



**COUNCIL OF  
THE EUROPEAN UNION**

**Brussels, 4 December 2013**

**17219/13**

---

**Interinstitutional File:  
2013/0320 (NLE)  
2013/0211 (NLE)**

---

**ACP 191  
FIN 877  
PTOM 47  
RELEX 1105  
DEVGEN 309**

**COVER NOTE**

---

from: European Investment Bank  
date of receipt: 2 December 2013  
to: Council of the European Union

---

No Cion doc.: 14081/13 - COM(2013) 660 final  
11672/13 - COM(2013) 445 final

---

Subject: - Proposal for a Council Regulation on the financial regulation applicable to  
the 11th European Development Fund  
- Proposal for a Council Regulation on the implementation of the 11th  
European Development Fund  
= Opinion of the European Investment Bank

---

Delegations will find attached the document on the above.



M. Uwe Corsepius  
 Secrétaire-Général  
 Conseil de l'Union Européenne  
 Rue de la Loi 175  
 B – 1048 Bruxelles

Isiponelema le hano leqanane eGama  
 Eropasidi Inyanga eNtshona  
 Dien Stary eSishe le eNtshona, leqo  
 Eropasidi le Investimane eNtshona  
 Eropasidi le Investimane eNtshona  
 Eropasidi le Investimane eNtshona  
 Eropasidi le Investimane eNtshona  
 Eropasidi le Investimane eNtshona  
 Eropasidi le Investimane eNtshona  
 Eropasidi le Investimane eNtshona  
 Eropasidi le Investimane eNtshona

Isiponelema le hano leqanane eGama  
 Eropasidi Inyanga eNtshona  
 Dien Stary eSishe le eNtshona, leqo  
 Eropasidi le Investimane eNtshona  
 Eropasidi le Investimane eNtshona  
 Eropasidi le Investimane eNtshona  
 Eropasidi le Investimane eNtshona  
 Eropasidi le Investimane eNtshona  
 Eropasidi le Investimane eNtshona  
 Eropasidi le Investimane eNtshona  
 Eropasidi le Investimane eNtshona

**Secrétaire Général**

Luxembourg, le 29 novembre 2013

SG/DIR 2013-0583

Monsieur le Secrétaire-Général,

EXP BEI - EID  
 012917 29.NOV 13

J'accuse bonne réception des documents COM(2013) 445 final et COM(2013) 660 final contenant les propositions de la Commission Européenne pour le règlement du Conseil relatif à la mise en œuvre et le règlement financier du 11<sup>ème</sup> Fonds européen de développement, publiés respectivement le 2 juillet 2013 et le 26 septembre 2013, et vous remercie pour ces deux consultations.

Nos services ayant été consultés par la Commission Européenne lors de la préparation de ces deux documents, nous sommes en accord avec les propositions de la Commission, mis à part quelques corrections, d'ordre technique, que vous trouverez dans les documents joints. Nous proposons également de modifier l'article 58 afin de tenir compte de la volonté de la Banque d'uniformiser la procédure d'approbation des Etats Financiers pour tous les instruments gérés sous mandats tiers.

*«The operations financed from the 11th EDF resources managed by the EIB in accordance with Part Two shall be subject to the discharge procedures that the EIB applies for third party mandate accounts. Detailed rules for auditing by the Court of Auditors are set out in a Tripartite Agreement between the EIB, the Commission and the Court of Auditors.»*

Je suis conscient que les négociations ont d'ores et déjà bien avancé au Groupe ACP et que de nouveaux textes de compromis sont actuellement en discussion. Les services de la BEI continueront à fournir les commentaires de la BEI afin de conclure ces discussions dans les délais impartis et de répondre notamment aux nombreuses questions des Etats-Membres. L'opinion favorable de la BEI dépend évidemment de la prise en compte de nos remarques dans le texte final.

Pour les futures communications à ce sujet, je vous invite à vous adresser directement à M. Ben Knapen, Représentant Permanent de la BEI auprès des Institutions UE.

Je vous prie d'agréer, Monsieur le Secrétaire-Général, l'assurance de ma haute considération.

Alfonso Querejeta

SECRETARIAT DU CONSEIL  
 DE L'UNION EUROPÉENNE  
 SGE13/12370

REÇU LE 02 DEC. 2013  
 DEST. PRINC. M. CLOOS  
 DEST. COP. M. SCHIAVO  
 M. PILLATH

98 100, boulevard Konrad Adenauer L-2950 Luxembourg ☎ (+352) 43 79 11 ☎ (+352) 43 77 04 ✉ info@eb.org www.eb.org Service Juridique



COUNCIL OF  
THE EUROPEAN UNION

Brussels, 26 September 2013

14081/13

---

**Interinstitutional File:**  
**2013/0320 (NLE)**

---

ACP 148  
FIN 570  
PTOM 29  
DEVGEN 242

**PROPOSAL**

---

from: European Commission  
dated: 26 September 2013

---

No Cion doc.: COM(2013) 660 final

---

Subject: Proposal for a Council Regulation on the financial regulation applicable to the 11th European Development Fund

---

Delegations will find attached a proposal from the Commission, submitted under a covering letter from Mr Jordi AYET PUIGARNAU, Director, to Mr Uwe CORSEPIUS, Secretary-General of the Council of the European Union.

Encl.: COM(2013) 660 final

---

14081/13

DG C 1

PK/br

1  
EN



Brussels, 25.9.2013  
COM(2013) 660 final  
2013/0320 (NLE)

Proposal for a

**COUNCIL REGULATION**

**on the financial regulation applicable to the 11th European Development Fund**

{SWD(2013) 345 final}

**EN**

**EN**

## EXPLANATORY MEMORANDUM

### 1. CONTEXT OF THE PROPOSAL

The proposal for the Council Regulation on the financial regulation applicable to the 11th European Development Fund (11<sup>th</sup> EDF) is a part of the package of the legislative documents governing the European Development Fund which consists also of the Internal Agreement [...], Part Four of the Overseas Association Decision and the Implementation Regulation of the 11<sup>th</sup> EDF.

### 2. RESULTS OF CONSULTATIONS WITH THE INTERESTED PARTIES AND IMPACT ASSESSMENTS

The overarching principle of this proposal is maximum alignment with the Financial Regulation applicable to the general budget of the Union (Regulation (EU, Euratom) No 966/2012) and its Rules of Application (Delegated Regulation No 1268/2012). The proposal draws on the results of the public consultation in 2009/2010 that preceded the Commission proposal for the new Financial Regulation which was adopted in 2012.

### 3. LEGAL ELEMENTS OF THE PROPOSAL

As stated above, the overarching principle of this proposal is maximum alignment with the Financial Regulation and its Rules of Application. This is achieved by direct references to these regulations.

Furthermore, alignment is sought with the latest available version of the Common Implementing Rules regulation where it contains provisions relevant for financial implementation; these cases, not numerous, are treated by including identical text.

References to the Financial Regulation and its Rules of Application have to be read bearing in mind that:

- Article 2(2) of the proposal excludes the application of provisions which give the Commission the power to adopt delegated acts under Article 290 TFEU.
- Where an article of the Financial Regulation is declared applicable to the 11<sup>th</sup> EDF, all the related and relevant provisions of the Rules of Application also apply directly unless their application is explicitly excluded. However, where the Financial Regulation or the applicable Rules of Application provisions contain only indirect internal references, the provisions referred to only apply if the 11<sup>th</sup> EDF Financial Regulation declares them applicable. In other words, it is solely the 11<sup>th</sup> EDF Financial Regulation that explicitly declares provisions of the Financial Regulation or the Rules of Application applicable to the 11<sup>th</sup> EDF or not.
- Certain provisions of the Financial Regulation or the Rules of Application apply “mutatis mutandis”; in such a case the applicable provisions have to be interpreted reasonably pursuant to their purpose and objective, and bearing in mind the context of their application, in accordance with the principles of interpretation established by the case-law of the Court of Justice, and not literally.
- In applying by reference the provisions of the Financial Regulation to 11<sup>th</sup> EDF implementation, due account must be taken of the exceptions especially provided for in the Financial Regulation to address the specificities of external action, and in particular its extraterritorial and conventional context.

EN

2

EN

The proposal follows as much as possible the structure of the Financial Regulation. It is divided into three Parts: Main Provisions, Investment Facility, and Transitional and Final Provisions.

The recitals of the proposal address the degree of alignment with the Financial Regulation and its Rules of Application in more detail.

Part One “Main Provisions” is subdivided into ten Titles: Subject matter, scope and general provisions; Financial principles; 11<sup>th</sup> EDF resources and its implementation; Financial actors; Revenue operations; Expenditure operations; Various implementation provisions; Funding instruments; Presentation of the accounts and accounting; and External audit and discharge.

The self-standing text of the proposal largely falls into one of three categories. Certain text is aligned on the substance with the Financial Regulation but it was deemed inappropriate to achieve the alignment by a mere reference because of terminological differences or the necessity to carry out minor adjustments to the 11<sup>th</sup> EDF. Examples of this are in Title VIII “Funding instruments”. Other self-standing text is specific to the 11<sup>th</sup> EDF. Examples of this are in Title VI “Revenue operations”. As stated above, third type of self-standing text contains provisions aligned with the latest version of the Common Implementing Rules regulation.

Part Two describes the management of 11<sup>th</sup> EDF resources under the Investment Facility (IF) managed by the EIB. Some changes, in comparison with the 10<sup>th</sup> EDF, were necessary due to the deadline fixed for the availability of funds subscribed by the Member States pursuant to the Internal Agreement. Where an article of the Financial Regulation or of the Rules of application apply to the IF, it should be specifically mentioned.

