II

(Acts whose publication is not obligatory)

COUNCIL

COUNCIL DECISION

of 3 March 1997

amending the Decision of 4 April 1978 on the application of certain guidelines in the field of officially supported export credits

(97/173/EC)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 113 thereof,

Having regard to the proposal from the Commission,

Whereas the Community is a party to the Arrangement on guidelines for officially supported export credits, hereinafter referred to as 'the Arrangement';

Whereas the Arrangement is the subject of the Council Decision of 4 April 1978; whereas the Annex to that Decision was last amended by Decision 93/112/EEC [1];

Whereas the participants in the Arrangement have drawn up additional guidelines for exports of used aircraft, spare engines and spare parts, and for aircraft maintenance contracts and service contracts;

Whereas the text of Annex IV to the Arrangement which appears in the Annex to the Decision of 4 April 1978 needs to be replaced by the new text of Annex IV,

HAS ADOPTED THIS DECISION:

Article 1

In the Annex to the Council Decision of 4 April 1978, Annex IV to the Arrangement is hereby replaced by the Annex to this Decision.

Article 2

This Decision shall apply immediately.

Article 3

This Decision is addressed to the Member States.

Done at Luxembourg, 3 March 1997.

For the Council

The President

M. DE BOER

[1] OJ No L 44, 22. 2. 1993, p. 1.

ANNEX

'ANNEX IV

SECTOR UNDERSTANDING ON EXPORT CREDITS FOR CIVIL AIRCRAFT

Chapter I

NEW LARGE COMMERCIAL AIRCRAFT

1. **Form and Scope**

This chapter complements the Arrangement on guidelines for officially supported export credits. Its sets out the particular complementary guidelines that are applicable to officially supported export credits for financing sales or leases of large civil aircraft listed in the appendix and supersedes the terms of the OECD 'Standstill' (TC/ECG/M/75.1, item 6 and Annex III-A) with respect to such aircraft.

2. **Objective of this chapter**

The objective of this chapter is to establish a balanced equilibrium that, on all markets:

— equalizes competitive financial conditions between participants,

— neutralizes finance among participants as a factor in the choice among competing aircraft, and

— avoids distortions of competition.

3. **Credit terms and conditions**

(a) *Cash payments*

The minimum cash payment is 15 % of the aircraft's total price (the price of the airframe and any installed engines plus the spare engines and spare parts described in paragraph 28). Participants shall not provide official support for such cash payments other than insurance and guarantees against the usual pre-credit risks.

(b) *Maximum repayment term*

The maximum repayment term of an officially supported credit is 12 years.

4. **Interest rates**

(a) *Minimum interest rates*

Notwithstanding the provisions of paragraph 5, the following minimum interest rates, inclusive of credit insurance premia and guarantees, apply where participants are providing official financing support by way of direct credit, refinancing or interest rate subsidy:

1. Financing in US dollars:

Number of years in maximum repayment term	
Up to 10 years	From 10 to 12 years
TB 10 + 120 basis points	TB 10 + 175 basis points

where TB 10 means 10-year Treasury bond yields at constant maturity, averaged over the previous two calendar weeks.

2. Financing in the currencies of the currency cocktail (German mark, French franc, pound sterling, ecu) (1)

A currency cocktail package, based on 10-year government bond yields for the German mark, French Franc and the pound sterling (2), plus a margin applies. This margin, calculated as a weighted average of the margins applicable to each currency, is equal to the margin applicable in the case of financing in US dollars.

In the case of financing in ecus the minimum rate applicable is the long-term ecu bond yield (3) less 20 basis points plus a margin equal to the margin applicable in the case of financing in US dollars.

