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DECISIONS ADOPTED JOINTLY BY THE EUROPEAN PARLIAMENT AND THE COUNCIL

DECISION No 633/2009/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 13 July 2009

granting a Community guarantee to the European Investment Bank against losses under loans and loan guarantees for projects outside the Community

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Articles 179 and 181a thereof,

Having regard to the proposal from the Commission,

Acting in accordance with the procedure laid down in Article 251 of the Treaty ⁽¹⁾,

Whereas:

(1) Since 1963, the European Investment Bank (EIB) has undertaken operations outside the Community in support of the Community's external policies.

(2) Most of those operations have been carried out upon the request of the Council and have benefited from a Community budgetary guarantee administered by the Commission. Most recently, the Community guarantee was established for the period 2000-2007 by Council Decision 2008/580/EC of 23 June 2008 granting a Community guarantee against losses under loans for projects outside the Community (South-eastern neighbours, Mediterranean countries, Latin America and Asia and the Republic of South Africa) ⁽²⁾ and by Council Decisions 2001/777/EC of 6 November 2001 granting a Community guarantee to the European Investment Bank against losses under a special lending action for

selected environmental projects in the Baltic Sea basin of Russia under the Northern Dimension ⁽³⁾ and 2005/48/EC of 22 December 2004 granting a Community guarantee to the European Investment Bank against losses under loans for certain types of projects in Russia, Ukraine, Moldova and Belarus ⁽⁴⁾ for regionally specific lending actions.

(3) With a view to supporting the Community's external action without affecting the EIB's credit standing, the EIB should be offered a Community budgetary guarantee for operations carried out outside the Community. The EIB should be encouraged to increase its operations outside the Community without recourse to the Community guarantee, particularly in the pre-accession countries and Mediterranean countries as well as in investment grade countries in other regions, while the nature of the coverage of the Community guarantee should be clarified as covering risks of a political or sovereign nature.

(4) The Community guarantee should cover losses under loans and loan guarantees for EIB-eligible investment projects carried out in countries covered by the Instrument for Pre-Accession Assistance ⁽⁵⁾ (IPA), the European Neighbourhood and Partnership Instrument ⁽⁶⁾ (ENPI) and the Development Cooperation Instrument ⁽⁷⁾ (DCI), where the loan financing or guarantee has been granted according to a signed agreement which has neither expired nor been cancelled (EIB financing operations).

⁽¹⁾ Opinion of the European Parliament of 25 March 2009 (not yet published in the Official Journal) and Council Decision of 7 July 2009.

⁽²⁾ OJ L 186, 15.7.2008, p. 30.

⁽³⁾ OJ L 292, 9.11.2001, p. 41.

⁽⁴⁾ OJ L 21, 25.1.2005, p. 11.

⁽⁵⁾ Council Regulation (EC) No 1085/2006 (OJ L 210, 31.7.2006, p. 82).

⁽⁶⁾ Regulation (EC) No 1638/2006 of the European Parliament and of the Council (OJ L 310, 9.11.2006, p. 1).

⁽⁷⁾ Regulation (EC) No 1905/2006 of the European Parliament and of the Council (OJ L 378, 27.12.2006, p. 41).

