



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 27.10.2006
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Proposal for a

COUNCIL REGULATION

On the implementation of the 10th European Development Fund

(presented by the Commission)

EXPLANATORY MEMORANDUM

The European Council of 15 & 16 December 2005 decided that geographic cooperation with the African, Caribbean and Pacific (ACP) States should continue to be funded from the inter-governmental European Development Fund (EDF) for the period 2008-2013. The Representatives of the Member States, meeting within the Council, confirmed that the amount of €22 682 million earmarked for this purpose also included the cooperation with the Overseas Countries and Territories (OCT) to which Part Four of the EC Treaty applies and the support expenditures directly linked to the implementation of the EDF.

The ACP-EC Council of Ministers, meeting in Port Moresby on 2 June 2006 decided on the multi-annual financial framework 2008-2013 for the cooperation under the ACP-EC Partnership Agreement signed in Cotonou on 23 June 2000 and revised in Luxembourg on 25 June 2005. The General Affairs and External Relations Council of 17 July 2006 signed the Internal Agreement on the financing of Community Aid under the multi-annual financial framework 2008-2013 and on the allocation of financial assistance for the OCT. The Commission is preparing a proposal to amend accordingly Council Decision 2001/822/EC of 27.11.2001 on the association of the OCT with the EC.

Through the Internal Agreement signed on 17 July 2006, a 10th EDF has been set up, covering geographic cooperation with the ACP and the OCT for the period 2008-2013. The Internal Agreement further defines the various financial envelopes of the 10th EDF and the contribution key for the Member States, sets up a Committee of Representatives of the Member States at the Commission (EDF Committee) and a similar Committee at the European Investment Bank (EIB) for the management of the Investment Facility funded from the EDF (IF Committee), determining the voting weight and qualified majority rule therein.

The Internal Agreement also provides for the adoption by the Council, acting unanimously, of an implementing regulation for the 10th EDF, and the adoption by the Council, acting by qualified majority, of a financial regulation for the 10th EDF, both based on a proposal from the Commission and after consulting the EIB and, for the financial regulation, the Court of Auditors.

Regarding the implementing regulation, the Internal Agreement states that it shall contain appropriate modifications and improvements to the programming and decision-making procedures compared to the 9th EDF, as well as harmonise Community and EDF procedures as far as possible, including on co-financing aspects, and establish particular management procedures for the Peace Facility.

The Commission is preparing a proposal for a 10th EDF financial regulation which will be submitted to the Council in the coming months. The present proposal for a 10th EDF implementing regulation covers the programming and decision-making procedures which under the 9th EDF were included in the Internal Agreement. By addressing these issues now, through a separate regulation which does not require ratification, further delays in the launching of the ratification process of the Internal Agreement could be avoided, while enabling the Commission to submit a proposal on implementing rules that is more in line with the procedures proposed under the cooperation funded by the Community budget.

The present proposal reflects as far as possible the common position of the Council on the adoption of a Regulation of the European Parliament and of the Council establishing a

financing instrument for development cooperation (DCI) which was adopted on 23 October 2006. The major changes and improvements compared to the 9th EDF are the following:

- An enhanced focus by the EDF management committee on strategic issues and monitoring. The major change in this field is the replacement of the practice of submitting individual financing proposals to the EDF committee for an opinion by the submission of annual action programmes for an opinion. These action programmes will specify the objectives pursued, the fields of intervention, the expected results, the management procedures and total amount of financing planned, as well as a description of the operations to be financed and an indication of the amounts and implementation timetable for each operation. This approach allows a more coherent approach to implementation with a constant interaction between the initial multi-annual strategy paper and its translation into annual response strategies. It also leads to a more programmatic approach to implementation and therefore to a smoother and leaner implementation cycle.
- Strategy papers, aid allocations and indicative programmes and any modification to these as a result of periodic or ad hoc reviews remain subject to the prior opinion of the EDF Committee, as is the case for all special measures exceeding EUR 10 million.
- The EDF Committee will receive for information and discussion the aid allocation criteria, the special measures not exceeding EUR 10 million and the various monitoring and evaluation reports. Annual reports and a performance review undertaken on the basis of a proposal provided by the Commission in 2010 will be submitted to the Council. Any decision to release part or all of the funds decommitted after 31.12.2007 from previous EDFs will be taken by the Council, acting unanimously, on this basis.
- The establishment of a framework for co-financing which will be further elaborated in the financial regulation.
- Special management procedures for the Peace Facility.
- Increased possibilities for regional cooperation, including between the ACP and the Community's outermost regions, by identifying common priorities and specific resources and by enhancing the coordination of the selection of common interest projects, including through the mobilisation of technical assistance as well as through programme monitoring committees involving the various stakeholders.
- An emphasis on the principle of coordination with Member States and other donors and stakeholders and on the principle of subsidiarity and complementarity between thematic programmes and geographic cooperation, whereby support funded from the Community budget (e.g. sugar protocol countries and thematic programmes) will, where applicable, be integrated in the geographic strategy papers.
- The introduction of a programmed approach to intra-ACP funding.

