

## I

(Acts adopted under the EC Treaty/Euratom Treaty whose publication is obligatory)

## REGULATIONS

## COUNCIL REGULATION (EC) No 617/2007

of 14 May 2007

**on the implementation of the 10th European Development Fund under the ACP-EC Partnership Agreement**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to the Partnership Agreement between the members of the African, Caribbean and Pacific Group of States of the one part, and the European Community and its Member States, of the other part, signed in Cotonou on 23 June 2000 <sup>(1)</sup> as revised in Luxembourg on 25 June 2005 <sup>(2)</sup> (hereinafter referred to as the ACP-EC Partnership 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 Community aid under the multiannual financial framework for the period 2008 to 2013 in accordance with the ACP-EC Partnership Agreement and on the allocation of financial assistance for the Overseas Countries and Territories to which Part Four of the EC Treaty applies <sup>(3)</sup> (hereinafter referred to as the Internal Agreement), and in particular Article 10(1) thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Investment Bank,

Whereas:

- (1) Decision No 1/2006 of the ACP-EC Council of Ministers <sup>(4)</sup> specifies the multiannual financial framework for the period 2008 to 2013 and inserts a new Annex Ib in the ACP-EC Partnership Agreement.
- (2) The Internal Agreement defines the various financial envelopes of the 10th European Development Fund (hereinafter referred to as the EDF), the contribution key and contributions to the 10th EDF, sets up the EDF Committee and the Investment Facility Committee (here-

inafter referred to as the IF Committee), and determines the voting weight and qualified majority rule therein.

- (3) Furthermore, the Internal Agreement sets the aggregate amount of Community aid to the African, Caribbean and Pacific Group of States (hereinafter referred to as ACP States) (excluding the Republic of South Africa) and to the Overseas Countries and Territories (hereinafter referred to as the OCTs) for the six-year period 2008 to 2013 at EUR 22 682 million from the 10th EDF contributed by Member States. From the amount of the 10th EDF set by the Internal Agreement, EUR 21 966 million should be allocated to the ACP States as specified in the multiannual financial framework 2008 to 2013 referred to in Annex Ib to the ACP-EC Partnership Agreement, EUR 286 million should be allocated to the OCTs and EUR 430 million should be allocated to the Commission for support expenditures linked to programming and implementation of the EDF by the Commission.
- (4) The 10th EDF allocation to the OCTs is governed by Council Decision 2001/822/EC of 27 November 2001 on the association of the overseas countries and territories with the European Community <sup>(5)</sup> and by its implementing Commission Regulation (EC) No 2304/2002 <sup>(6)</sup> 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>(7)</sup>, should only in exceptional circumstances be financed under the 10th EDF, where such assistance is required to ensure continuity of cooperation from crisis to stable conditions for development and cannot be financed from the general budget of the European Union.

<sup>(1)</sup> OJ L 317, 15.12.2000, p. 3.

<sup>(2)</sup> OJ L 209, 11.8.2005, p. 27.

<sup>(3)</sup> OJ L 247, 9.9.2006, p. 32.

<sup>(4)</sup> OJ L 247, 9.9.2006, p. 22.

<sup>(5)</sup> OJ L 314, 30.11.2001, p. 1. Decision as amended by Decision 2007/249/EC (OJ L 109, 26.4.2007, p. 33).

<sup>(6)</sup> OJ L 348, 21.12.2002, p. 82.