- (5) The amounts covered by the Community guarantee under this Decision should represent ceilings for financing by the EIB under the Community guarantee. They should not form targets that the EIB is obliged to meet.
- (6) The Community's external relations policies have been revised and broadened in recent years. This has notably been the case for the Pre-Accession Strategy, for the European Neighbourhood Policy, for the renewed partnerships with Latin America and South-East Asia and for the European Union's Strategic Partnerships with Russia, Central Asia, China and India. This is further the case in relation to the Community's development policies, which have now been extended to include all developing countries. Those development policies are one of the pillars of the Community's external relations, affording a solution tailored to the needs of developing countries.
- (7) From 2007, the Community's external relations have also been supported by the new financial instruments, i.e. the IPA, the ENPI, the DCI, the European Instrument for Democracy and Human Rights (EIDHR) ⁽¹⁾ and by the Instrument for Stability ⁽²⁾.
- (8) EIB financing operations should be consistent with and support the Community's external policies including specific regional objectives and should contribute to the general objective, as referred to in Articles 177 and 179 of the Treaty, of promoting and consolidating democracy and the rule of law, human rights and fundamental freedoms, and to the observance of international environmental agreements to which the Community is a party. In relation to developing countries in particular, EIB financing operations should foster: sustainable economic and social development of these countries, more particularly in the most disadvantaged amongst them; their smooth and gradual integration into the world economy; the campaign against poverty; the general objective of developing and consolidating democracy and the rule of law; the general objective of respecting human rights and fundamental freedoms; as well as compliance with objectives approved by the Community in the context of the United Nations and other competent international organisations. By ensuring overall coherence with Community actions, EIB financing should be complementary to corresponding Community assistance policies, programmes and instruments in the different regions. Moreover, the protection of the environment and energy security of the Member States should form part of the EIB's financing objectives in all eligible regions. EIB financing operations should take place in countries complying with appropriate conditionality consistent with Community high level agreements on political and macroeconomic aspects.
- (9) The policy dialogue between the Commission and the EIB, as well as strategic planning and coherence between EIB and Commission financing, should be strengthened. The link between EIB activities outside the Community and Community policies should be strengthened via enhanced cooperation between the EIB and the Commission at central, as well as at field level. Such strengthened coordination should include, inter alia, early mutual consultation with respect to policy matters, preparation of papers of mutual significance and project pipelines. Of particular importance is early consultation on strategic programming documents prepared by the Commission or by the EIB, to maximise synergies between EIB and Commission activities and measure progress towards the fulfilment of relevant Community policy objectives.
- (10) With regard to pre-accession countries, EIB financing in those countries should reflect the priorities established in the Accession and European Partnerships, in the Stabilisation and Association agreements and in negotiations with the Community. The focus of Community action in the Western Balkans should continue to shift progressively from reconstruction to pre-accession support. In this context, the EIB activity should, in addition, also seek to encourage the institution building aspect, where relevant, in cooperation with other international financial institutions active in the region. Over the period 2007-2011, financing to candidate countries (Croatia, Turkey and the former Yugoslav Republic of Macedonia) should increasingly take place under the Pre-Accession Facility made available by the EIB, which should be extended over time to cover the potential candidate countries in the Western Balkans in line with the progress of their accession process.
- (11) With regard to countries covered by the ENPI, the EIB should continue and consolidate its activities relating to the Mediterranean region, enhancing its focus on private sector development. In this respect, cooperation by partner countries to facilitate private sector development and encourage structural reform, in particular financial sector reform, is needed, as well as other measures to facilitate EIB activities, in particular to ensure that the EIB can issue bonds in local markets. As regards Eastern Europe, Southern Caucasus and Russia, the EIB should enhance its activities in the countries concerned in line with appropriate conditionality consistent with Community high-level agreements with the country in question on political and macroeconomic aspects. In this region, the EIB should finance projects of significant interest to the Community in transport, energy, telecommunications and environmental infrastructure. Priority should be given to projects on extended major Trans-European Network axes, projects with cross-border implications for one or more Member States and major projects favouring regional integration through increased connectivity. In the environmental sector, the EIB should in Russia give particular priority to projects within the framework of the Northern Dimension Environmental Partnership. In the energy sector, strategic energy supply and energy transport projects are of
- ⁽¹⁾ Regulation (EC) No 1889/2006 of the European Parliament and of the Council (OJ L 386, 29.12.2006, p. 1).
- ⁽²⁾ Regulation (EC) No 1717/2006 of the European Parliament and of the Council (OJ L 327, 24.11.2006, p. 1).

particular importance, in line with the objective of Community policy of diversifying energy sources and with a view to guaranteeing stable and secure resources for consumers. EIB financing operations in this region should be carried out in close cooperation with the European Bank for Reconstruction and Development (EBRD), in particular according to the terms set out in a tripartite Memorandum of Understanding between the Commission, the EIB and the EBRD.

