



Brussels, 2.8.2018
COM(2018) 565 final

2018/0297 (NLE)

Proposal for a

COUNCIL DECISION

**on the position to be taken on behalf of the European Union in the Meeting of the
Participants to the Arrangement on Officially Supported Export Credits**

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 Meeting of the Participants to the Arrangement on Officially Supported Export Credits (the 'Meeting of the Participants') in connection with the envisaged adoption of a decision concerning the request from Turkey to become a Participant to the Arrangement on Officially Supported Export Credits ('the Arrangement') of the Organisation for Economic Cooperation and Development ('OECD').

2. CONTEXT OF THE PROPOSAL

2.1. The Arrangement on Officially Supported Export Credits

The Arrangement is a Gentlemen's Agreement among the EU, the US, Canada, Japan, Korea, Norway, Switzerland, Australia and New Zealand which aims to provide a framework for the orderly use of officially supported export credits. In practice, this means providing for a level playing field (whereby competition is based on the price and quality of the exported goods and not the financial terms provided) and working to eliminate subsidies and trade distortions related to officially supported export credits. The Arrangement entered into force on April 1978, it is of indefinite duration and, although it receives the administrative support of the OECD Secretariat, is not an OECD Act¹.

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 Council²³. Updates are incorporated into EU legislation through delegated Acts pursuant to Article 2 of this Regulation.

2.2. The Meeting of the Participants to the Arrangement on Officially Supported Export Credits

Article 67 of the Arrangement provides that "The Participants shall review regularly the functioning of the Arrangement. In the review the Participants shall examine, inter alia, notification procedures, implementation and operation of the DDR system, rules and procedures on tied aid, questions of matching, prior commitments and possibilities of wider participation in the Arrangement".

The European Commission represents the Union in the Meeting of the Participants, where decisions on all modifications to the Arrangement are taken by consensus. The position of the Union is adopted by the Council and discussed with Member States' representatives within the Working Group on Export Credits⁴.

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

⁴ Council Decision setting up a Policy Co-ordination Group for Credit Insurance, Credit Guarantees and Financial Credits, (OJ 66, 27.10.1960, p. 1339/60).

2.3. The envisaged act of the Meeting of the Participants to the Arrangement on Officially Supported Export Credits

Article 3 of the Arrangement provides that "Other OECD Members and non-members may be invited to become Participants by the current Participants". Turkey has been an OECD Member since 2 August 1961.

By letter dated 20 September 2017 and addressed to the Chairman of the Meeting of the Participants to the Arrangement, Turkey requested to become a Participant to the Arrangement.

Turkey's request was discussed at the Meeting of the Participants in confidential session on 15th November 2017. No decision was taken as the Participants, including the EU, did not have a position on the issue.

In the week of 12th November 2018 the Meeting of the Participants to the Arrangement is to adopt a decision regarding this request from Turkey ('the envisaged act').

The envisaged act will become binding on the parties in accordance with Article 67 of the Arrangement.

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

Turkey has been an observer to the Arrangement since 2006.

Turkey is already under the obligation to comply with EU legislation on officially supported export credit policy, pursuant to Article 12 of the EU-Turkey Customs Union Agreement which provides that:

"Turkey shall, in relation to countries which are not members of the Community, apply provisions and implementing measures which are substantially similar to those of the Community's commercial policy set out in the following Regulations: [...] - Council Decision 93/112/EEC (officially supported export credits)⁵"

Council Decision 93/112/EEC has now been replaced by Regulation (EU) No 1233/2011 and, even if Turkey has not completely aligned itself with the EU legislation on export credits (as stated still in the Turkey 2016 Report⁶), admitting Turkey as a Participant to the OECD Arrangement will increase the pressure on Turkey to comply with those rules. Since rules on officially supported export credits are adopted by consensus in the Meeting of Participants to the Arrangement, Turkey will be fully involved in the decision making process once it becomes a Participant.

Finally, Turkey is a member of the International Working Group on Export Credits, set up in 2012 to negotiate new rules on export credits with the participation of emerging, non-OECD economies, where it has been participating actively and has been supportive of the EU position.

Therefore, Turkey's request to become a Participant to the Arrangement should be supported.

⁵ OJ No L 44, 22.2.1993, p. 1

⁶ SWD(2016) 366 final

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*’⁷.

4.1.2. Application to the present case

The act which the Meeting of the Participants is called upon to adopt constitutes an act having legal effects. The envisaged act is capable of decisively influencing the content of EU law, by virtue of Article 2 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 “[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”.

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 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.

4.3. Conclusion

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

5. PUBLICATION OF THE ENVISAGED ACT

As the act of the Meeting of the Participants will amend the Arrangement, it is appropriate to publish it in the *Official Journal of the European Union* after its adoption.

⁷ 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 in the Meeting of the Participants to the 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) The Arrangement on Officially Supported Export Credits ("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 Council⁸⁹.
- (2) Pursuant to Article 3 of the Arrangement, the Meeting of the Participants to the Arrangement may adopt a decision to invite other OECD Members to become Participants to the Arrangement.
- (3) On 20 September 2017, Turkey announced its intention to become a Participant to the Arrangement.
- (4) The Meeting of the Participants to the Arrangement, during its 140th session on the week of 12 November 2018, is to adopt a decision concerning the request from Turkey to become a Participant to the Arrangement.
- (5) It is appropriate to establish the position to be taken on the Union's behalf in the Meeting of the Participants to the Arrangement, as the envisaged decision will be 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 taken on the Union's behalf in the 140th session of the Meeting of the Participants to the Arrangement on Officially Supported Export Credits shall be to approve Turkey's request to become a Participant to the Arrangement on Officially Supported Export Credits.

⁸ 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).

⁹ In the past, earlier versions of the OECD Arrangement had already been transposed into EU law by Council Decisions.

Article 2

This Decision is addressed to the Commission.

Done at Brussels,

*For the Council
The President*