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Proposal for a

COUNCIL DECISION

**on the eligibility of Central Asian countries under Council Decision 2006/1016/EC
granting a Community guarantee to the European Investment Bank against losses under
loans and loan guarantees for projects outside the Community**

{SEC(2008) 417}

(presented by the Commission)

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

- Grounds for and objectives of the proposal

The purpose of this proposal for a Council Decision is to establish the eligibility of five Central Asian countries, namely Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan and Uzbekistan, for European Investment Bank ("EIB") financing under Community guarantee in accordance with Council Decision 2006/1016/EC. According to Article 2 of Council Decision 2006/1016/EC, the activation of the EIB mandate in these countries shall be decided by the Council on the basis of a proposal from the Commission.

- General context

The European Council adopted in its meeting of 21/22 June 2007 the EU strategy for a new partnership with Central Asia (the "Strategy"). The Strategy serves as an overall framework for EU relations with Central Asia, including in the following fields of particular relevance to EIB financing: human rights, good governance and democracy, economic development, trade and investment, energy, transport and environmental policies. The Strategy builds on the progress made by the Central Asian countries since attaining independence and on the results obtained under the implementation of the various Partnership, Trade and Cooperation Agreements. The Strategy, based upon common interests of the EU and the countries of the region, defines the EU's priorities for its cooperation with the region as a whole, but with implementation tailored to the specific requirements and performance of each Central Asian country.

In particular, in order to intensify cooperation with the Central Asian countries, the Strategy states that: "Interaction with international financial institutions will be strengthened, including the World Bank and the European Bank for Reconstruction and Development (EBRD). The European Investment Bank (EIB) should play an important role in financing projects of interest to the EU in Central Asia."

The Central Asian countries of Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan and Uzbekistan have experienced a considerable evolution in both political and economic terms since attaining independence. They have established statehood, safeguarded multi-ethnic understanding and inter-religious communication. By joining the OSCE, they subscribed to the organisation's values, standards and commitments. By signing the United Nations Millennium Declaration, they set themselves ambitious goals for sustainable development, which are reflected in their national Poverty Reduction Strategy Papers or similar national strategies for welfare improvement of their populations. In the framework of the Strategy, the EU has undertaken to establish a regular, result-oriented "Human Rights dialogue" with each of the Central Asia countries.

The EU has individual Partnership and Cooperation Agreements ("PCAs") with all five Central Asian countries, although only those agreements with Kazakhstan, Kyrgyzstan and Uzbekistan are in force. The PCAs with Tajikistan and Turkmenistan have not yet been ratified by all EU Member States. These agreements, while concluded on a bilateral basis, provide a common regional framework for the EU cooperation with all five Central Asian countries.

Council Decision 2006/1016/EC specifies that EIB activity in Central Asia should focus on major energy supply and energy transport projects with cross-border implications. Central Asia, with its significant hydrocarbon resources and favourable geographical location for transport routes to European markets, has the potential to play an important role in ensuring the EU's energy supplies.

Also, the Commission considers that the macro-economic conditions prevailing in the countries covered by this proposal should allow them access to financing from the EIB, under specific conditions for some of these countries. Indeed, the Central Asian economies have been registering very fast output growth in the last years. This strong GDP growth, among the strongest in the world, promoted by prudent macroeconomic policies and, for the poorest countries of the region (Kyrgyzstan and Tajikistan), by access to large concessional financial assistance from multilateral and bilateral creditors and donors, has led to the strengthening of the external finances and to the improvement of the debt sustainability in the region. Progress in reducing debt and building official reserves has put the region in a better position to absorb shocks and address development needs.

