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## PROPOSAL

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From: Secretary-General of the European Commission,  
signed by Mr Jordi AYET PUIGARNAU, Director

date of receipt: 16 September 2015

To: Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of  
the European Union

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No. Cion doc.: COM(2015) 463 final

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Subject: Proposal for a COUNCIL REGULATION amending Regulation (EU)  
2015/323 of 2 March 2015 on the financial regulation applicable to the 11th  
European Development Fund

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Delegations will find attached document COM(2015) 463 final.

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Encl.: COM(2015) 463 final



Brussels, 16.9.2015  
COM(2015) 463 final

2015/0213 (NLE)

Proposal for a

**COUNCIL REGULATION**

**amending Regulation (EU) 2015/323 of 2 March 2015 on the financial regulation  
applicable to the 11<sup>th</sup> European Development Fund**

## EXPLANATORY MEMORANDUM

### **1. CONTEXT OF THE PROPOSAL**

The Internal Agreement establishing the eleventh European Development Fund (11<sup>th</sup> EDF) entered into force on 01 March 2015 after its ratification by all the Member States.

While the 11<sup>th</sup> EDF is not included in the EU budget and its financial envelope is determined in the Internal Agreement, the funds will be implemented according to the 11<sup>th</sup> EDF Financial Regulation, which is aligned to the maximum with the Financial Regulation and its Rules of Application.

The 11<sup>th</sup> EDF Financial Regulation was adopted on 02 March 2015 and entered into force on 06 March 2015.

A clarification to the current arrangements is proposed. It reflects the most recent experience as regards EDF accounts.

The motivation for the amendment proposed by the Commission is presented hereafter.

### **2. CONTENT OF THE PROPOSAL**

Ensuring that European Commission EDF accounts (Article 22(3) of Council Regulation (EU) 2015/323) are kept free of any charge and negative interest:

According to Article 22(3) of Council Regulation (EU) 2015/323, contributions to the EDF shall be credited by each Member State to a special account entitled ‘European Commission — European Development Fund’ opened with the central bank of the relevant Member State or the financial institution designated by it.

It should be clarified that these special accounts opened by the Member States in the name of the Commission, for the purpose of depositing EDF contributions, until they need to be used for payments, are not only to be kept free of charges, but also free of interest (positive or negative). The purpose of this provision is to prevent losses for the EDF budget. Any charge applied to those accounts would be equivalent to a reduction of the funds available to the EDF budget. In this respect, negative interest should equally be avoided as it has the same negative effect as charges. Therefore, it is proposed that the Member State concerned should compensate the EDF budget for any charge or negative interest applied to the account for EDF resources it has opened in the name of the Commission pursuant to Article 22(3) of Council Regulation (EU) 2015/323.

This amendment further ensures that the EDF budget is not negatively affected by Decision 2014/337/EU (ECB/2014/23) of the European Central Bank of 5 June 2014<sup>1</sup>, providing for a negative interest rate which entails a payment obligation of the deposit holder to the relevant national central bank (NCB) including the right of that NCB to debit the relevant government deposit account accordingly, or by similar decisions by other EU central banks where EDF funds have to be kept in accordance with Article 22 of Council Regulation (EU) 2015/323. In this context, it should be recalled that, so far, the Commission has not requested Member States to remunerate EDF accounts in case of positive ECB deposit rates.

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<sup>1</sup> 2014/337/EU: Decision of the European Central Bank of 5 June 2014 on the remuneration of deposits, balances and holdings of excess reserves (ECB/2014/23), OJ L 168, 7.6.2014, p. 115.

Proposal for a

## COUNCIL REGULATION

### amending Regulation (EU) 2015/323 of 2 March 2015 on the financial regulation applicable to the 11<sup>th</sup> 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 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, 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>2</sup> ('the Internal Agreement'), and in particular Article 10(2) thereof,

Having regard to the proposal from the European Commission,

Having regard to the opinion of the European Court of Auditors<sup>3</sup>,

Having regard to the opinion of the European Investment Bank on the provisions concerning it<sup>4</sup>,

Whereas:

- (1) The European Central Bank adopted on 5 June 2014 a Decision<sup>5</sup> providing for a negative interest rate, which entails a payment obligation of the deposit holder to the relevant national central bank (NCB) including the right of that NCB to debit the relevant government deposit account accordingly. Other EU central banks where EDF funds have to be kept in accordance with Article 22 of the Financial Regulation applicable to the 11<sup>th</sup> EDF adopted similar decisions.
- (2) According to Article 22(3) of Council Regulation (EU) 2015/323<sup>6</sup> of 2 March 2015 on the Financial Regulation applicable to the eleventh European Development Fund (11<sup>th</sup> EDF), contributions to the EDF are to be credited by each Member State to a special

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<sup>2</sup> OJ L 210, 6.8.2013, p. 1

<sup>3</sup> OJ C [...], , p. [...].

<sup>4</sup> OJ C [...], [...], p. [...].

<sup>5</sup> 2014/337/EU: Decision of the European Central Bank of 5 June 2014 on the remuneration of deposits, balances and holdings of excess reserves (ECB/2014/23), OJ L 168, 7.6.2014, p. 115.

<sup>6</sup> OJ L 58, 3.3.2015, p.17

account entitled 'European Commission — European Development Fund' opened with the central bank of the relevant Member State or the financial institution designated by it.

- (3) It should be clarified that these special accounts opened by the Member States in the name of the Commission, for the purpose of depositing EDF contributions, until they need to be used for payments should be kept free of any charge and interest. The purpose of this provision is to prevent losses for the EDF budget. Any charge applied to those accounts would be equivalent to a reduction of the funds available to the EDF budget. In this respect, negative interest should equally be avoided as it has the same negative effect as charges. Therefore, the Member State concerned should compensate the EDF budget for any charge or negative interest applied to the account for EDF resources it has opened in the name of the Commission pursuant to Article 22(3) of Council Regulation (EU) 2015/323.
- (4) Regulation (EU) 2015/323 should therefore be amended accordingly.

HAS ADOPTED THIS REGULATION:

#### *Article 1*

Article 22 of Regulation (EU) 2015/323 is replaced by the following:

#### *"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 point (a) of Article 21(7) shall be credited by each Member State to a special account entitled 'European Commission — European Development Fund' opened with the central bank of the relevant 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 point (a) of Article 1(2) of the Internal Agreement.
- The contribution referred to in point (b) of Article 21(7) of this Regulation shall be credited by each Member State in accordance with Article 53(1).
4. The account referred to in paragraph 3 shall be kept free of any charge and interest.
  5. Each Member State shall compensate the Commission for any charges or negative interest applied to this account on the first working day of the second month following the application of these charges or negative interest."

*Article 2*

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

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

Done at Brussels,

*For the Council  
The President*