Commission Delegated Regulation (EU) 2016/155 of 29 September 2015 amending Annex II to 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

COMMISSION DELEGATED REGULATION (EU) 2016/155

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amending Annex II to 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/EC[(1)] and in particular Article 2 thereof,

Whereas:

(1) Regulation (EU) No 1233/2011 lays down that the guidelines contained in the Arrangement on Officially Supported Export Credits of the Organisation for Economic Cooperation and Development ('OECD') ('the Arrangement') are to apply in the Union. The text of the Arrangement is contained in Annex II to that Regulation.

(2) Regulation (EU) No 1233/2011 requires the Commission to adopt delegated acts to amend Annex II to that Regulation where amendments to the guidelines are agreed upon by the Participants to the Arrangement.

(3) The Participants to the Arrangement have agreed on a number of amendments to it.

(4) It is appropriate and necessary to incorporate the said amendments into Union legislation.

(5) 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 set out 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*.

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

Done at Brussels, 29 September 2015.

For the Commission

The President

Jean-Claude JUNCKER

***Changes to legislation:** There are currently no known outstanding effects for the Commission Delegated Regulation (EU) 2016/155. (See end of Document for details)*

ANNEX

ANNEX IICHAPTER IGENERAL PROVISIONS1.PURPOSE
2.STATUS

The Arrangement, developed within the OECD framework, initially came into effect in April 1978 and is of indefinite duration. The Arrangement is a Gentlemen's Agreement among the Participants; it is not an OECD Act[(2)], although it receives the administrative support of the OECD Secretariat (hereafter: "the Secretariat").

3.PARTICIPATION

The Participants to the Arrangement currently are: Australia, Canada, the European Union, Japan, Korea, New Zealand, Norway, Switzerland and the United States. Other OECD Members and non-members may be invited to become Participants by the current Participants.

4.INFORMATION AVAILABLE TO NON-PARTICIPANTS
5.SCOPE OF APPLICATION

The Arrangement shall apply to all official support provided by or on behalf of a government for export of goods and/or services, including financial leases, which have a repayment term of two years or more.

6.SECTOR UNDERSTANDINGS
7.PROJECT FINANCE
8.WITHDRAWAL

A Participant may withdraw by notifying the Secretariat in writing by means of instant communication, *e.g.* the OECD On-Line Information System (OLIS). The withdrawal takes effect 180 calendar days after receipt of the notification by the Secretariat.

9.MONITORING

The Secretariat shall monitor the implementation of the Arrangement.

CHAPTER II

FINANCIAL TERMS AND CONDITIONS FOR EXPORT CREDITS

Financial terms and conditions for export credits encompass all the provisions set out in this Chapter which shall be read in conjunction one with the other.

The Arrangement sets out limitations on terms and conditions that may be officially supported. The Participants recognise that more restrictive financial terms and conditions than those provided for by the Arrangement traditionally apply to certain trade or industrial sectors. The Participants shall continue to respect such customary financial terms and conditions, in particular the principle by which repayment terms do not exceed the useful life of the goods.

10. DOWN PAYMENT, MAXIMUM OFFICIAL SUPPORT AND LOCAL COSTS

(a) The Participants shall require purchasers of goods and services which are the subject of official support to make down payments of a minimum of 15 % of the export contract value at or before the starting point of credit as defined in Annex XIV. For the assessment of down payments, the export contract value may be reduced proportionally if the transaction includes goods and services from a third country which are not officially supported. Financing/insurance of 100 % of the premium is permissible. Premium may or may not be included in the export contract value. Retention payments made after the starting point of credit are not regarded as down payment in this context.

(b) Official support for such down payments shall only take the form of insurance or guarantee against the usual pre-credit risks.

Changes to legislation: *There are currently no known outstanding effects for the Commission Delegated Regulation (EU) 2016/155. (See end of Document for details)*

(c) Except as provided for in paragraphs (b) and (d), the Participants shall not provide official support in excess of 85 % of the export contract value, including third country supply but excluding local costs.

(d) The Participants may provide official support for local costs, provided that:

(1) Official support provided for local costs shall not exceed 30 % of the export contract value.

(2) It shall not be provided on terms more favourable/less restrictive than those agreed for the related exports.