(b) *Interest rate adjustments*

An adjustment is made to the minimum rates of interest set out in (a) if the two-weekly average of the 10-year government bond yields at constant maturity at the end of each two-week period differs by 10 basis points or more from the average of the 10-year government bond yield at constant maturity at the end of the last two calendar weeks of June 1985. When such a change occurs, the levels of the minimum rates of interest set out above are adjusted by the same number of basis points and the recalculated minimum rates are rounded off to the nearest five basis points. Subsequently, minimum rates of interest are adjusted on a two-weekly basis according to the aforementioned method if there is a change of 10 basis points or more in the interest rate underlying the preceding change in minimum rates of interest. Similar provisions apply to the ecus in the case of changes in the ecu bond yield.

(c) *Special adjustments*

1. If a participant believes that at least two significant sales in any six-month period:

(i) for which participants are direct competitors, and

(ii) on which offers have been made with official financial support (see paragraphs 5 (a) and (b)) have been concluded on a pure cover basis, other than Pefco, at a fixed interest rate below the applicable minimum interest rates specified in this chapter,

the participants shall consult immediately in order to determine the interest rates on the basis of which the sales have been concluded and, if necessary, to find a permanent solution that ensures that the objectives of paragraph 2 are fully met.

2. If during these consultations:

(i) it cannot be determined whether the interest rates for the sales in question were at, above, or equivalent to the applicable minimum interest rates specified in this chapter, and

(ii) if a solution cannot be found within 30 days from the start of the consultations,

then the minimum interest rates specified in paragraph 4 (a) (1) are reduced by 15 basis points, unless the participants agree that the sales concerned are not significant. In no case is the interest rate for the 10-year option reduced below TB 10 plus 105 basis points. Such adjustments are made without prejudice to continuing consultations to find a solution, including the possibility of a recoupment in the event that additional cases do not occur.

3. If, in any six-month period, two or more sales for which participants are direct competitors are concluded on a floating-rate pure cover basis, consultations to ensure that the objectives of paragraph 2 are fully met shall be held at the request of any participant.

(d) *Differential between 10- and 12-year financing options* (4)

1. If, subject to the conditions outlined below, at the end of the period between 1 July 1985 and 1 July 1986, 66 % or more of all sales of aircraft, financed either by means of official support or by Pefco, have been concluded on a 10-year term, then the minimum interest rate on the 10-year financing option shall be increased by 15 basis points.

If, during the following year, 66 % or more of all sales of aircraft, financed either by means of official support or by Pefco, have been concluded on a 10-year term, then the participants shall review the differential between 10- and 12-year financing options with a view to finding a permanent solution to the problem of equating the differential between the two options. If, on the other hand 66 % or more of the above sales have been concluded under the 10- to 12-year financing option, then the minimum interest rate on the 10-year financing option shall be decreased by 10 basis points.

2. If, subject to the conditions outlined below, at the end of the period 1 July 1985 and 1 July 1986, 66 % or more of all sales have been concluded on a 10- to 12-year term then the minimum interest rate on the 10-year financing option shall be decreased by 15 basis points.

   If, during the following year, 66 % or more of all sales of aircraft have been concluded under the 10- to 12-year term, then the participants shall review the differential between 10- and 12-year financing options with a view to finding a permanent solution to the problem of equating the differential between the two options. If, on the other hand, 66 % or more of the above sales have been concluded under the 10-year option, then the 10-year minimum interest rate shall be increased by 10 basis points.

(e) *Date of determination of interest rate offer*

A participant may offer the borrower a choice of one of the two following methods for selecting the date on which the minimum interest rate (as defined in paragraph 4 (a) *et seq.*) on official fixed interest rate financing (see paragraph 5 (a)) and on Pefco financing (see paragraph 5 (b)) is determined. The selection by the borrower is irrevocable. The minimum rate is:

(i) the minimum rate prevailing on the date of the offer by the lender, or

(ii) the minimum rate prevailing on whichever one of a series of dates may be selected by the borrower.

The date selected shall in no event be later than the date of delivery of the aircraft.