Proposal for a
COUNCIL REGULATION

On the implementation of the 10th European Development Fund

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to the Partnership Agreement between the members of the African, Caribbean and Pacific Group of States (hereinafter referred to as ‘the ACP States’) of the one part, and the European Community and its Member States, of the other part, signed in Cotonou (Benin) on 23 June 2000¹ as revised by Agreement of 25 June 2005 signed in Luxembourg² (hereinafter referred to as the ‘ACP-EC Agreement’),

Having regard to the Internal Agreement between Representatives of the Governments of the Member States, meeting within the Council, on the financing of Community aid under the multi-annual financial framework for the period 2008 to 2013 in accordance with the ACP-EC Agreement and on the allocation of financial assistance for the Overseas Countries and Territories to which Part Four of the EC Treaty applies (hereinafter referred to as the ‘Internal Agreement’) adopted by the Council on 17 July 2006 and in particular Article 10(1) thereof³,

Having regard to the proposal from the Commission⁴,

Having regard to the opinion of the European Investment Bank⁵,

Whereas:

- (1) Decision No 1/2006 of the ACP-EC Council of Ministers of 2 June 2006 specifies the multi-annual financial framework for the period 2008 to 2013 and inserts a new Annex Ib in the ACP-EC Agreement⁶.
- (2) The Internal Agreement defines the various financial envelopes of the 10th European Development Fund (hereinafter referred to as the ‘EDF’), the contribution key and the contributions to the 10th EDF, sets up a Committee of Representatives of the Member States at the Commission (hereinafter referred to as the ‘EDF Committee’) and the Investment Facility Committee at the European Investment Bank (hereinafter referred to as the ‘IF Committee’), and determines the voting weight and qualified majority rule therein.

¹ OJ L 317, 15.12.2000, p. 3.

² OJ L 209, 11.8.2005, p. 27.

³ OJ L 247, 9.9.2006, p. 32.

⁴ [...]

⁵ [...]

⁶ OJ L 247, 9.9.2006, p. 22.

- (3) The Internal Agreement sets the aggregate amount of Community aid to the ACP States (excluding the Republic of South Africa) and to the Overseas Countries and Territories (hereinafter referred to as the ‘OCT’) for the six-year period 2008-2013 at EUR 22 682 million from the 10th EDF contributed by Member States. From the amount of the 10th EDF set by the Internal Agreement, EUR 21 966 million shall be allocated to the ACP States as specified in the multi-annual financial framework 2008-2013 referred to in Annex Ib to the ACP-EC Agreement, EUR 286 million shall be allocated to the OCT and EUR 430 million shall be allocated to the Commission for support expenditures linked to programming and implementation of the EDF by the Commission.
- (4) Measures covered by, and eligible for funding under Council Regulation (EC) No 1257/96 of 20 June 1996 concerning humanitarian aid⁷, should only in exceptional circumstances be financed under the 10th EDF, where such assistance is required to ensure continuity of cooperation from crisis to stable conditions for development and cannot be financed from the Community’s budget.
- (5) Measures covered by, and eligible for funding under Regulation (EC) No [...] of the European Parliament and of the Council of [...] establishing an instrument for stability should only be funded under the EDF where there is a need to ensure continuity of cooperation from crisis to stable conditions for development. On 11 April 2006, the Council adopted the principle to fund the African Peace Facility from the 10th EDF for an amount of up to EUR 300 million covering the initial period 2008-2010.
- (6) The ACP Sugar protocol countries affected by the Community sugar reform shall benefit from accompanying measures funded through Regulation (EC) No [...] of the European Parliament and of the Council of [...] establishing a financing instrument for development cooperation (DCI)⁸. The ACP will also access Community assistance from thematic programmes provided by the DCI and by Regulation (EC) No [...] of the European Parliament and of the Council of [...] establishing a financing instrument for the promotion of democracy and human rights⁹. Those thematic programmes shall add value to, be consistent with and subsidiary and additional to the geographic programmes funded under the EDF.
- (7) The ACP-EC Agreement, in its Article 28, stresses the importance of regional cooperation among the ACP, the OCTs and the Community’s outermost regions.
- (8) Council Decision 2005/446/EC of 30 May 2005¹⁰ sets at 31 December 2007 the date beyond which the funds of the 9th EDF managed by the Commission, the interest subsidies managed by the European Investment Bank (hereinafter referred to as ‘the EIB’) and the revenue accruing from the interest on these appropriations shall no longer be committed. This date could be reviewed if necessary.
- (9) In order to implement the EDF, the procedure for programming, examining and approving aid should be decided and the detailed rules for supervising the use of aid

⁷ OJ L 163, 2.7.1996, p. 1. Regulation as amended by Regulation (EC) No 1882/2003 of the European Parliament and of the Council (OJ L 284, 31.10.2003, p. 1).

⁸ OJ L , , p. .

⁹ OJ L , , p. .

¹⁰ OJ L 156, 18.6.2005, p. 19.

should be laid down. On 17 July 2006 the representatives of the Governments of the Member States meeting within the Council adopted a decision on the provisional application of the Internal Agreement on the financing of Community aid under the multiannual financial framework for the period 2008 to 2013 in accordance with the ACP-EC Agreement and on the allocation of financial assistance for the OCT to which Part Four of the EC Treaty applies¹¹, for the purpose of the adoption of the Implementation Regulation and the Financial Regulation and, *inter alia*, for the purposes of establishing the EDF Committee and the IF Committee.

