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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 21.5.2008
COM(2008) 308 final

2008/0095 (COD)

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

**amending Regulation (EC) No. 1638/2006 laying down general provisions establishing a
European Neighbourhood and Partnership Instrument**

(presented by the Commission)

EXPLANATORY MEMORANDUM

The proposed regulation amends Article 23 of Regulation (EC) No. 1638/2006 of the European Parliament and of the Council of 24 October 2006 laying down general provisions establishing a European Neighbourhood and Partnership Instrument. The purpose of the amendment is twofold.

Firstly it seeks to clarify existing provisions on Community funds managed by financial intermediaries for loan financing, equity investments, guarantee funds or investment funds. The current text is ambiguous about the possibility of continuing to re-invest such funds (e.g. through a revolving fund mechanism). Re-using resources is common practice in operations involving risk capital and loan financing. Funds reflowing from old loans and investments can thus be re-invested. In this way they bring further benefit to the target beneficiaries and enhance the impact of the assistance. Clarity on this issue is also important and urgent, as similar operations may take place in the context of the Neighbourhood Investment Facility, which is about to become operational.

Secondly the proposed amendment allows EIB to re-invest within the Facility for Euro Mediterranean Investment and Partnership (FEMIP) the funds reflowing from past operations (reflows) financed under MEDA and the earlier financial protocols with Algeria, Cyprus, Egypt, Greece, Jordan, Lebanon, Malta, Morocco, Syria, Tunisia and Turkey . The reflows include the capital repayment and the benefits on the investment (including interests, dividends, the profits/losses on the sales of participations, and the penalties applied by the Bank). The re-investment will take place within the framework of this Regulation.

In 2006, a review of FEMIP was carried out. This review covered EIB loans and EU budget resources managed by the EIB and used for risk capital, technical assistance, interest subsidies and 'special loans'. To make the best use of available funds, the Commission proposed in the 'FEMIP Communication'¹ to use these reflows for new risk capital operations. This proposal was endorsed by the Ecofin Council (November 2006), which underlined that FEMIP should be further developed and strengthened. At present, as the earlier Regulations did not explicitly provide for the possibility of re-investing the funds, the “reflows” are returned to the Community budget shortly after the beneficiary has reimbursed the EIB. With the proposed amendment, the EIB can be allowed to re-invest such funds in the context of FEMIP until the Commission decides to close the operation.

In order to stop the repayment of the “reflows” and avoid the amount of funds available for future operations under FEMIP dwindling while the proposed amendment is being discussed, the Commission, immediately after the adoption of this proposal, will request the EIB to suspend repayments to the Community budget and to keep the funds in an interest-bearing account until the proposed amendment is adopted by the legislative authority. If the amendment is adopted, the EIB will be allowed to re-invest the funds. If the amendment were not to be adopted the funds kept in the EIB accounts (and the interest earned) would immediately return to the Community budget.

¹ Communication to the Council: Assessment of the Facility for Euro-Mediterranean Investment and Partnership (FEMIP) and Future Options (Com (2006) 592 final, dated 17-10-2006)

Proposal for a

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amending Regulation (EC) No. 1638/2006 laying down general provisions establishing a European Neighbourhood and Partnership Instrument

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 Treaty²,

Whereas:

- (1) Regulation (EC) No. 1638/2006 of the European Parliament and of the Council of 24 October 2006 laying down general provisions establishing a European Neighbourhood and Partnership Instrument establishes the framework for the provision of Community Assistance to neighbouring countries and to Russia.
- (2) In order to support investments in infrastructure and the development of the private sector it is important that Community assistance can be effectively used for measures such as loan financing, equity investments, guarantee funds or investment funds managed by the European Investment Bank and other financial intermediaries.
- (3) The effectiveness of such measures will be enhanced if the financial intermediaries are allowed to re-invest the repayments of funds occurring under such measures in new operations.
- (4) The Facility for Euro-Mediterranean Investment and Partnership (FEMIP) has been successful in channelling funding to the Mediterranean region through lending to private companies and infrastructure investment aimed at enhancing the business environment.
- (5) In order to further strengthen FEMIP it is necessary that EIB be allowed to re-invest in Mediterranean non-member countries the repayment of funds arising from operations carried out under the regulations and decisions listed in the Annex.
- (6) For the purpose of this Regulation the interests on loans, the dividends on investments, the profits and losses on the sales of participations and the penalties applied should be considered as benefit perceived by the European Investment Bank
- (7) Regulation (EC) No 1638/2006 should therefore be amended accordingly,

² Opinion of the European Parliament of ... and Council Decision of ...