In conclusion, this proposal results in overall simplification by showing more clearly which provisions of the Financial Regulation and its Rules of Application apply and which provisions are specificities of the 11<sup>th</sup> EDF. This proposal contains less than half the number of articles compared to the 10<sup>th</sup> EDF Financial Regulation.

The proposal is accompanied by a Commission Staff Working Document which allows a comparison of this proposal with the 10<sup>th</sup> EDF Financial Regulation and is a synoptic presentation of the provisions of the Financial Regulation and its Rules of Application that are applicable to the 11<sup>th</sup> EDF. In this comparative document, the provisions of the Financial Regulation and the Rules of Application which do not apply are in strikethrough format.

#### 4. BUDGETARY IMPLICATION

The proposal has no budgetary implications. The 11<sup>th</sup> EDF is not included in the EU budget and its financial envelope is determined in the Internal Agreement. While the funds will be implemented according to the 11<sup>th</sup> EDF Financial Regulation, its adoption itself has no financial impact.

EN

EN

2013/0320 (NLE)

Proposal for a

**COUNCIL REGULATION**

**on the financial regulation applicable to the 11th European Development Fund**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Internal Agreement between the Representatives of the Governments of the Member States of the European Union, 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 ACP-EU Partnership Agreement (hereinafter "the Internal Agreement"), and on the allocation of financial assistance for the Overseas Countries and Territories ("the OCTs") to which Part Four of the Treaty on the Functioning of the European Union (hereinafter "the Treaty") applies and in particular Article 10(2) thereof,

Having regard to the proposal from the European Commission,

Having regard to the opinion of the Court of Auditors<sup>1</sup>,

Having regard to the opinion of the European Investment Bank on the provisions concerning it<sup>2</sup>,

Whereas:

- (1) It is necessary to determine the detailed rules for the payment of the contributions by the Member States to the 11<sup>th</sup> European Development Fund ("the 11<sup>th</sup> EDF"), set up by the Internal Agreement.
- (2) It is necessary to lay down the conditions in accordance with which the Court of Auditors must exercise its powers in respect of the 11<sup>th</sup> EDF.
- (3) It is necessary to determine the detailed rules for the financial implementation of the 11<sup>th</sup> EDF concerning notably the applicable principles; the constitution of its resources; the financial actors and entities entrusted with budget-implementation tasks; the financing decisions, commitments and payments; the funding instruments including procurement, grants, financial instruments and Union trust funds; the presentation of the accounts and accounting; the external audit by the Court of Auditors and discharge by the European Parliament; as well as the Investment Facility managed by the European Investment Bank.
- (4) For the sake of simplification and coherence, this Regulation should be aligned, as much as possible, with Regulation (EU, Euratom) No 966/2012<sup>3</sup> and Commission

<sup>1</sup> OJ C , , p .

<sup>2</sup> OJ C , , p .

<sup>3</sup> Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002 (OJ L 298, 26.10.2012, p.1.)

EN

4

EN

Delegated Regulation (EU) No 1268/2012<sup>4</sup>. Such alignment should be achieved by direct references to these regulations and should, on the one hand, allow for an easy identification of specificities in the financial implementation of the 11<sup>th</sup> EDF and, on the other hand, reduce the diversity of Union funding rules in the area of external action that creates an unnecessary burden for the recipients, the Commission as well as other actors involved.

- (5) It is necessary to recall that the framework for financial implementation of the 11<sup>th</sup> EDF is, besides this Regulation, constituted by several instruments: the Partnership Agreement between the members of the African, Caribbean and Pacific group of States on the one part, and the European Community and its Member States on the other part, signed in Cotonou on 23 June 2000, revised in Luxembourg on 25 June 2005 and revised in Ouagadougou on 22 June 2010 (hereinafter “the Cotonou Agreement”), in particular by its Annex IV; further by the Internal Agreement; by Council Decision of [date] on the association of the overseas countries and territories with the European Union (hereinafter “the Overseas Association Decision”); and by Council Regulation No [number] of [date] on the implementation of the 11<sup>th</sup> European Development Fund (hereinafter “the Implementation Regulation”).
- (6) The financial implementation of the 11<sup>th</sup> EDF should be guided by the principles of unity and budgetary accuracy, unit of account, universality, specification, sound financial management and transparency. Having regard to the multiannual set-up of the 11<sup>th</sup> EDF, the budgetary principle of annuality should not apply to the 11<sup>th</sup> EDF.
- (7) The rules concerning the financial actors, i.e. the authorising and accounting officers, the delegation of their tasks as well as their liability should be aligned with Regulation (EU, Euratom) No 966/2012 as the Commission exerts the same executive responsibility when it implements the 11<sup>th</sup> EDF.
- (8) It is necessary to establish the detailed rules in accordance with which the authorising officer by delegation of the Commission establishes the necessary arrangements with the ACP (African, Caribbean and Pacific) States and OCTs to ensure the proper execution of operations, in close cooperation with the national, regional, intra-ACP or territorial authorising officer designated by the ACP States or OCTs.
- (9) The rules on indirect management, which entail the entrustment of budget-implementation tasks and of its conditions and limits, should be aligned with Regulation (EU, Euratom) No 966/2012. In addition, a provision on sub-delegation of budget-implementation tasks mirroring that in [the Common Implementing Rules regulation] should be inserted in order to ensure a coherent implementation of funding of external action. This Regulation should nonetheless contain specific provisions on temporary actors taking the place of the national authorising officer, on entrustment by the ACP States and OCTs to a service provider, and on strengthening the protection of Union financial interests in the case of indirect management with ACP States and OCTs.
- (10) While EDF resources will not be implemented under shared management, this Regulation should enable that in the framework of regional cooperation between ACP States and OCTs, on the one hand, and the Union's outermost regions, on the other hand, EDF resources and support from the European Regional Development Fund

<sup>4</sup> Commission Delegated Regulation (EU) No 1268/2012<sup>4</sup> of 29 October 2012 on the rules of application of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council on the financial rules applicable to the general budget of the Union (OJL 362, 31.12.2012, p. 1.)



(“the ERDF”) in favour of the Union's outermost regions can be implemented by the same entity in accordance with this Regulation as regards EDF resources and under shared management as regards the ERDF.

- (11) The provisions on financing decisions should be aligned with those of Regulation (EU, Euratom) No 966/2012 where the Commission implements the 11<sup>th</sup> EDF.
- (12) The rules on commitments should be aligned with those of Regulation (EU, Euratom) No 966/2012 with the exception of provisional commitments which should not be available in the 11<sup>th</sup> EDF. In addition, an extension of deadlines should be provided where it is necessary for actions carried out in indirect management by ACP States or OCTs.
- (13) The time limits for payments should be aligned with those of the Regulation (EU, Euratom) No 966/2012. Special provisions should be laid down where ACP States and OCTs are not entrusted with carrying out payments under indirect management and where, consequently, the Commission continues to carry out payments to recipients.
- (14) Various implementation provisions concerning the internal auditor, good administration and redress, the IT system, electronic transmission, e-Government, the administrative and financial penalties, and the use of the central exclusion database, should be aligned with those of Regulation (EU, Euratom) No 966/2012. In addition, the protection of Union financial interests through the application of administrative penalties should be strengthened and clarified where the 11<sup>th</sup> EDF is implemented in indirect management with ACP States and OCTs.
- (15) The rules on procurement, grants, prizes, and experts should be aligned with those of Regulation (EU, Euratom) No 966/2012. The rules on financial instruments and Union trust funds should be aligned with adjustments due to the nature of the 11<sup>th</sup> EDF. Budget support to OCTs should take the institutional links with the Member States concerned into account.
- (16) The rules on presentation of the accounts and accounting, and on external audit and discharge, should mirror those of Regulation (EU, Euratom) No 966/2012 in order to provide a coherent framework for implementation and reporting.
- (17) It is necessary to lay down the conditions in accordance with which the European Investment Bank (“the EIB”) manages certain 11<sup>th</sup> EDF resources.
- (18) The provisions concerning scrutiny by the Court of Auditors of the 11<sup>th</sup> EDF resources managed by the EIB should comply with the tripartite agreement concluded between the Court of Auditors, the EIB, and the Commission provided for in Article 287(3) of the Treaty.
- (19) The transitional provisions should lay down the rules on treating balances and revenue from previous European Development Funds as well as the application of this Regulation to residual operations under them.
- (20) In order to allow for timely programming and implementation of the 11<sup>th</sup> EDF programmes, this Regulation should enter into force on the third day following that of its publication in the *Official Journal of the European Union*,

HAS ADOPTED THIS REGULATION:

EN

6

EN

## PART ONE MAIN PROVISIONS

### TITLE I SUBJECT MATTER, SCOPE AND GENERAL PROVISIONS

#### *Article 1* **Scope**

This Regulation lays down the rules for the financial implementation of the resources of the 11<sup>th</sup> European Development Fund (11<sup>th</sup> EDF), and the presentation and auditing of the accounts.

#### *Article 2*

##### **Relation to Regulation (EU, Euratom) No 966/2012 applicable to the general budget**

1. Unless specifically provided otherwise, direct references in this Regulation to the provisions of Regulation (EU, Euratom) No 966/2012 shall be deemed to include also references to the corresponding provisions of Delegated Regulation (EU) No 1268/2012.
2. References in this Regulation to applicable provisions of Regulation (EU, Euratom) No 966/2012 shall not be deemed to include procedural provisions which are not relevant to the 11<sup>th</sup> EDF, in particular those concerning the empowerment to adopt delegated acts.
3. Internal references in Regulation (EU, Euratom) No 966/2012 or in Delegated Regulation (EU) No 1268/2012 shall not render the provisions referred to indirectly applicable to the 11<sup>th</sup> EDF.
4. Terms used in this Regulation shall have the same meaning as that assigned to them in Regulation (EU, Euratom) No 966/2012, with the exception of points (a) to (e) of Article 2 of that Regulation.