- (10) The Council of 24 November 2004 adopted conclusions on the effectiveness of EU external actions, including further strengthening complementarity and coordination between Community and Member States' development cooperation. On 24 May 2005 the Council committed itself to timely implementation and monitoring of the Paris Declaration on Aid Effectiveness and of the EU specific commitments adopted at the Paris Forum of 28 February – 2 March 2005. The Council of 11 April 2006 adopted conclusions on a joint programming framework for the EU and other interested donors.
- (11) On 22 December 2005, the Council and the representatives of the Governments of the Member States meeting within the Council, the European Parliament and the Commission adopted a Joint Statement on a European Union Development Policy¹².

HAS ADOPTED THIS REGULATION:

TITLE I

PROGRAMMING

Article 1

General framework for programming

1. Programming for geographic cooperation with the ACP countries and regions in the context of the 10th EDF shall be founded on the basic principles and values reflected in the general provisions of the ACP-EC Agreement and on the development objectives and cooperation strategies set out in Title XX of the Treaty and in Article 178 therein, in the ACP-EC Agreement and in the European Union Development Policy Statement of 22 December 2005.
2. The process of programming for assistance to the ACP countries and regions managed by the Commission under the ACP-EC Agreement shall be undertaken in accordance with Articles 1 to 14 of Annex IV to that Agreement.
3. Programming for this purpose shall mean, *inter alia*:

¹¹ OJ L 247, 9.9.2006, p. 30.

¹² OJ C 46, 24.2.2006, p. 1.

- (a) the preparation and development of Country Support Strategies and Regional Support Strategies based on the country's or region's own medium-term development objectives and strategies;
 - (b) a clear indication from the Community of the indicative programmable financial allocation from which the countries and regions may benefit during the six-year period of the 10th EDF;
 - (c) the preparation and adoption of a multi-annual indicative programme for implementing the country and regional support strategies;
 - (d) a review process covering the country and regional support strategies, the multi-annual indicative programmes and the volume of resources allocated to them.
4. In addition to country and regional support strategies, an Intra-ACP Support Strategy and related multi-annual indicative programme shall be prepared and developed, based on criteria set out for an intra-ACP policy framework compliant with the principles of complementarity, subsidiarity and geographic scope inherent in Article 12 of Annex IV to the ACP-EC Agreement.
 5. In the exceptional circumstances referred to in Article 3(4) and Article 4(5) of Annex IV to the ACP-EC Agreement, when countries cannot access normal programmable funds and/or the national authorising officer is prevented from carrying out his/her duty, the Community shall make specific provisions as referred to in Article 3(7) of this regulation.

Article 2

Resource allocation

1. At the beginning of the programming processes the Commission shall, on the basis of the needs and performance criteria identified in Articles 3, 9 and 12 of Annex IV to the ACP-EC Agreement, determine the multi-annual indicative fund allocation for each ACP country and region and for the intra-ACP envelop on which the programming process is based, within the limits set out in Article 2 of the Internal Agreement. These criteria shall be standard, objective and transparent.
2. Regarding the national indicative grant allocation, the resources shall comprise a programmable amount and an amount for unforeseen needs as referred to in Article 3(2)(b) of Annex IV to the ACP-EC Agreement.
3. The method used in the application of the general criteria for resource allocation shall be the subject of an exchange of views between the Member States and the Commission in the framework of the EDF Management Committee (hereinafter referred to as the 'EDF Committee') referred to in Article 10(1). The consolidated country and regional aid allocations shall be consistent with the amounts set out in Article 2 of the Internal Agreement. They shall be integrated into the country and regional support strategies and multi-annual indicative programmes, and adopted by the Commission in accordance with the management procedure set out in Article 10(4). Funds earmarked for special action programmes and support as referred to in

Article 3(7) shall also be adopted by the Commission in accordance with the management procedures set out in Article 10(4).

Article 3

Support strategy papers and multi-annual programming

1. The support strategy papers (hereinafter referred to as ‘strategy papers’) for partner countries and regions shall cover no more than the period covered by the 10th EDF and aim to provide a coherent framework for cooperation between the Community and the partner country or region concerned, consistent with the overall purpose and scope, objectives and principles of the ACP-EC Agreement. The strategy paper shall not only cover the development cooperation funded out of the EDF, but also all other Community instruments having an impact on the partner country or region, taking into account the Community’s development objectives and aiming to ensure coherence with other areas of the Community’s external action.
 - (a) Preparation and implementation of the support strategies shall be based on the principles of aid effectiveness;
 - (b) Except in the circumstances provided for in Article 1(5), strategy papers shall be based on dialogue with the partner country or region so as to ensure that the country or region concerned takes sufficient ownership of the process and to encourage coherence with and support for national or regional development strategies, particularly those for reducing poverty. Emphasis shall be placed on shared assessments of needs and performance and sector analysis, as well as priorities;
 - (c) Other stakeholders, including representative local non-State actors and, where appropriate, local authorities, shall be associated in the programming process as early as appropriate;
 - (d) The Commission and the Member States shall consult each other in order to come to a joint analysis of the country or regional situation and to ensure that their cooperation activities complement each other. Where possible, they will seek to achieve a joint programming. Such coordination will remain open to other donors and shall involve the EIB on matters relating to its areas of expertise and operations, including as regards the Investment Facility.
2. Except in the circumstances referred to in Article 1(5), multi-annual indicative programmes shall be drawn up on the basis of the respective strategy papers and shall be the subject of an agreement with the country or region concerned. The multi-annual indicative programmes shall include:
 - (a) the priority areas selected for Community financing, the overall objectives, expected impact and general policy commitments;
 - (b) the indicative financial allocation, both overall and per priority area. The allocation per priority area may be given in the form of a range, where appropriate. Community assistance shall be concentrated in a limited number

of priority areas and shall ensure complementarity with operations financed by the ACP State itself, by Member States and by other donors;