Yet, the economic and financial situations of the five Central Asian countries differ substantially. Kazakhstan, a middle-income emerging economy and an important exporter of natural resources (primarily hydrocarbons), attracts large foreign direct investment and has access to international capital markets. The financial position of Turkmenistan, the other major hydrocarbon producer and exporter, is equally comfortable. While the other three countries of the region are much poorer and have much less exportable resources (Uzbekistan has a large potential, but it still needs to be further developed), they have also registered substantial progress in strengthening their financial situation. However, the external financial situation of Kyrgyzstan and Tajikistan is still fragile and could be substantially worsened if the two countries contract additional debt on non-concessional terms. Therefore, Kyrgyzstan and Tajikistan should only be granted access to EIB financing in the context of financing packages with a substantial grant element.

The EIB activity in these countries falls under the remit of the tripartite Memorandum of Understanding signed on 15 December 2006 between the Commission, the EIB and the EBRD, in respect of cooperation in Eastern Europe and the Southern Caucasus in Russia and in Central Asia. Therefore, the EIB activity in these countries will be coherent with EBRD's activities in the region.

Furthermore, a multipartite Memorandum of Understanding covering cooperation in the Central Asian countries has been signed on 13 July 2007 between the Commission, the EIB, the EBRD, the Black Sea Trade and Development Bank, the Council of Europe Development Bank, the International Bank for Reconstruction and Development, the International Finance Corporation and the Nordic Investment Bank.

More information on the economic developments in Central Asian countries is provided in a Staff Working Paper (SEC (2008) xxx).

- Existing provisions in the area of the proposal

As noted above, the proposal deals with the eligibility of Central Asian countries under Council Decision 2006/1016/EC.

- Consistency with other policies and objectives of the Union

The proposal follows the request of the European Council that the EIB should become active in Central Asia. The EIB activity will be complementary to the other assistance provided by the Commission under the Development Cooperation Instrument (DCI). In addition, the five Central Asian republics of Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan and Uzbekistan are also invited to participate in the regional initiatives and programmes of the European Neighbourhood and Partnership Instruments with the aim of deepening EU/Central Asia relations.

The Commission has adopted on 27 April 2007 the Regional Strategy Paper for Assistance to Central Asia for 2007-2013 and the Indicative Programme for 2007-2010 under the DCI.

The regional assistance strategy is conceived as a tool to support the strengthening of political dialogue with the Central Asian countries at regional and national level. It is focused, at the regional level, on the consolidation of links between the EU, the region and the EU Neighbourhood countries through transport, energy and communications networks, and, at the national level, on governance (public finance management and judiciary) as well as poverty reduction for the poorest countries (Kyrgyzstan and Tajikistan). In particular to ensure best impact and synergy, the priorities for the specific Central Asian regional actions in the fields of energy, transport and environment are aligned with those of the relevant ENPI regional programmes and can benefit from EC funding through the ENPI Eastern Regional Programme (on the basis of Article 27 of the ENPI Regulation).

In order to reflect greater engagement of the EU towards the region, the EC assistance budget to Central Asia will be significantly increased under the new Financial Framework 2007-2013 to a total of EUR 750 million (constant prices), with the average annual allocation to the region under the DCI growing from EUR 58 million in 2007 to EUR 139 million in 2013.

The European Council has asked the Council and the Commission to regularly review progress in implementing the Strategy and to submit a progress report to the European Council by the middle of 2008.

2. CONSULTATION OF INTERESTED PARTIES AND IMPACT ASSESSMENT

- Consultation of interested parties

Consultation methods, main sectors targeted and general profile of respondents

The EIB and the EBRD were consulted in the framework of a meeting of the Steering Committee set up under the tripartite Memorandum of Understanding signed on 15 December 2006 between the Commission, the EIB and the EBRD, in respect of cooperation in Eastern Europe and the Southern Caucasus in Russia and in Central Asia.

Summary of responses and how they have been taken into account

The EIB and the EBRD have not raised any objections to the activation of the EIB mandate in Central Asia.

- Collection and use of expertise

There was no need for external expertise.

- Impact assessment

The activation of the EIB mandate for the five Central Asian countries will take place in the framework of the Council Decision 2006/1016/EC. There will be no modification of the ceilings for EIB Financing Operations. The indicative sub-ceiling for Asia remains EUR 1 billion.

