

COUNCIL DECISION

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

(2006/1016/EC)

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament ⁽¹⁾,

Whereas:

(1) Since 1963, the European Investment Bank (the '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 request by 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 2000/24/EC of 22 December 1999 granting a Community guarantee against losses under loans for projects outside the Community (Central and Eastern Europe, Mediterranean countries, Latin America and Asia and the Republic of South Africa) ⁽²⁾ and by Decisions 2001/777/EC ⁽³⁾ and 2005/48/EC ⁽⁴⁾ for regionally specific lending actions.

(3) With a view to supporting EU 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 the Mediterranean 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⁾ (the 'IPA'), the European Neighbourhood and Partnership Instrument ⁽⁶⁾ (the 'ENPI') and the Development Cooperation Instrument (the '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').

(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 should necessarily meet.

(6) The EU's external relations policies have been revised and broadened in recent years. This has notably been the case for the Pre-Accession Strategy as set out in the Commission's 2005 Enlargement Strategy Paper, for the European Neighbourhood Policy, as set out in the Commission's Strategy Paper of 12 May 2004, for the renewed partnerships with Latin America and South-East Asia and for the EU's Strategic Partnerships with Russia, China and India.

(7) From 2007, the EU's external relations will also be supported by the new financial instruments, i.e. the IPA, the ENPI, the DCI and by the Instrument for Stability ⁽⁷⁾.

(8) EIB Financing Operations should be consistent with and support EU external policies including specific regional objectives. By ensuring overall coherence with EU actions, EIB financing should be complementary to corresponding Community assistance policies, programs 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 EU high level agreements on political and macro-economic aspects.

⁽¹⁾ Opinion delivered on 30 November 2006 (not yet published in the Official Journal).

⁽²⁾ OJ L 9, 13.1.2000, p. 24. Decision as last amended by Decision 2006/174/EC (OJ L 62, 3.3.2006, p. 26).

⁽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 of 17 July 2006 (OJ L 210, 31.7.2006, p. 82).

⁽⁶⁾ Regulation (EC) No 1638/2006 of the European Parliament and of the Council of 24 October 2006 (OJ L 310, 9.11.2006, p. 1).

⁽⁷⁾ Regulation (EC) No 1717/2006 of the European Parliament and of the Council of 15 November 2006 (OJ L 327, 24.11.2006, p. 1).

- (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 EU 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 will be 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 EU 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 EU. The focus of EU 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 (IFIs) active in the region. Over the period 2007-2013, 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 in 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 EU high level agreements with the country in question on political and macro-economic aspects. In this region, the EIB should finance projects of significant interest to the EU 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 particular importance. EIB Financing Operations in this region should be carried out in close cooperation with the European Bank for Reconstruction and Development ('the EBRD'), in particular according to the terms to be set out in a tripartite Memorandum of Understanding between the Commission, the EIB and the EBRD.
- (12) EIB financing in the Asian and Latin American countries will be progressively aligned with the EU 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 the less prosperous countries. In support of EU objectives, EIB financing in the 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 EU 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 the EIB financing in Asia and Latin America.
- (13) In Central Asia, the EIB should focus on major energy supply and energy transport projects with cross-border implications. EIB financing in Central Asia should be carried out in close cooperation with the EBRD, in particular according to the terms to be set out in a tripartite Memorandum of Understanding between the Commission, the EIB and the EBRD.
- (14) To complement the EIB activities under the Cotonou Agreement for the ACP countries, 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 SMEs. The implementation of the provisions on economic cooperation under the EU-South Africa Trade and Development Cooperation Agreement will further promote EIB activities in this region.
- (15) With a view to enhancing the coherence of overall EU support in the regions concerned, opportunities should be sought to combine EIB financing with EU 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 and, for South Africa, the DCI.

- (16) The EIB already closely cooperates with IFIs 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 EU falling within the scope of this Decision, the EIB should endeavour to further enhance coordination and cooperation with IFIs and with European bilateral institutions where relevant, including, where appropriate, cooperation on sector conditionality, increased use of cofinancing and participation with other IFIs in global initiatives, such as those promoting aid coordination and efficiency.
- (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,

HAS DECIDED AS FOLLOWS:

Article 1

Guarantee and ceilings

- (17) Reporting 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, include a section on value-added in line with EU policies, and a section on cooperation with the Commission, other IFIs and bilateral donors, including on cofinancing.
- (18) The Community guarantee established by this Decision should cover EIB Financing Operations signed during a period beginning on 1 February 2007 and ending on 31 December 2013. 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. This review should in particular include an external evaluation whose terms of reference 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 OLAF.
- (20) The Guarantee Fund for External Action (the 'Guarantee Fund'), established by Council Regulation (EC, Euratom) No 2728/94 of 31 October 1994, should continue to provide a liquidity cushion for the Community budget against losses on EIB Financing Operations⁽¹⁾.
1. The Community shall grant the European Investment Bank (the 'EIB') a global guarantee (the 'Community guarantee') in respect of payments not received by the EIB, but due to it, in respect of 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 European Union.
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 sums.
3. The maximum ceiling of the EIB Financing Operations throughout the period referred to in paragraph 6, less amounts cancelled, shall not exceed EUR 27 800 million. This maximum ceiling shall be broken down into two parts:
- (a) a basic ceiling of a fixed maximum amount of EUR 25 800 million, including its regional distribution defined in paragraph 4, to cover the entire period referred to in paragraph 6;
- (b) an optional mandate of EUR 2 000 million. The activation in whole or in part of this optional amount and its regional distribution will be decided by the Council in accordance with the procedure foreseen in Article 181a(2) of the Treaty. The decision will be based on the outcome of the mid-term review set out in Article 9.