- (c) per priority area, specific objectives and sectoral policy commitments and the most appropriate measures and operations for attaining these objectives and targets. The indicative programme shall also describe the expected impact, and define results and performance indicators and a timetable for implementation, including commitments and disbursement of resources;
 - (d) the resources reserved for programmes and projects outside the priority areas and, where possible, the broad outlines of such activities as well as an indication of the resources to be deployed for each of these activities. They may include the priorities and specific resources for the purpose of strengthening cooperation with the Community's outermost regions, OCTs or neighbouring partner countries and regions as referred to in Article 9 of this Regulation and the modalities for identifying and coordinating the selection of those common interest projects;
 - (e) the type of non-state actors eligible for funding and, where possible, the resources to be allocated and the type of activities to be supported.
3. The strategy papers and multi-annual indicative programmes shall take account of, and avoid duplication with, measures and programmes eligible for funding under other EDF or Community instruments. Particular care shall be paid to the interaction between national, regional and intra-ACP support strategies and to the complementarity and subsidiarity with Community instruments, in particular Regulation (EC) No [...] [of the European Parliament and of the Council of [...]] establishing a financing instrument for development cooperation], Regulation (EC) No [...] [of the European Parliament and of the Council of [...]] establishing a financing instrument for the promotion of democracy and human rights], Regulation No (EC) [...] [of the European Parliament and of the Council of [...]] establishing an instrument for stability], and Regulation (EC) No 1257/96. The multi-annual adaptation strategies for ACP sugar protocol countries provided for in the instrument for development cooperation shall be integrated in the country strategy papers.
 4. Each strategy paper, including its multi-annual indicative programme, shall be set out in a single document based on the common framework and on the principles towards joint multi-annual programming adopted by the Council on 11 April 2006.
 5. The single strategy papers referred to in paragraph 4, including the multi-annual indicative programmes, shall be adopted by the Commission in accordance with the management procedure set out in Article 10(4).
 6. The single strategy papers, including the multi-annual indicative programmes, shall subsequently be adopted by common agreement between the Commission and the ACP State or Region concerned and shall, when adopted, be binding on both the Community and that State or Region. Countries without a signed strategy paper remain eligible to funding from the envelope for unforeseen needs referred to in Article 3(2)(b) of Annex IV to the ACP-EC Agreement.

7. The provisions referred to in Article 1(5) of this Regulation can take the form of special action programmes replacing a support strategy in cases where there is no government in place in the partner country to notify the amount of the multi-annual indicative fund allocation or to prepare the support strategy, or they can take the form of special support funded from the appropriation for unforeseen needs referred to in Article 3(2)b of Annex IV to the ACP-EC Agreement in situations when the amount of the multi-annual indicative fund allocation is notified but no strategy paper is signed, and/or the national authorising officer of the partner country is prevented from carrying out his/her duty. These special action programmes and support shall comply with the previous paragraphs and take into account the special considerations referred to in Article 4(3)(c) of this Regulation. They shall be adopted by the Commission in accordance with the management procedure set out in Article 10(4) of this Regulation.

Article 4

Reviews

1. Strategy papers and multi-annual indicative programmes as well as the special action programmes and support referred to in Article 3(7) shall be submitted to annual operational reviews, to reviews at mid-term and at the end of term and, when necessary, to ad hoc reviews.
2. The mid-term and end-of-term reviews constitute an integral part of the programming process and assess the strategy paper, including the multi-annual adaptation strategies for the Sugar Protocol countries and any other programmes funded from Community instruments referred to in Article 3(3), and the multi-annual indicative programme in the light of current needs and performance. The review includes, to the extent possible, an impact assessment of the Community's development cooperation in relation to the objectives and indicators set out in the support strategy. Following the completion of the mid-term or end-of-term review exercise,
 - (a) the support strategies and multi-annual indicative programmes may be adjusted where the reviews indicate specific problems, or in the light of changed circumstances.
 - (b) the national and regional multi-annual indicative allocation may be increased or decreased in the light of current needs and performance.
3. The annual operational reviews assess the level of implementation of the multi-annual indicative programmes only. In cases of new or special needs, such as those resulting from a post-crisis situation, or exceptional performance when a multi-annual indicative allocation is totally committed and additional funding can be absorbed against a background of effective poverty-reduction policies and sound financial management, a multi-annual indicative allocation may be increased following the completion of the annual operational review exercise.
4. Ad hoc reviews can be carried out at the request of either the ACP State concerned or the Commission, in cases of new or special needs or exceptional performance as

described in paragraph 2 of this Article or in the case of exceptional circumstances referred to in Article 72 and Article 73 of the ACP-EC Agreement regarding humanitarian and emergency aid. The occurrence of sudden and unforeseeable serious humanitarian, economic and social difficulties of an exceptional nature resulting from natural disasters, man-made crises such as wars and other conflicts, post-conflict situations, threats to democracy, the rule of law, human rights or fundamental freedoms or extraordinary circumstances within a country or within a region that have comparable effects, may be considered as cases justifying the conducting of an ad hoc review.

