

EN

EN

EN



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 17.6.2008  
COM(2008) 365 final

2008/0117 (CNS)

Proposal for a

**COUNCIL REGULATION (EC, Euratom) No .../..**

**establishing a Guarantee Fund for external actions**

**(Codified version)**

(presented by the Commission)

## EXPLANATORY MEMORANDUM

1. In the context of a people's Europe, the Commission attaches great importance to simplifying and clarifying Community law so as to make it clearer and more accessible to the ordinary citizen, thus giving him new opportunities and the chance to make use of the specific rights it gives him.

This aim cannot be achieved so long as numerous provisions that have been amended several times, often quite substantially, remain scattered, so that they must be sought partly in the original instrument and partly in later amending ones. Considerable research work, comparing many different instruments, is thus needed to identify the current rules.

For this reason a codification of rules that have frequently been amended is also essential if Community law is to be clear and transparent.

2. On 1 April 1987 the Commission therefore decided<sup>1</sup> to instruct its staff that all legislative acts should be codified after no more than ten amendments, stressing that this is a minimum requirement and that departments should endeavour to codify at even shorter intervals the texts for which they are responsible, to ensure that the Community rules are clear and readily understandable.
3. The Conclusions of the Presidency of the Edinburgh European Council (December 1992) confirmed this<sup>2</sup>, stressing the importance of codification as it offers certainty as to the law applicable to a given matter at a given time.

Codification must be undertaken in full compliance with the normal Community legislative procedure.

Given that no changes of substance may be made to the instruments affected by codification, the European Parliament, the Council and the Commission have agreed, by an interinstitutional agreement dated 20 December 1994, that an accelerated procedure may be used for the fast-track adoption of codification instruments.

4. The purpose of this proposal is to undertake a codification of Council Regulation (EC, Euratom) No 2728/94 of 31 October 1994 establishing a Guarantee Fund for external actions<sup>3</sup>. The new Regulation will supersede the various acts incorporated in it<sup>4</sup>; this proposal fully preserves the content of the acts being codified and hence does no more than bringing them together with only such formal amendments as are required by the codification exercise itself.

---

<sup>1</sup> COM(87) 868 PV.

<sup>2</sup> See Annex 3 to Part A of the Conclusions.

<sup>3</sup> Carried out pursuant to the Communication from the Commission to the European Parliament and the Council - Codification of the *acquis communautaire*, COM(2001) 645 final.

<sup>4</sup> Annex I to this proposal.

5. The codification proposal was drawn up on the basis of a preliminary consolidation, in all official languages, of Regulation (EC, Euratom) No 2728/94 and the instruments amending it, carried out by the Office for Official Publications of the European Communities, by means of a data-processing system. Where the Articles have been given new numbers, the correlation between the old and the new numbers is shown in a table contained in Annex II to the codified Regulation.

---

↓ 2728/94

2008/0117 (CNS)

Proposal for a

**COUNCIL REGULATION (EC, Euratom) No .../..**

**of [...]**

**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~~ 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<sup>1</sup>,

Having regard to the opinion of the European Economic and Social Committee<sup>2</sup>,

Whereas:

---

↓

- (1) Council Regulation (EC, Euratom) No 2728/94 of 31 October 1994 establishing a Guarantee Fund for external actions<sup>3</sup> has been substantially amended several times<sup>4</sup>. In the interests of clarity and rationality the said Regulation should be codified.

---

<sup>1</sup> OJ C [...], [...], p. [...].

<sup>2</sup> OJ C [...], [...], p. [...].

<sup>3</sup> OJ L 293, 12.11.1994, p. 1. Regulation as last amended by Regulation (EC, Euratom) No 89/2007 (OJ L 22, 31.1.2007, p. 1).

<sup>4</sup> See Annex I.

---

↓ 2728/94 Recital 1 (adapted)

- (2) The general budget of the European ~~Union~~ ~~Communities~~ is exposed to ~~a~~ ~~increased~~ financial risk as a result of the guarantees covering loans to third countries.

---

↓ 2728/94 Recital 2 (adapted)

- (3) 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. ~~It is possible to meet this~~ ~~This~~ ~~need~~ can be met ~~by~~ the establishment of a Guarantee Fund which may be drawn on to pay the ~~Community's~~ ~~Communities'~~ ~~creditors~~ direct.