An alternative option examined was not to propose the activation of the EIB mandate for the five Central Asian countries. However, this was not deemed a suitable option considering the recommendation by the European Council that the EIB should play an important role in financing projects of interest to the EU in Central Asia.

3. LEGAL ELEMENTS OF THE PROPOSAL

- Summary of the proposed action

The purpose of this proposal for a Council Decision is to establish the eligibility of five Central Asian countries, namely Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan and Uzbekistan, for EIB financing under Council Decision 2006/1016/EC.

- Legal basis

As foreseen under Article 2 of Council Decision 2006/1016/EC, the legislative proposal will be based on Article 181a of the Treaty establishing the European Community.

It should be noted that the European Parliament has challenged the choice of legal basis for adoption of Council Decision 2006/1016/EC in an action for annulment before the European Court of Justice (Case C-155/07), arguing that the Decision is an instrument of development policy which should have been adopted on the dual legal basis of Articles 179 and 181a EC, and not solely on the basis of Article 181a. However, the Parliament asks the European Court of Justice - should it decide in favour of an annulment - to uphold the effects of Council Decision 2006/1016/EC until a new decision has been adopted. Against this background, the Commission presents this legislative proposal based on Article 181a of the Treaty, in line with the requirements set out in Council Decision 2006/1016/EC.

- Subsidiarity principle

The proposal falls under the exclusive competence of the Community. The subsidiarity principle therefore does not apply.

- Proportionality principle

The proposal complies with the proportionality principle for the following reasons:

The proposal concerns the implementation of a provision in an existing Council Decision.

The proposal imposes no additional financial and administrative burden upon the Community and national or local authorities.

- Choice of instruments

Proposed instruments: other.

Other means would not be adequate for the following reason:

A Council Decision is required under Council Decision 2006/1016/EC.

4. BUDGETARY IMPLICATION

The proposal has no implication for the Community budget.

5. ADDITIONAL INFORMATION

- Review/revision/sunset clause

Council Decision 2006/1016/EC includes a review clause.

Council Decision 2006/1016/EC includes a revision clause.

Council Decision 2006/1016/EC includes a sunset clause.

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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 Commission¹,

Having regard to the opinion of the European Parliament²,

Whereas:

- (1) In accordance with Article 2 of 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 Community³, for countries listed in Annex 1 and marked with an asterisk ("*") and for others not listed in Annex 1, 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.
- (2) Annex 1 of Council Decision 2006/1016/EC includes five Central Asian countries, namely Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan and Uzbekistan, among the countries marked with an asterisk ("*").
- (3) In the EU Strategy for a new partnership with Central Asia, adopted by the European Council in its meeting of 21/22 June 2007, it is highlighted that the European Investment Bank (EIB) should play an important role in financing projects of interest to the EU in Central Asia.
- (4) The macro-economic conditions prevailing in the Central Asian countries, and in particular the situation of external finances and debt sustainability, have improved in the recent years as a result of strong economic growth and prudent macroeconomic policies, and they should therefore be allowed access to financing from the EIB.
- (5) Given that the external financial situation of Kyrgyzstan and Tajikistan is still fragile, these two countries should only contract additional debt on concessional terms. Therefore, EIB financing to Kyrgyzstan and Tajikistan should only be provided in the context of financing packages comprising a substantial grant element.

¹ OJ C , , p.

² OJ C , , p.

³ OJ L 414/95, 19.12.2006

- (6) EIB financing in Central Asia 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 the tripartite Memorandum of Understanding signed on 15 December 2006 between the Commission, the EIB and the EBRD, in respect of cooperation in Eastern Europe and the Southern Caucasus, in Russia and in Central Asia.

HAS DECIDED AS FOLLOWS:

Article 1

Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan and Uzbekistan are eligible for EIB financing under Community guarantee in accordance with Council Decision 2006/1016/EC.

Article 2

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

Done at Brussels,

For the Council

The President