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Proposal for a

COUNCIL REGULATION

on the implementation of the 11th European Development Fund

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

Poverty remains a major problem in African, Caribbean and Pacific (ACP) States. Many of them are off-track towards the achievement of the Millennium Development Goals (MDGs) and they do not benefit from sustainable development. The EU is helping ACP countries address these problems. It is necessary for the EU to continue to support ACP countries' efforts towards reducing and eventually eradicating poverty, while attaining the objectives of sustainable development and achieving their gradual integration into the global economy.

The EU maintains privileged relations with the ACP group of developing countries under the Partnership Agreement between 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 2000 for a period of 20 years¹ (hereinafter referred to as the Cotonou Agreement). The European Development Fund (EDF) is the main instrument for providing EU assistance for development cooperation under the Cotonou Agreement with ACP countries and for cooperation with Overseas Countries and Territories (OCTs) under the Overseas Association Decision (OAD). The EDF is funded outside the EU budget by the EU Member States on the basis of specific contribution keys. Each EDF is concluded for a multi-annual period.

For the post-2013 multiannual financial framework, the European Commission proposed in its Communication 'A budget for Europe 2020'² the overall volume (EUR 30 318.7 million in 2011 prices, i.e. EUR 34 275.6 million in current prices) for the 11th EDF for cooperation with ACP countries and OCTs. The Commission also adopted a Communication describing the main elements that could figure in the Internal Agreement for the 11th EDF, for the period from 1 January 2014 to 31 December 2020³. The assumption of the European Commission is that an agreement will be reached by the European Union and its Member States on laying down the financing mechanism (the 11th EDF), the exact period to be covered (2014-2020) and the amount of funds to be allocated to that mechanism, for implementing the ACP-EU Partnership, and that the Representatives of the Governments of the Member States will agree on an Internal Agreement for an 11th EDF. The European Council set the global amount of the 11th EDF in its Conclusions on February 8th 2013, i.e. EUR 30 506 million in current prices⁴.

New challenges, together with the priorities set out in the Europe 2020 Strategy, have prompted the Commission to make a proposal to adapt the 11th EDF Implementation Regulation in line with the Communication 'Increasing the Impact of EU Development Policy: An Agenda for Change'⁵ of 13 October 2011. The European Consensus on Development adopted on 22 December 2005 and the internationally agreed principles on aid effectiveness including the Busan Outcome Document (2011) also form part of the general policy framework for the programming and implementation of the 11th EDF.

¹ OJ L 317, 15.12.2000, p. 3. Agreement as amended by the Agreement signed in Luxembourg on 25 June 2005 (OJ L 287, 28.10.2005, p. 4) and by the Agreement signed in Ouagadougou on 22 June 2010 (OJ L 287, 4.11.2010, p. 3).

² COM(2011) 500.

³ COM(2011) 837.

⁴ EUCO 37/13 + EUCO 37/13 COR 1

⁵ COM(2011) 637.

2. RESULTS OF THE CONSULTATIONS WITH THE INTERESTED PARTIES AND IMPACT ASSESSMENT

Public Consultation

The Commission held a public consultation on future funding for EU external action between 26 November 2010 and 31 January 2011. This process was based on an online questionnaire accompanied by a background paper 'What funding for EU external action after 2013?'. In general, the replies did not suggest the need for a substantial change in the current implementing mechanisms, although a significant majority of respondents supported increased flexibility and simplification in implementation.

Impact Assessment

The Commission carried out an Impact Assessment (IA)⁶ that considered 3 basic policy alternatives for each objective identified (more differentiation and concentration, strengthened coordination with EU Member States, more use of innovative financial instruments, further flexibility): a status quo option (no change compared to the 10th EDF), and an alternative option with two sub-options for amending the EDF framework. The status quo option was not accepted because it would not have solved the problems identified. The sub-options solved the identified problems to different extents, each having particular implications. The IA concluded that for each objective identified, the second sub-option which better addressed the new revised strategic orientations of the EU external action should be chosen as it:

- contributed through a sharpened geographical focus to targeting resources where they were most needed having the greatest possible impact and value added ;
- contributed through a sharpened sectoral focus to concentrating resources on a limited number of sectors, thus increasing the EU's critical mass;
- reinforced the efficiency and the political leverage of EU aid through increased division of labour among donors, joint programming and use of EU Trust Funds;
- increased the financial leverage of EU grant resources through use of innovative financial instruments;
- allowed the adaption of aid allocations rapidly to take into account evolving circumstances or specific situations (such as crisis, fragility or transition), or to implement a more incentives-based approach.

3. LEGAL ELEMENTS OF THE PROPOSAL

The main policy objectives of EU external action are set in the Lisbon Treaty (Art. 21 TEU). In addition, the main objective of EU development cooperation (Art. 208 TFEU) is the reduction and, in the long term, the eradication of poverty. In this context the EU will comply with the commitments and take account of the objectives they have approved in the context of the United Nations and other international organisations.

⁶ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=SEC:2011:1459:FIN:EN:PDF>

Regarding cooperation with ACP countries and regions, this legal framework is complemented by the Cotonou Agreement.

This proposal is presented by the Commission on the basis of an Internal Agreement for the 11th EDF⁷ which foresees that a Council Regulation on the implementation of the 11th EDF under the Cotonou Agreement should be adopted by unanimity, on a proposal by the Commission and after consulting the European Investment Bank (EIB).

4. BUDGETARY IMPLICATION

N/A

5. MAIN ELEMENTS

The 11th EDF Implementation Regulation was prepared with the following objectives:

- in line with the key principles of simplification and increased effectiveness, to align the text as much as possible with the main provisions of the Commission proposal for a Regulation of the European Parliament and of the Council establishing a financing instrument for development cooperation (DCI)⁸ (in particular on programming) and of the Commission proposal for a Regulation of the European Parliament and of the Council establishing common rules and procedures for the implementation of the Union's instruments for external action (CIR)⁹ (in particular on implementation) which entails simplified and harmonised implementing rules and procedures for all external action instruments (except the EDF and Greenland). This effort for alignment also takes into account the results of the negotiations in Council on these texts (Coreper level) as well as in Parliament Committees when this proposal was drafted, regarding compromises being acceptable for the Commission. Moreover, the Commission reserves the right to adapt this proposal after its adoption, during the negotiations with the Council, in order to continue to ensure coherence with the texts of the DCI and the CIR being negotiated in parallel. This alignment will help pave the way towards possible inclusion of the EDF into the EU budget in the Multiannual Financial Framework post 2020, in line with the Commission proposals made in the above mentioned Communication 'A budget for Europe 2020' and with the European Council Conclusions of February 8th 2013.
- to ensure the compliance of the text with the provisions of the Cotonou Agreement, in particular its annex IV on implementation and management procedures, while simplifying the text compared to the 10th EDF Implementing Regulation¹⁰.

Title I: Objectives and general principles – Articles 1 and 2

Article 1 (Objectives and eligibility criteria) is aligned as far as possible with Article 2 of the Commission proposal for the DCI Regulation on objectives and eligibility criteria, while including also a reference to the broader objectives, principles and values described in the Cotonou Agreement, as well as to the development objectives and cooperation strategies set

⁷ Insert reference to the 11th EDF Internal Agreement

⁸ COM(2011) 840.

⁹ COM(2011) 842.