HAVE ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No. 1638/2006 is amended as follows:

- (1) In Article 23, paragraph 2 is replaced by the following:
2. The Commission shall adopt implementing provisions for paragraph 1 on a case-by-case basis to cover in particular risk-sharing, the remuneration of the intermediary responsible for implementation, the use of funds, their re-use or recovery, and the closure of the operation.
- (2) In Article 23, the following paragraph 3 is added:
3. The Commission may decide that the repayments on capital and the benefits accrued by European Investment Bank under the regulations and decisions referred to in the Annex are re-invested by the European Investment Bank in the Mediterranean countries covered by this regulation.

Article 2

Entry into force

This Regulation shall enter into force on the seventh day following that of 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.

Done at Brussels, [...]

For the European Parliament
The President

For the Council
The President

[...][...]

Annex

Regulations and decisions referred to in Recital (5) and Article 1 (2)

First Financial Protocols

Council Regulation (EEC) No 2210/78 of 26 September 1978 concerning the conclusion of the Cooperation Agreement between the European Economic Community and the People's Democratic Republic of Algeria (OJ L 263, 27.9.1978, p. 1).

Council Regulation (EEC) No 2211/78 of 26 September 1978 concerning the conclusion of the Cooperation Agreement between the European Economic Community and the Kingdom of Morocco (OJ L 264, 27.9.1978, p. 1).

Council Regulation (EEC) No 2212/78 of 26 September 1978 concerning the conclusion of the Cooperation Agreement between the European Economic Community and the Republic of Tunisia (OJ L 265, 27.9.1978, p. 1).

Council Regulation (EEC) No 2213/78 of 26 September 1978 on the conclusion of the Cooperation Agreement between the European Economic Community and the Arab Republic of Egypt (OJ L 266, 27.9.1978, p. 1).

Council Regulation (EEC) No 2214/78 of 26 September 1978 concerning the conclusion of the Cooperation Agreement between the European Economic Community and the Lebanese Republic (OJ L 267, 27.9.1978, p. 1).

Council Regulation (EEC) No 2215/78 of 26 September 1978 concerning the conclusion of the Cooperation Agreement between the European Economic Community and the Hashemite Kingdom of Jordan (OJ L 268, 27.9.1978, p. 1).

Council Regulation (EEC) No 2216/78 of 26 September 1978 concerning the conclusion of the Cooperation Agreement between the European Economic Community and the Syrian Arab Republic (OJ L 269, 27.9.1978, p. 1).

Second Financial Protocols

Council Regulation (EEC) No 3177/82 of 22 November 1982 on the conclusion of a Protocol on financial and technical cooperation between the European Economic Community and the People's Democratic Republic of Algeria (OJ L 337, 29.11.1982, p. 1).

Council Regulation (EEC) No 3178/82 of 22 November 1982 on the conclusion of a Protocol on financial and technical cooperation between the European Economic Community and the Arab Republic of Egypt (OJ L 337, 29.11.1982, p. 8).

Council Regulation (EEC) No 3179/82 of 22 November 1982 on the conclusion of a Protocol on financial and technical cooperation between the European Economic Community and the Hashemite Kingdom of Jordan (OJ L 337, 29.11.1982, p. 15).

Council Regulation (EEC) No 3180/82 of 22 November 1982 on the conclusion of a Protocol on financial and technical cooperation between the European Economic Community and the Lebanese Republic (OJ L 337, 29.11.1982, p. 22).

Council Regulation (EEC) No 3181/82 of 22 November 1982 on the conclusion of a Protocol on financial and technical cooperation between the European Economic Community and the Kingdom of Morocco (OJ L 337, 29.11.1982, p. 29).

Council Regulation (EEC) No 3182/82 of 22 November 1982 on the conclusion of a Protocol on financial and technical cooperation between the European Economic Community and the Syrian Arab Republic (OJ L 337, 29.11.1982, p. 36).

Council Regulation (EEC) No 3183/82 of 22 November 1982 on the conclusion of a Protocol on financial and technical cooperation between the European Economic Community and the Republic of Tunisia (OJ L 337, 29.11.1982, p. 43).

Third Financial Protocols

Council Decision 88/30/EEC of 21 December 1987 on the conclusion of a Protocol on financial and technical cooperation between the European Economic Community and the People's Democratic Republic of Algeria (OJ L 22, 27.1.1988, p. 1).

Council Decision 88/31/EEC of 21 December 1987 on the conclusion of a Protocol on financial and technical cooperation between the European Economic Community and the Arab Republic of Egypt (OJ L 22, 27.1.1988, p. 9).

