



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 25.4.2007
COM(2007) 222 final

Proposal for a

COUNCIL DECISION

on the position to be adopted by the Community within the ACP-EC Council of Ministers regarding a decision to reassign part of the reserve of the 9th European Development Fund (EDF) envelope for long-term development to the allocation for intra-ACP cooperation in the 9th EDF envelope for regional cooperation and integration

(presented by the Commission)

EXPLANATORY MEMORANDUM

Annex I to the ACP-EC Partnership Agreement signed in Cotonou on 23 June 2000 and revised in Luxembourg on 25 June 2005 (hereinafter referred to as the 'ACP-EC Agreement') specifies that in the event of the funds provided for in any of the instruments of the ACP-EC Agreement being exhausted before the expiry of the Financial Protocol, the joint ACP-EC Council of Ministers must take appropriate measures. The date beyond which the funds of the Financial Protocol covered by the 9th European Development Fund (EDF) can no longer be committed is set at 31 December 2007. The last meeting of the joint ACP-EC Council of Ministers before this deadline will be held on 25 May 2007.

Articles 5 and 11 of Annex IV to the ACP-EC Agreement provide for the Commission to carry out an end-of term review (ETR) of cooperation with the ACP States and regions, which may lead to a revision of resource allocation. The conclusions of the ETR conducted in 2006 under the 9th EDF were submitted to the EDF management committee on 23 January 2007 in accordance with Article 16 of the Internal Agreement between Representatives of the Governments of the Member States, meeting within the Council, on the financing and administration of Community Aid under the Financial Protocol to the ACP-EC Agreement funded from the 9th EDF, signed on 18 September 2000. The meeting endorsed the ETR conclusions.

Given the resource reallocations resulting from the ETR and the new needs identified for funding from the 9th EDF intra-ACP allocation in the envelope for regional cooperation and integration, the instrument for long-term development used to finance the national indicative programmes will have excess balances while the instrument used to finance intra-ACP projects and programmes is in need of replenishment.

It is therefore proposed that the Community adopt the position within the ACP-EC Council of Ministers of May 2007 that all remaining balances in the long-term development reserve should be systematically transferred to the intra-ACP allocation to be used as follows:

- €176.7 million withdrawn from the individual country envelopes for unforeseen needs to establish regional envelopes to cover humanitarian and emergency assistance where such assistance cannot be financed from the Community budget;
- €50 million to establish an intra-ACP fund to finance the FLEX mechanism, which aims at mitigating the adverse effects of instability in export earnings for the application year 2005 in 2006. In the past, the FLEX mechanism was funded from the individual country envelopes for unforeseen needs (the "B" envelope); since these funds have been exhausted in several countries eligible for FLEX funding, it is proposed to consolidate the funding of FLEX at intra-ACP level;
- €10 million to establish a reserve to cover a regional project in the SADC region which has a high risk of not being appraised in time for the funds to be committed before the end of 2007; if this project has not received a favourable opinion from the EDF Committee by the end of July 2007, the funds will be transferred to the intra-ACP reserve for alternative purposes;
- an estimated €185 million as an intra-ACP envelope to be mobilised as follows:

- €80 million as a bridging fund for the African Peace Facility, of which €45 million on the basis of the available intra-ACP funds before its replenishment referred to in Article 1 and €35 million after this replenishment;
- €5.5 million to contribute to the running costs of the ACP Secretariat for 2008 to cover transitional needs pending the entry into force of the 10th EDF;
- €2.5 million to reinforce the intra-ACP technical cooperation facility primarily used to cover technical assistance needs, especially for project preparation for the 10th EDF;
- €35 million for FLEX financial support for the application year 2006;
- €4 million as an urgent carry-over of a rinderpest eradication programme in Africa (PACE);
- €38 million as an additional EDF contribution to the Global Fund against HIV/Aids, Tuberculosis and Malaria (GFATM)
- €20 million for a small prudential reserve to finance new and unexpected needs, including possible specific action on health, the environment or on migration and development in Africa.

The amount of the intra-ACP envelope of € 185 million is based on existing balances at the end of 2006 (€46 million) and an estimate of decommitments during 2007 on projects and programmes funded from the 9th EDF and from previous EDFs. This amount may be over- or underestimated.

If overestimated, this will impact on the FLEX programme for the application year 2006 and/or the €20 million earmarked for new and unexpected needs, which will have to be reduced in order to compensate for the shortfall.

If decommitments appear to have been underestimated or funds earmarked in the intra-ACP envelope above are under-used, any additional funds will be used as follows, in decreasing order of priority:

- up to €20 million to further top up the African Peace Facility;
- up to €15 million to top up FLEX financial support for the application year 2006 to a total of €50 million, comparable to that earmarked for the application year 2005;
- any further additional funds will be transferred to the Partnership for Infrastructure in Africa as an advance payment on 10th EDF commitments.