¹⁰ Council regulation (EC) No 617/2007 – OJ L152 p.1 of 13.6.2007

out in the policies developed by the Union, including the Agenda for Change. This Article also requires fulfilling the criteria for Official Development Assistance (ODA) established by the OECD/DAC to the greatest extent possible. It also explains complementarity between the Humanitarian and EDF instruments.

Article 2 (General principles) is aligned with Article 3(5) to 3(10) of the Commission proposal for the DCI Regulation. It sets out the main principles governing the implementation of the Regulation, which are strengthened coherence of EU external action, improved coordination with the Member States and other bilateral or multilateral donors, and a partner country-led and region-led development process with mutual accountability, through an inclusive and participatory approach to development, using effective and innovative cooperation modalities in line with OECD/DAC best practices, thus improving the impact of aid and reducing overlap and duplication.

Title II: Programming and allocation of funds – Articles 3 to 7

Article 3 (General framework for allocating funds) lays down the framework for allocation of funds under the EDF. It is aligned as far as possible with Article 3(2) of the Commission proposal for the DCI Regulation on the principles of a differentiated approach towards the partner countries. Article 3 provides for the application of the principles of the Communication 'Increasing the Impact of EU Development Policy: An Agenda for Change' to the EDF, while also ensuring that the requirements of the Cotonou Agreement regarding resource allocation (criteria described in article 3 of annex IV of the Cotonou Agreement) are respected. Therefore the allocation criteria are described in two paragraphs: paragraph 1 recalls the Cotonou requirements on needs and performance and paragraph 2 provides more specifically the differentiation principles of the Agenda for Change in the determination of the indicative national allocations (needs, capacities, commitments, performance and impact).

Article 4 (General framework for programming) lays down the general framework for EDF programming under this Regulation. The Article recalls the principles of partnership and alignment of the Cotonou Agreement, i.e. that programming should be done whenever possible jointly with the partner country or region concerned and increasingly aligned with their poverty reduction strategies. The Article also takes elements from Article 10(2) of the Commission proposal for the DCI Regulation: in order to ensure synergies and complementarity of the Union's measures and those of the Member States, the latter will be fully involved in the programming process, including through joint programming. The participation of all Member States including those not locally represented is foreseen because of the specific nature of EDF funding. Consultation processes will also involve other donors and development actors as well as civil society and regional and local authorities.

Article 4(3) describes circumstances foreseen in the Cotonou Agreement where the Commission can establish specific provisions for programming and implementing development aid unilaterally.

Article 4(4) recalls the EU's objective of concentrating assistance announced in the Communication 'Increasing the Impact of EU Development Policy: An Agenda for Change', with a limitation to 3 sectors of intervention for bilateral programming, in line with Article 5(4) of the Commission proposal for the DCI Regulation.

Article 5 (Programming documents) is aligned as far as possible with Article 11 of the Commission proposal for the DCI Regulation. It outlines the requirement and principles for preparing strategy papers for the countries and regions and, based on these, multiannual

indicative programmes. The article also lists the cases when a strategy paper would not need to be prepared in order to simplify and streamline the programming process as well as to favour joint programming with Member States and alignment to the national programmes of developing countries. Thus the Article also introduces the possibility of having a Joint Framework Document that would lay down a comprehensive Union strategy, of which development policy would be part of. In line with the principle of partnership of the Cotonou Agreement, the agreement of the partner country government to use alternative programming documents is required; otherwise a strategy paper will have to be drafted.

Articles 5(5) and 5(6) provide for EDF-specific types of programming as foreseen in the Cotonou Agreement, i.e. for intra-ACP cooperation and special support programmes.

Article 6 (Programming for countries and regions in crisis, post-crisis or fragility situations) is aligned with Article 12 of the Commission proposal for the DCI Regulation. It emphasises the special needs and circumstances of countries in crisis, post-crisis or fragility situation, which ought to be considered at the time of drafting of programming documents.

Article 7 (Approval and modification of programming documents) is aligned as far as possible with Article 14 of the Commission proposal for the DCI Regulation on the approval of strategy papers and on the adoption of multiannual indicative programmes. The Article states that programming documents (i.e. strategy papers, multiannual indicative programmes and special support programmes) are approved by the Commission in accordance with Article 14 of this Regulation. It also reflects the provisions in the Cotonou Agreement regarding transmission of documents to the Joint Parliamentary Assembly and endorsement of programming documents by the ACP State or region after adoption by the Commission. It provides for the review of programming, and the revision where appropriate (in case of substantial evolution of the strategy or of the programmed priorities) of the corresponding documents. The Article provides flexibility and simplification by establishing cases of non-substantial modifications, of which the EDF Committee is informed. The Article also foresees a special urgency procedure for modifying the programming documents on duly justified grounds of urgency, equivalent to the comitology procedure in article 8 of Regulation 182/2011¹¹, as provided for by Article 14(10) of this Regulation.

Title III: Implementation – Articles 8 to 13

Article 8 (General framework for implementation) sets the general framework for implementation of EU assistance in relation with the Financial Regulation of the 11th EDF.

Article 9 (Adoption of action programmes, individual measures and special measures) is aligned as far as possible with Article 2 of the Commission proposal for the CIR Regulation. It provides the principle that financing decisions taken by the Commission are to be in the form of action programmes, based on the multiannual programming documents. However, in line with the multiannual programming documents, individual measures can be also adopted outside the action programme framework. In the event of specific cases (exceptional circumstances or unforeseen needs) provided for in the Cotonou Agreement, the Commission may also adopt special measures not provided for in the multiannual programming documents. The Article establishes the procedures for the adoption of the mentioned financing decisions. It also provides for specific environmental screening, including Climate Change and Biodiversity impact.

¹¹ Regulation of the European Parliament and of the Council laying down the rules and general principles concerning mechanisms for controls by Member States of the Commission's exercise of implementing powers

Article 10 (Additional Member State contributions) describes the conditions for the management of voluntary contributions which can be provided by Member States to the Commission or the EIB in accordance with the 11th EDF Internal Agreement.

Article 11 (Taxes, duties and charges) describes possible arrangements with respect to taxes, duties and charges, in line with Article 5 of the Commission proposal for the CIR Regulation, while respecting the provisions of Article 31 of Annex IV of the Cotonou Agreement.

Article 12 (Protection of the financial interests of the Union) is aligned with Article 7 of the Commission proposal for the CIR Regulation. It lays down measures to protect the Union's financial interests, and in particular to enable it (notably the Commission, the Court of Auditors and OLAF) to carry out all the necessary controls and checks on the measures implemented.

Article 13 (Rules on nationality and origin for public procurement, grants and other award procedures) is not aligned with Articles 8 and 9 of the Commission proposal for the CIR Regulation, as it refers to the provisions on rules on nationality and origin which are defined in Article 20 of annex IV of the Cotonou Agreement.

Title IV: Decision-making procedures – Articles 14 to 16

Article 14 (Responsibilities of the EDF Committee) describes the tasks and the involvement of the EDF Committee in the implementation of this Regulation. It aligns EDF procedures with Article 15 of the Commission proposal for the CIR, which refers to the Regulation on comitology procedures. The procedures are equivalent 'mutatis mutandis' to Article 3 (common provisions), 5 (examination procedure) and 8 (urgency procedure) of Regulation 182/2011 on comitology.

Article 15 (The African Peace Facility) establishes ad hoc procedures for the management of the African Peace Facility.

Article 16 (The Investment Facility Committee) describes the structure and the functioning of the Investment Facility Committee, set up under the auspices of the EIB according to the Internal Agreement, in the implementation of this Regulation. It also describes the *modus operandi* and conditions for EIB operations.