5. **Amount of financing**

(a) *Official fixed interest rate financing*

1. The maximum percentage of the aircraft total price (as that term is defined in paragraph 3 (a)) that may be financed at the fixed minimum rates specified in paragraph 4 (a) by means of official financing support is 62,5 % when repayment of the loan is spread over the entire life of the financing and 42,5 % when repayment of the loan is spread over the later maturities. Participants are free to use either repayment approach, subject to the ceiling applicable to that pattern. A participant offering such a tranche shall notify the other participants of the amount, the interest rate, the date on which the interest rate is set, the validity period for the interest rate and the pattern of repayment.

2. The participants will review the two ceilings at the time of each review pursuant to paragraph 14, to examine whether one ceiling provides more advantages than the other with a view to adjusting the more advantageous so that a balance is more evenly struck.

(b) *Pefco financing*

1. Fixed-rate funds may be officially financed in a manner comparable to that provided by the Private Export Funding Corporation (Pefco). Weekly information on Pefco's borrowing costs and applicable lending rates, exclusive of official guarantee fees on fixed-rate finance for immediate disbursement and for disbursements over a series of dates, for contract offers and for bid offers, shall be communicated to the other participants on a regular basis. A participant offering such a tranche shall notify the other participants of the amount, interest rate, date on which interest rate is set, validity period for the interest rate and pattern of repayments. Any participant matching such financing offered by another participant shall match it in all of its terms and conditions other than the validity period of offers of commitment (see paragraph 6).

2. These rates as notified shall be applicable by all participants as long as the 24-month disbursement interest rate does not exceed 225 basis points above TB 10 (see paragraph 4). In the event the 24-month rate exceeds 225 basis points, participants are free to apply the rate of 225 basis points for 24 months disbursement and all the corresponding rates and shall consult immediately with a view to finding a permanent solution.

(c) *'Pure cover' tranche*

Official support by menas of guarantees only ('pure cover') is permitted subject to the ceiling specified in (d). However, a participant offering such a tranche shall notify the other participants of the amount, term, pattern of repayments, and, where possible, interest rates.

(d) *Total official support*

The total amount of funds benefiting from official support pursuant to paragraph 5 (a), (b) and (c) shall not exceed 85 % of the total price as defined in paragraph 3 (a).

6. **Validity period of commitments**

The duration of fixed interest rate offers of commitment on the tranches of financing defined in paragraphs 5 (a) and (b) shall not exceed three months.

7. **Fees**

Commitment and management fees are not included in the interest rate.

8. **Security**

Participants retain the right to decide on security acceptable to themselves autonomously and will communicate fully to other participants on this point, as requested or when deemed appropriate.

9. **Aid credits**

There shall be no tied or partially untied aid credits (including tied and partially untied grants) for any item covered by the Sector Understanding. Participants shall not provide any other kind of financing on credit conditions that are more favourable than those set out in this Sector Understanding [5]. However, participants shall consider sympathetically any requests for a common line for tied or partially untied aid for humanitarian purposes.

10. **Model changes**

It is understood that when a loan contract has been concluded on one type of aircraft, the terms contained therein cannot be transferred to another type bearing a different model designation.

11. **Leases**

It is also understood that a participant may match a 12-year officially supported lease transaction with a 12-year repayment term and 85 % credit financing support, subject to the other terms and conditions of this chapter.

12. **Competition reference point**

In the event of officially supported competition, aircraft that are in the list of large civil aircraft in the Appendix and that compete with other aircraft may benefit from the same export credit terms and conditions.

13. **Procedures**

The procedures outlined in the Arrangement on guidelines for officially supported export credits apply to this chapter. In addition, should any participant believe that another participant is offering an officially supported export credit that is not in conformity with the Guidelines without giving advance notice, consultations shall be held within 10 days on request.

14. **Review**

The information procedures and conditions outlined in this chapter are subject, in principle, to an annual review. However, the participants shall review the provisions of this Chapter whenever requested, notably in relation to the possible development of certain financing and interest rate trends (see paragraph 4 (c) and (d)).

