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COUNCIL REGULATION (EC, EURATOM) No 2728/94

of 31 October 1994

establishing a Guarantee Fund for external actions

(OJ L 293, 12.11.1994, p. 1)

Amended by:

		Official Journal		
		No	page	date
►**M1**	Council Regulation (EC, Euratom) No 1149/1999 of 25 May 1999	L 139	1	2.6.1999
►**M2**	Council Regulation (EC, Euratom) No 2273/2004 of 22 December 2004	L 396	28	31.12.2004
►**M3**	Council Regulation (EC, Euratom) No 89/2007 of 30 January 2007	L 22	1	31.1.2007

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COUNCIL REGULATION (EC, EURATOM) No 2728/94

of 31 October 1994

establishing a Guarantee Fund for external actions

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 235 thereof,

Having regard to the Treaty establishing the European Atomic Energy Community, and in particular Article 203 thereof,

Having regard to the proposal from the Commission ([1]),

Having regard to the opinion of the European Parliament ([2]),

Having regard to the opinion of the Court of Auditors ([3]),

Whereas the general budget of the European Communities is exposed to increased financial risk as a result of the guarantees covering loans to third countries;

Whereas the European Council on 11 and 12 December 1992 concluded that considerations of prudent budgetary management and financial discipline called for the establishment of a new financial mechanism, and that accordingly a Guarantee Fund should be set up in order to cover the risks related to loans and guarantees covering loans granted to third countries or for projects executed in third countries; whereas it is possible to meet this need by the establishment of a Guarantee Fund which may be drawn on to pay the Community's creditors direct;

Whereas the institutions have agreed, pursuant to the Interinstitutional Agreement of 29 October 1993, to enter into the budget a reserve relating to lending and guarantee operations for the benefit of and in third countries;

Whereas mechanisms currently exist for honouring guarantees when they are activated, in particular by drawing provisionally on cash resources, as provided for in Article 12 of Council Regulation (EEC, Euratom) No 1552/89 of 29 May 1989 implementing Decision 88/376/EEC, Euratom on the system of the Communities' own resources ([4]);

Whereas the Guarantee Fund should be constituted by the gradual payment of resources; whereas the Fund will subsequently also receive interest on its invested resources and amounts recovered from defaulting debtors where the Fund has already honoured the guarantee;

Whereas, by reference to the practice of international financial institutions, a ratio of 10 % between the Guarantee Fund's resources and guaranteed liabilities in principal, increased by unpaid interest due, would seem adequate;

Whereas payments to the Guarantee Fund equal to 14 % of the amount of each operation would seem appropriate to attain this target amount; whereas the arrangements for making such payments must be defined;

Whereas, once the target amount is attained, the provisioning rate will be reviewed, whereas if the Guarantee Fund exceeds the target amount

([1]) OJ No C 68, 11. 3. 1993, p. 10.
([2]) OJ No C 315, 22. 11. 1993, p. 235.
([3]) OJ No C 170, 21. 6. 1993, p. 25.
([4]) OJ No L 155, 7. 6. 1989, p. 1. Regulation as last amended by Regulation (EC, Euratom) No 2729/94 (see page 5 of this Official Journal).

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the surplus will be paid back to the general budget of the European Communities;

Whereas the financial management of the Guarantee Fund should be entrusted to the European Investment Bank (EIB); whereas the financial management of the Fund should be subject to audit by the Court of Auditors in accordance with procedures to be agreed upon by the Court of Auditors, the Commission and the European Investment Bank;

Whereas the Treaties do not provide any powers other than those pursuant to Article 235 of the EC Treaty and Article 203 of the EAEC Treaty for the adoption of this Regulation,

HAS ADOPTED THIS REGULATION:

Article 1

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A Guarantee Fund, hereinafter referred to as the 'Fund', shall be established, the resources of which shall be used to repay the Community's creditors in the event of default by the beneficiary of a loan granted or guaranteed by the Community or of a loan guarantee issued by the European Investment Bank for which the Community provides a guarantee.

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The lending and guarantee operations referred to in the first paragraph, hereinafter refered to as 'operations', shall be those carried out for the benefit of a third country or for the purpose of financing projects in third countries.

