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(Acts adopted under the EC Treaty/Euratom Treaty whose publication is obligatory)

REGULATIONS

COUNCIL REGULATION (EC, EURATOM) No 89/2007

of 30 January 2007

amending Council Regulation (EC, Euratom) No 2728/94 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 308 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,

Having regard to the opinion of the European Parliament [1],

Having regard to the opinion of the Court of Auditors [2],

Whereas:

(1) The efficiency of the use made of budgetary means reserved for the Guarantee Fund established by Council Regulation (EC, Euratom) No 2728/94 [3] should be improved and the administrative work related to the budgetary management of the Guarantee Fund reduced.

(2) The transparency and programming of budgetary transactions in relation to the provisioning of the Guarantee Fund should be enhanced.

(3) The Interinstitutional Agreement between the European Parliament, the Council and the Commission on budgetary discipline and sound financial management [4] adopted on 17 May 2006 sets the multiannual financial framework of the European Union for the period 2007 to 2013. Pursuant to the Interinstitutional Agreement, the funding of the Guarantee Fund is provided for as an obligatory expenditure from the general budget of the European Union for that period.

(4) The main function of the Guarantee Fund, namely to shield the general budget of the European Union against shocks due to defaults on loans or guaranteed loans covered by the Fund, should be maintained.

(5) The Guarantee Fund covers defaults under loans issued by the European Investment Bank (hereinafter the EIB) for which the Community provides a guarantee under the EIB's external mandate. In addition, in line with the EIB's external mandate as taking effect from 1 February 2007, the Fund should also cover defaults under loan guarantees issued by the EIB for which the Community provides a guarantee.

(6) Council Regulation (EC, Euratom) No 2728/94 should therefore be amended accordingly.

(7) The Treaties provide for no powers, other than those in Article 308 of the EC Treaty and Article 203 of the Euratom Treaty, for the adoption of this Regulation,

HAS ADOPTED THIS REGULATION:

Article 1

Council Regulation (EC, Euratom) No 2728/94 is hereby amended as follows:

1. in Article 1, the first subparagraph shall be replaced by the following:

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[1] Opinion delivered on 14 March 2006 (not yet published in the Official Journal).
[2] OJ C 313, 9.12.2005, p. 6.
[3] OJ L 293, 12.11.1994, p. 1. Regulation as last amended by Regulation (EC, Euratom) No 2273/2004 (OJ L 396, 31.12.2004, p. 28).
[4] OJ C 139, 14.6.2006, p. 1.

'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.';

2. in Article 2, the first indent shall be replaced by the following:

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

3. in Article 3, the third subparagraph shall be replaced by the following:

'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 heading in the statement of revenue in the general budget of the European Union of the year "n+1".';

4. Article 4 shall be replaced by the following:

'*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.';

5. Article 5 shall be replaced by the following:

'*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.';

6. the Annex shall be deleted.

Article 2

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

It shall apply from 1 January 2007.

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

Done at Brussels, 30 January 2007.

For the Council
The President
P. STEINBRÜCK