Title V - Final provisions – Articles 17 to 22

Article 17 (Participation by a third country or region) is based on the 10th EDF implementing Regulation, taking into account Article 15 of the Commission proposal for the DCI Regulation. It provides for the possibility to extend the eligibility of funding under the EDF envelope dedicated to ACP countries to non-ACP developing countries and regional integration bodies with ACP participation. It also promotes the reinforcement of regional cooperation programmes between ACP countries, OCTs and Union's outermost regions.

Article 18 (Monitoring, reporting and evaluation of EDF assistance) is aligned with Articles 12 and 13 of the Commission proposal for the CIR Regulation. It commits the Commission and the EIB to regularly evaluate the results of the implemented policies and programmes and projects, and for the Commission, to look at the effectiveness of programming itself, and to prepare a biennial Commission report on the progress and implementation of this Regulation. It also provides for a Performance review to assess the degree of realisation of commitments and disbursements and the results and impact of the aid

provided, and for a mid-term and end-term evaluations of the ACP Investment Facility, as foreseen in Annex II to the Cotonou Agreement.

Article 19 (Climate action and biodiversity expenditure) is aligned with Article 14 of the Commission proposal for the CIR Regulation. It provides for a specific tracking system based on the OECD methodology ('Rio markers').

Article 20 (European External Action Service) is a horizontal article to be found in all Commission proposals for the Regulations on external action, such as Article 21 of the Commission proposal for the DCI Regulation. It highlights that this Regulation is to be applied in accordance with the Council Decision establishing the organisation and functioning of the European External Action Service¹², in particular Article 9 thereof.

Article 21 (Transitional measures) provides for a bridging facility to ensure the availability of funds in case of late entry into force of the 11th EDF, in particular in view of possible delays in the ratification process of the 11th EDF Internal Agreement. Until the entry into force of the 11th EDF, action programmes, individual measures, special measures and specific action programmes for support expenditure should thus be financed within the limits of the balances of the previous EDFs and from funds decommitted from projects under these EDFs. Funds committed¹³ under the bridging facility should be accounted for under the 11th EDF. By adopting the current regulation by unanimity, the Council takes the decision on the use of the balances of previous EDFs, described in Article 1(5) of the 10th EDF Internal Agreement and in Article 5 of Annex Ib to the Cotonou Agreement. This Article also provides for the continuation of the 10th EDF Financial Regulation pending the entry into force of the 11th EDF Financial Regulation.

Article 22 (Entry into force) provides that this Regulation shall apply from 1 January 2014 until the final date of application of the 11th EDF Internal Agreement.

¹² Council Decision (EU) 2010/427

¹³ "Approved" according to the EIB terminology

Proposal for a

COUNCIL REGULATION

on the implementation of the 11th European Development Fund

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union and to the Treaty on the Functioning of the European Union,

Having regard to the Partnership Agreement between the members of the African, Caribbean and Pacific Group of States of the one part, and the European Community and its Member States, of the other part, signed in Cotonou on 23 June 2000¹⁴ (hereinafter referred to as the Cotonou Agreement),

Having regard to the Internal Agreement between the Representatives of the Governments of the Member States, meeting within the Council, on the financing of European Union aid under the multiannual financial framework for the period 2014 to 2020, in accordance with the Cotonou Agreement, and on the allocation of financial assistance for the Overseas Countries and Territories to which Part Four of the Treaty on the Functioning of the European Union applies¹⁵ ("the Internal Agreement"), and in particular Article 10(1) thereof,

Having regard to the proposal from the European Commission,

Having regard to the opinion of the European Investment Bank (EIB),

Whereas:

- (1) Decision No (...) of the ACP-EU Council of Ministers¹⁶ establishes the multiannual financial framework for cooperation with ACP countries for the period 2014 to 2020 by adopting a new Annex Ic to the Cotonou Agreement.
- (2) The Internal Agreement defines the various financial envelopes of the 11th European Development Fund ("the 11th EDF"), the contribution key and contributions to the 11th EDF, sets up the EDF Committee and the Investment Facility Committee ("the IF Committee"), and determines the voting weights and qualified majority rule therein.
- (3) Furthermore, the Internal Agreement sets the aggregate amount of Union aid to the African, Caribbean and Pacific Group of States ("the ACP States") (excluding the

¹⁴ OJ L 317, 15.12.2000, p. 3. Agreement as amended by the Agreement signed in Luxembourg on 25 June 2005 (OJ L 287, 28.10.2005, p. 4) and by the Agreement signed in Ouagadougou on 22 June 2010 (OJ L 287, 4.11.2010, p. 3).

¹⁵ Insert reference of the 11th EDF Internal Agreement: OJ (...)

¹⁶ Insert reference of the ACP-EU Council decision: OJ (...)

Republic of South Africa) and to the Overseas Countries and Territories ("the OCTs") for the seven-year period 2014 to 2020 at EUR 30 506 million contributed by the Member States. From this amount, EUR (...) million are allocated to the ACP States as specified in the multiannual financial framework 2014 to 2020 referred to in Annex Ic to the Cotonou Agreement, EUR (...) million are allocated to the OCTs and EUR (...) million are allocated to the Commission for support expenditures linked to programming and implementation of the EDF by the Commission.

- (4) The 11th EDF allocation to the OCTs is governed by Council Decision (...) of (...) on the association of the OCTs, with the European Union¹⁷ and by its implementing rules and any subsequent updates thereof.
- (5) Measures covered by, and eligible for funding under Council Regulation (EC) No 1257/96 of 20 June 1996 concerning humanitarian aid¹⁸ should only in exceptional circumstances be financed under the 11th EDF, where such assistance is required to ensure continuity of cooperation from crisis to stable conditions for development and cannot be financed from the general budget of the European Union.
- (6) On 11 April 2006, the Council adopted the principle of funding the African Peace Facility from the EDF.
- (7) The ACP countries will also be eligible for Union assistance from thematic programmes provided by Regulation (...) of the European Parliament and of the Council of (...) establishing a financing instrument for development cooperation, by Regulation (...) of the European Parliament and of the Council of (...) establishing a Partnership Instrument for cooperation with third countries, by Regulation (...) of the European Parliament and of the Council of (...) establishing an Instrument for Stability and by Regulation (...) of the European Parliament and of the Council of (...) establishing a financing instrument for the promotion of democracy and human rights worldwide. Those programmes should add value to, be consistent with and complementary to the programmes funded under the 11th EDF.
- (8) As referred to in Article 13(2) of Regulation (EU) No [.../...] of the European Parliament and of the Council establishing "Erasmus For All" The Union Programme for Education, Training, Youth and Sport¹⁹, in order to promote the international dimension of higher education, an indicative amount of EUR 1 812 100 000 from the different external instruments (Development Cooperation Instrument, European Neighbourhood Instrument, Instrument for Preaccession Assistance, Partnership Instrument and the European Development Fund), will be allocated to actions of learning mobility to or from non EU countries and to cooperation and policy dialogue with authorities/ institutions/ organisations from these countries. The provisions of the Regulation (EU) No [.../...] ["Erasmus for All"] will apply to the use of those funds. The funding should be made available through 2 multiannual allocations only covering the first 4 years and the remaining 3 years respectively. This funding should be reflected in the multiannual indicative programming under this Regulation, in line with the identified needs and priorities of the countries concerned. The allocations should be revised in line with the EU external priorities in case of major unforeseen circumstances or important political changes.

