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2026/0043 (NLE)

Proposal for a

COUNCIL DECISION

on the position to be taken on behalf of the Union in the written procedure by the Participants to the Sector Understanding on Export Credits for Civil Aircraft ("ASU") regarding the calculation of the Market Reflective Surcharge

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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 written procedure of the Participants to the Sector Understanding on Export Credits for Civil Aircraft ('Aircraft Sector Understanding' or 'ASU') regarding the envisaged amendment to the ASU to make the temporary Credit Adjustment Spread (CAS) of -29bps permanent in the calculation of the Market Reflective Surcharge.

2. CONTEXT OF THE PROPOSAL

2.1. The Arrangement on Officially Supported Export Credits

The Arrangement is a gentlemen's agreement between the Union, the US, Canada, Japan, Korea, Norway, Switzerland, Australia, New Zealand, Türkiye and the United Kingdom, which aims to provide a framework for the orderly use of officially supported export credits. In practice, this means establishing a level playing field (whereby competition is based on the price and quality of the exported goods and services and not on the financial terms provided), while working to eliminate subsidies and trade distortions related to officially supported export credits. The Arrangement entered into force in April 1978 and is of indefinite duration.

The Aircraft Sector Understanding is Annex III to the Arrangement and 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 4(a) of the ASU. The ASU seeks to foster a level playing field for the exports in the aircraft sector and eliminate subsidies and trade distortions related to the official support. The latest text of the ASU became effective on 1 February 2011.

The Arrangement, including the ASU, 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 Acts[1].

The Union – and not the Member States – is a Participant to the Arrangement and the ASU 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 provisions of the Arrangement and the Aircraft Sector Understanding are legally binding as a matter of Union law.

2.2. The Participants to the Sector Understanding on Export Credits for Civil Aircraft

The Aircraft Sector Understanding has eleven Participants ('ASU Participants'), which are Australia, Brazil, Canada, the Union, Japan, Korea, New Zealand, Norway, Switzerland, United Kingdom and the United States.[3]

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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 The participation is largely the same as in the Arrangement, with a difference that Brazil is an ASU Participant but not an Arrangement Participant, while Türkiye does not participate in the ASU though it is an Arrangement Participant.

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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 ASU Participants. Decisions on all amendments of the ASU are taken by consensus.

2.3. The envisaged act of the ASU Participants

The envisaged act aims to amend Section 2 of Appendix II of the ASU by establishing a fixed Credit Adjustment Spread (CAS) value of -29bps for the calculation of the Market Reflective Surcharged (MRS). Appendix II of the ASU sets out the procedures to be used when determining the pricing of official support for a transaction subject to the Sector Understanding on Export Credits for Civil Aircraft, and Section 2 sets out the rules to determine the Minimum Premium Rates (MPR).

The text of the ASU stipulates that the calculation of the MPRs is the result of adding a Market Reflective Surcharge (MRS) to the risk-based rates (RBR) . One input in the calculation of the MRS is the Median Credit Spreads (MCS), based on data provided by Moody's to the OECD Secretariat. Given the discontinuation of the London Interbank Offered Rate (LIBOR), since August 2022 Moody's provided MCS data over the Secured Overnight Financing Rate (SOFR), rather than over LIBOR. This has a direct impact on the MCS value, on which ASU Participants were invited to reflect in November 2022 during the 73rd ASU Participants' meeting.

ASU Paticipants agreed during their 74th Meeting (November 2023) to apply an adjustment (Credit Spread Adjustment, "CAS") of -29bps to Moody's MCS data for one year (i.e., end of 2024). During the 76th ASU Participants Meeting in June 2025, Participants showed broad support to make this solution permanent. The envisaged act aims to amend the ASU text to transform that temporary adjustment into a permanent solution.

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

The discontinuation of the LIBOR in 2023 required Moody's to adjust its methodology to calculate the Median Credit Spreads (MCS), an important input to obtain the Market Reflective Surcharge (MRS) to be applied to the calculation of Minimum Premium Rates (MPRs) for ASU transactions as set out in Section 2 of Appendix II.

The MCS is a 90 day moving average of Moody's Median Credit Spreads with an average life of 7 years. They are provided by Moody's to the OECD Secretariat based on triannual contract arrangements that have been renovated since the first one signed in 2011.

