Changes to legislation: *There are outstanding changes not yet made to Regulation (EU) No 1233/2011 of the European Parliament and of the Council. Any changes that have already been made to the legislation appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

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

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

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 207 thereof,

Having regard to the proposal from the European Commission,

Acting in accordance with the ordinary legislative procedure[(1)],

Whereas:

(1) Export Credit Agencies ('ECAs') contribute to the development of world trade by supporting export and investments by companies in a manner that complements the provision of private sector finance and insurance. The Union is party to the Arrangement on Officially Supported Export Credits ('the Arrangement') of the Organisation for Economic Cooperation and Development ('OECD'). The Arrangement, as concluded by the Participants thereof, regulates the financial terms and conditions that ECAs may offer in order to foster a level playing field for officially supported export credits.

(2) By virtue of Council Decision 2001/76/EC of 22 December 2000 replacing the Decision of 4 April 1978 on the application of certain guidelines in the field of officially supported export credits[(2)] and Council Decision 2001/77/EC of 22 December 2000 on the application of principles of a framework agreement on project finance in the field of officially supported export credits[(3)], the guidelines contained in the Arrangement and the specific rules for project finance apply in the Union.

(3) The Arrangement indirectly contributes, through the activity of the ECAs, to free and fair trade and investment by companies which would otherwise have less access to credit facilities provided by the private sector.

(4) The Member States should comply with the Union's general provisions on external action, such as consolidating democracy, respect for human rights and policy coherence for development, and the fight against climate change, when establishing, developing and implementing their national export credit systems and when carrying out their supervision of officially supported export credit activities.

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(5) The Participants to the Arrangement are involved in a continuous process intended to minimise market distortion and to establish a level playing field in which the premiums charged by the ECAs are risk based and should be adequate to cover long-term operating costs and losses and in accordance with World Trade Organization obligations. In order to achieve this goal, the export credit systems operate in a transparent way and agencies report accordingly to the OECD.

(6) Well-targeted export credits provided by ECAs can contribute to market access opportunities for Union companies, including for small and medium-sized enterprises (SMEs).

(7) The Participants to the Arrangement and the Member States of the Union agreed to disclose certain information on export credits according to the transparency rules of the OECD and of the Union in order to facilitate a level playing field for the Participants to the Arrangement and Member States.

(8) The Union applies transparency and reporting measures as set out in Annex I.

(9) In view of the intensified competitive situation on world markets and in order to avoid competitive disadvantages for Union companies, the Commission, with regard to the negotiating authorisation from the Member States, should support the efforts by the OECD in reaching out to non-Participants to the Arrangement. The Commission should use bilateral and multilateral negotiations in order to establish global standards for officially supported export credits. Global standards in this field are a prerequisite for a level playing field in world trade.

(10) Although OECD countries are guided by the Arrangement, non-OECD countries are not Participants to the Arrangement and this could lead to a competitive advantage for exporters of the latter countries. Those countries, therefore, are being encouraged to apply the Arrangement in order to ensure a level playing field also at the global level.

(11) In view of the Union's Better Regulation policy, aimed at simplifying and improving existing regulation, the Commission and Member States, in future reviews of the Arrangement, will focus, where appropriate, on reducing administrative burdens on businesses and national administrations, including ECAs.

(12) The Participants to the Arrangement decided to amend and rationalise the Arrangement. Changes agreed upon by them cover enhanced user-friendliness, improving consistency among the relevant international obligations and the achievement of greater transparency, in particular with regard to non-Participants to the Arrangement. Moreover, the Participants to the Arrangement also agreed to incorporate in the text of the Arrangement the rules on project finance which were introduced by Decision 2001/77/EC, and the rules for export credits for ships, which were introduced by Council Decision 2002/634/EC[4] amending Decision 2001/76/EC.

(13) Decision 2001/76/EC, as amended, should be repealed and replaced by this Regulation and the consolidated and revised text of the Arrangement annexed thereto, and Decision 2001/77/EC should be repealed.

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(14) In order to smoothly and promptly incorporate into Union legislation the amendments to the guidelines set out in the Arrangement as agreed upon by the Participants to the Arrangement, the Commission should adopt delegated acts to amend Annex II where this is necessary. Therefore the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in respect of amendments to the guidelines as agreed upon by the Participants to the Arrangement. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level. The Commission, when preparing and drawing up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and to the Council,

HAVE ADOPTED THIS REGULATION:

Article 1

Application of the Arrangement

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.

Article 2

Delegation of power

The 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.

Where, in the case of amendments to Annex II as a result of amendments to the guidelines agreed upon by the Participants to the Arrangement, imperative grounds of urgency so require, the procedure provided for in Article 4 shall apply to delegated acts adopted pursuant to this Article.

Article 3

Exercise of the delegation

1 The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.

2 The power to adopt delegated acts referred to in Article 2 shall be conferred on the Commission for an indeterminate period of time from 9 December 2011.

3 The delegation of power referred to in Article 2 may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

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4 As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

5 A delegated act adopted pursuant to Article 2 shall enter into force only if no objection has been expressed either by the European Parliament or by the Council within a period of 2 months of notification of that act to the European Parliament and to the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by 2 months at the initiative of the European Parliament or of the Council.

Article 4

Urgency procedure

1 Delegated acts adopted pursuant to this Article shall enter into force without delay and shall apply as long as no objection is expressed in accordance with paragraph 2. The notification of a delegated act to the European Parliament and to the Council shall state the reasons for the use of the urgency procedure.

2 Either the European Parliament or the Council may object to a delegated act in accordance with the procedure referred to in Article 3(5). In such a case, the Commission shall repeal the act without delay following the notification of the decision to object by the European Parliament or by the Council.

Article 5

Transparency and reporting

The transparency and reporting measures to be applied in the Union are set out in Annex I.

Article 6

Repeal

Decisions 2001/76/EC and 2001/77/EC are hereby repealed.

Article 7

Entry into force

This Regulation shall enter into force on the day following 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.

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ANNEX I

1. Without prejudice to the prerogatives of the Member States' institutions exercising the supervision of the national export credit programs, each Member State shall make available to the Commission an Annual Activity Report in order to step up transparency at Union level. Member States shall report, in accordance with their national legislative framework, on assets and liabilities, claims paid and recoveries, new commitments, exposures and premium charges. Where contingent liabilities might arise from officially supported export credit activities, those activities shall be reported as part of the Annual Activity Report.

2. In the Annual Activity Report, Member States shall describe how environmental risks, which can carry other relevant risks, are taken into account in the officially supported export credit activities of their ECAs.

3. The Commission shall produce an annual review for the European Parliament based on this information, including an evaluation regarding the compliance of ECAs with Union objectives and obligations.

4. The Commission, according to its competencies shall provide to the European Parliament an annual report on negotiations undertaken, where the Commission has negotiating authorisation in the various forums of international cooperation, to establish global standards in the field of officially supported export credits.

The first reporting period, under the scope of this Regulation, covers the year 2011.

[F1 ANNEX II

Textual Amendments

F1 Substituted by Commission Delegated Regulation (EU) 2018/179 of 25 September 2017 amending 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.

CHAPTER I

GENERAL PROVISIONS

1. PURPOSE

(a) The main purpose of the Arrangement on Officially Supported Export Credits, referred to throughout this document as the Arrangement, is to provide a framework for the orderly use of officially supported export credits.

(b) The Arrangement seeks to foster a level playing field for official support, as defined in Article 5(a), in order to encourage competition among exporters based on quality and price of goods and services exported rather than on the most favourable officially supported financial terms and conditions.

2. STATUS