(3) Where official support for local cost exceeds 15 % of the export contract value, such official support shall be subject to prior notification, pursuant to Article 48, specifying the nature of the local costs being supported.

11. CLASSIFICATION OF COUNTRIES FOR MAXIMUM REPAYMENT TERMS

(a) Category I countries are High Income[(3)] OECD countries. All other countries are in Category II.

(b) The following operational criteria and procedures apply when classifying countries:

(1) Classification for Arrangement purposes is determined by per capita GNI as calculated by the World Bank for the purposes of the World Bank classification of borrowing countries.

(2) In cases where the World Bank does not have enough information to publish per capita GNI data, the World Bank shall be asked to estimate whether the country in question has per capita GNI above or below the current threshold. The country shall be classified according to the estimate unless the Participants decide to act otherwise.

(3) If a country is reclassified in accordance with Article 11(a), the reclassification will take effect two weeks after the conclusions drawn from the above-mentioned data from the World Bank have been communicated to all Participants by the Secretariat.

(4) In cases where the World Bank revises figures, such revisions shall be disregarded in relation to the Arrangement. Nevertheless, the classification of a country may be changed by way of a Common Line and Participants would favourably consider a change due to errors and omissions in the figures subsequently recognised in the same calendar year in which the figures were first distributed by the Secretariat.

(c) A country will change category only after its World Bank category has remained unchanged for two consecutive years.

12. MAXIMUM REPAYMENT TERMS

Without prejudice to Article 13, the maximum repayment term varies according to the classification of the country of destination determined by the criteria in Article 11.

(a) For Category I countries, the maximum repayment term is five years, with the possibility of agreeing up to eight-and-a-half years when the procedures for prior notification set out in Article 48 are followed.

(b) For Category II countries, the maximum repayment term is ten years.

***Changes to legislation:** There are currently no known outstanding effects for the Commission Delegated Regulation (EU) 2016/155. (See end of Document for details)*

(c) In the event of a contract involving more than one country of destination the Participants should seek to establish a Common Line in accordance with the procedures in Articles 58 to 63 to reach agreement on appropriate terms.

13. REPAYMENT TERMS FOR NON-NUCLEAR POWER PLANTS

(a) For non-nuclear power plants, the maximum repayment term shall be 12 years. If a Participant intends to support a repayment term longer than that provided for in Article 12, the Participant shall give prior notification in accordance with the procedure in Article 48.

(b) Non-nuclear power plants are complete power stations, or parts thereof, not fuelled by nuclear power; they include all components, equipment, materials and services (including the training of personnel) directly required for the construction and commissioning of such non-nuclear power stations. This does not include items for which the buyer is usually responsible, in particular costs associated with land development, roads, construction villages, power lines, and switchyard and water supply located outside the power plant site boundary, as well as costs arising in the buyer's country from official approval procedures (*e.g.* site permits, construction permit, fuel loading permits), except:

(1) in cases where the buyer of the switchyard is the same as the buyer of the power plant, the maximum repayment term for the original switchyard shall be the same as that for the non-nuclear power plant (i.e. 12 years); and

(2) the maximum repayment term for sub-stations, transformers and transmission lines with a minimum voltage threshold of 100 kV shall be the same as that for the non-nuclear power plant.

14. REPAYMENT OF PRINCIPAL AND PAYMENT OF INTEREST

(a) The principal sum of an export credit shall be repaid in equal instalments.

(b) Principal shall be repaid and interest shall be paid no less frequently than every six months and the first instalment of principal and interest shall be made no later than six months after the starting point of credit.

(c) For export credits provided in support of lease transactions, equal repayments of principal and interest combined may be applied in lieu of equal repayments of principal as set out in paragraph (a).

(d) On an exceptional and duly justified basis, export credits may be provided on terms other than those set out in paragraphs (a) through (c) above. The provision of such support shall be explained by an imbalance in the timing of the funds available to the obligor and the debt service profile available under an equal, semi-annual repayment schedule, and shall comply with the following criteria:

(1) No single repayment of principal or series of principal payments within a six-month period shall exceed 25 % of the principal sum of the credit.

(2) Principal shall be repaid no less frequently than every 12 months. The first repayment of principal shall be made no later than 12 months after the starting point of credit and no less than 2 % of the principal sum of the credit shall have been repaid 12 months after the starting point of credit.