- (a) Following the completion of the ad hoc review exercise, special measures referred to in Article 7 of this Regulation may be proposed. If required, the allocation of the multi-annual indicative programme or the special action programme may be increased within the limits of available funds set out in Article 2 of the Internal Agreement. Where no strategy paper has been signed, special support can be funded from the envelope for unforeseen needs referred to in Article 1(5) of this Regulation.
 - (b) The measures taken shall be consistent with and complement other Community instruments, in particular the instrument for stability and the instrument for humanitarian aid referred to in Article 3(3).
 - (c) Where partner countries or groups of partner countries are directly involved in, or affected by, a crisis or post-crisis situation, multi-annual programming shall place special emphasis on stepping up coordination between relief, rehabilitation and development to help them make the transition from an emergency situation to the development phase; programmes for countries and regions regularly subject to natural disasters shall provide for disaster preparedness and prevention.
5. In cases of new needs as defined in the Joint Declaration VI referring to Article 12(2) of Annex IV to the ACP-EC Agreement regarding intra-ACP cooperation, an increase in the intra-ACP programmable allocation may be financed from the intra-ACP reserves within the global limits set out in point (b) of Article 2 of the Internal Agreement.
6. Annual, mid-term and end-of-term reviews shall be carried out in close coordination with the Member States represented in the ACP State or region concerned. Representative national or regional non-state actors shall be consulted during the process. The EIB shall be consulted on matters relating to its operations and those of the Investment Facility.
7. Any change in support strategy and/or resource allocation resulting from a review referred to in paragraphs 1 to 4 of this Article shall be adopted by the Commission in accordance with the management procedure set out in Article 10(4) of this Regulation. The addenda to the single strategy papers, including the multi-annual indicative programmes and to the special action programmes, shall subsequently be adopted by common agreement between the Commission and the ACP State or Region concerned and shall, when adopted, be binding on both the Community and that State or Region.

TITLE II
IMPLEMENTATION

Article 5

General framework for implementation

1. The implementation of the assistance provided to the ACP countries and regions managed by the Commission under the ACP-EC Agreement shall be undertaken in accordance with Annex IV to that Agreement and the financial regulation referred to in Article 10(2) of the Internal Agreement.
2. Without prejudice to Articles 11b, 96 and 97 of the ACP-EC Agreement, where a partner country fails to observe the essential and fundamental elements referred to in Article 9 of that Agreement, and where consultations with the partner country do not lead to a solution acceptable to both parties, or if consultations are refused, or in cases of special urgency, the Council, acting by the qualified majority laid down in Article 8 of the Internal Agreement on a proposal from the Commission, may take appropriate measures in respect of any assistance granted to the partner country under the multi-annual financial framework 2008-2013. Such measures may include full or partial suspension of assistance.

Article 6

Adoption of annual action programmes

1. The Commission shall adopt annual action programmes based on the strategy papers and multi-annual indicative programmes referred to in Article 3.

Exceptionally, for instance where an annual action programme has not yet been adopted, the Commission may, on the basis of the strategy papers and multi-annual indicative programmes, adopt measures not provided for in the annual action programme under the same rules and procedures.
2. The annual action programmes shall specify the objectives pursued, the fields of intervention, the expected results, the management procedures and the total amount of financing planned. They shall contain a description of the operations to be financed, an indication of the amounts allocated for each operation and an indicative implementation timetable. Objectives shall be measurable and have time-bound benchmarks.
3. The annual action programmes shall be adopted by the Commission in accordance with the management procedures set out in Article 10(4). Any changes in the annual action programmes shall be adopted in accordance with Article 7(4).
4. The Commission shall adopt specific action programmes in accordance with the management procedure referred to in Article 10(4) of this Regulation for support expenditures referred to in Article 6(2) of the Internal Agreement and not covered by the multi-annual indicative programmes. Any changes in the action programmes for

support expenditures shall be adopted in accordance with Article 7(4) of this Regulation.

Article 7

Adoption of special measures

1. In the cases referred to in Article 4(3) of this Regulation which cannot be funded under the instrument for stability or the instrument for humanitarian aid referred to in Article 3(3) of this Regulation, the Commission may adopt special measures not provided for in the strategy papers and multi-annual indicative programmes.
2. Special measures shall specify the objectives pursued, the areas of intervention, the expected results, the management procedures and the total amount of financing. They shall contain a description of the operations to be financed, an indication of the amounts allocated for each operation and the indicative timetable for their implementation. They shall include a definition of the type of performance indicators that will have to be monitored when implementing the special measures.
3. Where the cost of such measures exceeds EUR 10 million, the Commission shall adopt them under the management procedure referred to in Article 10(4). For special measures below EUR 10 million, the Commission shall inform the EDF Committee within one month of their adoption.
4. Amendments to special measures, such as those making technical adjustments, extending the implementation period, reassigning funds within the forecast budget, or increasing or reducing the size of the budget by less than 20% of the initial budget, do not require adoption under the management procedure referred to in Article 10(4), provided that such amendments do not affect the initial objectives set out in the Commission decision.