Chapter II

ALL NEW AIRCRAFT EXCEPT LARGE COMMERCIAL AIRCRAFT

15. **Form and scope**

This chapter complements the Arrangement on guidelines for officially supported export credits. It sets out the particular complementing Guidelines that are applicable to officially supported export credits financing contracts for the international sale or lease of new (not used) aircraft not covered by chapter I of this Sector Understanding. It does not apply to hovercraft.

16. **Participation**

The rules on participation of the Arrangement shall apply.

17. **Best endeavours**

The provisions of this chapter represent the most generous terms that participants are allowed to offer when giving official support. Participants shall however continue to respect customary market terms for different types of aircraft and shall do everything in their power to prevent these terms from being eroded (4).

18. **Categories of aircraft**

The following categories have been agreed on in view of the competitive situation:

A. Turbine-powered aircraft — including helicopters — (e.g. turbo jet, turbo-prop, and turbo-fan aircraft), with generally between 30 to 70 seats. In case a new large turbine-powered aircraft with over 70 seats is being developed, immediate consultations shall be held on request with a view to agree on the classification of such an aircraft in this category or in chapter I of this Sector Understanding in view of the competitive situation.

B. Other turbine-powered aircraft, including helicopters.

C. Other aircraft, including helicopters.

An illustrative list of aircraft in categories A and B is in the Appendix.

19. **Credit terms and conditions**

Participants undertake not to support credit terms more favourable than those set out in this paragraph.

Category A: 10 years at SDR-based rate for recipient countries classified in category III or respective CIRRs.

Category B: seven years at SDR-based rate for recipient countries classified in category III or respective CIRRs.

Category C: five years at SDR-based rate for recipient countries classified in category III or respective CIRRs.

20. **Sales or leases to third countries (relay countries)**

In cases where the aircraft are to be on-sold or on-leased to an end-buyer or end-user in a third country, the interest rate shall be that applicable to the country of final destination.

21. **Matching provisions**

In the event of officially supported competition, aircraft competing with those from another category or chapter shall, for a specific sale, be able to benefit from matching of the same export credit terms and conditions. Before making the matching offer, the matching authority shall make reasonable efforts to determine the export credit terms and conditions the competing aircraft benefits from. The matching authority will be considered to have made such reasonable efforts if it has informed, by means of instant communication, the authority assumed to offer the terms it intends to match of its intention to do so but has not been informed within three working days that the terms it intends to match will not be used to support the transaction in question.

22. **Insurance premiums and guarantee fees**

Participants shall not waive in part or in total insurance premiums or guarantee fees.

23. **Aid credits**

There shall be no tied or partially untied aid credits (including tied and partially untied grants) for any item covered by the Sector Understanding. Participants shall not provide any other kind of financing on credit conditions that are more favourable than those set out in this Sector Understanding (5). However, participants shall consider sympathetically any requests for a common line for tied or partially untied aid for humanitarian purposes.

24. **Consultation and notification procedures**

The procedures of the Arrangement shall apply officially supported export credits not in conformity with the terms of this Sector Understanding. In addition, should any participant believe that another participant may be offering an officially supported export credit not in conformity with this chapter without giving advance notice, consultations shall be held within 10 days on request.

25. **Review**

The provisions of this Chapter are subject to review annually, normally during the spring meeting of the participants of the Arrangement. In the review, the participants will examine possible modifications of the provisions, notably in order to bring them closer to market conditions. In addition, if market conditions or customary financing practices change considerably, any participant is entitled to ask for a special review of the provisions.

Chapter III

USED AIRCRAFT, SPARE ENGINES, SPARE PARTS, MAINTENANCE AND SERVICE CONTRACTS

26. **Form and scope**

This chapter complements the Arrangement on guidelines for officially supported export credits. It sets out the particular complementing Guidelines that are applicable to officially supported export credits financing contracts for the international sale or lease of used aircraft, and of spare engines, spare parts, maintenance and service in conjunction with both new and used aircraft. It does not apply to hovercraft.