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

- (6) On 11 April 2006, the Council adopted the principle of funding the African Peace Facility from the 10th EDF for an amount of up to EUR 300 million covering the period 2008 to 2010 and agreed on future modalities and design for the facility.
- (7) The Sugar Protocol countries as referred to in Protocol 3 to ACP-EC Partnership Agreement affected by the Community sugar reform should be able to benefit from accompanying measures funded through Regulation (EC) No 1905/2006 of the European Parliament and of the Council of 18 December 2006 establishing a financing instrument for development cooperation <sup>(1)</sup>. The ACP countries will also access Community assistance from thematic programmes provided by the instrument for development cooperation and by Regulation (EC) No 1889/2006 of the European Parliament and of the Council of 20 December 2006 establishing a financing instrument for the promotion of democracy and human rights worldwide <sup>(2)</sup>. Those thematic programmes should add value to, be consistent with and subsidiary and additional to the geographic programmes funded under the EDF.
- (8) The ACP-EC Partnership Agreement stresses the importance of regional cooperation among the ACP States, the OCTs and the Community's outermost regions.
- (9) The Decision 2005/446/EC <sup>(3)</sup> of the Representatives of the Governments of the Member States meeting within the Council sets as 31 December 2007 the date beyond which the funds of the 9th EDF managed by the Commission, the interest subsidies managed by the European Investment Bank (hereinafter referred to as the EIB) and the revenue accruing from the interest on these appropriations are no longer to be committed. This date could be reviewed if necessary.
- (10) In order to implement the EDF, the procedure for programming, examining and approving aid should be decided and the detailed rules for supervising the use of aid should be laid down. On 17 July 2006 the representatives of the Governments of the Member States meeting within the Council adopted Decision 2006/610/EC <sup>(4)</sup> on the provisional application of the Internal Agreement, 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) On 24 November 2004 the Council adopted conclusions on the effectiveness of EU external actions, including further strengthening complementarity and coordination between Community and Member States' development

cooperation. On 24 May 2005 the Council committed itself to timely implementation and monitoring of the Paris Declaration on Aid Effectiveness and of the EU specific commitments adopted at the Paris Forum of 28 February to 2 March 2005. The Council of 11 April 2006 adopted conclusions on the common framework for country strategy papers thus enabling a joint multi-annual programming by the EU and other interested donors. On 16 October 2006 the Council adopted conclusions on the importance of complementarity and division of labour as constitutive parts of aid effectiveness.

- (12) On 22 December 2005, the Council and the representatives of the Governments of the Member States meeting within the Council, the European Parliament and the Commission adopted a Joint Statement on a European Union Development Policy <sup>(5)</sup>. Subsequently the European Council adopted a strategy for Africa in December 2005 and the Council adopted conclusions on a strategy for the Caribbean (10 April 2006) and the Pacific (17 July 2006).
- (13) On 16 October 2006 the Council adopted conclusions on Governance in the European Consensus on Development: Towards a Harmonised Approach within the European Union, recalling that the allocation of incentive tranches of the Governance Initiative should be thoroughly discussed between Member States and the Commission and stressing the need for the Commission to involve the competent bodies of the Council,

HAS ADOPTED THIS REGULATION:

#### TITLE I

#### GENERAL PRINCIPLES

##### Article 1

#### General framework for programming and implementation

1. The primary and overarching objective of cooperation under this Regulation shall be the eradication of poverty in partner countries and regions in the context of sustainable development, including pursuit of the Millennium Development Goals.

2. Geographic cooperation with the ACP countries and regions in the context of the 10th EDF shall be founded on the basic principles and values reflected in the general provisions of the ACP-EC Partnership Agreement and taking into account the development objectives and cooperation strategies set out in Title XX of the Treaty.

<sup>(1)</sup> OJ L 378, 27.12.2006, p. 41.

<sup>(2)</sup> OJ L 386, 29.12.2006, p. 1.

<sup>(3)</sup> OJ L 156, 18.6.2005, p. 19.

<sup>(4)</sup> OJ L 247, 9.9.2006, p. 30.

<sup>(5)</sup> OJ C 46, 24.2.2006, p. 1.

The Joint Development Policy Statement of 22 December 2005: 'The European Consensus' shall provide the general framework to guide the programming and implementation of the 10th EDF, including the principles set out in the 2005 Paris Declaration on Aid Effectiveness.

3. The Paris Declaration on Aid Effectiveness includes the principles of ownership, alignment, harmonisation, results oriented aid management and mutual accountability, valid for partner countries and regions as well as for donors.

Those principles shall create the conditions for the partner countries and regions to exercise effective leadership over their development policies and strategies and lead to a country or region-based and country or region-led approach, involving broad stakeholder consultation and increasingly aligning with national or regional development objectives and strategies, particularly those for reducing poverty. This requires effective donor coordination, based on a search for complementarity, a non-exclusive approach and the promotion of donor-wide initiatives, aligned with and based on existing analyses, processes and strategies and country or region specific procedures and institutions.