Article 8

Co-financing and additional Member State contributions

1. Co-financing occurs when a project or programme is funded from different sources.
 - (a) In the case of parallel co-financing, the project or programme is split into a number of clearly identifiable components, each of which is financed by the different partners providing co-financing, in such a way that the end-use of the financing can always be identified.
 - (b) In the case of joint co-financing, the total cost of a project or programme is shared between the partners providing co-financing and the resources are pooled in such a way that it is no longer possible to identify the source of financing for any activity undertaken as part of the project or programme.
2. When the Commission is involved in joint co-financing arrangements, the implementing arrangements governing such funds, including the coverage of the administrative costs incurred by the body in charge of the management of the pooled

funds, shall be laid down in the financing agreement according to the rules and procedures which shall be detailed in the financial regulation referred to in Article 10(2) of the Internal Agreement.

- (a) Where the Commission receives and manages funds on behalf of
 - (i) Member States and their regional and local authorities, and in particular their public and parastatal agencies;
 - (ii) Other donor countries, and in particular their public and parastatal agencies;
 - (iii) International organisations, including regional organisations, and in particular international and regional financial institutions;

for the purpose of implementing joint measures, such funds shall be treated as assigned revenue, in accordance with the Financial Regulation referred to in Article 9(2) of the Internal Agreement and shall be integrated as such in the annual action programmes.

- (b) Where the Commission entrusts the bodies referred to in paragraph 2(a) with funds for the financing of tasks of public authority, and in particular EDF implementation tasks, such co-financing shall be reflected and duly justified in the annual action programmes and visibility of the EDF's contribution shall be fully ensured.
3. When the EIB is designated as the manager for a joint co-financing arrangement, the implementing arrangements governing such funds, including the coverage of the administrative costs incurred by the EIB, shall be drawn up in compliance with the statutes and internal regulations of the EIB.
 4. At their own initiative, Member States may also provide to the Commission or the EIB voluntary contributions above those defined in Article 1(2)(a) of the Internal Agreement to help achieve the objectives of the ACP-EC Agreement outside joint co-financing arrangements. The implementing arrangements governing such funds, including the intervention framework for which the voluntary contributions are made, the specific objectives, expected results and performance indicators and the remuneration of the administrative costs incurred by the Commission or the EIB in managing these contributions, shall be laid down in bilateral contribution agreements. Voluntary contributions entrusted to the Commission shall be treated as assigned revenue, in accordance with the Financial Regulation referred to in Article 10(2) of the Internal Agreement and shall be integrated as such in the annual action programmes and in the review process.
 5. Member States entrusting the Commission or the EIB with additional voluntary contributions to help achieve the objectives of the ACP-EC Agreement shall inform the Council of these contributions in advance. Any change in the annual action programmes or in the support strategies resulting from these voluntary contributions, for example in response to the launch of a new initiative based on new or special needs as referred to in Article 4(2), (3) and (4), shall be adopted by the Commission in accordance with the management procedures set out in Article 10(4).

Article 9

Participation by a third country or region

In order to ensure the coherence and effectiveness of Community assistance, the Commission may decide that non-ACP developing countries and regional integration bodies with ACP participation that promote regional cooperation and integration eligible for Community Assistance under Regulation (EC) No [...] [of the European Parliament and of the Council of [...] establishing a financing instrument for development cooperation], Regulation (EC) No [...] [of the European Parliament and of the Council]¹³ [of [...] establishing a European Neighbourhood and Partnership instrument], the OCTs eligible for Community assistance under the Council Decision 2001/822/EC¹⁴ on the association of the OCTs with the European Community, and the Community's outermost regions are eligible for funds referred to in Article 1(2)(a)(i) of the Internal Agreement, where the project or programme concerned is of a regional or cross-border nature. Provision may be made for this funding in the strategy papers and multi-annual indicative programmes and in the special measures referred to in Article 7 of this Regulation. Those provisions shall be integrated in the annual action programmes.

TITLE III

DECISION-MAKING PROCEDURES

Article 10

Responsibilities of the EDF Committee

1. An EDF Committee has been set up at the Commission for those resources of the 10th EDF which the Commission administers. This EDF Committee deliberates according to the voting rules adopted in Article 8 of the Internal Agreement.
2. The EDF Committee shall give its opinion on the substantive issues of development cooperation at country, regional and intra-ACP level funded from the 10th EDF and other Community resources referred to in Article 3(3).
3. The Committee's tasks shall cover two levels:
 - (a) programming of Community aid under the 10th EDF and programming reviews focusing in particular on country, regional and intra-ACP strategies;and
 - (b) monitoring the implementation of Community aid, including annual action programmes, sectoral aspects, cross-cutting issues, and the functioning of field-level coordination.
4. When the EDF Committee is called upon to give its opinion, the representative of the Commission shall submit to the committee a draft of the measures to be taken. The

¹³ OJ L , , p. .

¹⁴ OJ L 314, 30.11.2001, p. 1.

EDF Committee shall deliver its opinion within a time-limit which the chairman may lay down according to the urgency of the matter but which shall not exceed 30 days. The EIB shall take part in the exchange of views. The opinion shall be delivered by the qualified majority laid down in Article 8(3) of the Internal Agreement on the basis of the votes of the Member States weighted in the manner set out in Article 8(2) of the Internal Agreement.

