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COUNCIL REGULATION (EC, EURATOM) No 480/2009

of 25 May 2009

establishing a Guarantee Fund for external actions

(Codified version)

(OJ L 145, 10.6.2009, p. 10)

Amended by:

		Official Journal		
		No	page	date
►**M1**	Regulation (EU) 2018/409 of the European Parliament and of the Council of 14 March 2018	L 76	1	19.3.2018

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(Codified version)

Article 1

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

The lending and guarantee operations referred to in the first paragraph (hereinafter referred 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.

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.

Article 2

The Fund shall be endowed by:

— one annual payment from the general budget of the European Union pursuant to Articles 5 and 6,

— interest on Fund resources invested,

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

▼M1

— risk-premium revenues generated under the financing operations of the EIB for which the Union provides a guarantee which is remunerated.

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Article 3

The Fund shall rise to an appropriate level (hereinafter referred to as the target amount).

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

▼**M1**

If the amount of the Fund exceeds 10 % of the Union's total outstanding capital liabilities, the surplus shall be paid back into the general budget of the European Union. That 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 on the basis of the year-end n – 1 difference between 10 % of the Union's total outstanding capital liabilities amount and the value of the Fund's net assets, calculated at the beginning of the year n.

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Article 4

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 paragraph of Article 1.

In order to calculate the amount of the reduction, the percentage rate referred to in the second paragraph 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.

Article 5

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 6

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 shall be 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 paragraph of Article 3 and in Article 5. 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 5.

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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.

▼M1

Article 7

The Commission shall entrust the financial management of the Fund to the EIB.

By 30 June 2019, the Commission shall submit to the European Parliament and to the Council an independent external evaluation of the advantages and disadvantages of entrusting the financial management of the assets of the Fund and of the European Fund for Sustainable Development to the Commission, the EIB, or a combination of the two, taking into account the relevant technical and institutional criteria used in comparing asset-management services, including the technical infrastructure, a comparison of costs for the services given, the institutional set-up, reporting, performance, accountability and the expertise of each institution and the other asset-management mandates for the general budget of the European Union. The evaluation shall, where appropriate, be accompanied by a legislative proposal.

Article 8

The Commission shall, by 31 May of each year, submit to the European Parliament, to the Council and to the Court of Auditors an annual report on the management of the Fund in the previous calendar year. The annual report shall contain a presentation of the financial position and information on the functioning of the Fund at the end of the previous calendar year, the financial flows as well as the significant transactions and any relevant information on the financial accounts, such as detailed information on the outstanding capital of guaranteed loans or the Fund's assets during the previous calendar year, as well as conclusions and lessons learned. The report shall also include information about the financial management and performance and the risk of the Fund at the end of the previous calendar year. As of 2019 and every third year thereafter, it shall also include an assessment on the adequacy of the 9 % target and the 10 % threshold for the Fund, as referred to in the second and third paragraphs of Article 3 respectively.

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Article 9

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.

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Article 10

Regulation (EC, Euratom) No 2728/94, is repealed.

References to the repealed Regulation shall be construed as references to this Regulation and be read in accordance with the correlation table set out in Annex II.

Article 11

This Regulation shall enter into force on the 20th 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

Repealed Regulation with list of its successive amendments

Council Regulation (EC, Euratom) No 2728/94	(OJ L 293, 12.11.1994, p. 1).
Council Regulation (EC, Euratom) No 1149/1999	(OJ L 139, 2.6.1999, p. 1).
Council Regulation (EC, Euratom) No 2273/2004	(OJ L 396, 31.12.2004, p. 28).
Council Regulation (EC, Euratom) No 89/2007	(OJ L 22, 31.1.2007, p. 1).

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ANNEX II

Correlation table

Regulation (EC, Euratom) No 2728/94	This Regulation
Articles 1, 2 and 3	Articles 1, 2 and 3
Article 3a	Article 4
Article 4	Article 5
Article 5	Article 6
Article 6	Article 7
Article 7	Article 8
Article 8	Article 9
Article 9	—
—	Article 10
Article 10, first paragraph	Article 11
Article 10, second paragraph	—
—	Annex I
—	Annex II