

**REGULATION (EC) No 546/2009 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
of 18 June 2009**

amending Regulation (EC) No 1927/2006 on establishing the European Globalisation Adjustment Fund

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular the third paragraph of Article 159 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Economic and Social Committee ⁽¹⁾,

Having regard to the opinion of the Committee of the Regions ⁽²⁾,

Acting in accordance with the procedure laid down in Article 251 of the Treaty ⁽³⁾,

Whereas:

(1) Regulation (EC) No 1927/2006 of the European Parliament and of the Council of 20 December 2006 ⁽⁴⁾ established the European Globalisation Adjustment Fund (the EGF) to enable the Community to provide support and show solidarity to workers made redundant as a result of major structural changes in world trade patterns due to globalisation.

(2) In its Communication of 2 July 2008, the Commission presented, in accordance with Article 16 of Regulation (EC) No 1927/2006, its first annual report to the European Parliament and to the Council. The Commission concluded that it would be appropriate to reinforce the impact of the EGF on the creation of jobs and training opportunities for Europe's workers.

(3) The 'Common Principles of Flexicurity' endorsed by the European Council on 14 December 2007 and the Commission Communication entitled 'New skills for new jobs: Anticipating and matching labour market and skills needs'

both emphasise the objective of fostering the continuous adaptability and employability of workers through better learning opportunities at all levels and through skills-development strategies responsive to the needs of the economy, including, for example, skills needed for the transition to a low-carbon and knowledge-based economy.

(4) On 26 November 2008, the Commission issued a Communication on a European Economic Recovery Plan based on the fundamental principles of solidarity and social justice. As part of the response to the crisis, the rules of the EGF need to be revised to provide for a derogation in order to broaden temporarily the EGF's scope and to enable it to react more effectively. The Member States applying for an EGF contribution under this derogation must establish a direct and demonstrable link between the redundancies and the financial and economic crisis.

(5) In order to ensure that the intervention criteria are applied transparently, a definition of the event constituting redundancy should be introduced. In order to give more flexibility to Member States to present applications and to better meet the solidarity objective, the redundancy threshold should be lowered.

(6) In conformity with the objective of fair and non-discriminatory treatment, all workers whose redundancy can be clearly linked to the same redundancy event should be entitled to benefit from the package of personalised services presented for an EGF contribution.

(7) Technical assistance at the initiative of the Commission should be used in order to facilitate the implementation of the EGF.

(8) In order to provide additional EGF support during the period of the financial and economic crisis, the co-financing rate should be temporarily increased.

(9) In order to improve the quality of the actions and to leave sufficient time for the measures to be effective in reintegrating into employment the most vulnerable workers, the period during which the eligible actions must be carried out should be extended and clarified.

⁽¹⁾ Opinion of 24 March 2009 (not yet published in the Official Journal).

⁽²⁾ Opinion of 22 April 2009 (not yet published in the Official Journal).

⁽³⁾ Opinion of the European Parliament of 6 May 2009 (not yet published in the Official Journal) and Council Decision of 11 June 2009.

⁽⁴⁾ OJ L 48, 22.2.2008, p. 82.

- (10) It is appropriate to review the functioning of the EGF, including the temporary derogation to support workers made redundant as a result of the global financial and economic crisis.
- (11) Regulation (EC) No 1927/2006 should therefore be amended accordingly,

may be considered admissible even if the intervention criteria laid down in points (a) or (b) are not entirely met, when redundancies have a serious impact on employment and the local economy. The Member State shall specify that its application does not entirely meet the intervention criteria set out in points (a) or (b). The aggregated amount of contributions in exceptional circumstances may not exceed 15 % of the annual maximum amount of the EGF.

HAVE ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 1927/2006 is hereby amended as follows:

1. in Article 1, the following paragraph is inserted:

'1a. By way of derogation from paragraph 1, the EGF shall also provide support to workers made redundant as a direct result of the global financial and economic crisis, provided applications comply with the criteria set out in Article 2(a), (b) or (c). Member States applying for an EGF contribution under this derogation shall establish a direct and demonstrable link between the redundancies and the financial and economic crisis.