4. Without prejudice to the need to ensure continuity of cooperation from crisis to stable conditions for development, measures covered by, and eligible for funding under Regulation (EC) No 1257/96 shall, in principle, not be funded under this Regulation.

## TITLE II

### PROGRAMMING

#### Article 2

#### The programming process

1. The process of programming for assistance to the ACP countries and regions managed by the Commission under the ACP-EC Partnership Agreement shall be undertaken in accordance with Articles 1 to 14 of Annex IV to that Agreement and in accordance with the general principles referred to in Article 1 of this Regulation.

2. Programming for the purpose of this Regulation shall mean, *inter alia*:

- (a) the preparation and development of Country Support Strategies (hereinafter referred to as country strategy papers) and Regional Support Strategies (hereinafter referred to as regional strategy papers);
- (b) a clear indication from the Community of the indicative programmable financial allocation from which the countries and regions may benefit during the six-year period of the 10th EDF;
- (c) the preparation and adoption of a multiannual indicative programme for implementing the country strategy papers and regional strategy papers;

(d) a review process covering the country strategy papers and regional strategy papers, the multiannual indicative programmes and the volume of resources allocated to them.

3. The programming at national and regional level shall be conducted in a coordinated way. Coordination for the purpose of this Regulation shall mean, *inter alia*:

(a) the partner country or region concerned shall to the extent possible be the leading force in the programming of Community assistance. Programming shall, except in the cases provided for in paragraph 5, be done jointly with the partner country or region concerned and increasingly aligned with the partner country or region's poverty reduction or equivalent strategies; the joint process shall include other stakeholders where relevant, including parliaments, local authorities and representative non-State actors, that shall be associated in the programming process as early as appropriate;

(b) for the preparation and development of the strategy papers the Commission shall work in coordination with the Member States locally represented and the EIB on matters relating to its areas of expertise and operations, including as regards the Investment Facility. Coordination will remain open to the Member States that are not permanently represented in the country or region concerned;

(c) the Commission and the Member States locally represented shall strive where possible and appropriate to joint programming, including a joint response strategy. Participation in joint programming will, through flexible mechanisms, remain open to the Member States that are not permanently represented in the country or region concerned;

(d) the Commission and Member States shall seek regular and frequent exchanges of information, including with other donors and development banks, and promote better coordination of policies, harmonisation of procedures, complementarity and division of labour, thereby enhancing improved impact of policies and programming. Donor coordination shall as far as possible take place through existing mechanisms of donor coordination and build on existing harmonisation processes in the partner country or region concerned. The partner country or region concerned should to the extent possible be the leading force in the coordination of Community assistance with other donors; whenever the development of common strategies is already under way, joint programming should remain open to other donors and complement, strengthen, and whenever possible be part of these existing processes.

4. In addition to country strategy papers and regional strategy papers, an intra-ACP strategy paper and related multiannual indicative programme shall be prepared and developed with the ACP-EC Committee of Ambassadors, based on criteria set out for an intra-ACP policy framework compliant with the principles of complementarity and geographic scope inherent in Article 12 of Annex IV to the ACP-EC Partnership Agreement.

5. In the exceptional circumstances referred to in Article 3(4) and Article 4(5) of Annex IV to the ACP-EC Partnership Agreement, when countries cannot access normal programmable funds and/or the national authorising officer is prevented from carrying out his/her duty, the Community shall make specific provisions as referred to in Article 4(7) of this Regulation.

6. Programming shall be designed so as to fulfil to the greatest extent possible the criteria for official development assistance (hereinafter referred to in as 'ODA') established by the OECD/DAC.

7. Programming shall, where appropriate, ensure European visibility in partner countries and regions.

### Article 3

#### Resource allocation

1. At the beginning of the programming processes the Commission shall, on the basis of the needs and performance criteria identified in Articles 3, 9 and 12 of Annex IV to the ACP-EC Partnership Agreement, determine the multiannual indicative fund allocation for each ACP country and region and for the intra-ACP envelope on which the programming process is based, within the limits set out in Article 2 of the Internal Agreement. These criteria shall be standard, objective and transparent.