¹⁷ Insert reference of the revised OAD: OJ (...)

¹⁸ OJ L 163, 2.7.1996, p. 1.

¹⁹ OJ L [...].

- (9) The regional cooperation among the ACP States, the OCTs and the Union's outermost regions should be further encouraged.
- (10) In order to implement the 11th EDF, the procedure for programming, examining and approving aid should be established and the detailed rules for supervising the use of aid should be laid down. On (...) the representatives of the Governments of the Member States meeting within the Council adopted Decision (...) on the provisional application of the Internal Agreement²⁰, 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.
- (11) The European Consensus on Development of 22 December 2005²¹ and the Council Conclusions on the Commission Communications 'Increasing the impact of EU development policy: an Agenda for Change'²², and on 'The future approach to EU budget support to third countries'²³, should provide the general policy framework to guide the programming and implementation of the 11th EDF, including the internationally agreed principles on aid effectiveness such as the principles set out in the Paris Declaration on Aid Effectiveness (2005), the EU Code of Conduct on Division of Labour in Development Policy (2007), the EU Guidelines for the Accra Agenda for Action (2008), and the Busan Outcome Document (2011) and the United Nations Convention on the Rights of Persons with Disabilities to which the Union is a party.
- (12) The Union also aims to ensure coherence with other areas of its external action when formulating the Union's development cooperation policy and its strategic planning programming and implementation of measures.
- (13) Fighting climate change and protecting the environment are among the great challenges which face the Union and where the need for international action is urgent. In accordance with the intent stated in Commission Communication "A budget for Europe 2020" of 29 June 2011, this Regulation should as far as possible contribute to the objective of addressing at least 20% of the overall EU funding to climate action objectives, while respecting the principle of partnership with ACP countries enshrined in the Cotonou Agreement. Actions in low carbon and climate resilient society should, wherever possible, be mutually supportive in order to reinforce their impacts.
- (14) The Union and the Member States should improve the consistency and the complementarity of their respective policies on development cooperation, in particular by responding to partner countries' and regions' priorities at country and regional level. To ensure that the Union's development cooperation policy and that of the Member States complement and reinforce each other, it is appropriate to provide for joint programming procedures which should be implemented whenever possible and relevant.
- (15) The EU-Africa Summit in December 2007 adopted the Africa-EU Strategic Partnership²⁴, confirmed by the EU-Africa summit in November 2010. The Council

²⁰ Insert reference to the decision on provisional application

²¹ OJ C 46, 24.2.2006, p. 1.

²² Council document 9369/12 of 14 May 2012

²³ Council document 9371/12 of 14 May 2012

²⁴ Council document 16344/07

also adopted conclusions on the Joint Caribbean-EU Partnership Strategy on November 19th 2012²⁵, replacing the Council conclusions on the EU-Caribbean Partnership of April 11th 2006. For the Pacific, the Council adopted conclusions on a renewed Development Partnership on May 14th 2012²⁶, updating and complementing the strategy adopted in 2006 (Council Conclusions of July 17th 2006).

- (16) The financial interests of the European Union should be protected through proportionate measures throughout the expenditure cycle, including the prevention, detection and investigation of irregularities, the recovery of funds lost, wrongly paid or incorrectly used and, where appropriate, penalties. These measures should be carried out in accordance with the applicable agreements concluded with international organisations and third countries.
- (17) According to Article 1(5) of the 10th EDF Internal Agreement and to Article 5 of Annex Ib to the Cotonou Agreement, the funds of the 10th EDF (apart from amounts allocated to the Investment Facility, excluding the related interest rate subsidies), should no longer be committed beyond 31 December 2013 unless the Council decides otherwise unanimously, on a proposal from the Commission. It is appropriate hereby to provide that these funds should be used to ensure continuity in case of late entry into force of the 11th EDF. As a complement to Article 10 of the 11th EDF Internal Agreement which foresees that the 10th EDF Implementation Regulation should remain in force pending the adoption of the 11th EDF Implementation Regulation, the continuation of the 10th EDF Financial Regulation should also be foreseen, pending the adoption of the 11th EDF Financial Regulation.
- (18) The organisation and functioning of the European External Action Service are described in Council Decision 2010/427/EU,

HAS ADOPTED THIS REGULATION:

TITLE I

OBJECTIVES AND GENERAL PRINCIPLES

Article 1

Objectives and eligibility criteria

1. Geographic cooperation with the ACP countries and regions in the context of the 11th EDF shall be founded on the objectives, basic principles and values reflected in the general provisions of the Cotonou Agreement.
2. In particular, and within the framework of the principles and objectives of the Union's external action, the European Consensus on Development and subsequent modifications and additions thereto:
 - (a) the primary objective of cooperation under this Regulation shall be the reduction and, in the long term, the eradication of poverty;

²⁵ Council document 16455/12

²⁶ Council document 9877/12

- (b) cooperation under this Regulation will also contribute to:
- (i) fostering sustainable economic, social and environmental development, and
 - (ii) consolidating and supporting democracy, the rule of law, good governance, human rights and the relevant principles of international law.

The achievement of these objectives shall be measured using relevant indicators, including human development indicators, in particular Millennium Development Goal (MDG) 1 for subparagraph (a) and MDG 1 to 8 for subparagraph (b) and, after 2015, other indicators agreed at international level by the Union and its Member States.

3. Programming shall be designed so as to fulfill to the greatest extent possible the criteria for official development assistance (hereinafter referred to in as 'ODA') established by the OECD/DAC.
4. Actions covered by Council Regulation (EC) No 1257/96 of 20 June 1996 concerning humanitarian aid²⁷ and eligible for funding under that Regulation shall not, in principle, be funded under this Regulation, without prejudice to the need to ensure continuity of cooperation from crisis to stable conditions for development. In those cases, special consideration shall be given to ensuring that humanitarian relief, rehabilitation and development assistance are effectively linked.

Article 2

General principles

1. In implementing this Regulation, consistency with other areas of Union external action and with other relevant Union policies and policy coherence for development shall be ensured, in accordance with Article 208 of the Treaty on the Functioning of the EU. To this end, measures financed under this Regulation, including those managed by the European Investment Bank (EIB), shall be based on the cooperation policies set out in documents such as arrangements, declarations and action plans between the Union and the third countries and regions concerned, and on the Union's decisions, specific interests, policy priorities and strategies.
2. The Union and the Member States shall seek regular and frequent exchanges of information, including with other donors, and promote better donor coordination and complementarity by working towards joint multiannual programming, based on partner countries' poverty reduction or equivalent development strategies. They may undertake joint action including joint analysis of and joint response to these strategies identifying priority sectors of intervention and in-country division of labour, by joint donor-wide missions and by the use of co-financing and delegated cooperation arrangements.
3. The Union shall promote a multilateral approach to global challenges and shall cooperate with Member States and partner countries in this respect. Where appropriate, it shall foster cooperation with international organisations and bodies and other bilateral donors.

²⁷ OJ L 163, 2.7.1996, p. 1.

4. Relations between the EU and its Member States and partner countries are based on and will promote shared values of human rights, democracy and the rule of law as well as the principles of ownership and of mutual accountability.

Further, relations with partner countries shall take into account their commitment and track record in implementing international agreements and contractual relations with the Union.