Council Decision 88/32/EEC of 21 December 1987 on the conclusion of a Protocol on financial and technical cooperation between the European Economic Community and the Hashemite Kingdom of Jordan (OJ L 22, 27.1.1988, p. 17).

Council Decision 88/33/EEC of 21 December 1987 on the conclusion of a Protocol on financial and technical cooperation between the European Economic Community and the Lebanese Republic (OJ L 22, 27.1.1988, p. 25).

Council Decision 88/34/EEC of 21 December 1987 on the conclusion of a Protocol on financial and technical cooperation between the European Economic Community and the Republic of Tunisia (OJ L 22, 27.1.1988, p. 33).

Council Decision 88/453/EEC of 30 June 1988 concerning the conclusion of a Protocol on financial and technical cooperation between the European Economic Community and the Kingdom of Morocco (OJ L 224, 13.8.1988, p. 32).

Council Decision 92/549/EEC of 16 November 1992 on the conclusion of the Protocol on financial and technical cooperation between the European Economic Community and the Syrian Arab Republic (OJ L 352, 2.12.1992, p. 21).

Fourth Financial Protocols

Council Decision 92/44/EEC of 19 December 1991 on the conclusion of a Protocol on financial and technical cooperation between the European Economic Community and the Republic of Tunisia (OJ L 18, 25.1.1992, p. 34).

Council Decision 92/206/EEC of 16 March 1992 on the conclusion of a Protocol on financial and technical cooperation between the European Economic Community and the People's Democratic Republic of Algeria (OJ L 94, 8.4.1992, p. 13).

Council Decision 92/207/EEC of 16 March 1992 on the conclusion of a Protocol on financial and technical cooperation between the European Economic Community and the Arab Republic of Egypt (OJ L 94, 8.4.1992, p. 21).

Council Decision 92/208/EEC of 16 March 1992 on the conclusion of a Protocol on financial and technical cooperation between the European Economic Community and the Hashemite Kingdom of Jordan (OJ L 94, 8.4.1992, p. 29).

Council Decision 92/209/EEC of 16 March 1992 on the conclusion of a Protocol on financial and technical cooperation between the European Economic Community and the Lebanese Republic (OJ L 94, 8.4.1992, p. 37).

Council Decision 92/548/EEC of 16 November 1992 concerning the conclusion of a Protocol on financial and technical cooperation between the European Economic Community and the Kingdom of Morocco (OJ L 352, 2.12.1992, p. 13).

Council Decision 94/67/EC of 24 January 1994 on the conclusion of a Protocol on financial and technical cooperation between the European Economic Community and the Syrian Arab Republic (OJ L 32, 5.2.1994, p. 44).

Cyprus, Greece, Malta and Turkey

Council Regulation (EEC) No 2760/78 of 23 November 1978 on the conclusion of the Financial Protocol between the European Economic Community and the Republic of Cyprus (OJ L 332, 29.11.1978, p. 1).

Council Regulation (EEC) No 787/84 of 26 March 1984 on the conclusion of the Protocol on financial and technical cooperation between the European Economic Community and the Republic of Cyprus (OJ L 85, 28.3.1984, p. 37).

Council Decision 90/153/EEC of 26 February 1990 on the conclusion of the Protocol on financial and technical cooperation between the European Economic Community and the Republic of Cyprus (OJ L 82, 29.3.1990, p. 32).

Council Decision 95/485/EC of 30 October 1995 on the conclusion of a Protocol on financial and technical cooperation between the European Community and the Republic of Cyprus (OJ L 278, 21.11.1995, p. 22).

Council Decision 1999/258/EC of 30 March 1999 concerning the conclusion of a Protocol on the extension of the period during which the funds laid down in the fourth Protocol on financial and technical cooperation between the European Community and the Republic of Cyprus may be committed (OJ L 100, 15.4.1999, p. 25).

Council Decision **78/666/EEC of 25 July 1978** concerning the conclusion of the Financial Protocol between the European Economic Community and Greece (OJ L 225, 16.08.1978, p.25).

Council Regulation (EEC) No 939/76 of 23 April 1976 concluding the Financial Protocol and the Protocol laying down certain provisions relating to the Agreement establishing an Association between the EEC and Malta (OJ L 111, 28.4.1976, p. 1).

Council Regulation (EEC) No 2458/86 of 7 July 1986 on the conclusion of a Protocol on financial and technical cooperation between the European Economic Community and the Republic of Malta (OJ L 216, 5.8.1986, p. 1).

Council Decision 89/378/EEC of 12 June 1989 concerning the conclusion of a Protocol on financial and technical cooperation between the European Economic Community and Malta (OJ L 180, 27.6.1989, p. 46).