- (12) EIB financing in Asian and Latin American countries will be progressively aligned with the Union's cooperation strategy in those regions and be complementary to instruments financed by Community budgetary resources. The EIB should endeavour to progressively expand its activities across a larger number of countries in those regions, including in less prosperous countries. In support of Community objectives, EIB financing in Asian and Latin American countries should focus on environmental sustainability (including climate change mitigation) and energy security projects, as well as the continued support of the Union's presence in Asia and Latin America through foreign direct investment, and the transfer of technology and know-how. Taking into account cost-efficiency, the EIB should be able to work also directly with local companies, in particular in the field of environmental sustainability and energy security. The mid-term review will re-examine the objectives of EIB financing in Asia and Latin America.
- (13) In Central Asia, the EIB should focus on major energy supply and energy transport projects which also serve Community energy interests and are consistent with and support the Community policy objectives of diversification of energy sources and the Kyoto requirements, and of enhancement of environmental protection. EIB financing in Central Asia should be carried out in close cooperation with the EBRD, in particular according to the terms set out in a tripartite Memorandum of Understanding between the Commission, the EIB and the EBRD.
- (14) To complement the EIB activities under the Partnership agreement between the members of the African, Caribbean and Pacific Group of States of the one part, and the European Community and its Member States, of the other part ⁽¹⁾, (the Cotonou Agreement) for countries concerned, in South Africa the EIB should focus on infrastructure projects of public interest (including municipal infrastructure, power and water supply) and private sector support, including small and medium-sized enterprises. The implementation of the provisions on economic cooperation under the Agreement on Trade, Development and Cooperation between the European Community and its Member States, of the one part, and the Republic of South Africa, of the other part ⁽²⁾, will further promote EIB activities in this region.
- (15) With a view to enhancing the coherence of overall Community support in the regions concerned, opportunities should be sought to combine EIB financing with Community budgetary resources as appropriate, in the form of grant support, risk capital and interest rate subsidies, alongside technical assistance for project preparation, implementation or enhancement of the legal and regulatory framework, through the IPA, the ENPI, the Instrument for Stability, the EIDHR and, for South Africa, the DCI.
- (16) The EIB already closely cooperates with international financial institutions and with European bilateral institutions. This cooperation is guided by regionally specific Memoranda of Understanding, which should be approved by the governing bodies of the EIB. In its financing operations outside the Community that fall within the scope of this Decision, the EIB should endeavour to further enhance coordination and cooperation with international financial institutions and with European bilateral institutions where relevant, including, where appropriate, cooperation on sector conditionality, increased use of co-financing and participation with other international financial institutions in global initiatives, such as those promoting aid coordination and efficiency.
- (17) The reporting and transmission of information by the EIB and the Commission on EIB financing operations should be strengthened. On the basis of the information received from the EIB, the Commission should report, on an annual basis, to the European Parliament and the Council on the EIB financing operations carried out under this Decision. The report should, in particular, contain the strategic documents and include a section on added value in line with Community policies, and a section on cooperation with the Commission, other international financial institutions and bilateral donors, including on cofinancing.
- (18) The Community guarantee established by this Decision should cover EIB financing operations signed during the period beginning on 1 February 2007 and ending on 31 October 2011. In order to be able to take stock of the developments during the first half of that period, the EIB and the Commission should prepare a mid-term review of the Decision. Such a review should in particular include an external evaluation, the terms of reference of which are specified in Annex II.
- (19) EIB financing operations should continue to be managed in accordance with the EIB's own rules and procedures, including appropriate control measures, as well as with the relevant rules and procedures concerning the Court of Auditors and the European Anti-Fraud Office (OLAF).

⁽¹⁾ OJ L 317, 15.12.2000, p. 3.

⁽²⁾ OJ L 311, 4.12.1999, p. 3.