When the EDF Committee has delivered its opinion, the Commission shall adopt measures which shall apply immediately. However, if these measures are not in accordance with the opinion of the EDF Committee, they shall be communicated by the Commission to the Council forthwith. In that event, the Commission may defer application of the measures for a period which shall not exceed 30 days from the date of such communication. The Council, acting by the same qualified majority as the EDF Committee, may take a different decision within this period.

5. The Committee shall also examine the consistency and complementarity between Community aid and aid from the Member States. In order to ensure transparency and consistency between cooperation operations and improve complementarity between Community actions and bilateral aid, the Commission shall involve to the extent possible the Member States represented in the partner countries and regions in the preparation of the annual action programmes. In turn, each Member State shall systematically inform the Commission of the cooperation activities that it is undertaking, or intends to undertake, in each particular country or region.
6. Following the Council's adoption of the principles to fund the African Peace Facility from the 10th EDF as a complementary instrument to funds made available from the Community budget, to enable the African Union to assume leadership and responsibility for Africa's peace and security agenda and to support African organisations (the African Union as well as sub-regional organisations acting under the mandate of the African Union) in the preparation, planning and implementation of effective peace support operations, the intra-ACP indicative programme shall earmark funding for the African Peace Facility. Specific management procedures shall apply:
 - (a) On a request from the African Union, endorsed by the ACP Committee of Ambassadors, an action programme shall be prepared covering the initial period 2008-2010. An evaluation shall be undertaken in 2010 reviewing the procedures of the African Peace Facility as well as the possibilities of alternative future sources of funding, including common foreign and security policy funding. This action programme shall specify the objectives pursued, the scope and nature of the possible interventions and the implementation arrangements, including an agreed format for background documents and requests, and for reporting.
 - (b) This action programme shall be discussed by the relevant preparatory Council working group(s), and approved by the Political and Security Committee of the Council before being adopted by the Commission in accordance with the management procedures set out in Article 10(4);

- (c) A financing agreement shall subsequently be concluded between the Commission and the African Union and shall, when adopted, be binding on both the Community and the African Union;
- (d) Each intervention to be implemented under the financing agreement shall be subject to prior approval by the Political and Security Committee of the Council;
- (e) The Commission shall prepare an activity report on the use of the funds for information of the EDF Committee on an annual basis and at the request of the EDF Committee.

Article 11

The Investment Facility Committee

1. A committee (hereinafter referred to as the 'IF Committee') consisting of representatives of the Governments of the Member States and of a representative of the Commission shall be set up under the auspices of the EIB.
 - (a) Each Government shall nominate one representative and one designated alternate. The Commission shall act in the same way for its representative. With a view to maintaining continuity, the Chairman of the IF Committee shall be elected by and from among the members of the IF Committee for a period of two years. The EIB shall provide the Committee's secretariat and support services. Only the members of the IF Committee designated by the Member States, or their alternates, shall vote;
 - (b) The Council, acting unanimously, shall adopt the rules of procedure of the IF Committee on the basis of a proposal drawn up by the EIB after consulting the Commission;
 - (c) The IF Committee shall act by qualified majority. The weighting of the votes shall be as laid down in Article 8 of the Internal Agreement;
 - (d) The IF Committee shall meet at least four times a year. Additional meetings may be convened at the request of the EIB or of the members of the Committee as set out in the rules of procedure.

2. The IF Committee shall approve:
 - (a) guidelines on the implementation of the Investment Facility, its development impact assessment framework and proposals for their revision;
 - (b) the investment strategies and business plans of the Facility, including performance indicators, on the basis of the objectives of the ACP-EC Agreement and of the broad principles of Community development policy;
 - (c) the annual reports of the Investment Facility;
 - (d) any general policy document, including evaluation reports, concerning the Investment Facility.

3. Furthermore, the IF Committee shall deliver an opinion on:
 - (a) proposals to grant an interest subsidy under Article 2(7), and Article 4(2), of Annex II to the ACP-EC Agreement. In such cases, the Committee shall also deliver an opinion on the use of such an interest subsidy;
 - (b) proposals for an IF investment for any project for which the Commission has delivered a negative opinion;
 - (c) other proposals relating to the Investment Facility based on the general principles defined in the operational guidelines.

In addition, the governing bodies of the EIB may, from time to time, request that the IF Committee provides an opinion on all financing proposals, or on certain categories of financing proposals.

4. It shall be the EIB's responsibility to submit to the IF Committee in a timely manner any matters that require the approval or opinion of the IF Committee, as provided for in paragraphs 1 and 2. Any proposal submitted to the Committee for an opinion shall be made in accordance with the relevant criteria and principles set out in the operational guidelines.
5. The EIB and the Commission shall cooperate closely and, where relevant, shall coordinate their respective operations. In particular:
 - (i) the EIB shall prepare or revise jointly with the Commission the guidelines on the implementation of the Investment Facility referred to under paragraph 2(a);
 - (ii) the EIB shall request the opinion of the Commission beforehand on investment strategies, business plans and general policy documents
 - (iii) the EIB shall request the opinion of the Commission at the appraisal stage of a project on the conformity of public sector or financial sector projects with the relevant country cooperation strategy or regional cooperation strategy or, as the case may be, with the general objectives of the Investment Facility;
 - (iv) the EIB shall also request the agreement of the Commission at the appraisal stage of a project on any proposal made to the IF Committee for an interest subsidy, as to its compliance with Article 2(7) and Article 4(2) of Annex II to the ACP-EC Agreement, and with the criteria defined in the operational guidelines of the Investment Facility.