However for the purposes of this Regulation, the following terms in Regulation (EU, Euratom) No 966/2012 shall be interpreted with the following adjustments:

- (a) "budget" or "budgetary" means "11<sup>th</sup> EDF";
  - (b) "budgetary commitment" means "financial commitment";
  - (c) "institution" means "the Commission";
  - (d) "appropriations" or "operational appropriations" means "11<sup>th</sup> EDF resources";
  - (e) "budget line" or "line in the budget" means "allocation";
  - (f) "basic act" means, according to the relevant context, the Internal Agreement, the Overseas Association Decision, or the Implementation Regulation;
  - (g) "third country" means any beneficiary country or territory covered by the geographical scope of the 11<sup>th</sup> EDF.
5. The interpretation of this Regulation shall aim at preserving coherence with Regulation (EU, Euratom) No 966/2012 unless such interpretation would be incompatible with the specificities of the 11<sup>th</sup> EDF as provided for in the Cotonou

EN

7

EN

Agreement, the Internal Agreement, the Overseas Association Decision, or the Implementation Regulation.

*Article 3*

**Periods, dates and time limits**

Unless otherwise provided, Council Regulation (EEC, Euratom) No 1182/71<sup>5</sup> shall apply to deadlines set by this Regulation.

*Article 4*

**Protection of personal data**

This Regulation is without prejudice to the requirements of Directive 95/46/EC of the European Parliament and of the Council<sup>6</sup> and to the requirements of Regulation (EC) No 45/2001 of the European Parliament and of the Council<sup>7</sup>.

Article 29 of Delegated Regulation (EU) No 1268/2012 concerning information on transfers of personal data for audit purposes shall apply.

**TITLE II  
FINANCIAL PRINCIPLES**

*Article 5*

**Financial principles**

The 11<sup>th</sup> EDF resources shall be implemented in compliance with the following principles:

- (a) unity and budgetary accuracy;
- (b) unit of account;
- (c) universality;
- (d) specification;
- (e) sound financial management;
- (f) transparency.

*Article 6*

**Principle of unity and budgetary accuracy**

No revenue shall be collected and no expenditure effected unless booked to the EDF.

Article 8(2) and (3) and the first subparagraph of Article 8(4) of Regulation (EU, Euratom) No 966/2012 shall apply.

---

<sup>5</sup> Council Regulation (EEC, Euratom) No 1182/71 of 3 June 1971 determining the rules applicable to periods, dates and time limits (OJL 124, 8.6.1971, p. 1).

<sup>6</sup> Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJL 281, 23.11.1995, p. 31).

<sup>7</sup> Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (OJL 8, 12.1.2001, p. 1).

EN

EN

*Article 7*

**Principle of unit of account**

Article 19 of Regulation (EU, Euratom) No 966/2012 on the use of the euro shall apply *mutatis mutandis*.

*Article 8*

**Principle of universality**

Without prejudice to Article 9, total revenue shall cover total estimated payments.

All revenue and expenditure shall be entered in full without any adjustment against each other, without prejudice to Article 23 of Regulation (EU, Euratom) No 966/2012, concerning rules on deductions and exchange rate adjustments, which shall apply.

However, the revenue referred to in Article 9(2)(c) of this Regulation shall automatically decrease payments made against the commitment from which it was generated.

*Article 9*

**Assigned revenue**

1. Assigned revenue shall be used to finance specific items of expenditure.
2. The following shall constitute assigned revenue:
  - (a) financial contributions from Member States and third countries, including in both cases their public agencies, entities or natural persons; and from international organisations to certain external aid projects or programmes financed by the Union and managed by the Commission or the EIB on their behalf in accordance with Article 10 of the [Implementation Regulation];
  - (b) revenue earmarked for a specific purpose, such as income from foundations, subsidies, gifts and bequests;
  - (c) revenue arising from the repayment, following recovery, of amounts wrongly paid;
  - (d) revenue generated by interest on pre-financing payments, subject to Article 8(4) of Regulation (EU, Euratom) No 966/2012;
  - (e) repayments and revenues generated by financial instruments pursuant to Article 140(6) of Regulation (EU, Euratom) No 966/2012;
  - (f) revenue arising from subsequent reimbursement of taxes pursuant to Article 23(3)(b) of Regulation (EU, Euratom) No 966/2012.
3. Assigned revenue referred to in points (a) and (b) of paragraph 2 shall finance such items of expenditure as are determined by the donor provided that it is accepted by the Commission.

Assigned revenue referred to in points (e) and (f) of paragraph 2 shall finance items of expenditure similar to those from which it was generated.
4. Article 184(3) of Regulation (EU, Euratom) No 966/2012 shall apply *mutatis mutandis*.
5. Article 22(1) and (2) of Regulation (EU, Euratom) No 966/2012 concerning donations shall apply to the assigned revenue referred to in point (b) of paragraph 2 of this Regulation. With regard to Article 22(2) of Regulation (EU, Euratom) No

EN

EN

966/2012, acceptance of a donation shall be subject to the authorisation of the Council.

6. The 11<sup>th</sup> EDF resources corresponding to assigned revenue shall be made available automatically when the revenue has been received by the Commission. However, an estimate of amounts receivable shall have the effect of making 11<sup>th</sup> EDF resources available in the case of assigned revenue referred to in point (a) of paragraph 2 where the agreement with the Member State is expressed in euro; payments may be carried out against this revenue only when it has been received.

#### *Article 10*

##### **Principle of specification**

11<sup>th</sup> EDF resources shall be earmarked for specific purposes per the ACP States or OCTs and according to the main instruments of cooperation.

In respect of the ACP States, those instruments are laid down by the Financial Protocol set out in Annex Ic to the Cotonou Agreement. Earmarking of resources (indicative allocations) shall also be based on the provisions of the Internal Agreement and of the Implementation Regulation and shall take account of the resources reserved for support expenditure linked to programming and implementation under Article 6 of the Internal Agreement.

In respect of the OCTs, those instruments are laid down in Part Four of the Overseas Association Decision and Annex II thereto. Earmarking of those resources shall also take into account the non-allocated reserve provided for in Article 3(3) of that Annex and the resources for studies or technical assistance measures under Article 1(1)(c) thereof.

#### *Article 11*

##### **Principle of sound financial management**

1. Article 30(1) and (2) of Regulation (EU, Euratom) No 966/2012 concerning the principles of economy, efficiency and effectiveness shall apply. Article 18 of Delegated Regulation (EU) No 1268/2012 shall not apply.
2. Specific, measurable, achievable, relevant and timed objectives shall be set. The achievement of those objectives shall be monitored by performance indicators.
3. In order to improve decision-making, in particular to justify and specify the determination of the contributions to be paid by Member States referred to in Article 21, the following evaluations are required:
  - (a) the use of 11<sup>th</sup> EDF resources shall be preceded by an ex ante evaluation of the operation to be undertaken covering the elements listed in Article 18(1) of Delegated Regulation (EU) No 1268/2012;
  - (b) the operation shall be submitted to an ex post evaluation with a view to ensuring that the intended results justified the means deployed.
4. The funding instruments provided for in Title VIII and the methods of implementation provided for in Article 17 shall be chosen on the basis of their ability to achieve the specific objectives of the actions and their ability to deliver results, taking into account, in particular, the costs of controls, the administrative burden, and the expected risk of non-compliance. For grants, this shall include a consideration of the use of lump sums, flat rates and unit costs.

EN

10

EN

*Article 12*  
**Internal control**

Article 32 of Regulation (EU, Euratom) No 966/2012 shall apply.

*Article 13*  
**Principle of transparency**

1. The 11<sup>th</sup> EDF shall be implemented and the accounts presented in accordance with the principle of transparency.
2. The annual estimates of commitments and payments under Article 7 of the Internal Agreement shall be published in the *Official Journal of the European Union*.
3. Without prejudice to Article 4 of this Regulation, the first subparagraph of Article 35(2) and Article 35(3) of Regulation (EU, Euratom) No 966/2012, concerning the publication of information on recipients and other information, shall apply. For the purpose of the second subparagraph of Article 21(2) of Delegated Regulation (EU) No 1268/2012, the term "locality" shall mean, where necessary, the equivalent to the region at NUTS 2 level when the recipient is a natural person.

4. Actions financed under the 11<sup>th</sup> EDF may be implemented with parallel or joint co-financing.

In the case of parallel co-financing, an action is split into a number of clearly identifiable components which are each financed by the different donors providing co-financing in such a way that the end-use of the financing can always be identified.

In the case of joint co-financing, the total cost of an action is shared between the donors providing the co-financing and the resources are pooled in such a way that it is no longer possible to identify the source of financing for any given activity undertaken as part of the action. In such cases, ex-post publication of grant and procurement contracts as foreseen by Article 35 of Regulation (EU, Euratom) No 966/2012, shall comply with the rules of the entrusted entity, if any.

5. The Commission shall, where appropriate, take all necessary measures in order to ensure the visibility of the Union's financial support. This shall include measures imposing visibility requirements on recipients of Union funds except in duly justified cases. The Commission shall have the responsibility for monitoring their compliance.