- (20) The Guarantee Fund for External Action (the 'Guarantee Fund'), established by Council Regulation (EC, Euratom) No 2728/94 ⁽¹⁾, should continue to provide a liquidity cushion for the Community budget against losses on EIB financing operations.
- (21) The EIB should prepare, in consultation with the Commission, an indicative multi-annual programme of the volume of signatures of EIB financing operations, so as to ensure an appropriate budgetary plan for provisioning the Guarantee Fund. The Commission should take account of this plan in its regular budget programming transmitted to the budgetary authority.
- (22) By its judgment of 6 November 2008 in Case C-155/07 (Parliament v Council), the Court of Justice of the European Communities annulled Council Decision 2006/1016/EC of 19 December 2006 granting a Community guarantee to the European Investment Bank against losses under loans and loan guarantees for projects outside the Community ⁽²⁾. Decision 2006/1016/EC had been extended to five central Asian countries (namely Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan and Uzbekistan) by Council Decision 2008/847/EC of 4 November 2008 on the eligibility of central Asian countries under Decision 2006/1016/EC ⁽³⁾.
- (23) The Court, however, ordered that the effects of Decision 2006/1016/EC be maintained for EIB financing arrangements entered into before the entry into force, within a period of 12 months from the date of delivery of the said judgment, of a new decision adopted on the appropriate legal basis, namely Articles 179 and 181a of the Treaty together. The result of that judgment is that the codecision procedure will now apply for the activation of the optional mandate, the eligibility of countries listed in Annex I, and the suspension of new EIB financing in a specific country in the event of serious concerns over the political or economic situation.
- (24) A new Decision of the European Parliament and of the Council should therefore be adopted in order to provide for a continuous unchanged guarantee of the relevant EIB financing operations outside the Community.
- (25) Nevertheless, the swift adoption of this Decision should be achieved whilst ensuring that the European Parliament's prerogatives are fully respected; for that reason, the Commission should present, before 30 April 2010, a proposal for a new decision, *inter alia*, taking into consideration the conclusions of the mid-term review.

- (26) That proposal for a new decision should address, amongst other things, the issue of greater scrutiny by the European Parliament and the Council of all budgetary and political decisions to be taken by the EIB and the Commission in the framework of that new decision, the issue of transparency of the whole financing mechanism, and the issue of the limitation of Community guarantee compared to disbursed appropriations,

HAVE DECIDED AS FOLLOWS:

Article 1

Guarantee and ceilings

1. The Community shall grant the European Investment Bank (EIB) a global guarantee (the 'Community guarantee') in respect of payments not received by the EIB, but due to it, in connection with loans and loan guarantees for EIB-eligible investment projects carried out in countries covered by this Decision, where the loan financing or guarantee has been granted according to a signed agreement which has neither expired nor been cancelled (EIB financing operations) and has been granted in accordance with the EIB's own rules and procedures and in support of the relevant external policy objectives of the Community.
2. The Community guarantee shall be restricted to 65 % of the aggregate amount of credits disbursed and guarantees provided under EIB financing operations, less amounts reimbursed, plus all related amounts.
3. The maximum ceiling of the EIB financing operations throughout the period 2007-2013, less amounts cancelled, shall not exceed EUR 27 800 000 000. This maximum ceiling shall be broken down into two parts:
 - (a) a basic ceiling of a fixed maximum amount of EUR 25 800 000 000, the regional distribution of which is set out in paragraph 4, to cover the entire period 2007-2013;
 - (b) an optional mandate of EUR 2 000 000 000. The activation in whole or in part of this optional amount and its regional distribution will be decided by the European Parliament and the Council in accordance with the procedure laid down in Article 251 of the Treaty. The decision will be based on the outcome of the mid-term review set out in Article 9.
4. The basic ceiling referred to in paragraph 3(a) shall be broken down into the following binding regional ceilings:
 - (a) pre-accession countries: EUR 8 700 000 000;

⁽¹⁾ OJ L 293, 12.11.1994, p. 1.

⁽²⁾ OJ L 414, 30.12.2006, p. 95.

⁽³⁾ OJ L 301, 12.11.2008, p. 13.