5. The Union shall promote effective cooperation with partner countries and regions in line with international best practice. It shall align its support with partners' national or regional development strategies, reform policies and procedures wherever possible, and support democratic ownership and domestic accountability. To that end, it shall promote:

- (a) a development process that is transparent, partner country or region led and owned, including the promotion of local expertise;
- (b) the empowerment of the population of partner countries, inclusive and participatory approaches to development and a broad involvement of all segments of society in the development process and in national and regional dialogue, including political dialogue. Particular attention shall be given to the respective roles of parliaments, local authorities and civil society, inter alia regarding participation, oversight and accountability;
- (c) effective cooperation modalities and instruments in line with OECD/DAC best practices, including the use of innovative instruments such as blending grants and loans and other risk-sharing mechanisms in selected sectors and countries and private-sector engagement, with due regard to the issues of debt sustainability and the number of such mechanisms. All programmes, interventions and cooperation modalities and instruments shall be adapted to the particular circumstances of each partner country or region, with a focus on programme-based approaches, on delivery of predictable aid funding, on the mobilisation of private resources, including from the local private sector, on universal and non-discriminatory access to basic services, and the development and use of country systems;
- (d) mobilisation of domestic revenue and reinforcement of partner countries' fiscal policy with the purpose of reducing poverty and aid dependence;
- (e) improved impact of policies and programming through coordination, consistency and harmonisation between donors to create synergies and avoid overlap and duplication, to improve complementarity and to support donor-wide initiatives;
- (f) coordination in partner countries and regions using agreed guidelines and best practice principles on coordination and aid effectiveness;
- (g) results-based approaches to development including through transparent and country-led results frameworks based on, where appropriate, internationally agreed targets and indicators such as those of the MDGs to assess and communicate the results, including the outputs, outcomes and impact of development aid.

6. The Union shall support as appropriate the implementation of bilateral, regional and multilateral cooperation and dialogue, the development dimension of partnership agreements and triangular cooperation. The Union shall promote south-south cooperation.
7. In its development cooperation activities the Union shall as appropriate draw on and share the reform and transition experiences of Member States and lessons learned.
8. The Union shall seek regular exchanges of information with civil society.

TITLE II

PROGRAMMING AND ALLOCATION OF FUNDS

Article 3

General framework for allocating funds

1. The Commission shall determine the multiannual indicative resource allocations for each ACP country and region and for Intra-ACP cooperation on the basis of the criteria provided for in Articles 3, 9 and 12c of Annex IV to the Cotonou Agreement, within the financial limits set out in Article 2 of the Internal Agreement.
2. In the determination of the indicative national allocations, a differentiated approach shall be pursued, in order to ensure that partner countries are provided with specific, tailor-made cooperation based on:
 - (a) their needs;
 - (b) their capacities to generate and access financial resources and absorption capacities;
 - (c) their commitments and performance; and
 - (d) the potential impact of Union assistance.

The countries most in need, in particular the least developed countries, low income countries and countries in crisis, post-crisis, fragile and vulnerable situation, shall be given priority in the resource allocation process.

Article 4

General framework for programming

1. The process of programming for assistance to the ACP countries and regions under the Cotonou Agreement shall be undertaken in accordance with the general principles referred to in Articles 1 to 14 of Annex IV to that Agreement and in Articles 1 and 2 of this Regulation.
2. Programming will, except in the cases provided for in paragraph 3, be undertaken jointly with the partner country or region concerned and increasingly aligned with the partner country or region's poverty reduction, or equivalent, strategies.

The Union and the Member States shall consult each other at an early stage of the programming process in order to promote complementarity and consistency among their cooperation activities.

The Union shall consult the EIB on matters related to its expertise and operations, and other donors and development actors including representatives of civil society and regional and local authorities.

The Commission and the Member States locally represented shall strive to joint programming where possible and appropriate. All other Member States are invited to contribute for the purpose of reinforcing joint external action of the Union. Joint programming should build on the comparative advantages of all Union donors.

3. In circumstances such as those referred to in Article 3(3) and Article 4(5) of Annex IV to the Cotonou Agreement, the Commission may establish specific provisions for programming and implementing development aid unilaterally in accordance with the relevant Union policies.
4. The Union will in principle concentrate its bilateral assistance on a maximum of three sectors.

Article 5

Programming documents

1. Strategy papers are documents drawn up by the Union and the partner country or region concerned to provide a coherent policy framework for development cooperation, consistent with the overall purpose and scope, objectives and general principles of the Cotonou Agreement, and in line with the principles established in Articles 2, 8 and 12a of Annex IV to that Agreement.

The preparation and implementation of strategy papers must comply with the principles of aid effectiveness: national ownership, partnership, coordination, harmonisation, alignment with recipient country or regional systems, transparency, mutual accountability and results orientation as laid down in Article 2 of this Regulation. The programming period must become, in principle, synchronised with partner country strategy cycles.

2. With the consent of the partner country or region concerned, no strategy paper will be required for:
 - (a) countries or regions having a development strategy in the form of a development plan or a similar development document accepted by the Commission as a basis for the corresponding multiannual indicative programme, when adopting the latter document;
 - (b) countries or regions for which a joint multiannual programming document between the Union and Member States has been agreed;
 - (c) countries or regions where a Joint Framework Document (JFD) already exists that provides a comprehensive Union approach to the relations with that partner country or region, including Union development policy;

- (d) regions having a jointly agreed strategy with the Union;
 - (e) countries where the Union intends to synchronise its strategy with a new national cycle starting before 1 January 2017; in such cases the multiannual indicative programme for the interim period between 2014 and the beginning of the new national cycle will contain the Union's response for that country.
3. Strategy papers shall not be required for the countries or regions receiving an initial allocation of Union funds under this Regulation not exceeding EUR 50 million for the 2014-2020 period. In such cases, the multiannual indicative programmes will contain the Union's response for these countries or regions.

If the options referred to in paragraphs 2 and 3 are not acceptable for the partner country or region, a strategy paper shall be prepared.

4. Except in the circumstances referred to in Article 4(3), multiannual indicative programmes will be based on a dialogue with the partner country or region and be drawn up on the basis of the strategy papers or similar documents referred to in this Article, and will be the subject of an agreement with the country or region concerned.

For the purpose of this Regulation, the joint multiannual programming document provided for in paragraph 2(b) and complying with the principles and conditions established in this paragraph, including an indicative allocation of funds, may in accordance with the procedure set out in Article 14 be considered as the multiannual indicative programme in agreement with the partner country or region.

Multiannual indicative programmes will set out the priority areas selected for Union financing, the specific objectives, the expected results, the performance indicators and the indicative financial allocation, both overall and per priority area.

5. In addition to programming documents for countries and regions, an intra-ACP strategy paper and related multiannual indicative programme will be prepared jointly by the Commission and the ACP through the ACP secretariat, in line with the principles established in Articles 12 to 14 of Annex IV to the Cotonou Agreement.
6. The specific provisions referred to in Article 4(3) of this Regulation may take the form of special support programmes, taking into account the special considerations referred to in Article 6(1) of this Regulation.

Article 6

Programming for countries and regions in crisis, post-crisis or fragility situations

1. When drawing up programming documents for countries and regions in crisis, post-crisis, or fragility situations, due account will be taken of the vulnerability, special needs and circumstances of the countries or regions concerned.

Proper attention will be given to conflict prevention, state and peace building, post-conflict reconciliation and reconstruction measures as well as to the role of women in these processes.