**TITLE III**  
**11<sup>TH</sup> EDF RESOURCES AND ITS IMPLEMENTATION**

*Article 14*  
**Sources of 11<sup>th</sup> EDF resources**

The 11<sup>th</sup> EDF resources shall consist of the funds referred to in Article 1(2), (4) and (6) of the Internal Agreement; of the funds referred to in Article 1(9) thereof; and of other assigned revenue referred to in Article 9 of this Regulation.

*Article 15*  
**Structure of the 11<sup>th</sup> EDF**

The 11<sup>th</sup> EDF revenue and expenditure shall be classified according to their type or the use to which they are assigned.

EN

EN

*Article 16*

**11<sup>th</sup> EDF implementation in accordance with the principle of sound financial management**

1. The Commission shall assume the responsibilities of the Union defined in Article 57 of the Cotonou Agreement and in the Overseas Association Decision. To that end it shall implement the revenue and expenditure of the 11<sup>th</sup> EDF in accordance with the provisions of this Part and Part Three of this Regulation, under its own responsibility and within the limits of the 11<sup>th</sup> EDF resources.
2. The Member States shall cooperate with the Commission so that the 11<sup>th</sup> EDF resources are used in accordance with the principle of sound financial management.

*Article 17*

**Methods of implementation**

1. Articles 56 and 57 of Regulation (EU, Euratom) No 966/2012 shall apply.
2. Subject to the provisions of paragraphs 3 to 5, the rules on methods of implementation provided for in Chapter 2 of Title IV of Part One of Regulation (EU, Euratom) No 966/2012, and Articles 188 and 193 of that Regulation, shall apply. However the provisions in Articles 58(1)(b) and 59 of that Regulation, concerning shared management with Member States, shall not be applicable.
3. The entrusted entities shall ensure consistency with the EU's external policy and may entrust budget-implementation tasks to other entities under conditions equivalent to those applying to the Commission. They shall fulfil their obligations under Article 60(5) of Regulation (EU, Euratom) No 966/2012 annually. The audit opinion shall be submitted within one month of the report and management declaration, to be taken into account in the assurance of the Commission. ACP States and OCTs may also entrust budget-implementation tasks within their departments and to bodies governed by private law on the basis of a service contract. These bodies shall be selected on the basis of open, transparent, proportionate and non-discriminatory procedures, avoiding conflict of interests. The financing agreement shall stipulate the terms of the service contract.
4. Where the 11<sup>th</sup> EDF is implemented in indirect management with ACP States or OCTs, without prejudice to the responsibilities of the ACP States or the OCTs acting in their capacity of contracting authorities, the Commission:
  - (a) shall, where necessary, recover amounts due from recipients according to Article 80 of Regulation (EU, Euratom) No 966/2012, including by means of a decision which shall be enforceable under the same conditions as laid down in Article 299 of the Treaty;
  - (b) may, where the circumstances so require, impose administrative and/or financial penalties under the same conditions as laid down in Article 109 of Regulation (EU, Euratom) No 966/2012.

The financing agreement shall contain provisions on the cooperation between the Commission and the ACP State or OCT to this end.

5. The Union's financial assistance may be provided through contributions to international, regional or national funds, such as those established or managed by the EIB, Member States, third countries or by international organisations, for attracting

EN

12

EN

joint financing from a number of donors, or to funds set up by one or more donors for the purpose of the joint implementation of projects.

## **TITLE IV FINANCIAL ACTORS**

### *Article 18*

#### **General provisions on financial actors and their liability**

1. The Commission shall provide each financial actor with the resources required to perform his or her duties and a charter describing in detail his or her tasks, rights, and obligations.
2. Article 64 of Regulation (EU, Euratom) No 966/2012 on the segregation of duties, shall apply.
3. Chapter IV of Title IV of Part One of Regulation (EU, Euratom) No 966/2012 concerning the liability of the financial actors shall apply *mutatis mutandis*.

### *Article 19*

#### **Authorising officer**

1. Articles 65, 66 and 67 of Regulation (EU, Euratom) No 966/2012, concerning respectively, the authorising officer, his or her powers and duties, and those of Heads of Union Delegations, shall apply.
2. Where the responsible authorising officer of the Commission becomes aware of problems in carrying out procedures relating to the management of 11<sup>th</sup> EDF resources, he or she shall, in conjunction with the appointed national, regional, intra-ACP, or territorial authorising officer, make all contacts necessary to remedy the situation and take any steps that are necessary. In case the national, regional, intra-ACP, or territorial authorising officer does not or is unable to perform the duties incumbent on him or her under the Cotonou Agreement or the Overseas Association Decision, the responsible authorising officer of the Commission may temporarily take the former's place and act in the name and on behalf of the former; in that case the Commission may receive financial compensation for the additional administrative workload incurred from the resources allocated to the ACP State or OCT in question.

### *Article 20*

#### **Accounting officer**

1. The accounting officer of the Commission shall be the accounting officer of the 11<sup>th</sup> EDF.
2. Articles 68, with the exception of the second subparagraph of its paragraph 1; and 69 of Regulation (EU, Euratom) No 966/2012, concerning respectively powers and duties of the accounting officer, and powers which may be delegated by the accounting officer, shall apply. Article 54 and Article 57(3); the second subparagraph of Article 58(5); and Article 58(6) of Delegated Regulation (EU) No 1268/2012 shall not apply.

EN

13

EN



## TITLE V REVENUE OPERATIONS

### *Article 21*

#### Annual contribution and its instalments

1. In accordance with Article 7 of the Internal Agreement, the ceiling for the annual amount of the contribution for the year  $n + 2$  and the annual amount of the contribution for the year  $n + 1$ , as well as its payment in three instalments, shall be determined according to the procedure set out in paragraphs 2 to 7 of this Article.

The instalments to be paid by each Member State shall be set in such a way as to be in proportion to that Member State's contributions to the 11th EDF as fixed in Article 1(2) of the Internal Agreement.

2. The Commission shall present a proposal by 20 October of the year  $n$ , containing:
  - the ceiling for the annual amount of the contribution for the year  $n + 2$ ;
  - the annual amount of the contribution for the year  $n + 1$ ;
  - the amount of the first instalment of the contribution for the year  $n + 1$ .

The Council shall decide on this proposal by 15 November of the year  $n$ .

The Member States shall pay the first instalment of the contribution for the year  $n + 1$  at the latest by 21 January of the year  $n + 1$ .

3. The Commission shall present a proposal by 15 June of the year  $n + 1$ , containing:
  - the amount of the second instalment of the contribution for the year  $n + 1$ ;
  - a revised annual amount of the contribution for the year  $n + 1$  in line with actual needs, in cases where, in accordance with Article 7(3) of the Internal Agreement, the annual amount deviates from actual needs.

The Council shall decide on the proposal at the latest 21 calendar days following the presentation by the Commission of its proposal.

The Member States shall pay the second instalment at the latest by 27 July of the year  $n + 1$ .

4. By 15 June of the year  $n + 1$ , the Commission, taking into account the EIB's forecasts concerning the management and operation of the Investment Facility, including those interest rates subsidies which are implemented by the EIB, shall establish and communicate to the Council a statement of the commitments, payments, and the annual amount of the calls for contributions made in the year  $n$  and to be made in the years  $n + 1$  and  $n + 2$ . The amounts for the years  $n + 1$  and  $n + 2$  shall be based on the capacity to deliver effectively the proposed level of resources.

5. The Commission shall present a proposal by 10 October of the year  $n + 1$ , containing:
  - the third instalment of the annual contribution for the year  $n + 1$ ;
  - a revised annual amount of the contribution for the year  $n + 1$  in line with actual needs, in cases where in accordance with Article 7(3) of the Internal Agreement the annual amount deviates from actual needs.

EN

EN

The Council shall decide on the proposal at the latest 21 calendar days following the presentation by the Commission of its proposal.

The Member States shall pay the third instalment at the latest by 21 November of the year  $n + 1$ .

6. The sum of the instalments relating to a certain year cannot exceed the annual amount of the contribution determined for that year. The annual amount of the contribution cannot exceed the ceiling determined for that year. The ceiling cannot be increased except in accordance with Article 7(4) of the Internal Agreement. A possible increase of the ceiling shall be made part of the proposals referred to under paragraphs 2, 3 and 5 of this Article.
7. The ceiling for the annual amount of the contribution for the year  $n + 2$ , the annual amount of the contribution for the year  $n + 1$  and the instalments of the contributions shall specify:
  - (a) the amount managed by the Commission and
  - (b) the amount managed by the EIB, including the interest rates subsidies managed by it.

#### *Article 22*

##### **Payment of the instalments**

1. Calls for contributions shall first use up the amounts laid down for previous European Development Funds, one after the other.
2. The contributions of the Member States shall be expressed in euro and shall be paid in euro.
3. The contribution referred to in Article 21(7)(a) shall be credited by each Member State to a special account entitled 'European Commission — European Development Fund' opened with the central bank of that Member State or the financial institution designated by it. The amount of such contributions shall remain in those special accounts until the payments need to be made. The Commission shall endeavour to make any withdrawals from the special accounts in such a way as to maintain a distribution of assets in those accounts corresponding to the contribution key pursuant to Article 1(2)(a) of the Internal Agreement.

The contribution referred to in Article 21(7)(b) of this Regulation shall be credited by each Member State in accordance with Article 53(1).

#### *Article 23*

##### **Interest for unpaid contribution amounts**

1. On expiry of the time-limits laid down in Article 21(2), (3) and (5), the Member State concerned shall be obliged to pay interest in accordance with the following conditions:
  - (a) the interest rate shall be the rate applied by the European Central Bank to its principal refinancing operations, as published in the C series of the *Official Journal of the European Union*, in force on the first calendar day of the month in which the time-limit expires, increased by two percentage points. That rate shall be increased by a quarter of a percentage point for each month of delay.

