A Common Line is an instrument under the ASU, which allows the Participants, on an exceptional basis, to divert from the ASU provisions with regard to a specific transaction or temporarily for a non-specific number of transactions. The Common Lines may be accepted in written procedure by remaining silent, as a Participant remaining silent shall be deemed to have accepted the Common Line proposal. The same applies for a Participant indication to have no position. The responses to a Common Line proposal shall be made in principle within 20 calendar days (Article 29 of the ASU). The OECD Export Credit Secretariat shall inform the Participants whether the Common Line was accepted and the agreed Common Line will take effect three calendar days after this announcement (Article 32 of the ASU).

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).

2.3. The envisaged act of the ASU Participants

The envisaged measure would be a proposal for a Common Line which would be submitted to the ASU Participants in accordance with Part 4, Section 3 of the ASU. The proposed Common Line would be an urgent and exceptional measure to react to the economic downturn resulting from the Covid-19 health crisis and reduce the severe impact of the crisis on the European civil aviation industry (see in more detail in section 3 below). The proposed Common Line, if agreed, would temporarily amend the ASU provision governing the repayment of principle (Article 13 of the ASU) which would consequently have legal effects in the EU as a matter of Union law (see in 2.1 above).

Considering the emergency nature of the measure, the proposal should be submitted as soon as possible, and, if agreed, the envisaged Common Line will have to become applicable for all Participants also as soon as possible. As result of the specific 20-day silence procedure stipulated in the ASU (see in 2.2 above), the Union proposal for the Common Line can be automatically agreed by the Participants as the final version of the Common Line, provided that no objection is raised, and should enter into effect three days after the end of the procedure.

In light of the above, it is appropriate to establish the Union's proposal as the 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."

The Common Line procedure in the ASU Participants is expected to be initiated in January 2021 and finalised in February 2021.

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

The envisaged Common Line would permit the ASU Participants to temporarily support their manufacturers of civil aircraft, whose business is threatened by short-term liquidity problems of the operators and buyers of new aircraft and engines in the wake of the Covid-19 fallout. Currently, most if not all airlines are facing substantial reductions in income and in the post-Covid recovery, these companies will still have fragile liquidity positions as they will have to deal with the financial aftermath of the crisis and with reduced demand.

Concretely, the proposed Common Line would allow the purchasers of new aircraft and engines to defer the beginning of repayments of the loan principal for 12 or, if certain conditions are satisfied, 18 months after the delivery while enabling manufacturers to receive payment for new aircraft and engines delivering in the next 12 months. The validity of the Common Line shall be 12 months.

Taken into account that the purpose of the envisaged Common Line is to reduce the severe impact of the Covid-19 health crisis on the European civil aviation industry, and that the Union envisages to make the proposal for this Common Line, the position to be taken on the Union's behalf should be to make and support the draft proposal in Annex to this Decision.

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 act, which the ASU Participants will be called upon to adopt, constitutes an act having legal effects. The envisaged act has 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 act relate to the common commercial policy. Therefore, the substantive legal basis of the proposed decision is Article 207.

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).

4. PUBLICATION OF THE ENVISAGED ACT

As the act of the ASU Participants will amend the Aircraft Sector Undertaking, it is appropriate to publish it in the Official Journal of the European Union after its acceptance.

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.

Proposal for a

COUNCIL DECISION

on the position to be taken on behalf of the European Union regarding the Sector Understanding on Export Credits for Civil Aircraft

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular the first subparagraph of Article 207(4) in conjunction with Article 218(9) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) The Sector Understanding on Export Credits for Civil Aircraft ('Aircraft Sector Understanding' or 'ASU'), which forms Annex III of the Arrangement on Officially Supported Export Credits, has been transposed, and hence been made legally binding in the European Union by Regulation (EU) No 1233/2011 of the European Parliament and of the Council.⁴
- (2) The Participants to the Aircraft Sector Understanding ('ASU Participants') are to decide, in a written procedure, on the European Union proposal for a Common Line in accordance with Part 4, Section 3 of this Sector Understanding to allow for a temporary deferral of repayment of principal for buyers of new aircraft and engines in the light of the current and developing COVID-19 economic downturn.
- (3) It is appropriate to establish the Union's proposal as the position to be taken on the Union's behalf in the written procedure of the ASU Participants, as the decision will be capable of decisively influencing the content of Union law by virtue 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.
- (4) The proposal for the Common Line would allow the purchasers of new aircraft as defined in Articles 8 a) (1) of the ASU, and of support for spare engines and spare parts as set out in Articles 20 a), b) and c) of the ASU to defer repayment of the loan principal for 12 months, or, if certain conditions are satisfied, 18 months after the delivery. This exceptional measure is necessary to react to the economic downturn resulting from the Covid-19 sanitary crisis and reduce the severe impact of the crisis on the civil aviation industry, whose business is threatened by short-term liquidity problems of the operators and purchasers of new aircraft and engines.

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).