Council Decision 95/484/EC of 30 October 1995 on the conclusion of a Protocol on financial and technical cooperation between the European Community and the Republic of Malta (OJ L 278, 21.11.1995, p. 14).

Council Decision 1999/259/EC of 30 March 1999 concerning the conclusion of a Protocol on the extension of the period during which the funds laid down in the fourth Protocol on financial and technical cooperation between the European Community and the Republic of Malta may be committed (OJ L 100, 15.4.1999, p. 31).

Council Decision 79/281/EEC of 5 March 1979 concerning the conclusion of a Financial Protocol between the European Community and Turkey (OJ L 067, 17.03.1979, p. 14).

Horizontal Regulations

Council Regulation (EEC) No. 3973/86 of 22 December 1986 concerning the application of the Protocols on financial and technical cooperation concluded between the Community and

Algeria, Morocco, Tunisia, Egypt, Lebanon, Jordan, Syria, Malta and Cyprus, (OJ L 370, 30.12.1986, p. 5).

Council Regulation (EEC) No 1762/92 of 29 June 1992 on the implementation of the Protocols on financial and technical cooperation concluded by the Community with Mediterranean non-member countries (OJ L 181, 1.7.1992, p. 1).

Council Regulation (EEC) No 1763/92 of 29 June 1992 concerning financial co-operation in respect of all Mediterranean non-member Countries (OJ L 181, 1.07.1992, p. 22).

Council Regulation (EC) No 1488/96 of 23 July 1996 on financial and technical measures to accompany (MEDA) the reform of economic and social structures in the framework of the Euro-Mediterranean partnership (OJ L 189, 30.7.1996, p.1). Regulation as last amended by Regulation (EC) No. 2112/2005.

**LEGISLATIVE FINANCIAL STATEMENT FOR PROPOSALS HAVING A
BUDGETARY IMPACT EXCLUSIVELY LIMITED TO THE REVENUE SIDE**

1. NAME OF THE PROPOSAL:

Regulation of the European Parliament and the Council amending Regulation (EC) No. 1638/2006 laying down general provisions establishing a European Neighbourhood and Partnership Instrument

2. BUDGET LINES:

Chapter: 8.1 Loans granted by the Commission, Article: 8.1.0 Capital repayments and interest in respect of special loans and risk capital granted in the framework of financial cooperation with Mediterranean non-member Countries

Amount budgeted for the year concerned (2008): € 26,070,788

3. FINANCIAL IMPACT

☐ Proposal has no financial implications

☒ Proposal has no financial impact on expenditure but has a financial impact on revenue – the effect is as follows:

(€ million to one decimal place)

(€ million to one decimal place)

Budget line			
Title 8	Borrowing and lending Operations		
Chapter: 81	Loans granted by the Commission		
Article 810	Capital repayments and interest in respect of special loans and risk capital granted in the framework of financial cooperation with Mediterranean non-member countries		€ 35 (estimated)

Situation following action					
	[n+1]	[n+2]	[ulter. -]		
Article 8.1.0	p.m.	p.m.	p.m.		

* The figures included in the above table should be considered as rough estimates. For 2008 whatever has been reimbursed before the approval of this proposal will not be re-invested under FEMIP. It should be noted that

accurate estimates are extremely difficult because part of the reflows which are generated by risk capital operations are highly volatile due to the risky nature of the instrument.

The proposed addition of paragraph 3 to Art 23 gives the possibility to the Commission to take a decision allowing EIB to re-invest the funds received as re-imbusement of operations carried out under MEDA and the earlier financial protocols for co-operation with Mediterranean countries. As a result the re-imbusement of such funds to the community budget will be deferred to a later date and the funds will continue being used to support infrastructure investment and private sector development in the Mediterranean region.

4. ANTI-FRAUD MEASURES

The protection of the Community's financial interests and the fight against fraud and irregularities form an integral part of the ENPI Regulation.

For the measures covered by this amendment, the administrative monitoring of the use of ENPI funds will be the responsibility of DG AIDCO. Where an agreement in that sense does not already exist, it will be concluded with the financial intermediaries in charge of managing community funds covering all the aspects indicated in the new Article 23 (2) of the ENPI Regulation.

Such agreement will expressly provide for monitoring of spending authorised under the measures as well as financial control by the Commission, including the European Anti-Fraud Office (OLAF), and audits by the Court of Auditors, if necessary on the spot. Financial intermediaries will be requested to authorise the Commission (OLAF) to carry out on-the-spot checks and inspections in accordance with Council Regulation (Euratom, EC) No 2185/96 of 11 November 1996 concerning on-the-spot checks and inspections carried out by the Commission in order to protect the European Communities' financial interests against fraud and other irregularities.