Due to the transition from LIBOR to SOFR in 2023, Moody's began to provide MCS data over SOFR only, rather than over LIBOR. This base rate switch results in an increased value for MCS, thus penalizing the risk premium. The introduction of a Credit Adjustment Spread (CAS) aims to compensate for this increase. The CAS was temporarily established at -29 bps, reflecting the average difference of the MCS since Moody's changed its base rate from the LIBOR to the SOFR.

Given this, the EU supports the efforts being undertaken to adjust the calculation of MRS so as to compensate for the additional surcharge resulting from a switch in the base rate following the discontinuation of the LIBOR. The envisaged amendment, by providing for a fixed CAS of -29 bps allows to compensate the increase in MCS and provides predictibility for aircraft manufacturers and other ASU users. Therefore, it is recommended that the position of the Union in the written procedure by the Participants to the ASU is to approve the envisaged decision to introduce a fixed CAS of -29 bps to the MCS for the calculation of MRS as set out in in Section 2 of Appendix II.

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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*'[4].

4.1.2. Application to the present case

The envisaged act is capable of decisively influencing the content of EU legislation, namely 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. This is because by virtue of Article 2 of this Regulation, 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 by the Participants to the Arrangement".

The envisaged amendment of the ASU will be adopted in the written procedure of the ASU Participants under the auspices of the OECD.

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 export credits, which is within the scope of the common commercial policy. Therefore, the substantive legal basis of the proposed decision is Article 207 TFEU.

4.3. Conclusion

The legal basis of the proposed decision should be Article 207(4), first subparagraph, TFEU in conjunction with Article 218(9) TFEU.

5. PUBLICATION OF THE ENVISAGED ACT

As the proposed changes will amend the Arrangement on Officially Supported Export Credits which, in turn, will require an amendment of Annex II to the Regulation (EU) No 1233/2011

[4] 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.

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by virtue of Article 2 of that Regulation, it is appropriate to publish it in the Official Journal of the European Union after its acceptance.

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 207(4), first subparagraph, 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 Exported Export Credits (the 'Arrangement') including those in the Sector Understanding on Export Credits for Civil Aircraft ('Aircraft Sector Understanding, ASU') in Annex III to the Arrangement, have been transposed, and hence been made legally binding in the EU by virtue of Regulation (EU) No 1233/2011 of the European Parliament and of the Council[5].

(2) The envisaged amendment to Article 28 of Appendix II (Minimum Premium Rates) of the ASU aims to to introduce a permanent Credit Adjustment Spread of -29 bps to the calculation of the Market Reflective Surcharge and should compensate for the effects of the base rate change from LIBOR to SOFR after the discontinuation of the LIBOR.

(3) It is appropriate to establish the position to be taken on the Union's behalf in the written procedure of the ASU Participants as the envisaged decision will be binding on the Union and capable of decisively influencing the content of Union law, by virtue of Article 2 of Regulation (EU) No 1233/2011,

HAS ADOPTED THIS DECISION:

Article 1

The position to be adopted on the Union's behalf in the context of the Arrangement on Officially Supported Export Credits regarding the calculation of the Market Reflective Surcharge for the Aircraft Sector Understanding, shall be to support the amendment to the Aircraft Sector Understanding in line with the annex to this Decision.

[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) ('Regulation (EU) No 1233/2011').

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Article 2

This Decision shall enter into force on the the day of its adoption.

Done at Brussels,

For the Council
The President

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ANNEX

ANNEX

to the

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ANNEX

The position to be taken on behalf of the Union in the written procedure by the Participants to the Sector Understanding on Export Credits for Civil Aircraft ("ASU") is to accept the changes to Article 28 of Appendix II (Minimum Premium Rates) as set out in this Annex. Additions are in **bold underline:**

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APPENDIX II- MINIMUM PREMIUM RATES

28. For each risk category, a Market Reflective Surcharge shall be calculated as follows:

$$MRS = B*\{[0.5*(MCS-CAS)]-RBR]\}$$

where:

-B is a blend coefficient varying from 0.7 to 0.35 according to each risk category as per Table 4 below.

-MCS is a 90-day moving average of Moody's Median Credit Spreads (MCS) with an average life of 7 years.

-CAS (Credit Adjustment Spread) is applied to align the historical MCS base rate with the new MCS risk-free base rate, following the discontinuation of LIBOR; a CAS of 29bps shall apply.

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