Where partner countries or regions are directly involved in, or affected by, a crisis, post-crisis or fragility situation, special emphasis will be placed on stepping up coordination between relief, rehabilitation and development amongst all relevant actors to help the transition from an emergency situation to the development phase and to increase resilience. Programming for countries and regions in fragility or regularly subject to natural disasters will provide for disaster preparedness and prevention and for managing the consequences of such disasters.

2. For countries or regions experiencing crisis, post-crisis or fragility situations, an ad hoc review of the country's or region's cooperation strategy may be carried out. Such reviews may propose a specific and adapted strategy to ensure the transition to long-term cooperation and development, promoting a better coordination and transition between the humanitarian and development policy instruments.

Article 7

Approval and modification of programming documents

1. The programming documents, including the indicative allocations therein, shall be approved by the Commission in accordance with the procedure set out in Article 14.

At the same time as the programming documents are transmitted to the EDF Committee referred to in Article 14, the Commission shall also transmit them to the Joint Parliamentary Assembly for information.

The programming documents shall subsequently be endorsed by the ACP State or region concerned. Countries or regions without a signed programming document remain eligible to funding under the conditions laid down in Article 4(3) of this Regulation.

2. Strategy papers and multiannual indicative programmes, including the indicative allocations therein, may be adjusted taking into account reviews as foreseen in Articles 5, 11 and 14 of Annex IV of the Cotonou Agreement.
3. The procedure set out in Article 14 shall also apply to substantial modifications which have the effect of significantly modifying the strategy, its programming documents and/or its programmable resource allocation. Where applicable, the corresponding addenda to the programming documents shall be subsequently endorsed by the ACP State or region concerned.
4. The procedure referred to in paragraph 1 shall not apply to non-substantial modifications to programming documents, making technical adjustments, reassigning funds within the indicative allocations per priority area, or increasing or decreasing the size of the initial indicative allocation by less than 20%, provided that these modifications do not affect the priority areas and objectives set out in these documents. In such case, the Commission shall inform the EDF committee of these modifications within one month.
5. On duly justified imperative grounds of urgency, such as crises or immediate threats to democracy, the rule of law, human rights or fundamental freedoms, including those cases referred to in Article 6(2), the procedure referred to in Article 14(10) may be used to modify the programming documents referred to in Article 5.

TITLE III IMPLEMENTATION

Article 8

General framework for implementation

The implementation of the assistance provided to the ACP countries and regions managed by the Commission and the EIB under the Cotonou Agreement shall be undertaken in accordance with the Financial Regulation referred to in Article 10(2) of the Internal Agreement (hereinafter the "EDF Financial Regulation").

Article 9

Adoption of action programmes, individual measures and special measures

1. The Commission shall adopt annual action programmes, where required based on the indicative programming documents referred to in Article 5.

In the case of recurrent actions, it may also adopt multi-annual action programmes for a period of up to three years.

When necessary, an action may be adopted as an individual measure before or after the adoption of annual or multi-annual action programmes.

2. The action programmes and individual measures shall be prepared by the Commission with the partner country or region, involving the Member States locally represented and coordinating where appropriate with other donors, notably in cases of joint programming, and with the EIB.

Action programmes shall specify for each action the objectives pursued, the expected results and main activities, methods of implementation, budget and indicative timetable, any associated support measures and performance monitoring arrangements.

They shall state how they take current or planned EIB activities into account.

3. In the cases referred to in Article 4(3) and in cases of unforeseen needs, the Commission may adopt special measures.
4. The action programmes and the individual measures provided for in paragraph 1 for which the Union's financial assistance exceeds EUR 10 million and special measures for which the Union's financial assistance exceeds EUR 30 million shall be adopted by the Commission in accordance with the procedure set out in Article 14 of this Regulation.

That procedure shall not be required for action programmes and measures below those thresholds, and for non-substantial amendments thereto. Non-substantial amendments are technical adjustments such as 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, provided these amendments do not substantially affect the objectives of the initial action programme or measure. In such

case, action programmes and measures and non-substantial amendments thereto shall be adopted by the Commission, which shall inform the EDF Committee within one month.

On duly justified imperative grounds of urgency, such as crises, or immediate threats to democracy, the rule of law, human rights or fundamental freedoms, the Commission may adopt individual or special measures or amendments to existing action programmes and measures, in accordance with the procedure referred to in Article 14(10).

5. The Commission shall adopt specific action programmes for support expenditures referred to in Article 6(2) of the Internal Agreement in accordance with the procedure set out in Article 14. Any changes in the action programmes for support expenditures shall be adopted in accordance with the same procedure.
6. Appropriate environmental screening, including climate change and biodiversity impacts, shall be undertaken at project level including where applicable environmental impact assessment (EIA) for environmentally sensitive projects, in particular for major new infrastructure. Where relevant, strategic environmental assessments (SEA) shall be used in the implementation of sectoral programmes. The involvement of interested stakeholders in environmental assessments and public access to the results shall be ensured.

Article 10

Additional Member State contributions

1. At their own initiative, Member States may provide the Commission or the EIB with voluntary contributions in accordance with Article 1(9) of the Internal Agreement to help achieve the objectives of the Cotonou Agreement outside joint co-financing arrangements. Such contributions shall not affect the overall allocation of funds under the 11th EDF. They shall be treated in the same way as Member States' regular contributions referred to in Article 1(2) of the Internal Agreement except for the provisions in Articles 6 and 7 of the Internal Agreement for which specific arrangements may be laid down in a bilateral contribution agreement.
2. Earmarking shall only be made in duly justified circumstances, for example in response to the exceptional circumstances as referred to in Article 4(3). In this case, voluntary contributions entrusted to the Commission or the EIB shall be treated as assigned revenue in accordance with the EDF Financial Regulation.
3. The additional funds shall be integrated in the programming and review process and in the annual action programmes, individual measures and special measures referred to in this Regulation as well as reflect partner country or region ownership.
4. Any resulting change in the action programmes, individual measures and special measures shall be adopted by the Commission in accordance with the provisions of Article 9.
5. Member States entrusting the Commission or the EIB with additional voluntary contributions to help achieve the objectives of the Cotonou Agreement shall inform the Council and the EDF/IF Committee of these contributions in advance.

Article 11

Taxes, duties and charges

Union assistance shall not generate, or activate the collection of specific taxes, duties or charges.

Without prejudice to Article 31 of Annex IV of the Cotonou Agreement, such taxes, duties and charges may be eligible under the conditions laid down in the EDF Financial Regulation referred to in Article 10(2) of the Internal Agreement.

Article 12

Protection of the financial interests of the Union

1. The Commission shall take appropriate measures ensuring that, when actions financed under this Regulation are implemented, the financial interests of the Union are protected by the application of preventive measures against fraud, corruption and any other illegal activities, by effective checks and, if irregularities are detected, by the recovery, or where appropriate by the restitution of the amounts wrongly paid and, where appropriate, by effective, proportionate and dissuasive administrative and financial penalties.
2. The Commission or its representative and the Court of Auditors shall have the power of audit and verification, on the basis of documents and on-the-spot checks, over all grant beneficiaries, contractors and subcontractors who have received Union funds under the Regulation.
3. The European Anti-fraud Office (OLAF) may carry out investigations including on-the-spot checks and inspections, in accordance with the provisions and procedures laid down in Regulation (EC) No 1073/1999 of the European Parliament and of the Council²⁸ and Council Regulation (Euratom, EC) No 2185/96²⁹ with a view to establishing whether there has been fraud, corruption or any other illegal activity affecting the financial interests of the Union in connection with a grant agreement or grant decision or a contract funded under this Regulation.
4. Without prejudice to paragraphs 1, 2 and 3, cooperation agreements with third countries and with international organisations, contracts, grant agreements and grant decisions resulting from the implementation of this Regulation shall contain provisions expressly empowering the Commission, the Court of Auditors and OLAF to conduct such audits, on-the-spot checks and inspections, according to their respective competences.