EN

15

EN

- (b) the interest shall be payable for the period elapsing from the calendar day following expiry of the time-limit for payment up to the day of payment.
2. In respect of the contribution referred to in Article 21(7)(a), the interest shall be credited to one of the accounts provided for in Article 1(6) of the Internal Agreement.
- In respect of the contribution referred to in Article 21(7)(b), the interest shall be credited to the Investment Facility in accordance with Article 53(1).

*Article 24*

**Calling on unpaid contributions**

Upon expiry of the financial protocol set out in Annex Ic to the Cotonou Agreement, that part of the contributions which the Member States remain obliged to pay in accordance with Article 21 shall be called on by the Commission and the EIB, as required, in accordance with the conditions laid down in this Regulation.

*Article 25*

**Other revenue operations**

1. Articles 77 to 79, Article 80(1) and (2) and Articles 81 to 82 of Regulation (EU, Euratom) No 966/2012, concerning the estimate of the amount receivable, the establishment of amounts receivable, the authorisation and rules of recovery, the limitation period and national treatment of Union entitlements, shall apply. Recovery may be done by way of a Commission decision enforceable pursuant to Article 299 of the Treaty.
2. With regard to Articles 77(3) and 78(2) of Regulation (EU, Euratom) No 966/2012, the reference to own resources shall be understood as one to the Member States' contributions defined in Article 21.
3. Article 83(2) of Delegated Regulation (EU) No 1268/2012 shall apply to recoveries established in euro. For recoveries in local currency, it shall apply while the rate shall be that of the central bank of the country issuing the currency in force on the first calendar day of the month in which the recovery order is established.
4. With regard to Article 84(3) of Delegated Regulation (EU) No 1268/2012, the list of entitlements shall be established separately for the 11<sup>th</sup> EDF and shall be added to the report referred to in Article 44(2).
5. Articles 85 and 90 of Delegated Regulation (EU) No 1268/2012 shall not apply.

**TITLE VI  
EXPENDITURE OPERATIONS**

*Article 26*

**Financing decisions**

The commitment of expenditure shall be preceded by a financing decision adopted by the Commission.

Article 84 of Regulation (EU, Euratom) No 966/2012 shall apply with the exception of paragraph 2 thereof.

EN

16

EN

*Article 27*

**Rules applicable to commitments**

1. Article 85, with the exception of point (c) of paragraph 3 thereof, Articles 86, 87, 185, Article 189(1) and (2) of Regulation (EU, Euratom) No 966/2012 concerning commitments and the implementation of external actions shall apply. Article 95(2), Article 97(1)(a) and (e) and Article 98 of Delegated Regulation (EU) No 1268/2012 shall not apply.
2. With regard to the application of Article 189(2) of Regulation (EU, Euratom) No 966/2012, the period to conclude individual contracts and grants agreements which implement the action may be extended beyond three years following the date of the conclusion of the financing agreement in the case where ACP States and OCTs entrust budget-implementation tasks pursuant to Article 17(3) of this Regulation.
3. Where the 11<sup>th</sup> EDF resources are implemented in indirect management with ACP States or OCTs, the responsible authorising officer may, upon accepting justification, extend the two-year period referred to in the third subparagraph of Article 86(5) of Regulation (EU, Euratom) No 966/2012; and the three-year period referred to in the second subparagraph of Article 189(2) thereof.
4. At the end of the extended periods referred to in paragraph 3 of this Article or the periods referred to in the third subparagraph of Article 86(5) and in the second subparagraph of Article 189(2) of Regulation (EU, Euratom) No 966/2012, the unused balances shall be, as applicable, decommitted.
5. Where measures are adopted under Articles 96 and 97 of the Cotonou Agreement, the running of the extended periods referred to in paragraph 3 of this Article, in the third subparagraph of Article 86(5) and the second subparagraph of Article 189(2) of Regulation (EU, Euratom) No 966/2012 may be suspended.
6. For the purposes of point (c) of paragraph 1 and of point (b) of paragraph 2 of Article 87 of Regulation (EU, Euratom) No 966/2012, compliance and regularity shall be assessed against the relevant provisions, in particular the Treaties, the Cotonou Agreement, the Overseas Association Decision, the Internal Agreement, this Regulation, and all acts adopted in implementation of those provisions.
7. Each legal commitment shall expressly provide for the Commission and the Court of Auditors to have the power of verification and audit and for OLAF to have the power of investigations, on the basis of documents and on the spot, over all beneficiaries, contractors, and subcontractors who have received 11<sup>th</sup> EDF funds.

*Article 28*

**Validation, authorisation and payment of expenditure**

Articles 88, 89, Article 90, with the exception of the second subparagraph of paragraph 4 thereof; and Article 91 and Article 184(4) of Regulation (EU, Euratom) No 966/2012 shall apply.

*Article 29*

**Time limits for payment**

1. Subject to paragraph 2, Article 92 of Regulation (EU, Euratom) No 966/2012 shall apply to payments carried out by the Commission.

EN

EN

2. Where 11<sup>th</sup> EDF resources are implemented in indirect management with ACP States or OCTs and the Commission executes payments on their behalf, the time limit referred to in point (b) of Article 92(1) of Regulation (EU, Euratom) No 966/2012 shall apply to all payments not referred to in point (a) thereof. The financing agreement shall contain the necessary provisions to ensure the timely collaboration of the contracting authority.
3. Claims for delayed payments for which the Commission is responsible shall be charged to the account or accounts provided for in Article 1(6) of the Internal Agreement.

## TITLE VII VARIOUS IMPLEMENTATION PROVISIONS

### *Article 30*

#### **Internal auditor**

The internal auditor of the Commission shall be the internal auditor of the 11<sup>th</sup> EDF. Articles 99 and 100 of Regulation (EU, Euratom) No 966/2012 shall apply.

### *Article 31*

#### **IT systems, electronic transmission and e-Government**

The provisions in Articles 93, 94 and 95 of Regulation (EU, Euratom) No 966/2012, concerning the electronic management of operations and documents, shall apply to the 11<sup>th</sup> EDF *mutatis mutandis*.

### *Article 32*

#### **Good administration and redress**

Articles 96 and 97 of Regulation (EU, Euratom) No 966/2012 shall apply.

### *Article 33*

#### **Use of the central exclusion database**

The central exclusion database set up pursuant to Article 108(1) of Regulation (EU, Euratom) 966/2012 which contains details of candidates and tenderers, and applicants and beneficiaries who are in one of the situations referred to in Article 106; point (b) of the first subparagraph of Article 109(1); and point (a) of Article 109(2) of that Regulation shall be used for the implementation of the 11<sup>th</sup> EDF.

Articles 108(2) and (5) of Regulation (EU, Euratom) No 966/2012 and Articles 142 and 144 of Delegated Regulation (EU) No 1268/2012 on the use of the central exclusion database and on the access to it shall apply *mutatis mutandis*.

With regard to Article 108(2) of Regulation (EU, Euratom) No 966/2012, the Union's financial interests shall include the implementation of the 11<sup>th</sup> EDF.

**Comment [GS1]:** Financial Regulation 966/2012 refers in Article 108(1) only to candidates and tenderers and not to applicants and beneficiaries .

### *Article 34*

#### **Administrative arrangements with the EEAS**

Detailed arrangements may be agreed between the European External Action Service (EEAS) and the Commission services in order to facilitate the implementation by Union Delegations

EN

18

EN

of the resources foreseen for support expenditure linked to the 11<sup>th</sup> EDF under Article 6 of the Internal Agreement.

## TITLE VIII FUNDING INSTRUMENTS

### *Article 35*

#### **General provisions on funding instruments**

1. For the purpose of providing financial assistance under this Title, cooperation between the Union, and the ACP States and OCTs may take the form, *inter alia*, of:
  - (a) triangular arrangements by which the Union coordinates with any third country its assistance to an ACP State, OCT or region,
  - (b) administrative cooperation measures such as twinning between the public institutions, local authorities, national public bodies or private law entities entrusted with public service tasks of a Member State, and those of an ACP State or OCT, as well as cooperation measures involving public-sector experts dispatched from the Member States and their regional and local authorities,
  - (c) contributions to the costs necessary to set up and administer a public-private partnership,
  - (d) sector policy support programmes, by which the Union provides support to an ACP State's or OCT's sector programme, and
  - (e) interest rate subsidies in accordance with Article 37.
2. In addition to the funding instruments provided for in Articles 36 to 42, financial assistance may also be provided through the following:
  - (a) debt relief, under internationally agreed debt relief programmes;
  - (b) in exceptional cases, sectoral and general import programmes, which may take the form of:
    - sectoral import programmes in kind;
    - sectoral import programmes providing foreign exchange to finance imports for the sector in question; or
    - general import programmes providing foreign exchange to finance general imports of a wide range of products.
3. Financial assistance may also be provided through contributions to international, regional or national funds, such as those established or managed by the European Investment Bank, Member States or by ACP States or OCTs and regions or by international organisations, for attracting joint financing from a number of donors, or to funds set up by one or more donors for the purpose of the joint implementation of projects.

Reciprocal access by EU financial institutions to financial instruments set up by other organisations shall be promoted, as appropriate.
4. In implementing its support to transition and reform in ACP States and OCTs, the Union shall draw on and share the experiences of Member States and lessons learned.