The Commission therefore suggests that the Council adopts the attached decision.

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 310 in conjunction with Article 300(2), second indent, thereof,

Having regard to the ACP-EC Partnership Agreement signed in Cotonou on 23 June 2000¹ and the revised ACP-EC Partnership Agreement signed in Luxembourg on 25 June 2005² (hereinafter referred to as the 'ACP-EC Agreement'),

Having regard to the Internal Agreement between the Representatives of the Governments of the Member States, meeting within the Council, on the financing and administration of Community Aid under the Financial Protocol to the ACP-EC Agreement funded from the ninth EDF signed on 18 September 2000 (hereinafter referred to as the 'Internal Agreement')³,

Having regard to the proposal from the Commission,

Whereas:

- (1) Article 15 of the ACP-EC Agreement establishes an ACP-EC Council of Ministers with powers to take decisions in accordance with the Agreement, and paragraph 8 of Annex I to the ACP-EC Agreement authorises it to take appropriate measures if the funds provided for in any of the instruments of the Agreement are exhausted.
- (2) Articles 5 and 11 of Annex IV to the ACP-EC Agreement provide for the Commission to carry out an end-of term review of its national and regional programmes with the ACP States and regions. Following the completion of the end-of-term review, the Commission may, on behalf of the Community, revise the resource allocation in the light of the current needs and performance of the ACP States or regions concerned.
- (3) Article 12(2) of Annex IV to the ACP-EC Agreement provides that, in order to take account of new needs for increasing the impact of intra-ACP activities, the Commission may increase the allocation for intra-ACP cooperation.

¹ OJ L 317, 15.12.2000, p.3.

² OJ L 287, 28.10.2002, p.4.

³ OJ L 317, 15.12.2000, p.355.

- (4) Decision No 2005/446/EC of 30 May 2005 of the Representatives of the Governments of the Member States, meeting within the Council, sets 31 December 2007 as the date beyond which the funds of the ninth European Development Fund (hereinafter referred to as the 'EDF') can no longer be committed⁴.
- (5) In the context of the 9th EDF end-of-term review, forecasts have been made about the decommitments to be made before the end of 2007 from previous EDFs and about their reallocation.
- (6) Based on the conclusions of the end-of-term review, the forecast decommitments and their proposed reallocation, an estimate has been made of the funds uncommitted or becoming available before the end of 2007 in the long-term development reserve and the intra-ACP reserve. An estimate has also been made of the new needs for which projects and programmes can be prepared and committed before the end of 2007 and for which provision must be made in the long-term development reserve and the intra-ACP reserve. The EDF Committee has been consulted and has expressed a favourable opinion on the conclusions of the end-of-term review.
- (7) The B-envelopes for unforeseen needs, for many countries, are exhausted or may be insufficient to be able to respond to possible humanitarian and emergency needs under Articles 72 and 73 of the ACP-EC Partnership Agreement or to mitigate adverse effects of instability in export earnings under Article 68 of the ACP-EC Partnership Agreement (FLEX); for other countries, the B-envelopes remain unused.
- (8) It is therefore proposed to transfer all the remaining uncommitted balances of the B-envelopes to the intra-ACP reserve, to establish on the basis of those transferred funds five new, regionalised B-envelopes consolidating, pro rata, the funds transferred from the B-envelopes of the countries of each respective region, and an intra-ACP reserve for emergency assistance under Article 72(3)(a) and (b) of the ACP-EC Partnership Agreement and to establish all-ACP envelopes for FLEX 2006 and FLEX 2007 (application years 2005 and 2006).
- (9) The funds of the 9th EDF envelope available for regional cooperation and integration are currently insufficient for the planned intra-ACP-funded activities and for setting up the intra-ACP FLEX funds, while the estimated balances in the long-term development reserve exceed expected commitments.
- (10) The Community's position within the ACP-EC Council of Ministers should therefore be established with a view to adopting a decision to reassign part of the reserve of the 9th EDF envelope for long-term development to the allocation for intra-ACP cooperation in the envelope for regional cooperation and integration,

⁴ OJ L 156, 18.6.2005, p.19.

HAS DECIDED AS FOLLOWS:

Article 1

The Community position within the ACP-EC Council of Ministers on the use of the reserve of the long-term development envelope of the 9th European Development Fund shall be based on the draft decision of the ACP-EC Council of Ministers set out in the Annex.

Minor changes may be made to this draft decision without a new Council Decision being necessary.