- (b) neighbourhood and partnership countries:
EUR 12 400 000 000;

broken down into the following indicative sub-ceilings:

- (i) Mediterranean countries: EUR 8 700 000 000;

- (ii) Eastern Europe, Southern Caucasus and Russia:
EUR 3 700 000 000;

- (c) Asia and Latin America: EUR 3 800 000 000;

broken down into the following indicative sub-ceilings:

- (i) Latin America: EUR 2 800 000 000;

- (ii) Asia (including Central Asia): EUR 1 000 000 000;

- (d) Republic of South Africa: EUR 900 000 000.

5. Within the regional ceilings, the governing bodies of the EIB may decide to reallocate an amount of up to 10 % of the regional ceiling between sub-ceilings.

6. The Community guarantee shall cover EIB financing operations signed during the period beginning on 1 February 2007 and ending on 31 October 2011. EIB financing operations signed under Decisions 2006/1016/EC and 2008/847/EC shall continue to benefit from the Community guarantee under this Decision.

7. If, on expiry of the period referred to in paragraph 6, the European Parliament and the Council have not adopted a decision granting a new Community guarantee to the EIB for its financing operations outside the Community, that period shall be automatically extended by six months.

Article 2

Countries covered

1. The list of countries eligible or potentially eligible for EIB financing under Community guarantee is laid down in Annex I.

2. For countries listed in Annex I and marked with '*' and for other countries not listed in Annex I, the eligibility of such country for EIB financing under Community guarantee shall be decided by the European Parliament and the Council on a case-by-case basis in accordance with the procedure laid down in Article 251 of the Treaty.

3. The Community guarantee shall cover only EIB financing operations carried out in countries that have concluded a framework agreement with the EIB establishing the legal conditions under which such operations are to be carried out.

4. In the event of serious concerns over the political or economic situation in a specific country, the European Parliament and the Council may decide to suspend new EIB financing under Community guarantee in that country in accordance with the procedure laid down in Article 251 of the Treaty.

5. The Community guarantee shall not cover EIB financing operations in a specific country where the agreement concerning such operations has been signed after that country's accession to the European Union.

Article 3

Consistency with policies of the Community

1. The consistency of EIB external actions with the external policy objectives of the Community shall be strengthened with a view to maximising synergies of EIB financing and budgetary resources of the European Union, in particular through regular and systematic dialogue and early consultation on:

(a) strategic documents prepared by the Commission, such as country and regional strategy papers, action plans and pre-accession documents;

(b) the EIB's strategic planning documents and project pipelines;

(c) other policy and operational aspects.

2. The cooperation shall be carried out on a regionally differentiated basis, taking into consideration the EIB's role as well as the policies of the Community in each region.

3. An EIB financing operation shall not be included under the cover of the Community guarantee in the event that the Commission delivers a negative opinion on such an operation within the framework of the procedure provided for in Article 21 of the Statutes of the EIB.

4. The consistency of EIB financing operations with the external policy objectives of the Community shall be monitored in accordance with Article 6.

*Article 4***Cooperation with other international financial institutions**

1. EIB financing operations shall increasingly be carried out, where appropriate, in cooperation between and/or by means of co-financing by the EIB and other international financial institutions, or European bilateral institutions, in order to maximise synergies, cooperation and efficiency and to ensure reasonable sharing of risks and coherent project and sector conditionality.

2. The cooperation referred to in paragraph 1 shall be facilitated by coordination, carried out notably in the context of Memoranda of Understanding, where appropriate, between the Commission, the EIB and the main international financial institutions and European bilateral institutions operating in the different regions.

3. The cooperation with international financial institutions and other donors shall be assessed at the mid-term review set out in Article 9.

*Article 5***Coverage and terms of the Community guarantee**

1. For EIB financing operations entered into with a State, or guaranteed by a State, and for other EIB financing operations entered into with regional or local authorities or government-owned and/or government-controlled public enterprises or institutions, where such other EIB financing operations have an appropriate EIB credit risk assessment taking into account the credit risk situation of the country concerned, the Community guarantee shall cover all payments not received by the EIB, but due to it (the 'Comprehensive Guarantee').