EN

19

EN

*Article 36*  
**Procurement**

1. Article 101 of Regulation (EU, Euratom) No 966/2012 defining public contracts shall apply.
2. The contracting authorities for the purposes of this Regulation shall be:
  - (a) the Commission on behalf of, and on account of, one or more ACP States or OCTs;
  - (b) entities and persons referred to in Article 185 of Regulation (EU, Euratom) No 966/2012 and entrusted with the corresponding budget-implementation tasks.
3. For procurement contracts awarded by the contracting authorities referred to in paragraph 2 of this Article, or on their behalf, the provisions of Chapter 1 of Title V of Part One and of Chapter 3 of Title IV of Part Two of Regulation (EU, Euratom) No 966/2012 shall apply with the exception of:
  - (a) Article 103, the second subparagraph of Article 104(1) and Article 111 of Regulation (EU, Euratom) No 966/2012;
  - (b) Article 127(3) and (4), Article 128, Articles 134 to 137, Article 139(3) to (6), Article 148(4), Article 151(2), Article 160, Article 164, the second sentence of Article 260; and Article 262 of Delegated Regulation (EU) No 1268/2012.

Article 124(2) of Delegated Regulation (EU) No 1268/2012 shall apply to building contracts.

The first subparagraph of this paragraph shall not apply to the contracting authorities referred to in point (b) of paragraph 2 where, following the checks referred to in Article 61 of Regulation (EU, Euratom) No 966/2012, the Commission has authorised them to use their own procurement procedures.
4. For procurement contracts awarded by the Commission on its own account as well as the implementing actions relating to crisis management aid and civil protection and humanitarian aid operations, the provisions of Title V of Part One of Regulation (EU, Euratom) No 966/2012 shall apply.
5. In the event of failure to comply with the procedures referred to in paragraph 3, expenditure on the operations in question shall not be eligible for 11<sup>th</sup> EDF financing, subject to the principle of proportionality.
6. The procurement procedures referred to in paragraph 3 shall be laid down in the financing agreement.
7. With regard to Article 263(1)(a) of Delegated Regulation (EU) No 1268/2012:
  - (a) "a prior information notice" is the notice by which the contracting authorities make known, by way of indication, the estimated total value and subject of contracts and framework contracts which they intend to award during a financial year, but excluding contracts under the negotiated procedure without prior publication of a contract notice;
  - (b) "a contract notice" is the means by which the contracting authorities make known their intention to launch a procedure for the award of a contract or framework contract or to set up a dynamic purchasing system in accordance with Article 131 of Delegated Regulation (EU) No 1268/2012;

EN

20

EN

- (c) "an award notice" is the notice which gives the outcome of the procedure for the award of contracts, framework contracts or contracts based on a dynamic purchasing system.

*Article 37*

**Grants**

1. Subject to paragraphs 2 and 3 of this Article, Title VI of Part One; and Article 192 of Regulation (EU, Euratom) No 966/2012 shall apply.
2. Grants are direct financial contributions, by way of donation, from the 11<sup>th</sup> EDF in order to finance any of the following:
  - (a) an action, including one carried out by a Union agency, intended to help achieve an objective of the Cotonou Agreement or the Overseas Association Decision, or of a programme or project adopted in accordance with that Agreement or Decision; or
  - (b) the functioning of a body which pursues an objective referred to in point (a).A grant in the sense of point (a) may be awarded to a body referred to in Article 208(1) of Regulation (EU, Euratom) No 966/2012.
3. When working with local stakeholders, the Commission shall take into account their specificities including needs and context, when defining the modalities of financing, the type of contribution, the award modalities and the administrative provisions for the management of grants with the purpose to reach and best respond to the widest possible range of local stakeholders. Specific modalities shall be encouraged, such as partnership agreements, financial support to third parties, lump sums, direct award or eligibility-restricted calls for proposals
4. The following shall not constitute grants within the meaning of this Regulation:
  - (a) items referred to in points (b) to (f), (h) and (i) of Article 121(2) of Regulation (EU, Euratom) No 966/2012
  - (b) support referred to in Article 35(2) of this Regulation.
5. Articles 175 and 177 of Delegated Regulation (EU) No 1268/2012 shall not apply.

*Article 38*

**Prizes**

Title VII of Part One of Regulation (EU, Euratom) No 966/2012 shall apply with the exception of the second subparagraph of Article 138(2) thereof.

*Article 39*

**Budget support**

Article 186 of Regulation (EU, Euratom) No 966/2012 shall apply.

EU general or sector budget support is based on mutual accountability and shared commitments to universal values and aims at strengthening contractual partnerships between EU and ACP States or OCTs in order to promote democracy, human rights and the rule of law, support sustainable and inclusive economic growth and eradicate poverty.

Any decision to provide budget support shall be based on budget support policies agreed by the EU, a clear set of eligibility criteria and a careful assessment of the risks and benefits.

EN

21

EN



One of the key determinants of this decision shall be an assessment of the commitment, record and progress of ACP States and OCTs with regard to democracy, human rights and the rule of law. Budget support shall be differentiated to better respond to the political, economic and social context of the ACP States and OCTs, taking into account situations of fragility.

When providing budget support, the Commission shall clearly define and monitor its conditionality, and shall also support the development of parliamentary control and audit capacities and increase transparency and public access to information.

Disbursement of budget support shall be conditional on satisfactory progress towards achieving the objectives agreed with the ACP States and OCTs.

When providing budget support to OCTs, their institutional links to the Member State concerned shall be taken into account.

#### *Article 40*

##### **Financial instruments**

Financial instruments may be established in the financing decision referred to in Article 26. They shall be, whenever possible, under the lead of the EIB, or a multilateral European financial institution, such as the EBRD, or a bilateral European financial institution, e.g. bilateral development banks, possibly pooled with additional grants from other sources.

**Comment [GS2]:** To our knowledge, the EBRD has no mandate to intervene in the ACPs.

The Commission may implement financial instruments under direct management, or under indirect management by entrusting tasks to entities pursuant to points (ii), (iii), (v) and (vi) of Article 58(1)(c) of Regulation (EU, Euratom) No 966/2012. These entities shall fulfill the requirements of Regulation (EU, Euratom) No 966/2012 and shall comply with Union objectives, standards and policies, as well as best practices regarding the use of and reporting on Union funds.

Title VIII of Part One of Regulation (EU, Euratom) No 966/2012 shall apply with the exception of paragraph 1; the first subparagraph of paragraph 4 and paragraph 5 of Article 139 thereof.

Financial instruments may be grouped into regional facilities for implementation and reporting purposes.

#### *Article 41*

##### **Experts**

The second paragraph of Article 204 of Regulation (EU, Euratom) No 966/2012 and Article 287 of Delegated Regulation (EU) No 1268/2012 concerning remunerated external experts shall apply.

#### *Article 42*

##### **Union trust funds**

1. Subject to paragraph 2 of this Article, Article 187 of Regulation (EU, Euratom) No 966/2012 shall apply.
2. With regard to Article 187(8) of Regulation (EU, Euratom) No 966/2012, the competent committee shall be the committee referred to in Article 8 of the Internal Agreement.

EN

22

EN

**TITLE IX**  
**PRESENTATION OF THE ACCOUNTS AND ACCOUNTING**

*Article 43*  
**11<sup>th</sup> EDF accounts**

1. The 11<sup>th</sup> EDF accounts describing its financial situation as of 31 December of a given year shall comprise:
  - (a) the financial statements;
  - (b) the report on financial implementation;The financial statements shall be accompanied by the information supplied by the EIB in accordance with Article 57.
2. The accounting officer shall send the provisional accounts to the Court of Auditors by 31 March of the following year.
3. The Court of Auditors shall, by 15 June of the following year, make its observations on the provisional accounts as regards the part of the 11<sup>th</sup> EDF resources for the financial management of which the Commission is responsible, so that the Commission can make the corrections deemed necessary for drawing up the final accounts.
4. The Commission shall approve the final accounts and send them to the European Parliament, the Council and the Court of Auditors by 31 July of the following year at the latest.
5. The second subparagraph of Article 148(3) of Regulation (EU, Euratom) No 966/2012 shall apply.
6. The final accounts shall be published in the *Official Journal of the European Union* together with the statement of assurance given by the Court of Auditors in accordance with Article 49 by 15 November of the following year.
7. The provisional and final accounts may be sent pursuant to paragraphs 2 and 4 by electronic means.

*Article 44*  
**Financial statements and the report on financial implementation**

1. Article 145 of Regulation (EU, Euratom) No 966/2012 shall apply.
2. The report on financial implementation shall be prepared by the responsible authorising officer and transmitted to the accounting officer by 15 March for the inclusion in the 11<sup>th</sup> EDF accounts. It shall present a true and fair view of the revenue and expenditure operations from 11<sup>th</sup> EDF resources. It shall be presented in millions of euro and shall comprise:
  - (a) the financial outturn account, which sets out all financial operations for the year in terms of revenue and expenditure;
  - (b) the annex to the financial outturn account, which shall supplement and comment on the information given in that account.
3. The financial outturn account shall contain the following tables:
  - (a) a table describing changes over the preceding financial year in the allocations;

EN

23

EN

- (b) a table showing by allocation the total commitments, assigned funds and payments effected during the financial year and aggregate totals since the opening of the 11<sup>th</sup> EDF.

*Article 45*

**Monitoring and reporting by the Commission and the EIB**

1. The Commission and the EIB shall monitor, each to the extent to which it is concerned, the use of 11<sup>th</sup> EDF assistance by the ACP States, the OCTs or any other beneficiary, and the implementation of projects financed by the 11<sup>th</sup> EDF, having particular regard to the objectives referred to in Articles 55 and 56 of the Cotonou Agreement and in the corresponding provisions of the Overseas Association Decision.
2. The EIB shall periodically inform the Commission regarding the implementation of projects financed by the 11<sup>th</sup> EDF resources it administers, following the procedures set out in the operational guidelines of the Investment Facility.
3. The Commission and the EIB shall provide the Member States with information on the operational implementation of 11<sup>th</sup> EDF resources as foreseen in Article 18 of the Implementation Regulation. The Commission shall send that information to the Court of Auditors in accordance with Article 11(6) of the Internal Agreement.