---

↓ 2728/94 Recital 3 and 89/2007  
Recital 3 (adapted)

- (4) ~~The institutions have agreed,~~ Pursuant to the Interinstitutional Agreement ~~between the European Parliament, the Council and the Commission on budgetary discipline and sound financial management, adopted on 17 May 2006~~<sup>5</sup> ~~of 29 October 1993,~~ ~~the funding of the Guarantee Fund is provided for as an obligatory expenditure from the general budget of the European Union~~ ~~to enter into the budget a reserve relating to lending and guarantee operations for the benefit of and in third countries.~~

---

↓ 2728/94 Recital 4 (adapted)

- (5) 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 ~~1150/2000~~ of 22 May 2000 implementing Decision 2000/597/EC, Euratom on the system of the Communities' own resources<sup>6</sup> ~~1552/89 of 29 May 1989 implementing Decision 88/376/EEC, Euratom on the system of the Communities' own resources~~<sup>7</sup>.

---

<sup>5</sup> OJ C 139, 14.6.2006, p. 1.

<sup>6</sup> OJ L 130, 31.5.2000, p. 1. Regulation as amended by Regulation (EC, Euratom) No 2028/2004 (OJ L 352, 27.11.2004, p. 1).

<sup>7</sup> 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).

---

↓ 2728/94 Recital 5

- (6) The Guarantee Fund should be constituted by the gradual payment of resources. 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.

---

↓ 2728/94 Recital 6 (adapted)

- (7)  Experience of the functioning of the Guarantee Fund indicates that a ratio of 9%  ~~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  be  ~~seen~~ adequate.

---

↓ 2728/94 Recital 7 (adapted)

- (8) Payments to the Guarantee Fund equal to  9%  ~~14%~~ of the amount of each operation would seem  sufficient  ~~appropriate~~ to attain the ~~this~~ target amount. The arrangements for making such payments  should  ~~must~~ be defined.

---

↓ 2728/94 Recital 8 (adapted)

- (9) ~~Once the target amount is attained, the provisioning rate will be reviewed.~~ If the Guarantee Fund exceeds the target amount, the surplus ~~will~~  should  be paid back to the general budget of the European  Union  ~~Communities~~.

---

↓ 2728/94 Recital 9 (adapted)

- (10) The financial management of the Guarantee Fund should be entrusted to the European Investment Bank ( hereinafter referred to as the  'EIB'). 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~~  EIB .

---

↓ 2273/2004 Recital 3 (adapted)

- (11)  The Communities have granted loans and guaranteed loans to accession countries or for projects executed in those countries. Those loans and guarantees are covered by the Guarantee Fund and will remain outstanding or in force after the date of accession. From that date, they will cease to be external actions of the Communities and should therefore be covered directly by the general budget of the European Union and no longer by the Guarantee Fund.

---

↓ 89/2007 Recital 5 (adapted)

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

↓ 2728/94 Recital 10

- (13) The Treaties do not provide any powers other than those pursuant to Article ~~235~~ 308 of the EC Treaty and Article 203 of the Euratom Treaty for the adoption of this Regulation,
- 

↓ 2728/94

HAS ADOPTED THIS REGULATION:

*Article 1*

---

↓ 89/2007 Art. 1 pt. 1 (adapted)

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

---

↓ 2728/94

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.

---

↓ 2273/2004 Art. 1 pt. 1

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.



---

↓ 2728/94

*Article 2*

The Fund shall be endowed by:

---

↓ 89/2007 Art. 1 pt. 2

- one annual payment from the general budget of the European Union pursuant to Articles 54 and 56,

---

↓ 2728/94

- 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’.

---

↓ 1149/1999 Art. 1 pt. 1  
(adapted)

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

---

↓ 89/2007 Art. 1 pt. 3

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’.

---

↓ 2273/2004 Art. 1 pt. 2

*Article ~~34~~*

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 ~~sub~~paragraph of Article 1.

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

---

↓ 89/2007 Art. 1 pt. 4

*Article ~~44~~*

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.

---

↓ 89/2007 Art. 1 pt. 5

*Article ~~54~~*

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 ~~sub~~paragraph of Article 3 and in Article ~~4~~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 ~~4~~5.

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.

---

↓ 2728/94 (adapted)

*Article ~~6~~7*

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

---

↓ 2728/94  
→<sub>1</sub> 2273/2004 Art. 1 pt. 3

*Article ~~7~~8*

The Commission shall, by no later than →<sub>1</sub> 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~~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.

---

↓ 2728/94 (adapted)

~~Article 9~~

---

↓ 1149/1999 Art. 1 pt. 4  
(adapted)

~~The Commission shall submit to the European Parliament and the Council a 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.~~

---

↓

*Article 10*

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

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

---

↓ 2728/94 (adapted)

*Article ~~10~~11*

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

Done at Brussels, [...]

*For the Council  
The President  
[...]*



**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)

---

## 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