HAS ADOPTED THIS DECISION:

Article 1

The position to be taken on the Union's behalf concerning the proposal for the Common Line in accordance with Part 4, Section 3 of the Aircraft Sector Understanding shall be based on the Annex to this Decision.

Article 2

This Decision is addressed to the Commission.

Done at Brussels,

*For the Council
The President*



EUROPEAN
COMMISSION

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ANNEX

ANNEX

to the

Proposal for a Council Decision

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ANNEX

EU proposal for a Common Line according to Article 28 ff. ASU – repayment deferral

1. Reference number: EU [•]/2020
2. Name of importing country: Multiple
3. Description of transaction: Official support for new Aircraft and Spare Engines
4. Common Line proposal: temporary addition of two alternative repayment profiles in Clause 13 a) of the ASU
5. Nationality and names of known bidders: N/A
6. Tender/bid period closing date: N/A
7. Other information:

Background:

The EU is proposing a temporary Common Line effective immediately to address the short-term liquidity issues facing operators and buyers of new aircraft and engines in the light of the current and developing COVID-19 crisis. It is clear that most if not all airlines are facing severe reductions in income and even in the post-Covid recovery period will have much more fragile liquidity positions as they deal with the financial aftermath of the crisis and may face reduced demand for some time to come.

The proposed Common Line aims to alleviate the potential impact of the financial impact of the crisis on national manufacturers, by making it possible for Participants to offer financing terms that adhere to the principles of the Aircraft Sector Understanding, while addressing the specific short-term liquidity impact currently being observed.

- General terms

The proposal aims to address this issue by temporarily allowing purchasers to defer repayment of principal for 12 or 18 months while enabling manufacturers to receive payment for new aircraft and engines delivering in the next 12 months.

- Environmental bonus rationale

Due to exceptional circumstances, buyers and borrowers are experiencing extremely tight funding positions given the sharp drop of demand. In this context, buyers and borrowers are eligible for an additional 6 months deferral. In return, they are encouraged to adopt best practices in terms of greenhouse gas emissions monitoring and reduction measures.

Subject to global risk analysis of the transaction made by each export credit agency ('ECA'), the first instalment of principal begins no later than 18 months after the starting point of credit and instalments of interest begins no later than three months - or no later than six months subject to a prior notification - after the starting point of credit, if a monitoring and a reduction or offset plan ("greenhouse gas emissions plan") is made publicly available on a yearly basis and includes:

- i. a monitoring of the greenhouse gas emissions either using a recognized and acceptable methodology
and
- ii. a quantitative target for greenhouse gas emissions and disclosure of measures already in place or to be implemented to reduce or offset greenhouse gas emissions.

If a greenhouse gas emissions plan is not yet already in place and publicly available, the buyers or borrowers could still be eligible to the additional 6 months extension described above, if they explicitly commit, at the time of filing the request, to adopt and ensure the appropriate disclosure of such a plan in a reasonable timeframe during the 12 months of the alternative repayment profile.

If the buyer or borrower does not disclose such a report or plan during the 12 months of the alternative repayment profile, the general terms apply and the first instalment of principal shall be made no later than 12 months after the starting point of credit.

Proposal:

It is proposed that for a period of 12 months an alternative repayment profile is made available to Participants under Clause 13 a) of the ASU: *Repayment of Principal and Interest* by means of a Common Line. The additional repayment profile available to Participant would be defined as follows:

13 a) *The Participants shall apply a profile of repayment of principal and payment of interest as specified in sub-paragraph 1), 2), 3) or 4) below.*

1) *...As drafted in ASU*

2) *...As drafted in ASU*

3) *Subject to a Prior Notification, repayment of principal and interest combined shall be made in equal instalments:*

a) *instalments shall be made no less frequently than every three months and:*

i) *the first instalment of principal shall be made no later than 12 months after the starting point of credit. For the avoidance of doubt, principal payments normally due within the first 12 months under 1) or 2), will be applied pro-rata across the instalments of principal to be made under 3).*

ii) *or alternatively, and, if the buyer or borrower*

– *publicly discloses a yearly report including a greenhouse gas emissions monitoring and a plan to reduce or offset these emissions (“greenhouse gas emissions plan”);*

or

– *officially commits at the time of filing the request, to adopt and ensure an appropriate disclosure of such a plan in a reasonable timeframe during the 12 months of the alternative repayment profile under 3 a)i, above;*

The first instalment of principal shall be made no later than 18 months after the starting point of credit. For the avoidance of doubt, principal payments normally due within the first 18 months under 1) or 2), will be applied pro-rata across the instalments of principal to be made under 3).