*Article 46*

**Accounting**

The accounting rules referred to in Article 143(1) of Regulation (EU, Euratom) No 966/2012 shall apply to the 11<sup>th</sup> EDF resources managed by the Commission. These rules shall be applied to the 11<sup>th</sup> EDF while taking into account the specific nature of its activities.

The accounting principles contained in Article 144 of Regulation (EU, Euratom) No 966/2012 shall apply to the financial statements referred to in Article 44 of this Regulation.

Articles 151, 153, 154, and 155 of Regulation (EU, Euratom) No 966/2012 shall apply.

The accounting officer shall prepare and, after consulting the responsible authorising officer, adopt the chart of accounts to be applied to the 11<sup>th</sup> EDF's operations.

*Article 47*

**Budgetary accounting**

1. The budgetary accounts shall provide a detailed record of the financial implementation of the 11<sup>th</sup> EDF resources.
2. They shall show all:
  - (a) allocations and the corresponding 11<sup>th</sup> EDF resources;
  - (b) financial commitments;
  - (c) payments, and established debts and collection operations for the financial year, in full and without any adjustment against each other.
3. When commitments, payments and debts are expressed in national currencies, the accounting system shall make it possible, where necessary, for them to be recorded in national currencies as well as in euro.

EN

EN

4. Global financial commitments shall be recorded in euro for the value of the financing decisions taken by the Commission. Individual financial commitments shall be recorded in euro at the equivalent of the value of the legal commitments. That value shall include where appropriate:
  - (a) provision for the payment of reimbursable expenses on presentation of supporting documents;
  - (b) provision for the revision of prices, for the increase in quantities, and for contingencies as defined in 11<sup>th</sup> EDF-funded contracts;
  - (c) financial provision for exchange rate fluctuations.
5. All accounting records referring to the fulfilment of a commitment shall be kept for a period of five years from the date of the decision giving discharge in respect of the financial implementation of 11<sup>th</sup> EDF resources, referred to in Article 50, concerning the financial year during which the commitment was closed for accounting purposes.

## **TITLE X EXTERNAL AUDIT AND DISCHARGE**

### *Article 48*

#### **External audit and discharge regarding the Commission**

1. Regarding the operations financed from 11<sup>th</sup> EDF resources managed by the Commission in accordance with Article 16, the Court of Auditors shall exercise its powers in accordance with this Article and Article 49.
2. Articles 159, 160, Article 161, with the exception of paragraph 6, Article 162, with the exception of the first sentence of paragraph 3 and of paragraph 5, and Article 163 of Regulation (EU, Euratom) No 966/2012 shall apply.
3. For the purposes of Article 159(1) of Regulation (EU, Euratom) No 966/2012, the Court of Auditors shall have regard to the Treaties, the Cotonou Agreement, the Overseas Association Decision, the Internal Agreement, this Regulation and all other acts adopted pursuant to those instruments.
4. For the purposes of Article 162(1) of Regulation (EU, Euratom) No 966/2012, the date set out in the first sentence shall be 15 June.
5. The Court of Auditors shall be informed of the internal rules referred to in Article 56(1) of Regulation (EU, Euratom) No 966/2012 including the appointment of authorising officers, as well as of the instrument of delegation referred to in Article 69 of Regulation (EU, Euratom) No 966/2012.
6. The national audit authorities of the ACP States and the OCTs shall be encouraged to participate in the work of the Court of Auditors.
7. The Court of Auditors may, at the request of one of the other Union institutions, issue opinions on matters relating to the 11<sup>th</sup> EDF.

### *Article 49*

#### **Statement of assurance**

At the same time as the annual report referred to in Article 162 of Regulation (EU, Euratom) No 966/2012, the Court of Auditors shall provide the European Parliament and the Council

EN

25

EN

with a statement of assurance as to the reliability of the accounts and the legality and regularity of the underlying transactions, which shall be published in the *Official Journal of the European Union*.

*Article 50*

**Discharge**

1. The discharge decision shall cover the accounts referred to in Article 43, except the part thereof provided by the EIB in accordance with Article 57, and shall be adopted in accordance with Articles 164 and 165(2) and (3) of Regulation (EU, Euratom) No 966/2012. The discharge referred to in Article 164(1) of Regulation (EU, Euratom) No 966/2012 shall be given in respect of those 11<sup>th</sup> EDF resources that are managed by the Commission in accordance with Article 16(1) of this Regulation for year n.
2. The decision giving the discharge shall be published in the *Official Journal of the European Union*.
3. Articles 166 and 167 of Regulation (EU, Euratom) No 966/2012 shall apply.

EN

26

EN

## PART TWO INVESTMENT FACILITY

### Article 51

#### Role of the European Investment Bank

The EIB shall manage the Investment Facility and conduct operations thereunder, including interest-rate subsidies and technical assistance, on behalf of and at the risk of the Union in accordance with Part Two of this Regulation.

In addition, the EIB shall undertake the financial implementation of other operations carried out by means of financing from its own resources in accordance with Article 4 of the Internal Agreement, where applicable combined with interest rate subsidies drawn from the 11<sup>th</sup> EDF resources.

The implementation of Part Two of this Regulation shall not give rise to any obligations or liabilities on the part of the Commission.

### Article 52

#### Estimates of commitments and payments of the Investment Facility

Each year, before 1 September, the EIB shall send the Commission its estimates of commitments and payments, which are necessary for drawing up the communication referred to in Article 7(1) of the Internal Agreement, in respect of the operations of the Investment Facility, including those interest rate subsidies that it implements, in accordance with the Internal Agreement. The EIB shall send the Commission updated estimates of commitments and payments when deemed necessary. Modalities shall be defined in the management agreement provided for in Article 55(4) of this Regulation.

Comment [GS3]: The EIB is OK with the FR request to advance this deadline by one month to 1 August.

### Article 53

#### Management of contributions to the Investment Facility

1. The contributions referred to in Article 21(7)(b) and adopted by the Council shall be paid without cost for the beneficiary by the Member States to the EIB via a special account opened by the EIB in the name of the Investment Facility in accordance with detailed rules laid down in the management agreement provided for in Article 55(4).
2. The date referred to in Article 1(5) of the Internal Agreement shall be 31 December 2030.
3. Save where the Council decides otherwise regarding the remuneration of the EIB, in accordance with Article 5 of the Internal Agreement, proceeds received by the EIB via the credit balance of the special accounts referred to in paragraph 1 shall supplement the Investment Facility and shall be taken into consideration for the calls for contribution referred to in Article 21 and shall be used to meet any financial obligation after 31 December 2030.
4. The EIB shall undertake the treasury management of the amounts referred to in paragraph 1 in accordance with the detailed rules laid down in the management agreement provided for in Article 55(4).
5. The Investment Facility shall be managed in accordance with the conditions laid down in the Cotonou Agreement, the Overseas Association Decision, the Internal Agreement and Part Two of this Regulation.

EN

27

EN

*Article 54*

**Remuneration of the EIB**

The EIB shall be remunerated on a full indemnity basis for the management of the Investment Facility operations. The Council shall decide on the resources and mechanisms for remuneration of the EIB in accordance with Article 5(4) of the Internal Agreement. The measures implementing that decision shall be incorporated in the management agreement provided for in Article 55(4).

*Article 55*

**Implementation of the Investment Facility**

1. The EIB's own rules shall apply to instruments financed by the 11<sup>th</sup> EDF resources which it manages.
2. Where programmes or projects are co-financed by the Member States or their implementing bodies, and correspond to the priorities which are laid down in the Country Cooperation Strategies and Programming Documents provided for in the Implementation Regulation and foreseen in the second and third subparagraphs of Article 10(1) of the Internal Agreement and in Article 74 of the Overseas Association Decision, the EIB may entrust tasks in the implementation of the Investment Facility to Member States or their implementing bodies.
3. The names of the direct recipients of financial support under the Investment Facility shall be published by the EIB, unless such disclosure risks harming the commercial interests of the recipients, with due observance of the requirements of confidentiality and security, in particular the protection of personal data. The criteria for disclosure and the level of detail published shall take into account specificities of the sector and the nature of the Investment Facility.
4. The detailed rules for implementing this Part shall be the subject of a management agreement between the Commission, acting on behalf of the Union, and the EIB.

*Article 56*

**Reporting under the Investment Facility**

The EIB shall regularly inform the Commission of the operations carried out under the Investment Facility, including interest rate subsidies; the use made of each call for contributions paid to the EIB; and, in particular, of the total quarterly amounts of commitments, contracts and payments, in accordance with the detailed rules laid down in the management agreement provided for in Article 55(4).

*Article 57*

**Accounting and financial statements of the Investment Facility**

1. The EIB shall keep the accounts of the Investment Facility, including those interest rate subsidies that are implemented by it and financed by the 11<sup>th</sup> EDF, to provide a trail for the full circuit of the funds, from receipt to disbursement, and then to the revenue to which they give rise and any subsequent recoveries. The EIB shall draw up the relevant accounting rules and methods which are guided by international accounting standards and inform the Commission and the Member States accordingly.

EN

EN

2. Each year the EIB shall send the Council and the Commission a report on the implementation of operations financed from 11<sup>th</sup> EDF resources under its management, including the financial statements drawn up in accordance with the rules and methods referred to in paragraph 1 and the information referred to in Article 44(3).