⁽¹⁾ 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. 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 million;
- (b) Neighbourhood and Partnership countries: EUR 12 400 million;

broken down into the following indicative sub-ceilings:

- (i) Mediterranean: EUR 8 700 million;
- (ii) Eastern Europe, Southern Caucasus and Russia: EUR 3 700 million;
- (c) Asia and Latin America: EUR 3 800 million;

broken down into the following indicative sub-ceilings:

- (i) Latin America: EUR 2 800 million;
- (ii) Asia: EUR 1 000 million;
- (d) Republic of South Africa: EUR 900 million.

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 December 2013.

7. If, on expiry of the period referred to in paragraph 6, the Council has 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 Council on a case by case basis in accordance

with the procedure provided for in Article 181a(2) of the Treaty.

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

4. In the event of serious concerns over the political or economic situation in a specific country, the Council may decide to suspend new EIB financing under Community guarantee in that country in accordance with the procedure provided for in Article 181a(2) of the Treaty.

5. The Community guarantee shall not cover EIB Financing Operations in a specific country when the agreement concerning such EIB Financing Operations has been signed after that country's accession to the EU.

Article 3

Consistency with policies of the European Union

1. The consistency of EIB external actions with the external policy objectives of the European Union shall be strengthened with a view to maximising synergies of EIB financing and budgetary resources of the European Union, notably 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 European Union in each region.

3. An EIB Financing Operation will not be included under the cover of the Community guarantee in case the Commission delivers a negative opinion on such 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 European Union 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 cofinancing by the EIB and other IFIs, 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. This cooperation 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 IFIs and European bilateral institutions operating in the different regions.

3. The cooperation with IFIs 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.

*Article 6***Reporting and accounting**

1. The Commission shall report annually to the European Parliament and the Council on the 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 European Union, 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 IFIs and bilateral donors.

2. For the purposes of paragraph 1, the EIB shall provide the Commission with yearly reports of EIB Financing Operations carried out under this Decision and of the fulfilment of the external policy objectives of the European Union, including cooperation with other IFIs.

3. The EIB shall provide the Commission with statistical, financial and accounting data on each of the EIB Financing Operations as necessary to fulfil its 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. If 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 of the Decision**

1. The Commission shall present to the European Parliament and the Council a mid-term report on the application of this Decision by 30 June 2010, accompanied, as appropriate, by a proposal for its amendment, drawing upon an external evaluation whose terms of reference are specified in Annex II of this Decision.

2. The Commission shall present a final report on the application of this Decision by 31 July 2013.

*Article 10***Application**

This Decision shall take effect on the third day following its publication in the *Official Journal of the European Union*.

Done at Brussels, 19 December 2006.

For the Council

The President

J. KORKEAOJA

ANNEX I

Regions and countries covered by Article 1

A. PRE-ACCESSION COUNTRIES

1. 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 COUNTRIES

1. Mediterranean

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: Moldova, Ukraine, Belarus (*)

Southern Caucasus: Armenia, Azerbaijan, Georgia;

Russia: Russia.

C. ASIA AND LATIN AMERICA

1. 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, which will be fully informed by an independent external evaluation to be transmitted to the Council, will provide the basis for a decision by Member States whether and to what extent to release any optional mandate topping-up possible lending in the period following 2010 in a second stage, whether to make other amendments to the mandate, and how to ensure maximum value-added 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 June 2010, as the basis for any proposal for the amendment of the mandate. The Council will decide as appropriate after consulting the European Parliament.

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 IFIs 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 and a Commission representative. The steering committee will be chaired by one such 'wise person'. It will convene no later than during the first semester of 2008.

The steering committee will be supported by the EIB's and the Commission's evaluation departments and by external expertise. These external experts will be selected through a Commission tender process. 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 submitted by the steering committee will draw clear conclusions, based on the information gathered, to base the decision of the mid-term review on whether to release the optional tranche for the remaining term of the mandate and on the regional distribution of any additional financing.

The scope of the evaluation

The evaluation will cover the previous mandates (2000-2006) and the first years of the 2007-2013 mandate until end 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 EU external policies as well as of their value-added (to be conducted in association with the EIB's evaluation unit and Commission services);
- b. the assessment of consistency with the relevant EU external policies and strategies and of the additionality and value-added 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).

In these assessments, value-added of EIB operations will be measured against three elements: support of EU policy objectives, the quality of the projects themselves and alternative sources of financing.

- a. 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;
 - b. the assessment of the cooperation and coherence of actions between EIB and the Commission;
 - c. the assessment of the cooperation and synergies between the EIB and international and bilateral finance institutions and agencies.
-