For the purposes of this Article and Article 6(4), the notion of State includes the West Bank and Gaza Strip, as represented by the Palestinian Authority, and Kosovo (*), as represented by the UN Interim Administration Mission.

2. For EIB financing operations other than those indicated in paragraph 1, the Community guarantee shall cover all payments not received by the EIB, but due to it, where the non-receipt has been caused by the realisation of one of the following political risks (the 'Political Risk Guarantee'):

(a) non-transfer of currency;

(b) expropriation;

(c) war or civil disturbance;

(d) denial of justice upon breach of contract.

(*) Under United Nations Security Council Resolution 1244 (1999).

*Article 6***Reporting and accounting**

1. The Commission shall report annually to the European Parliament and the Council on EIB financing operations carried out under this Decision. The report shall include an assessment of impact and effectiveness of EIB financing operations at project, sector, country and regional level as well as the contribution of the EIB financing operations to the fulfilment of the external policy objectives of the Community, taking into account the operational objectives of the EIB. It shall also include an assessment of the extent of cooperation between the EIB and the Commission, and between the EIB and other international financial institutions and bilateral donors.

2. For the purposes of paragraph 1, the EIB shall provide the Commission with yearly reports on EIB financing operations carried out under this Decision and on the fulfilment of the external policy objectives of the Community, including cooperation with other international financial institutions.

3. The EIB shall provide the Commission with statistical, financial and accounting data on each of the EIB financing operations which are necessary to fulfil the Commission's reporting duties or requests by the European Court of Auditors as well as with an auditor's certificate on the outstanding amounts of the EIB financing operations.

4. For the purposes of the Commission's accounting and reporting of the risks covered by the Comprehensive Guarantee, the EIB shall provide the Commission with the EIB's risk assessment and grading information concerning EIB financing operations with borrowers or guaranteed obligors other than States.

5. The EIB shall provide the information referred to in paragraphs 2, 3 and 4 at its own expense.

*Article 7***Recovery of payments made by the Commission**

1. Where the Commission makes any payment under the Community guarantee, the EIB shall, in the name and on behalf of the Commission, pursue the recovery of claims for the amounts paid.

2. The EIB and the Commission shall enter into an agreement laying down the detailed provisions and procedures relating to recovery of claims no later than the date of conclusion of the agreement referred to in Article 8.

*Article 8***Guarantee agreement**

The EIB and the Commission shall enter into a guarantee agreement laying down the detailed provisions and procedures relating to the Community guarantee.

*Article 9***Review**

1. The Commission shall present to the European Parliament and the Council a mid-term report on the application of this Decision by 30 April 2010, accompanied by a proposal for its amendment, inter alia, drawing upon an external evaluation, the terms of reference of which are specified in Annex II to this Decision.
2. The Commission shall present a final report on the application of this Decision by 31 July 2013.

*Article 10***Repeal**

Decision 2008/847/EC is hereby repealed.

*Article 11***Entry into force**

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

Done at Brussels, 13 July 2009.

For the European Parliament
The President
H.-G. PÖTTERING

For the Council
The President
E. ERLANDSSON

ANNEX I

REGIONS AND COUNTRIES COVERED BY ARTICLES 1 AND 2

A. Pre-accession countries1. *Candidate countries*

Croatia, Turkey, the former Yugoslav Republic of Macedonia.

2. *Potential candidate countries*

Albania, Bosnia and Herzegovina, Montenegro, Serbia, Kosovo under United Nations Security Council Resolution 1244 (1999).

B. Neighbourhood And Partnership Countries1. *Mediterranean countries*

Algeria, Egypt, the West Bank and the Gaza Strip, Israel, Jordan, Lebanon, Libya (*), Morocco, Syria, Tunisia.

2. *Eastern Europe, Southern Caucasus and Russia*

Eastern Europe: Republic of Moldova, Ukraine, Belarus (*);

Southern Caucasus: Armenia, Azerbaijan, Georgia;

Russia: Russia.

C. Asia and Latin America1. *Latin America*

Argentina, Bolivia, Brazil, Chile, Colombia, Costa Rica, Ecuador, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, Uruguay, Venezuela.