The Commission shall be deemed to have rendered a favourable opinion on or to have agreed to a proposal unless it notifies a negative opinion on such proposal within two weeks following the submission of the proposal. As regards opinions for financial or public sector projects, as well as agreement to interest rate subsidies, the Commission may request that the final project proposal be submitted for its opinion or approval two weeks before being sent to the IF Committee.

6. The EIB shall not proceed with any action mentioned in paragraph 2 unless the IF Committee has given a favourable opinion.

Following a favourable opinion of the IF Committee, the EIB shall decide on the proposal in accordance with its own procedures. In particular it may, on account of new circumstances, decide not to proceed with the proposal. The EIB shall periodically inform the IF Committee and the Commission of cases where it decides not to proceed.

For loans from its own resources and for IF investments for which no opinion of the IF Committee is required, the EIB shall decide in accordance with its own procedures and, in the case of the Facility, in accordance with the guidelines and the investment strategies approved by the IF Committee.

Notwithstanding a negative opinion of the IF Committee on a proposal to grant an interest subsidy, the EIB may proceed with the loan in question without the benefit of the interest subsidy. The EIB shall periodically inform the IF Committee and the Commission of each occasion on which it so decides to proceed.

The EIB may, subject to conditions laid down in the operational guidelines, and the condition that the essential objective of the loan or Investment Facility Investment in question be unchanged, decide to modify the terms of an Investment Facility loan or investment on which the IF Committee has given a favourable opinion under paragraph 2 or of any loan on which the IF Committee has given a favourable opinion regarding interest subsidies. In particular, the EIB may decide to increase the amount of the loan or Investment Facility investment by up to 20%.

Such an increase may, for projects with interest subsidies referred to in Article 2(7)(a) of Annex II to the ACP-EC Agreement, result in a proportionate increase in the value of the interest subsidy. The EIB shall periodically inform the IF Committee and the Commission of each occasion on which it so decides to proceed. For projects falling under Article 2(7)(b) of Annex II to the ACP-EC Agreement, if an increase in the value of the subsidy is requested, the IF Committee will be required to deliver an opinion before the EIB proceeds.

7. The EIB shall manage Investment Facility Investments and all funds held on account of the said Investment Facility in accordance with the objectives of the Agreement. It may, in particular, take part in the management and supervisory bodies of legal persons in which the Investment Facility is invested, and may compromise, discharge and modify the rights held on account of the Investment Facility.

TITLE IV
FINAL PROVISIONS

Article 12

Monitoring and reporting requirements regarding the progress
in implementation of EDF assistance

1. The Commission and the EIB will ensure close coordination and cooperation in providing Community aid to the ACP States. The Commission and the EIB shall monitor, each to the extent to which it is concerned, the use of EDF assistance by the recipients.
2. The EIB shall periodically inform the Commission regarding the implementation of projects financed from the 10th EDF resources it administers, following the procedures set out in the operational guidelines of the Investment Facility.
3. The Commission shall examine the progress made in implementing the 10th EDF and shall submit to the Council an annual report on the implementation and results and, as far as possible, the main outcomes and impacts of the assistance. This report shall also be sent to the European Parliament, the European Economic and Social Committee and the Committee of the Regions. It shall contain information relating to the previous year on the measures financed, the results of monitoring and evaluation exercises, the involvement of the relevant partners, and the implementation of commitments and payments, broken down by country, region and cooperation sector. It shall assess the results of the assistance, using as far as possible specific and measurable indicators of its role in meeting the objectives of the ACP-EC Agreement. Particular attention shall be given to social sectors and progress made towards achieving the Millennium Development goals. The EIB shall similarly provide the IF Committee with information as regards progress towards the objectives of the Investment Facility. Following Article 6b of Annex II to the ACP-EC Agreement, the overall performance of the Investment Facility shall be subject to a joint review at the mid- and end-term of the 10th EDF.
4. The Commission shall provide the Council in 2010 with a proposal for the overall performance review to be undertaken. This review shall assess the financial performance, and in particular the degree of realisation of commitments and disbursements as well as the qualitative performance, and in particular the results and the impact, measured in terms of progress towards achieving the millennium development goals.

Article 13

Evaluation

1. The Commission and the EIB shall, in association with experts from the Member States where appropriate, each to the extent to which it is concerned, regularly

evaluate the results of the implementation of geographical and thematic policies and programmes and of sectoral policies and the effectiveness of programming, where appropriate by means of independent external evaluations, in order to ascertain whether the objectives have been met and to enable it to formulate recommendations with a view to improving future operations. Particular attention shall be given to ensuring coherence of Community development policy and to social sectors and progress made towards achieving the millennium development goals.

2. The Commission shall send its country and regional evaluation reports to the European Parliament and the EDF Committee for information. Member States may request a discussion of specific evaluations in the EDF Committee. The results shall feed back into programme design and resource allocation.
3. The Commission shall associate relevant stakeholders, including non-state actors, in the evaluation phase of the Community assistance provided.

Article 14

Entry into force

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

It shall be applicable for the same period as the Internal Agreement.

Done at Brussels,

For the Council
The President