2. Regarding the national indicative grant allocation, the resources shall comprise a programmable amount, including an incentive tranche allocated on the basis of governance related criteria in line with the principles on governance adopted by the Council on 16 October 2006, and an allocation for unforeseen needs as referred to in Article 3(2)(b) of Annex IV to the ACP-EC Partnership Agreement.

3. The EDF Committee referred to in Article 11 shall give its opinion in accordance with the management procedure set out in Article 11(3) on the method used in the application of the general criteria for resource allocation as presented by the Commission.

The consolidated country and regional aid allocations shall be consistent with the amounts set out in Article 2 of the Internal Agreement. They shall be integrated into the country and regional strategy papers and multiannual indicative programmes, and adopted by the Commission in accordance with the management procedure set out in Article 11(3). Funds earmarked for special support programmes and actions as referred to in Article 4(7) shall also be adopted by the Commission in accordance with the management procedure set out in Article 11(3).

### Article 4

#### Country and regional strategy papers and multiannual programming

1. The country and regional strategy papers shall be prepared on the basis of the general principles of coordination, ownership and aid effectiveness referred to in Articles 1 and 2, following the common framework for country strategy papers and the principles towards joint multiannual programming adopted by the Council on 11 April 2006.

2. The strategy papers shall aim to provide a coherent framework for cooperation between the Community and the partner country or region concerned, consistent with the overall purpose and scope, objectives and principles of the ACP-EC Partnership Agreement. The strategy paper shall not only cover the development cooperation funded out of the EDF, but also reflect all other Community instruments having an impact on the partner country or region aiming to ensure policy coherence with other areas of the Community's external action including, where relevant, the EIB.

3. Except in the circumstances referred to in Article 2(5), multiannual indicative programmes shall be drawn up on the basis of the respective strategy papers and shall be the subject of an agreement with the country or region concerned. Emphasis shall be placed on shared assessments of needs and performance and sector analysis, as well as priorities. In the context of Article 11(3) and in cases where the Commission participates in a joint programming process, the multiannual indicative programme shall where appropriate be integrated in a document drafted jointly with the other participating donors. The multiannual indicative programmes shall include:

- (a) the priority areas selected for Community financing, the overall objectives, the targeted beneficiaries, the general policy commitments and the expected impact;
- (b) the indicative financial allocation, both overall and per priority area. The allocation per priority area may be given in the form of a limited range, where appropriate. Community assistance shall be concentrated in a limited number of priority areas and, where appropriate, through general budget support, and shall ensure alignment with operations financed by the ACP country or region concerned and complementarity and coherence with operations financed by Member States and by other donors;
- (c) per priority area, and in case of general budget support, specific objectives and sectoral policy commitments and the most appropriate measures and operations for attaining these objectives and targets. The indicative programme shall also describe the expected impact, and define results and quantitative and qualitative performance indicators and a timetable for implementation, including commitments and disbursement of resources, and for expected results. Indicators shall to the maximum extent possible be aligned with and based on the partner country or region's own monitoring system;

- (d) the resources reserved for programmes and projects outside the priority areas and, where possible, the broad outlines of such activities as well as an indication of the resources to be deployed for each of these activities. They may include the priorities and specific resources for the purpose of strengthening cooperation with the Community's outermost regions, OCTs or neighbouring partner countries and regions as referred to in Article 10 of this Regulation and the modalities for identifying and coordinating the selection of those common interest projects;
- (e) the type of non-State actors eligible for funding and, where possible, the resources to be allocated and the type of activities to be supported.

Resources may be channelled through different modalities that may be complementary according to what will work best in each country. The use of budget support shall be done in accordance with the eligibility criteria set out in Article 61.2 of the ACP-EC Partnership Agreement.

4. The strategy papers and multiannual indicative programmes shall take account of, and avoid duplication with, measures and programmes eligible for funding under other EDF or Community instruments. Particular care shall be paid to the interaction between national, regional and intra-ACP support strategies and to consistency with Community instruments, in particular Regulation (EC) No 1905/2006, Regulation (EC) No 1889/2006, and Regulation (EC) No 1257/96, taking into account the actions undertaken under Regulation (EC) No 1717/2006 of the European Parliament and the Council of 15 November 2006 establishing an Instrument for Stability<sup>(1)</sup>. The multiannual adaptation strategies for Sugar Protocol countries provided for in the instrument for development cooperation shall be integrated in the country strategy papers.