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All operations carried out for the benefit of a third country or for the purpose of financing projects in a third country shall fall outside the scope of this Regulation with effect from the date on which that country accedes to the European Union.

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Article 2

The Fund shall be endowed by:

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— one annual payment from the general budget of the European Union pursuant to Articles 4 and 5,

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— interest on Fund resources invested,

— amounts recovered from defaulting debtors where the Fund has already honoured the guarantee.

Article 3

The Fund shall rise to an appropriate level, hereinafter referred to as 'the target amount'.

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The target amount shall be 9 % of the Community total outstanding capital liabilities arising from each operation, increased by unpaid interest due.

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On the basis of the year-end 'n–1' difference between the target amount and the value of the Fund's net assets, calculated at the beginning of the year 'n', any surplus shall be paid in one transaction to a special

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heading in the statement of revenue in the general budget of the European Union of the year ‘n+1’.

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Article 3a

Following the accession of a new Member State to the European Union, the target amount shall be reduced by an amount calculated on the basis of the operations referred to in the third subparagraph of Article 1.

In order to calculate the amount of the reduction, the percentage rate referred to in the second subparagraph of Article 3 applicable on the date of accession shall be applied to the amount of those operations outstanding on that date.

The surplus shall be paid back to a special heading in the statement of revenue in the general budget of the European Union.

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Article 4

Based on the year-end ‘n–1’ difference between the target amount and the value of the Fund's net assets, calculated at the beginning of the year ‘n’, the required provisioning amount shall be paid into the Fund in one transaction in the year ‘n+1’ from the general budget of the European Union.

Article 5

1. If, as a result of one or more defaults, the activation of guarantees during year ‘n–1’ exceeds EUR 100 million, the amount exceeding EUR 100 million shall be paid back into the Fund in annual tranches starting in year ‘n+1’ and continuing over the following years until full repayment (smoothing mechanism). The size of the annual tranche is the lesser of the following:

— EUR 100 million, or

— the remaining amount due in accordance with the smoothing mechanism.

Any amount resulting from the activation of guarantees in years preceding year ‘n–1’, that has not yet been repaid in full due to the smoothing mechanism, shall be paid back before the smoothing mechanism for defaults occurring in year ‘n–1’ or subsequent years can take effect. Such remaining amounts shall continue to be deducted from the maximum annual amount to be recovered from the general budget of the European Union under the smoothing mechanism until such time as the full amount has been paid back into the Fund.

2. The calculations based on the smoothing mechanism shall be made separately from the calculations referred to in the third subparagraph of Article 3 and in Article 4. Nevertheless, they shall together result in one annual transfer. The amounts to be paid from the general budget of the European Union under the smoothing mechanism shall be treated as net assets of the Fund for the calculation pursuant to Articles 3 and 4.

3. If, as a result of the activation of guarantees following one or more major defaults, resources in the Fund fall below 80 % of the target amount, the Commission shall inform the budgetary authority thereof.

4. If, as a result of the activation of guarantees following one or more major defaults, resources in the Fund fall below 70 % of the target amount, the Commission shall submit a report on exceptional measures that may be required to replenish the Fund.

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Article 6

The Commission shall entrust the financial management of the Fund to the EIB under a brief on the Community's behalf.

Article 7

The Commission shall, by no later than ►M2 31 May ◄ of the following financial year, send to the European Parliament, the Council and the Court of Auditors an annual report on the situation of the Fund and the management thereof in the previous year.

Article 8

The revenue and expenditure account and the balance sheet relating to the Fund shall be attached to the Communities' revenue and expenditure account and balance sheet.

Article 9

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The Commission shall submit to the European Parliament and the Council comprehensive reports on the functioning of the Fund, both at the time of the conclusion of the first accession agreement with the applicant States, and before 31 December 2006. The Commission shall, if necessary, submit to the Council appropriate proposals for modification of the parameters of the Fund.

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Article 10

This Regulation shall enter into force on the seventh day following its publication in the *Official Journal of the European Communities*.

Article 4 shall apply to operations decided on and committed as from 1 January 1993.

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

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