If the buyer or borrower does not disclose such a report or plan during the 12 months of the alternative repayment profile, the first instalment of principal shall be made no later than 12 months after the starting point of credit.

b) *instalments of interest shall be made no less frequently than every three months and the first instalment shall be made no later than 3 months after the starting point of credit.*

- c) *alternatively, instalments of principal and interest may be made every six months with the first instalment of principal beginning no later than 12 months or no later than 18 months under a.ii. after the starting point of credit and instalments of interest beginning no later than six months after the starting point of credit. In this case, a surcharge of 15% to the minimum premium rates calculated in accordance with Appendix II shall apply.*
- d) *in the case of a floating rate transaction, the principal amortising profile shall be set for the entire term, no more than five business days prior to the disbursement date, based on the floating or swap rate at that time.*
- 4) *Subject to a Prior Notification, repayment of principal shall be made in equal instalments with interest payable on declining balances:*
- a) *instalments of principal shall be made no less frequently than every three months and:*
- i) *the first instalment shall be made no later than 12 months after the starting point of credit. For the avoidance of doubt, principal payments normally due within the first 12 months under 1) or 2), will be applied pro-rata across the instalments of principal to be made under 4).*
- ii) *or alternatively, if the buyer or borrower:*
- *publicly discloses a yearly report including a greenhouse gas emissions monitoring and a plan to reduce or offset these emissions;*
 - or*
 - *officially commits at the time of filing the request, to adopt and ensure an appropriate disclosure of such a plan in a reasonable timeframe during the 12 months of the alternative repayment profile under 4 a)i, above;*
- The first instalment of principal shall be made no later than 18 months after the starting point of credit. For the avoidance of doubt, principal payments normally due within the first 18 months under 1) or 2), will be applied pro-rata across the instalments of principal to be made under 4).*
- If the buyer or borrower does not disclose such a report or plan during the 12 months of the alternative repayment profile, the first instalment of principal shall be made no later than 18 months after the starting point of credit.*
- b) *instalments of interest shall be made no less frequently than every three months and the first instalment shall be made no later than 3 months after the starting point of credit.*
- c) *alternatively, instalments of principal and interest may be made every six months with the first instalment of principal beginning no later than 12 months or no later than 18 months under a.ii. after the starting point of credit and instalments of interest beginning no later than six months after the starting point of credit. In this case, a surcharge of 15% to the minimum premium rates calculated in accordance with Appendix II shall apply.*

Scope:

It is proposed that the Common Line:

- i) will apply for twelve months from 1 November 2020;*
- ii) will apply only to new aircraft as defined in Articles 8 a) (1), and support for spare engines and spare parts as set out in Articles 20 a), b) and c) of the ASU;*
- iii) will not apply to aircraft not used for revenue generating operations either through the carriage of passengers or freight or through operating leasing;*
- iv) will apply only to new business as defined in ii) above where official support is provided within the period in which the Common Line is in effect;*
- v) will apply only to aircraft and engines as defined under ii) ordered under Purchase Agreements that were executed on or before 11 March 2020;*
- vi) flexibilities shall be permitted for interim financing arrangements (as defined in Article 8 b)) only when delivery and interim financing arrangement occur during the period in which the Common Line is in effect;*
- vii) will be available to all buyers or borrowers subject to a cash flow impact analysis being provided to the Participant demonstrating to it a rationale as to why the Common Line is required;*
- viii) will be applicable to delayed delivery so long as actual delivery occurs no later than 90 days after the effective end date of the Common Line ; and*
- ix) will not affect application of any other ASU term, which shall continue to apply.*

For the avoidance of doubt, the application of the proposed Common Line does not alter a Participants ability to agree any actions to minimise loss in accordance with Clause 7 of the ASU.

Delayed delivery:

Where a Participant has issued a commitment to provide official support for a delivery in accordance with the proposed Common Line and said delivery is delayed beyond the effective end date of the Common Line, Participant will be permitted to honour the terms of that original commitment so long as actual delivery occurs no later than 90 days after the effective end date of the Common Line.

A Participant intending to extend the availability period of the Common Line terms in the event of a delayed delivery will explain the rationale for agreeing the extension in the Post-Issue notification.

Delivery between 1 November 2020 and Date of Common Line Acceptance

Buyers or borrowers that take delivery of an aircraft with an official support in between the 1 November 2020 and the date of the Common Line acceptance, will be entitled to have the terms of the official support transaction amended so that the Common Line terms apply, subject always to the agreement of the participating ECAs in supporting the transaction and payment of additional premium as per the paragraph below.

Minimum premium rates:

The ASU premium rate rules as defined in Appendix II shall continue to apply to any transactions supported under the Common Line. Reprofiling in accordance with the proposal described above will have the effect of increasing the average weighted life of a transaction and therefore Participants charging premium on an upfront basis rather than as a margin over the life of the loan will be compensated through charging a higher premium rate should it chose to apply the terms proposed under the Common Line.

Risk Classification:

For buyer or borrowers whose ASU risk classification was accepted on or before 11 March 2020, an update to the Risk Classification should be proposed following the regular procedure described in Appendix II of the ASU in order to apply the terms of this Common Line.

Notifications:

Use of the proposed Common Line by Participants will be notified under the Prior Notification procedure defined in the ASU for information only.