5. The strategy paper referred to in paragraph 4, including its multiannual indicative programme, shall be adopted by the Commission in accordance with the management procedure set out in Article 11(3). At the same time as the strategy papers referred to in paragraph 1 are transmitted to Member States in the EDF Committee, the Commission shall also transmit them to the Joint Parliamentary Assembly for information, while fully respecting the decision-making procedure according to Title IV of this Regulation.

6. The strategy papers, including the multiannual indicative programmes, shall subsequently be adopted by common agreement between the Commission and the ACP State or region concerned and shall, when adopted, be binding on both the Community and that State or region. Countries without a signed strategy paper remain eligible to funding from the allocation for unforeseen needs referred to in Article 3(2)(b) of Annex IV to the ACP-EC Partnership Agreement.

7. The provisions referred to in Article 2(5) of this Regulation may take the form of special support programmes replacing the national strategy paper in cases as set out in Article 4 (5) of Annex IV to the ACP-EC Partnership Agreement where

the national authorising officer in the partner country is prevented from carrying out his duty, or they may take the form of actions funded from the allocation for unforeseen needs referred to in Article 3(2)(b) of Annex IV to the ACP-EC Partnership Agreement in situations set out in Article 3(4) of that Annex when the partner country can not access the normal programmable funds referred to in Article 3(2)(a) of that Annex. These special support programmes and actions funded from the allocation for unforeseen needs shall comply with the previous paragraphs and take into account the special considerations referred to in Article 5(4)(c) of this Regulation. They shall be adopted by the Commission in accordance with the management procedure set out in Article 11(3) of this Regulation.

#### Article 5

#### Reviews

1. Strategy papers and multiannual indicative programmes as well as the special support programmes and actions referred to in Article 4(7) of this Regulation shall be submitted to annual operational reviews, to reviews at mid-term and at the end of term and, when necessary, to ad hoc reviews. These reviews shall be carried out locally by the Commission and the partner country or region concerned in line with Article 5 of Annex IV of the ACP-EC Partnership Agreement, and shall be prepared on the basis of the general principles of coordination, ownership and aid effectiveness referred to in Articles 1 and 2. The strategy papers and multiannual indicative programmes may also be submitted to ad hoc reviews in between annual, mid-term and end-of-term reviews in line with Article 3(5) of Annex IV of the ACP-EC Partnership Agreement.

2. The mid-term and end-of-term reviews shall constitute an integral part of the programming process. They shall assess the strategy paper, including the multiannual adaptation strategies for the Sugar Protocol countries and any other programmes funded from Community instruments referred to in Article 4(4), and the multiannual indicative programme in the light of current needs and performance. The review shall include, to the extent possible, an impact assessment of the Community's development cooperation in relation to the general objective of poverty reduction referred to in Article 1(1), to the objectives, allocated resources and indicators set out in the strategy papers and an assessment of the adherence to, and the possibilities for furthering, the aid effectiveness principles referred to in Articles 1 and 2. Following the completion of the mid-term or end-of-term review exercise:

- (a) the strategy papers and multiannual indicative programmes may be adjusted where the reviews indicate specific problems or lack of progress towards meeting the objectives and indicated results, or in the light of changed circumstances, including as a result of ongoing harmonisation processes such as division of labour among Commission and Member States and possibly other donors;

<sup>(1)</sup> OJL 327, 24.11.2006, p. 1.

(b) the national and regional multiannual indicative allocation may be increased or decreased in the light of current needs and performance.

3. The annual operational reviews shall be conducted in accordance with Article 5(4) of Annex IV to the ACP-EC Partnership Agreement. In cases of new or special needs, set out in Articles 3(5) and 9(2) of Annex IV to the ACP-EC Partnership Agreement, such as those resulting from a post-crisis situation, or exceptional performance when a multiannual indicative allocation is totally committed and additional funding can be absorbed against a background of effective poverty-reduction policies and sound financial management, a multiannual indicative allocation may be increased following the completion of the annual operational review exercise.