2. *Asia*

Asia (without Central Asia):

Afghanistan (*), Bangladesh, Bhutan (*), Brunei, Cambodia (*), China (including Hong Kong and Macao Special Administrative Regions), India, Indonesia, Iraq (*), South Korea, Laos, Malaysia, Maldives, Mongolia, Nepal, Pakistan, the Philippines, Singapore, Sri Lanka, Taiwan (*), Thailand, Vietnam, Yemen.

Central Asia:

Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan, Uzbekistan.

D. South africa

South Africa.

ANNEX II

Mid-term review and terms of reference for the evaluation of the EIB's external mandate*Mid-term review*

A substantive mid-term review of EIB external financing will be conducted by 2010. This review will draw on an independent external evaluation, which will also be transmitted to the European Parliament and the Council. The review will provide the basis for the decision of the European Parliament and the Council as to whether and to what extent to release any optional mandate to top up the guarantee foreseen in this Decision, for the period following 2010, as to whether to make other amendments to the mandate, and as to how to ensure maximum added value and efficiency in the EIB's operations. The Commission will present the mid-term review to the European Parliament and to the Council by 30 April 2010, as the basis for any proposal for the amendment of the mandate.

The framework of the evaluation

It will include:

- (a) an evaluation of the EIB's external financing activities. Parts of the evaluation will be conducted in cooperation with the EIB's and the Commission's evaluation departments;
- (b) an assessment of the wider impact of the EIB's external lending on interaction with other international financial institutions and other sources of finance.

The evaluation will be supervised and managed by a steering committee comprising several 'wise persons' appointed by the EIB Board of Governors, an EIB representative and a Commission representative. The steering committee will be chaired by one such 'wise person'.

The steering committee will be supported by the EIB's and the Commission's evaluation departments and by external experts. These external experts will be selected through a tender process managed by the Commission. The steering committee will be consulted on the terms of reference and on the criteria for the selection of the external experts. The costs of external experts will then be borne by the Commission and will be covered by the budget line dedicated to the provisioning of the Guarantee Fund.

The final evaluation report will be submitted by the steering committee, and will draw clear conclusions, based on the information gathered, to provide information necessary for the decision of the mid-term review as to whether to release the optional tranche for the remainder of the mandate and as to the regional distribution of any additional financing.

The scope of the evaluation

The evaluation will cover the previous mandates (2000 to 2006) and the first years of the 2007-2013 mandate, up to the end of 2009. It will examine project financing volumes and disbursements by country as well as technical assistance and risk capital operations. Considering the effects at project, sector, regional and country level, the evaluation will base its conclusions on:

- (a) the in-depth evaluation of the relevance, performance (effectiveness, efficiency and sustainability) of EIB operations against their specific regional objectives as originally set within the relevant Community external policies as well as of their added value (to be conducted in association with the EIB's evaluation unit and Commission services);
- (b) the assessment of consistency with the relevant Community external policies and strategies and of the additionality and added value of EIB operations in the first years of the 2007-2013 mandate in the framework of the specific regional objectives in the 2007-2013 mandate and of the corresponding performance indicators to be set by the EIB (to be conducted in association with the EIB's evaluation unit and Commission services);
- (c) analysis of the financial needs of the beneficiaries, their absorption capacity and the availability of other sources of private or public financing for the relevant investments;

- (d) the assessment of the cooperation and coherence of actions between EIB and the Commission;
- (e) the assessment of the cooperation and synergies between the EIB and international and bilateral financial institutions and agencies.