Article 13

Rules on nationality and origin for public procurement, grants and other award procedures

The rules on nationality and origin for public procurement, grants and other award procedures are defined in Article 20 of Annex IV of the Cotonou Agreement.

²⁸ OJ L 136, 31.5.1999, p. 1.

²⁹ OJ L 292, 15.11.1996, p. 2.

TITLE IV DECISION-MAKING PROCEDURES

Article 14

Responsibilities of the EDF Committee

1. The European Development Fund Committee (the EDF Committee) established by Article 8 of the Internal Agreement shall give its opinion in accordance with the procedure set out in paragraphs 3 to 10.

An observer from the EIB shall take part in the EDF Committee's proceedings with regard to questions concerning the Bank.

2. The EDF Committee's tasks shall cover the responsibilities spelled out in Titles II and III of this Regulation:

- (a) programming of Union aid under the 11th EDF and programming reviews focusing in particular on country, regional and intra-ACP strategies; and
- (b) monitoring the implementation of Union and its Member States aid, covering amongst others the impact of assistance on the reduction of poverty, sectoral aspects, cross-cutting issues, the functioning of field-level coordination with Member States and other donors and progress on the aid effectiveness principles referred to in Article 2.

3. When the EDF Committee is called upon to give its opinion, the representative of the Commission shall submit to the EDF Committee within the time-limits set out in its rules of procedure, a draft of the measures to be taken. The 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.

Until the EDF Committee delivers an opinion, any EDF Committee member may suggest amendments and the chair may present amended versions of the draft measure.

The chair shall endeavour to find solutions which command the widest possible support within the EDF Committee. The chair shall inform the EDF Committee of the manner in which the discussions and suggestions for amendments have been taken into account, in particular as regards those suggestions which have been largely supported within the EDF Committee.

4. 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.
5. Where the EDF Committee delivers a positive opinion, the Commission shall adopt the measures which shall apply immediately.
6. If the EDF Committee delivers a negative opinion, the Commission shall not adopt the measures. Where the measures are deemed necessary, the chair may either submit

an amended version of the draft measures to the EDF Committee within 2 months of delivery of the negative opinion or submit the draft measures within 1 month of such delivery to an appeal committee referred to in paragraph 9 for further deliberation.

7. Where no opinion is delivered, the Commission may adopt the draft measures, except in the case provided in the second subparagraph below. Where the Commission does not adopt the measures, the chair may submit to the EDF Committee an amended version thereof.

The Commission shall not adopt the measures when a simple majority of the members of the EDF Committee opposes it. In this case, where the measures are deemed necessary, the chair may submit an amended version of the draft measures to the EDF Committee within 2 months of the vote or submit the draft measures within 1 month of such delivery to the appeal committee referred to in paragraph 9 for further deliberation.

8. Where the opinion of the EDF Committee is to be obtained by written procedure, the procedure shall be terminated without result when, within the time limit for delivery of the opinion, the chair of the EDF Committee so decides or a simple majority of EDF Committee members so requests.
9. The appeal committee shall adopt its own rules of procedure by a simple majority of its component members, on a proposal from the Commission. Where the appeal committee is seized, it shall meet at the earliest 14 days, except in duly justified cases, and at the latest 6 weeks, after the date of referral. Without prejudice to the first subparagraph of paragraph 3, the appeal committee shall deliver its opinion within 2 months of the date of referral 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. A representative of the Commission shall chair the appeal committee.

The chair shall set the date of the appeal committee meeting in close cooperation with the members of the committee, in order to enable Member States, the Commission and the EIB with regard to questions concerning the Bank, to ensure an appropriate level of representation.

Where the appeal committee delivers a positive opinion, the Commission shall adopt the measures. Where no opinion is delivered by the appeal committee, the Commission may adopt the measures. Where the appeal committee delivers a negative opinion, the Commission shall not adopt the measures.

10. Where reference is made to this paragraph, the Commission shall adopt the measures which shall apply immediately, without prior submission to the EDF Committee, and which shall remain in force for the duration of the adopted or modified document, action programme or measure.

At the latest 14 days after its adoption, the chair shall submit the measures to the EDF Committee in order to obtain its opinion.

In the event of the EDF Committee delivering a negative opinion in line with paragraphs 3 and 4 of this Article, the Commission shall immediately repeal the measures adopted in accordance with the first subparagraph.

Article 15

The African Peace Facility

The intra-ACP indicative programmes shall earmark funding for the African Peace Facility. This funding may be complemented by the regional indicative programmes. A specific procedure set out in the following subparagraphs shall apply as follows:

- (a) on a request from the African Union, endorsed by the ACP Committee of Ambassadors, pluriannual action programmes shall be prepared by the Commission specifying the objectives pursued, the scope and nature of the possible interventions and the implementation arrangements. An annex to each action programme shall describe the specific decision making procedures for each possible type of intervention according to its nature, size and urgency;
- (b) the action programmes, including the annex referred to in subparagraph (a), and any changes thereto shall be discussed by the relevant preparatory Council working groups and the Political and Security Committee and approved by Coreper by qualified majority as defined in Article 8(3) of the Internal Agreement, before being adopted by the Commission;
- (c) the action programmes, excluding the annex referred to in subparagraph (a), shall be the basis for the financing agreement to be concluded between the Commission and the African Union;
- (d) each intervention to be implemented under the financing agreement shall be subject to prior endorsement by the Political and Security Committee; the relevant preparatory Council working groups shall be informed or consulted in due time prior to their transmission to the Political and Security Committee according to the specific decision making procedures referred to in subparagraph (b) in order to ensure that, besides the military and security dimension, the development related aspects of the envisaged measures are being taken into account;
- (e) the Commission shall prepare an activity report on the use of the funds for information of the Council and the EDF Committee on an annual basis and at the request of Council or the EDF Committee, distinguishing between ODA and non-ODA related commitments and disbursements.

The Union shall continue to examine the possibilities of alternative future sources of funding, including common foreign and security policy funding.

Article 16

The Investment Facility Committee

1. The Investment Facility (IF) Committee set up under the auspices of the EIB by Article 9 of the Internal Agreement shall consist of the representatives of the Member States and a representative of the Commission. An observer from the General Secretariat of the Council and another one from the EEAS shall be invited to attend. Each Member State, as well as the Commission, shall nominate one representative and one designated alternate. 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.

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.

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.

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. In addition, the IF Committee may deliver an opinion by written procedure, in the terms established by its Rules of Procedure.

2. The IF Committee shall approve:
 - (a) the operational guidelines on the implementation of the IF;
 - (b) the investment strategies and business plans of the IF, on the basis of the objectives of the Cotonou Agreement and of the general principles of Union development policy;
 - (c) the annual reports of the IF;
 - (d) any general policy document, including evaluation reports, concerning the IF.
3. The IF Committee shall deliver an opinion on:
 - (a) proposals to grant an interest subsidy under Article 2(7), and Article 4(2)(b), of Annex II to the Cotonou Agreement. In such cases, the IF 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 IF based on the general principles defined in the operational guidelines of the IF.