Done at Brussels,

*For the Council
The President*

ANNEX

Draft

DECISION OF THE ACP-EC COUNCIL OF MINISTERS

on reassigning part of the reserve of the long-term development envelope of the 9th European Development Fund to the allocation for intra-ACP cooperation in the 9th EDF envelope for regional cooperation and integration

THE ACP-EC COUNCIL OF MINISTERS,

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 on 23 June 2000⁵ and revised in Luxembourg on 25 June 2005⁶ (hereinafter referred to as "the ACP-EC Partnership Agreement"), and in particular paragraph 8 of Annex I thereto,

Whereas:

- (1) Following the completion of the 9th EDF end-of-term reviews in accordance with Articles 5 and 11 of Annex IV of the ACP-EC Partnership Agreement, the resource allocations should be revised in the light of current needs and performance.
- (2) The funds reserved for the financing of support for regional cooperation and integration and the expected decommitments transferred to this reserve before the end of 2007 are insufficient to meet new needs for increasing the impact of intra-ACP activities.
- (3) Additional funds should be allocated to set up an intra-ACP funding mechanism for FLEX for each of the years 2006 and 2007 (application years 2005 and 2006 respectively), thereby ensuring minimal support to those countries subject to the adverse effects of instability in export earnings regardless of the level of the uncommitted balances under their national B-envelopes.
- (4) The uncommitted balances of the national B-envelopes may not cover expected needs and shall be transferred to the intra-ACP reserve at the date of adoption of this decision, to create five regionalised B-envelopes to finance future humanitarian and emergency assistance in each of these regions, based on regional solidarity, and an intra-ACP reserve for emergency assistance under Article 72(3)(a) and (b) of the ACP-EC Partnership Agreement in exceptional circumstances where such assistance cannot be financed from the Community budget.

⁵ OJ L 317, 15.12.2000, p.3.

⁶ OJ L 287, 28.10.2005, p.4.

- (5) The regionalised B-envelope for Eastern and Southern Africa and the Indian Ocean is a net amount after the deduction of €20 million to compensate for the ad hoc increase in the B-envelope of Sudan funded out of the long-term development reserve; no regionalised B-envelope is being set up for the Pacific as the balances of the B-envelopes have already been used to a large extent for a regional natural disaster mitigation programme.
- (6) Additional resources should be allocated to replenish the Africa Peace Facility over the year 2007, including support for the AMIS intervention in Sudan.
- (7) Additional resources should be allocated to finance part of the running costs of the ACP Secretariat for the year 2008 to bridge the period until the entry into force of the 10th EDF.
- (8) Additional resources should be allocated to reinforce the intra-ACP technical cooperation facility, which is primarily used to cover technical assistance needs, especially for project preparation.
- (9) An additional contribution to the Global Fund against HIV/Aids, Tuberculosis and Malaria (GFATM) is requested.
- (10) A small prudential reserve must be established to be able to meet new and unexpected intra-ACP needs in the period to 31 December 2007.
- (11) Funds under the 9th EDF, including expected decommitments, can no longer be committed beyond 31 December 2007 and a mechanism has to be found to commit available balances before that date in an efficient and effective way in support of the overall objectives of the ACP-EC Partnership Agreement,

HAS DECIDED AS FOLLOWS:

Article 1 – Replenishment of the intra-ACP reserve in the envelope for regional cooperation and integration

1. All funds available in the long-term development reserve on 31 March 2007 and adjusted for the results of the end of term decisions which had not yet been processed in the accounts at that date, with the exception of the funds to support the Centre for the Development of Enterprise (CDE) and the Technical Centre for Agricultural and Rural Cooperation (CTA) budgets for 2008 (€32m), the funds for “high risk programmes” in countries with a signed country strategy paper (€72.4m as of 1.3.2007), the funds for political priorities in countries without a signed country strategy paper (€30.2m as of 1.3.2007) and the funds for the Somalia special assistance programme (€36.1m), shall be transferred to the intra-ACP reserve in the envelope for regional cooperation and integration.
2. All funds set aside under the reserve to support the CDE and CTA budgets for 2008 to fund “high risk programmes” in countries with a signed country strategy paper and to fund political priorities in countries without a signed country strategy paper as referred to in paragraph (1) that have not been committed by 31 October 2007 shall be transferred to the intra-ACP reserve in the envelope for regional cooperation and integration.

3. All decommitments from the 9th EDF and previous EDFs initiated in the accounting system of the Commission as from 1 April until 31 December 2007 which accrue to the long-term development reserve shall be transferred to the intra-ACP reserve in the envelope for regional cooperation and integration.
4. All remaining funds under the national indicative programmes that become available under the long-term development reserve between 1 August and 31 December 2007 shall be transferred to the intra-ACP reserve in the envelope for regional cooperation and integration.