This derogation shall apply to all applications submitted before 31 December 2011.;

2. Article 2 is replaced by the following:

'Article 2

Intervention criteria

A financial contribution from the EGF shall be provided where major structural changes in world trade patterns lead to serious economic disruption, in particular a substantial increase of imports into the European Union, the rapid decline of the EU market share in a given sector or a delocalisation to third countries, which results in:

- (a) at least 500 redundancies over a period of four months in an enterprise in a Member State, including workers made redundant in its suppliers or downstream producers, or
- (b) at least 500 redundancies over a period of nine months, particularly in small or medium-sized enterprises, in a NACE 2 division in one region or two contiguous regions at NUTS II level.
- (c) In small labour markets or in exceptional circumstances, where duly substantiated by the Member State concerned, an application for a contribution from the EGF

For the purposes of calculating the number of redundancies provided for in points (a), (b) and (c) above, a redundancy shall be counted from:

- the date of the employer's individual notice to lay off or to terminate the contract of employment of the worker,
- the date of the de facto termination of the contract of employment before its expiry, or,
- the date on which the employer, in conformity with the provisions of Article 3(1), of Council Directive 98/59/EC of 20 July 1998 on the approximation of the laws of the Member States relating to collective redundancies (*), notifies the competent public authority in writing of the projected collective redundancies; in this case, the applicant Member State(s) shall provide the Commission with additional information on the actual number of redundancies effected according to points (a), (b) or (c) above, and the estimated costs of the coordinated package of personalised services, prior to the completion of the assessment provided for in Article 10 of this Regulation.

For each enterprise in question the Member State(s) shall specify in the application how the redundancies are being counted.

(*) OJ L 225, 12.8.1998, p. 16.;

3. The following Article is inserted:

'Article 3a

Eligible persons

Member States can provide personalised services co-financed by the EGF to affected workers, who may include:

- (a) workers made redundant within the period provided for in Article 2(a), 2(b) or 2(c), and

- (b) workers made redundant before or after the period provided for in Articles 2(a) or 2(c), in cases where an application under the latter derogates from the criteria set out in Article 2(a), provided that the redundancies occurred after the general announcement of the projected redundancies and a clear causal link can be established with the event which triggered the redundancies during the reference period.’;
4. Article 5(2)(a) is replaced by the following:
- ‘(a) a reasoned analysis of the link between the redundancies and major structural changes in world trade patterns or the financial and economic crisis, a demonstration of the number of redundancies, and an explanation of the unforeseen nature of those redundancies.’;
5. Article 8 is replaced by the following:
- ‘Article 8
- Technical assistance at the initiative of the Commission**
1. At the initiative of the Commission, subject to a ceiling of 0,35 % of the annual maximum amount of the EGF, the EGF may be used to finance the preparation, monitoring, information and creation of a knowledge base relevant to the implementation of the EGF. It may also be used to finance administrative and technical support, as well as audit, control and evaluation activities necessary to implement this Regulation.
2. Subject to the ceiling set out in paragraph 1, the budgetary authority shall make available an amount for technical assistance at the start of each year on the basis of a proposal by the Commission.
3. The tasks set out in paragraph 1 shall be executed in accordance with the Financial Regulation, as well as the implementing rules applicable to this form of implementation of the budget.
4. The Commission’s technical assistance shall include the provision of information and guidance for the Member States in using, monitoring and evaluating the EGF. The Commission can also provide information on using the EGF to the European and national social partners.’;
6. Article 10(1) is replaced by the following:
- ‘1. The Commission shall, on the basis of the assessment carried out in accordance with Article 5(5), particularly taking into account the number of workers to be supported, the proposed actions and the estimated costs, evaluate and propose as quickly as possible the amount of financial contribution, if any, that may be made within the limits of the resources available. The amount may not exceed 50 % of the total of the estimated cost referred to in Article 5(2)(d). For applications submitted before the date mentioned in Article 1(1a), the amount may not exceed 65 %.’;
7. In Article 11, the following paragraph is added:
- ‘In the case of grants, indirect costs, declared on a flat-rate basis, shall be expenditure eligible for a contribution from the EGF of up to 20 % of the direct costs of an operation, provided that the indirect costs are incurred in accordance with national rules, including accountancy rules.’;
8. Article 13(2) is replaced by the following:
- ‘2. The Member State(s) shall carry out all eligible actions included in the coordinated package of personalised services as soon as possible, but not later than 24 months after the date of application pursuant to Article 5, or after the date of commencement of these measures provided that the latter date falls no later than three months after the date of application.’;
9. In Article 20, the following paragraph is inserted after the first paragraph:
- ‘On the basis of a proposal from the Commission, the European Parliament and the Council may review this Regulation, including the temporary derogation provided for in Article 1(1a).’.
- Article 2*
- Transitional provisions**
- This Regulation shall apply to all applications for assistance from the EGF received from 1 May 2009. As regards applications received before that date, the rules in force on the date of the application shall continue to apply throughout the entire duration of the EGF assistance.

*Article 3***Entry into force**

This Regulation shall enter into force on the third day following 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, 18 June 2009.

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

For the Council
The President
Š. FÜLE