In order to streamline the approval process for small operations, the IF Committee may give its favourable opinion to proposals from the EIB for a global allocation (interest subsidies, technical assistance) or global authorisation (lending, equity), that shall subsequently, without further opinion from the IF Committee and/or the Commission, be sub-allocated by the EIB to individual projects in accordance with criteria set out in the global allocation/authorisation, including the maximum sub-allocation per project.

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 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 2 and 3 respectively. Any proposal submitted to the IF Committee for an opinion shall be made in accordance with the relevant criteria and principles set out in the operational guidelines of the IF.
5. The EIB shall cooperate closely with the Commission and, where applicable, shall coordinate its operations with other donors. In particular:
 - (a) the EIB shall prepare or revise jointly with the Commission the operational guidelines of the IF referred to in paragraph 2(a). The EIB shall be held accountable for compliance with the guidelines and shall ensure that the projects it supports respect international social and environmental standards and are coherent with the objectives of the Cotonou Agreement and of the general principles of Union development policy and with the relevant country or regional cooperation strategies;
 - (b) the EIB shall request the opinion of the Commission in preparation of the investment strategies, business plans and general policy documents;
 - (c) the EIB shall inform the Commission on the projects it administers in accordance with Article 18(1). At the appraisal stage of a project, it shall request the opinion of the Commission on its coherence with the relevant country cooperation strategy or regional cooperation strategy or, as the case may be, with the general objectives of the IF;
 - (d) with the exception of interest subsidies falling within the global allocation referred to in paragraph 3(a), 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 Cotonou Agreement, and with the criteria defined in the operational guidelines of the IF.

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 a proposal within three 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 3 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 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 on the proposal in accordance with its own procedures and, in the case of the Investment Facility, in accordance with the

operational guidelines of the Investment Facility 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 of the IF, and the condition that the essential objective of the loan or IF investment in question be unchanged, decide to modify the terms of an IF loan or investment on which the IF Committee has given a favourable opinion under paragraph 3 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 IF investment by up to 20 %.

Such an increase may, for projects with interest subsidies referred to in Article 2(7) of Annex II to the Cotonou 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) of Annex II to the Cotonou Agreement, if an increase in the value of the subsidy is requested, the IF Committee shall be required to deliver an opinion before the EIB proceeds.

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

TITLE V FINAL PROVISIONS

Article 17

Participation by a third country or region

In order to ensure the coherence and effectiveness of Union 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 Union assistance under other Union financing instruments for external action, where the project or programme concerned is of a regional or cross-border nature and complies with Article 6 of Annex IV to the Cotonou Agreement, are eligible for funds referred to in Article 1(2)(a)(i) of the Internal Agreement. The Overseas Countries and Territories ("OCTs") eligible for Union assistance under Decision [...], and the Union's outermost regions can also participate in regional cooperation projects or programmes; the funding to enable participation of these territories or outermost regions shall be additional to funds referred to in Article 1(2)(a)(i) of the Internal Agreement. The objective of a reinforced cooperation between the Member States, their outermost regions, the OCTs and the ACP countries should be taken into account and, where appropriate, coordination mechanisms be set up. Provision for this funding and for the types of financing referred to in the 11th Financial Regulation may be made in the strategy papers

and multiannual indicative programmes and in the action programmes and measures referred to in Article 9 of this Regulation.

Article 18

Monitoring, reporting and evaluation of EDF assistance

1. The Commission and the EIB shall regularly monitor their actions and review progress made towards delivering expected results. The Commission will also conduct evaluations of the impact and effectiveness of its sectoral policies and actions, and the effectiveness of programming, where appropriate by means of independent external evaluations. Evaluations should be based on OECD-DAC good practice principles, seeking to ascertain whether the specific objectives, where applicable taking into account gender equality, have been met and to formulate recommendations with a view to improving future operations.

The EIB shall periodically inform the Commission regarding the implementation of projects financed from the 11th EDF resources it administers, following the procedures set out in the operational guidelines of the Investment Facility.

2. The Commission shall send its evaluation reports to the Member States through the EDF Committee and the EIB for information. The results shall feed back into programme design and resource allocation.
3. The Commission shall associate to an appropriate extent all relevant stakeholders in the evaluation phase of the Union assistance provided under this Regulation and may, where appropriate, seek to undertake joint evaluations with EU Member States, other donors and development partners.
4. The Commission shall examine the progress made in implementing the 11th EDF and shall submit to the Council a report every two years starting in 2016 on the implementation and results and, as far as possible, the main outcomes and impacts of the Union's financial assistance. That report shall also be sent to the European Parliament, the European Economic and Social Committee and the Committee of the Regions.
5. The biennial report shall contain information relating to the previous year on the measures financed, the results of monitoring and evaluation exercises, the involvement of the relevant development partners, and the implementation of commitments and of payments appropriations broken down by country, region and cooperation sector.
6. The report 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 Cotonou Agreement. It shall reflect the main lessons learned and the follow-up to the recommendations of the evaluations of the previous years.
7. The Union and its Member States shall conduct a performance review, assessing the degree of realisation of commitments and disbursements, and the results and impact of the aid provided. The review shall be undertaken on the basis of a proposal by the Commission.

8. The EIB shall provide the IF Committee with information as regards progress towards the objectives of the IF. Following Article 6B of Annex II to the Cotonou Agreement, the overall performance of the IF shall be subject to a joint review at the mid- and end-term of the 11th EDF. The mid-term review shall be carried out by an independent external expert, in cooperation with the EIB, and shall be made available to the IF Committee.

Article 19

Climate action and biodiversity expenditure

An annual estimate of the overall spending related to climate action and biodiversity shall be made on the basis of the adopted indicative programming documents. The funding allocated in the context of the EDF shall be subject to an annual tracking system based on the OECD methodology ('Rio markers'), without excluding the use of more precise methodologies where such are available, integrated into the existing methodology for performance management of Union programmes, to quantify the expenditure related to climate action and biodiversity at the level of the action programmes, individual and special measures referred to in Article 9, and recorded within evaluations and biannual reports.

Article 20

European External Action Service

The application of this Regulation shall be in accordance with Council Decision 2010/427/EU, establishing the organisation and functioning of the European External Action Service.

Article 21

Transitional measures

Pending entry into force of the Internal Agreement of the 11th EDF, transitional measures in the form of action programmes, individual measures, special measures and specific action programmes for support expenditure, referred to in Article 9, shall be financed from a bridging facility for the 11th EDF, composed of balances from the previous EDFs and from funds decommitted from projects under these EDFs. This bridging facility may also cover the grants to finance the interest-rate subsidies and project-related technical assistance referred to in Article 2(d) of the Internal Agreement. These transitional measures shall aim at facilitating the implementation of programming documents.

Funds committed under this bridging facility shall be accounted for under the 11th EDF. The shares of Member States contributions stated in Article 1(2)(a) of the Internal Agreements of the 9th and 10th EDF shall be reduced accordingly.

For the purpose of implementation of these transitional measures, the Financial Regulation of the 10th EDF shall continue to apply until the entry into force of the Financial Regulation of the 11th EDF.

Article 22
Entry into force

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

It shall apply from 1 January 2014 until the final date of application of the Internal Agreement

This Regulation shall be binding in its entirety and directly applicable in all Member States

Done at Brussels,

For the Council
The President