Article 2 – Allocation of the intra-ACP funds

1. The funds available in the intra-ACP reserve shall be used for the following purposes:

- (a) setting up:

- (i) one intra-ACP reserve for emergency assistance under Article 72(3)(a) and (b) of the ACP-EC Partnership Agreement in exceptional circumstances where such assistance cannot be financed from the Community budget; this envelope amounts to €26 741 326 and is constituted by taking 15% of the amounts of uncommitted balances remaining in the B-envelopes of the constituent countries of those regions at the date the end-of-term reallocation decisions entered into force;
- (ii) five regionalised B-envelopes amounting to €17 511 615 for the Southern African region, €48 920 391 for the region of Eastern and Southern Africa and the Indian Ocean, €31 945 340 for the West African region, €16 139 355 for the Central African region and €35 422 478 for the Caribbean region, based on 85% of the amounts of uncommitted balances remaining in the B-envelopes of the constituent countries of those regions at the date the end-of-term reallocation decisions entered into force;

the regionalised B-envelopes shall be mobilised for contributions to internationally agreed debt relief initiatives as provided for in Article 3(2)(b) of Annex IV to the ACP-EC Partnership Agreement and for humanitarian and emergency assistance in accordance to Articles 72 and 73 of the ACP-EC Partnership Agreement on the basis of regional solidarity in exceptional circumstances where such assistance cannot be financed from the Community budget;

- (b) setting up an intra-ACP FLEX programme of €50 million for 2006 (application year 2005) in order to ensure minimal support to those countries subject to the adverse effects of instability in export earnings regardless of the level of the uncommitted balances under their national B-envelopes before the end-of-term review reallocation decisions entered into force;

- (c) replenishing the African Peace Facility for an amount of up to €80 million as a further EDF contribution to bridge the financial gap until the entry into force of the 10th EDF, for various peace support, training and capacity-building activities, including support for AMIS in Sudan, of which €45 million on the basis of the available intra-ACP funds before its replenishment referred to in Article 1 and €35 million after this replenishment;
 - (d) complementing the institutional support given to the ACP Secretariat in order to bridge the period until the entry into force of the 10th EDF with an amount of €5.5 million to contribute to the running costs of the ACP Secretariat for the year 2008;
 - (e) adding €2.5 million to the intra-ACP technical cooperation facility;
 - (f) mobilising €4 million as an urgent carry-over of a rinderpest eradication programme in Africa (PACE);
 - (g) setting up a regional prudential reserve of €10 million to supplement the regional indicative programme for the Southern African region in case the Milange - Mocuba road upgrading programme (Mozambique) can be appraised and pass the management procedure of the EDF Committee before 1 August 2007; if this programme cannot be appraised in time, this prudential reserve shall be transferred to the intra-ACP reserve;
 - (h) setting up an intra-ACP prudential reserve of €20 million for new and unexpected needs which cannot be funded from the regionalised B-envelopes;
 - (i) setting up an intra-ACP FLEX programme, provisionally fixed at €35 million for 2007 (application year 2006) in order to ensure minimal support to those countries subject to the adverse effects of instability in export earnings after the regionalisation of the B-envelopes for humanitarian and emergency assistance referred to in paragraph 1(a); this programme could be supplemented up to €15 million by uncommitted funds from the prudential reserves referred to in points (g) and (h) or by decommitments transferred to the intra-ACP reserve under Article 1(3) and (4) in excess of initial estimates;
 - (j) complementing the support given to the Global Fund against HIV/Aids, Tuberculosis and Malaria (GFATM) with an amount of €38 million.
2. Should the amounts accrued to the intra-ACP reserve be insufficient to cover all needs identified, the programme referred to in paragraph 1, point (i) shall be reduced accordingly. Should the shortfall of funds be larger than the amount referred to in point (i), the prudential reserve referred to in paragraph 1, point (h) shall be reduced accordingly. A further shortfall of funds shall lead to a reduction of the amount referred to in paragraph 1, point (c).
 3. Should the amounts accrued to the intra-ACP reserve exceed the initial estimates or should funds earmarked in paragraph 1, points (c), (d), (e) and (h) be under-used, the additional funds becoming available above the ceiling set for the programme referred to in paragraph 1, point (i) will be mobilised as follows:

- (a) an amount of up to €20 million could be used for additional support to the African Peace Facility should the funds earmarked in paragraph 1, point (c) be fully utilised.
- (b) any remaining funds after meeting the needs referred to in point (a) could be used to top up the EU-ACP Infrastructure Trust Fund as an advance on the allocations foreseen under the 10th EDF.

Article 3 – Request for support

In accordance with Article 13(2) of the Annex IV of the ACP-EC Partnership Agreement, the ACP-EC Council of Ministers calls on the Commission to finance the actions laid down in Article 2.

Article 4 – Entry into force

This Decision shall enter into force on the day it is adopted.

Done in

*For the ACP-EC Council of Ministers
The President*