The general results of the annual operational reviews shall be presented to the EDF Committee for an exchange of views in accordance with Article 11(4) of this Regulation.

4. Ad hoc reviews can be carried out at the request of either the ACP State concerned or the Commission in cases of new or special needs or exceptional performance as described in paragraph 3 of this Article or in the case of exceptional circumstances referred to in Article 72 and Article 73 of the ACP-EC Partnership Agreement regarding humanitarian and emergency aid. The Commission shall take into account requests for ad hoc reviews by Member States. The occurrence of sudden and unforeseeable serious humanitarian, economic and social difficulties of an exceptional nature resulting from natural disasters, man-made crises such as wars and other conflicts, post-conflict situations, threats to democracy, the rule of law, human rights or fundamental freedoms or extraordinary circumstances within a country or within a region that have comparable effects, may be considered as cases justifying the conducting of an ad hoc review.

(a) Following the completion of the ad hoc review exercise, special measures referred to in Article 8 of this Regulation may be proposed. If required, the allocation of the multiannual indicative programme or the special action programme may be increased within the limits of available funds set out in Article 2 of the Internal Agreement. Where no strategy paper has been signed, special support can be funded from the allocation for unforeseen needs as referred to in Article 3(2)(b) of Annex IV to the ACP-EC Partnership Agreement.

(b) The measures taken shall be consistent and coherent with and complement other Community instruments, including the instrument for humanitarian aid referred to in Article 4(4).

(c) Where partner countries or groups of partner countries are directly involved in, or affected by, a crisis or post-crisis

situation, multiannual programming shall place special emphasis on stepping up coordination between relief, rehabilitation and development to help them make the transition from an emergency situation to the development phase; programmes for countries and regions regularly subject to natural disasters shall provide for disaster preparedness and prevention.

5. In cases of new needs as defined in the Joint Declaration VI referring to Article 12(2) of Annex IV to the ACP-EC Partnership Agreement regarding intra-ACP cooperation, an increase in the intra-ACP programmable allocation may be financed from the intra-ACP reserves within the global limits set out in Article 2(b) of the Internal Agreement.

6. Any change in strategy papers and/or resource allocation resulting from a review referred to in paragraphs 1 to 4 shall be adopted by the Commission in accordance with the management procedure set out in Article 11(3). The addenda to the strategy papers, including the multiannual indicative programmes and to the special support programmes shall subsequently be adopted by common agreement between the Commission and the ACP State or region concerned and shall, when adopted, be binding on both the Community and that State or region.

### TITLE III

## IMPLEMENTATION

### Article 6

#### General framework for implementation

The implementation of the assistance provided to the ACP countries and regions managed by the Commission under the ACP-EC Partnership Agreement shall be undertaken in accordance with Annex IV to that Agreement and the Financial Regulation referred to in Article 10(2) of the Internal Agreement and in accordance with the principles of ownership and aid effectiveness referred to in Article 1.

### Article 7

#### Annual action programmes

1. The Commission shall adopt annual action programmes based on the strategy papers and multiannual indicative programmes referred to in Article 4.

Exceptionally, for instance where an annual action programme has not yet been adopted, the Commission may, on the basis of the strategy papers and multiannual indicative programmes, adopt measures not provided for in the annual action programme under the same rules and procedures.

2. The annual action programmes 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 the EIB. The annual action programmes shall describe the general context and assess Community assistance and lessons learnt, including regarding budget support, based especially on the annual operational reviews referred to in Article 5(3). They shall specify the objectives pursued, the fields of intervention, the total amount of financing planned and an indication of the amounts allocated for each operation. They shall include detailed individual fiches for each foreseen operation which shall contain an analysis of the specific sector context, a description of the actions to be financed, the main stakeholders, the expected results based on quantitative and qualitative indicators, the management procedure, an indicative implementation timetable, and, in case of budget support, the criteria for disbursement, inclusive of possible variable tranches. Objectives shall be specific, measurable, realistic and have time-bound benchmarks, aligning with the partner country or region's own objectives and benchmarks to the maximum extent possible. They shall state how they take current or planned EIB activities into account.