Those documents shall be submitted in draft form no later than 28 February and in their final version no later than 30 June of the financial year following the one which they concern, so that they can be used by the Commission in preparing the accounts referred to in Article 43 in accordance with Article 11(5) of the Internal Agreement. The report on the financial management of the resources managed by the EIB shall be submitted by the latter to the Commission no later than 31 March of the following financial year.

*Article 58*

**External audit and discharge on EIB operations**

The operations financed from 11<sup>th</sup> EDF resources managed by the EIB in accordance with Part Two shall be subject to the ~~audit and~~ discharge procedures that of the EIB applies for third party mandate accounts. Detailed rules for auditing by the Court of Auditors are set out in a Tripartite Agreement between the EIB, the Commission and the Court of Auditors.

EN

29

EN



## **PART THREE TRANSITIONAL AND FINAL PROVISIONS**

### **TITLE I TRANSITIONAL PROVISIONS**

#### *Article 59*

##### **Transfer of balances remaining from previous European Development Funds**

Transfers to the 11<sup>th</sup> EDF of the balances remaining from resources constituted under the Internal Agreements relating to the Eighth, Ninth and Tenth European Development Funds (hereinafter “previous EDFs”) shall be made in accordance with Articles 1(2)(b), 1(3) and 1(4) of the Internal Agreement.

#### *Article 60*

##### **Revenue from interest on resources of previous EDFs**

The balance of revenue accruing from interest on the resources of previous EDFs shall be transferred to the 11<sup>th</sup> EDF and allocated for the same purposes as the revenue provided for in Article 1(6) of the Internal Agreement. The same shall apply to miscellaneous revenue of previous EDFs comprising, for example, default interest received in the event of late payment of contributions to those EDFs by Member States. The interest generated by the 11<sup>th</sup> EDF resources managed by the EIB shall supplement the Investment Facility.

#### *Article 61*

##### **Reduction of contributions by remaining balances**

The amounts from projects under the 10th EDF or from previous EDFs not committed according to Article 1(3) of the Internal Agreement, or decommitted according to Article 1(4) of the Internal Agreement, unless decided otherwise by the Council unanimously, shall reduce that part of Member States’ contributions stated in Article 1(2)(a) of the Internal Agreement.

The impact on the contribution of each Member State shall be calculated in proportion to the contribution of each Member State to the 9th and 10th EDF. The impact shall be calculated annually.

#### *Article 62*

##### **Application of this Regulation to operations under previous EDFs**

The provisions of this Regulation concerning the financial actors, revenue operations, validation, authorisation and payment of expenditure, IT systems, grants, procurement, the presentation of accounts and accounting, as well as external audit and discharge also apply to operations financed from previous EDFs while respecting the existing legal commitments. These provisions shall not apply to the Investment Facility.

#### *Article 63*

##### **Commencement of contribution procedures**

The procedure concerning Member States’ contributions laid down in Articles 21 to 24 shall apply for the first time for the contributions of the year N + 2, under condition that the

EN

30

EN

Internal Agreement enters into force between 1 October of year N and 30 September of year N + 1.

## **TITLE II FINAL PROVISIONS**

### *Article 64* **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.

It shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

*For the Council*  
*The President*

**EN**

31

**EN**



COUNCIL OF  
THE EUROPEAN UNION

Brussels, 2 July 2013

11672/13

---

**Interinstitutional File:**  
**2013/0211 (NLE)**

---

ACP 103  
FIN 377  
PTOM 21  
RELEX 596  
DEVGEN 170

**PROPOSAL**

---

from: European Commission  
dated: 1 July 2013  
No Cion doc.: COM(2013) 445 final  
Subject: Proposal for a Council Regulation on the implementation of the 11th European Development Fund

---

Delegations will find attached a proposal from the Commission, submitted under a covering letter from Mr Jordi AYET PUIGARNAU, Director, to Mr Uwe CORSEPIUS, Secretary-General of the Council of the European Union.

---

Encl.: COM(2013) 445 final

---

11672/13

DG C 1

GLF/br

1  
EN



Brussels, 26.6.2013  
COM(2013) 445 final

2013/0211 (NLE)

Proposal for a  
**COUNCIL REGULATION**  
**on the implementation of the 11th European Development Fund**

**EN**

**EN**

## 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 years<sup>1</sup> (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'<sup>2</sup> 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 2020<sup>3</sup>. 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 11<sup>th</sup> EDF in its Conclusions on February 8<sup>th</sup> 2013, i.e. EUR 30 506 million in current prices<sup>4</sup>.

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'<sup>5</sup> 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.

<sup>1</sup> 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).  
<sup>2</sup> COM(2011) 500.  
<sup>3</sup> COM(2011) 837.  
<sup>4</sup> EUCO 37/13 + EUCO 37/13 COR 1  
<sup>5</sup> COM(2011) 637.

EN

2

EN

## 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)<sup>6</sup> 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.

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

EN

3

EN

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 EDF<sup>7</sup> 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)<sup>8</sup> (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)<sup>9</sup> (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 Regulation<sup>10</sup>.

#### **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

<sup>7</sup> Insert reference to the 11<sup>th</sup> EDF Internal Agreement  
<sup>8</sup> COM(2011) 840.  
<sup>9</sup> COM(2011) 842.  
<sup>10</sup> Council regulation (EC) No 617/2007 – OJ L152 p.1 of 13.6.2007

EN

4

EN

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

EN

5

EN



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 182/2011<sup>11</sup>, 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.

<sup>11</sup> 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

EN

7

EN

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 Service<sup>12</sup>, 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 committed<sup>13</sup> 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.

Comment [GS1]: This article has since then been deleted by the Commission and replaced by a separate Council Decision on the Bridging Facility.

**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.

<sup>12</sup> Council Decision (EU) 2010/427

<sup>13</sup> "Approved" according to the EIB terminology

EN

8

EN

2013/0211 (NLE)

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 2000<sup>14</sup> (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 applies<sup>15</sup> ("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 Ministers<sup>16</sup> 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

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

<sup>15</sup> Insert reference of the 11th EDF Internal Agreement: OJ (...)

<sup>16</sup> Insert reference of the ACP-EU Council decision: OJ (...)

EN

EN

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 Union<sup>17</sup> 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 aid<sup>18</sup> 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 Sport<sup>19</sup>, 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.

<sup>17</sup> Insert reference of the revised OAD: OJ (...)

<sup>18</sup> OJL 163, 2.7.1996, p. 1.

<sup>19</sup> OJL [...].

- (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 Agreement<sup>20</sup>, 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 2005<sup>21</sup> and the Council Conclusions on the Commission Communications 'Increasing the impact of EU development policy: an Agenda for Change'<sup>22</sup>, and on 'The future approach to EU budget support to third countries'<sup>23</sup>, 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 Partnership<sup>24</sup>, confirmed by the EU-Africa summit in November 2010. The Council

---

<sup>20</sup> Insert reference to the decision on provisional application

<sup>21</sup> OJ C 46, 24.2.2006, p. 1.

<sup>22</sup> Council document 9369/12 of 14 May 2012

<sup>23</sup> Council document 9371/12 of 14 May 2012

<sup>24</sup> Council document 16344/07

also adopted conclusions on the Joint Caribbean-EU Partnership Strategy on November 19<sup>th</sup> 2012<sup>25</sup>, replacing the Council conclusions on the EU-Caribbean Partnership of April 11<sup>th</sup> 2006. For the Pacific, the Council adopted conclusions on a renewed Development Partnership on May 14<sup>th</sup> 2012<sup>26</sup>, updating and complementing the strategy adopted in 2006 (Council Conclusions of July 17<sup>th</sup> 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 10<sup>th</sup> EDF Internal Agreement and to Article 5 of Annex Ib to the Cotonou Agreement, the funds of the 10<sup>th</sup> 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 11<sup>th</sup> EDF. As a complement to Article 10 of the 11<sup>th</sup> EDF Internal Agreement which foresees that the 10<sup>th</sup> EDF Implementation Regulation should remain in force pending the adoption of the 11<sup>th</sup> EDF Implementation Regulation, the continuation of the 10<sup>th</sup> EDF Financial Regulation should also be foreseen, pending the adoption of the 11<sup>th</sup> 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 11<sup>th</sup> 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;

<sup>25</sup> Council document 16455/12  
<sup>26</sup> Council document 9877/12

EN

EN

- (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 aid<sup>27</sup> 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.

---

<sup>27</sup> OJL 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.

EN

14

EN

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.

EN

15

EN

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;

EN

16

EN

- (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.

EN

EN

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.

EN

18

EN

### 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

EN

19

EN

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.

EN

20

EN

**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 Council<sup>28</sup> and Council Regulation (Euratom, EC) No 2185/96<sup>29</sup> 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.

---

<sup>28</sup> OJL 136, 31.5.1999, p. 1.  
<sup>29</sup> OJL 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

EN

22

EN

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.

EN

EN

**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

EN

EN

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.

EN

EN

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

EN

EN

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 11<sup>th</sup> Financial Regulation may be made in the strategy papers

EN

27

EN

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.

EN

28

EN

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 11<sup>th</sup> 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 11<sup>th</sup> 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 11<sup>th</sup> EDF. The shares of Member States contributions stated in Article 1(2)(a) of the Internal Agreements of the 9<sup>th</sup> and 10<sup>th</sup> EDF shall be reduced accordingly.

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

**Comment [GS2]:** Not applicable any more. Cf separate Council Decision on the Bridging Facility.

EN

29

EN



**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*

**EN**

30

**EN**