Provisions in chapters I and II apply, except the following:

27. **Used aircraft**

Participants shall not support credit terms more favourable that those set out in this Sector Understanding for transactions concerning new aircraft. Notwithstanding these rules, the following applies to used aircraft:

— when official financing support is to be given, the minimum interest rate shall not be less than the relevant CIRR and

— the participants agree that the normal repayment terms for used aircraft are:

Age (years)	Normal maximum repayment terms (in years)			
	Large aircraft	Category A	Category B	Category C
1	10	8	6	5
2	9	7	6	5
3	8	6	5	4
4	7	6	5	4
5 to 10	6	6	5	4
> 10	5	5	4	3

These terms should be reviewed if the maximum lengths of credit for new aircraft are changed.

28. **Spare engines and spare parts**

The financing of these items when contemplated as part of the original aircraft order may be on the same terms as for the aircraft, but in that case will be provided as a function of the size of the fleet of each specific aircraft type, including aircraft being acquired, aircraft already on firm orders or aircraft already owned, on the following basis:

— for the first five aircraft of the type in the fleet: 15 % of the aircraft price (airframe and installed engines),

— for the sixth and subsequent aircraft of that type in the fleet: 10 % of the aircraft price (airframe and installed engines).

When these items are not ordered with the aircraft, participants may offer official support for up to five years for new spare engines and up to two years for other spare parts.

For new spare engines for large aircraft, Participants may exceed the standard maximum repayment term of five years up to three years where the transaction:

(a) has a minimum contract value exceeding US $ 20 million or

(b) includes a minimum of four new spare engines.

The contract value should be reviewed every two years and adjusted for price escalation accordingly.

Participants reserve the right to change their practice and match the practices of competing participants in matters of detail relating to the timing of the first repayment with respect to spare engines and spare parts.

29. **Maintenance and service contracts**

Participants may offer official financing support with a repayment term of up to two years for maintenance and service contracts.

30. **Consultation and notification procedures**

Transactions for used aircraft exceeding the normal repayment terms set out in paragraph 27, and up to the maximum allowable terms specified in paragraphs 3 (b) and 19, as the case may be, of the Sector Understanding, shall be subject to prior notification according to paragraph 15 (a) of the Arrangement. Paragraphs 10 (a) and 12 (a) of the Arrangement shall apply to these repayments terms.

31. **Review**

The provisions of this chapter are subject to review annually, normally during the spring meeting of the participants of the Arrangement. In the review, the participants will examine possible modifications of the provisions, notably in order to bring them closer to market conditions. In addition, if market conditions or customary financing practices change considerably, any participant is entitled to ask for a special review of the provisions.

Notes and references

(1) The 'currency cocktail' financing for the A 300 and A 310 consists of the following percentages of the following currencies:

— German mark or ecu: 40 %
— French franc or ecu: 40 %
— Pound sterling, US dollar or ecu: 20 %.

For the A 320, the 'currency cocktail' consists of the following percentages of the following currencies:

— German mark or ecu: 33,7 % (provisional)
— French franc or ecu: 40,0 % (provisional)
— Pound sterling, US dollar or ecu: 26,3 % (provisional).

(2) At constant maturity, averaged over the previous two calendar weeks.

(3) As published by the Luxembourg Stock Exchange — long-term bond series, averaged over the previous two calendar weeks.

(4) For the operational purposes of this paragraph, it is understood that:

— the test sample will include only those cases in which the two financing options have been offered by at least one participant,

— the activation of an interest rate adjustment may take place only if 66 % of sales of aircraft according to one option have been concluded under two or more separate transactions,

— the term 'sales of aircraft' signifies that each separate aircraft sold is included in the sample.

(5) Only untied grants are excluded from the ban on aid.

(6) Best endeavours shall be made, *inter alia*, with respect to the willingness to respond favourably to the invitation by another participant to consult on possibilities of achieving conditions as close to the market as possible, for example in matching.