For the purposes of the assessments under points (a) and (b), the added value of EIB operations will be measured against three elements:

- support of Community policy objectives,
 - the quality of the projects themselves, and
 - alternative sources of financing.
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II

(Acts adopted under the EC Treaty/Euratom Treaty whose publication is not obligatory)

DECISIONS

EUROPEAN CENTRAL BANK

DECISION OF THE EUROPEAN CENTRAL BANK

of 19 June 2009

amending Decision ECB/2003/14 concerning the administration of the borrowing-and-lending operations concluded by the European Community under the medium-term financial assistance facility

(ECB/2009/17)

(2009/555/EC)

THE GENERAL COUNCIL OF THE EUROPEAN CENTRAL BANK,

Having regard to the Treaty establishing the European Community and in particular Article 119 and Article 123(2) thereof,

Having regard to the Statute of the European System of Central Banks and of the European Central Bank and in particular Article 17, Article 21.2, Article 44 and the first indent of Article 47.1 thereof,

Having regard to Council Regulation (EC) No 431/2009 of 18 May 2009 amending Regulation (EC) No 332/2002 establishing a facility providing medium-term financial assistance for Member States' balances of payments⁽¹⁾, and in particular Article 1(5) thereof,

Whereas:

- (1) According to Article 9 of Council Regulation (EC) No 332/2002 of 18 February 2002 establishing a facility providing medium-term financial assistance for Member States' balances of payments⁽²⁾ the European Central Bank (ECB) must make the necessary arrangements for the administration of the loans granted under the medium-term financial assistance facility to Member States that have not adopted the euro.
- (2) Article 1(5) of Regulation (EC) No 431/2009 introduces a new Article 7(5) into Regulation (EC) No 332/2002 requiring Member States that receive loans granted under

the medium-term financial assistance facility to transfer the amounts required for repayment of the principal and for payment of the interest on such loans to an account with the ECB seven TARGET2 business days prior to the corresponding due dates. The ECB therefore considers it appropriate to open specific accounts for the national central banks of such Member States for that purpose.

- (3) Decision ECB/2003/14 of 7 November 2003 concerning the administration of the borrowing-and-lending operations concluded by the European Community under the medium-term financial assistance facility⁽³⁾ should be amended in order to reflect these changes,

HAS ADOPTED THIS DECISION:

Article 1

Decision ECB/2003/14 is amended as follows:

1. Article 2 is replaced by the following:

'Article 2

Payments connected with the European Community's borrowing-and-lending operations shall be effected through accounts in the ECB's name and/or, having regard to the borrowing-and-lending arrangements between the European Community and the Member State in question, through accounts opened with the ECB in the name of the national central bank of that Member State or in the name of the Commission of the European Communities.'

⁽¹⁾ OJ L 128, 27.5.2009, p. 1.

⁽²⁾ OJ L 53, 23.2.2002, p. 1.

⁽³⁾ OJ L 297, 15.11.2003, p. 35.

2. Article 3(2) is replaced by the following:

‘2. Funds received by the ECB, for the account of the European Community, in respect of payment of interest or repayment of the principal from a Member State that has received a loan, shall be transferred on the due date and to the accounts specified by the creditors under the borrowing arrangements entered into by the European Community.’;

3. Article 4 is replaced by the following:

‘Article 4

The ECB shall record each borrowing and lending operation in its books on the following accounts in euro:

- (a) an account on the liabilities side for recording the funds received for the account of the European Community and their transfer to the national central bank of the Member State receiving the corresponding loan;
- (b) a memorandum account, entitled “European Community liabilities in respect of European Community borrowing operations”, divided, where applicable, into sub-accounts corresponding to the individual creditors in respect of borrowing arrangements;
- (c) a memorandum account, entitled “European Community claims in respect of European Community lending operations”;

4. Article 5 is replaced by the following:

‘Article 5

The ECB shall book the financial operations described in Article 3 on their value date by debiting or crediting the accounts referred to in this Decision.’;

5. Article 6 is replaced by the following:

‘Article 6

1. The ECB shall check the transfer dates and the due dates laid down in the borrowing-and-lending arrangements for the payment of interest and the repayment of the principal.

2. At least 15 calendar days before each transfer date the ECB shall notify the national central bank of the Member State that is in debt to the European Community.’

Article 2

The Executive Board of the ECB shall make all the arrangements necessary to give effect to this Decision.

Article 3

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

Done at Frankfurt am Main, 19 June 2009.

On behalf of the General Council of the ECB
The President of the ECB
Jean-Claude TRICHET

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