Appendix

Illustrative lists

All other similar aircraft that may be introduced in the future shall be covered by this Sector Understanding and shall be added to the appropriate list in due course. These lists are not exhaustive and serve only to indicate the type of aircraft to be included in the different categories where doubts could arise.

Large civil aircraft

Manufacturer	*Designation*
Airbus	A 300
Airbus	A 310
Airbus	A 320
Airbus	A 321
Airbus	A 330
Airbus	A 340
Boeing	B 737
Boeing	B 747
Boeing	B 757
Boeing	B 767
Boeing	B 777
Boeing	707, 727
British Aerospace	RJ 70
British Aerospace	RJ 85
British Aerospace	RJ 100
British Aerospace	RJ 115
British Aerospace	BAe 146
Fokker	F 70
Fokker	F 100
Lockheed	L 100
McDonnell Douglas	MD-80 series
McDonnell Douglas	MD-11
McDonnell Douglas	DC-10
McDonnell Douglas	DC-9
Lockheed	L-1011

Category A aircraft

Turbine-powered aircraft — including helicopters — (e.g. turbo jet, turbo-prop and turbo-fan aircraft), with generally between 30 and 70 seats. In case a new large turbine-powered aircraft with over 70 seats is being developed, immediate consultations shall be held upon request with a view to agree on the classification of such an aircraft in this category or in chapter I of this Understanding in view of the competitive situation.

Manufacturer	*Designation*
Aeritalia	G 222
Aeritalia/Aérospatiale	ATR 42
Aeritalia/Aérospatiale	ATR 72
Aérospatiale/MBB	C 160 Transall
De Havilland	Dash 8
De Havilland	Dash 7
De Havilland	Dash 5
Boeing Vertol	234 Chinook
Broman (US)	BR 2000
British Aerospace	BAe ATP
British Aerospace	BAe 748
British Aerospace	BAe Jetstream 41
Canadair	CL 215T
Canadair	RJ
Casa	CN 235
Dornier	DO 328
EH Industries	EH-101
Embraer	EMB 120 Brasilia

Manufacturer	*Designation*
Fokker	F 50
Fokker	F 27
Fokker	F 28
Gulfstream America	Gulfstream I-4
Saab	SF 340
Saab	2000
Short	SD 3-30
Short	SD 3-60
Short	Sherpa
etc.	

Category B aircraft

Other turbine-powered aircraft, including helicopters.

Manufacturer	*Designation*
Aérospatiale	AS 332
Beech	1900
Beech	Super King Air 300
Beech	Starship 1
Bell Helicopter	206B
Bell Helicopter	206L
Bell Helicopter	212
Bell Helicopter	412
Bell Helicopter	214
British Aerospace	BAe Jetstream 31
British Aerospace	BAe 125
British Aerospace	BAe 1000
Raytheon Co. Jets Inc.	Hawker 1000
British Aerospace	BAe Jetstream Super 31
Canadair	Challenger 601
Canadair	CL 215 (water bomber)
Casa	C 212-200
Casa	C 212-300
Cessna	Citation
Cessna	441 Conquest III
Claudius Dornier	CD2
Dassault Breguet	Falcon
Dornier	Do 228-200
Embraer	EMB 110 P2
Embraer/FAMA	CBA 123
Fairchild	Merlin/300
Fairchild	Metro 25
Fairchild	Metro III V
Fairchild	Metro III
Fairchild	Metro III A
Fairchild	Merlin IVC-41
Gates Learjet	20, 30 and 55 series
Gulfstream America	Gulfstream III and IV
IAI	Arava 101B
Mitsubishi	Mu2 Marquise
Piaggio	P 180
Pilatus Britten-Norman	BN2T Islander
Piper	400 LS
Piper	T 1040
Piper	PA-42-100 (Cheyenne 400)
Piper	PA-42-720 (Cheyenne III A)
Piper	Cheyenne II
Reims	Cessna-Caravan II
SIAI-Marchetti	SF 600 Canguro
Westland	W30
etc.'	