3. The annual action programmes shall be adopted by the Commission in accordance with the management procedure set out in Article 11(3) of this Regulation. Each Member State may request the withdrawal of a project or programme from the annual action programme. If this request is supported by a blocking minority of Member States as laid down in Article 8(3) in connection with 8(2) of the Internal Agreement, the annual action programme shall be adopted by the Commission without the project or programme concerned in accordance with the management procedure set out in Article 11(3) of this Regulation. Unless the Commission, in line with the views of the Member States in the EDF Committee, wishes not to pursue the withdrawn project or programme it shall, at a later stage, be re-submitted to the EDF Committee outside the annual action programme as provided for in paragraph 1, second subparagraph of this Article in the form of a financing proposal which shall then be adopted by the Commission in accordance with the management procedure set out in Article 11(3) of this Regulation.

4. Amendments to annual action programmes or to measures not provided for in the annual action programmes shall be adopted in accordance with the management procedure set out in Article 11(3). In cases where amendments to Annual Action Programmes or measures not provided for in the annual action programmes do not exceed 20 % of the initial projects, programmes or consolidated allocation thereof, but do not represent more than EUR 10 million, such amendments shall be adopted by the Commission provided they do not affect the initial objectives set out in the Commission decision. The Commission shall inform the EDF Committee of any such amendments within one month.

5. The Commission shall adopt specific action programmes in accordance with the management procedure set out in Article 11(3) of this Regulation for support expenditures referred to in Article 6(2) of the Internal Agreement and not covered by the multiannual indicative programmes. Any changes in the action programmes for support expenditures shall be adopted in accordance with paragraph 4 of this Article.

6. Member States represented in the country or region, other interested Member States and where appropriate the EIB shall be kept regularly informed by the Commission on the implementation of Community projects and programmes. In turn, each Member State and the EIB shall also regularly inform the Commission, at country or region level, of the cooperation activities that they are implementing or programming, in each particular country or region.

7. In accordance with Article 11(4) of this Regulation, each Member State may at any moment request to include on the agenda of the EDF Committee an exchange of views on implementation issues relating to a particular project or programme managed by the Commission. This exchange of views may include the way the Commission applies the criteria for disbursement of budget support referred to under paragraph 2 of this Article.

#### Article 8

#### Adoption of special measures

1. In the cases referred to in Article 5(4), the Commission may adopt special measures not provided for in the strategy papers and multiannual indicative programmes in accordance with Article 2(5).

2. Special measures shall specify the objectives pursued, the areas of intervention, the targeted beneficiaries, the expected results, the management procedure and the total amount of financing. They shall contain a description of the operations to be financed, an indication of the amounts allocated for each operation and the indicative timetable for their implementation. They shall include a definition of the type of performance indicators that will have to be monitored when implementing the special measures. These indicators shall take into account the partner country or region's monitoring systems where relevant.

3. Where the cost of such special measures exceeds EUR 10 million, the Commission shall adopt them under the management procedure set out in Article 11(3). For special measures below EUR 10 million, the Commission shall inform the EDF Committee within one month of their adoption. In accordance with Article 11(4), each Member State may at any moment request to include on the agenda of the EDF Committee an exchange of views on these operations. This exchange of views may lead to the formulation of recommendations which the Commission shall take into account.

4. Amendments to special measures, such as those making technical adjustments, extending the implementation period, reassigning funds within the forecast budget, or increasing or reducing the size of the budget by less than 20 % of the initial budget, but not more than EUR 10 million, do not require adoption under the management procedure set out in Article 11 (3), provided that such amendments do not affect the initial objectives set out in the Commission decision. Any such technical adjustments shall be communicated within one month to the Member States.

5. The special measures shall be subject to an annual exchange of views within the EDF Committee on the basis of a report prepared by the Commission.

#### Article 9

#### Co-financing and additional Member State contributions

1. Co-financing shall occur when a project or programme is funded from different sources:

- (a) in the case of parallel co-financing, the project or programme is split into a number of clearly identifiable components, each of which is financed by the different partners providing co-financing, in such a way that the end-use of the financing can always be identified;
- (b) in the case of joint co-financing, the total cost of a project or programme is shared between the partners providing co-financing and the resources are pooled in such a way that it is no longer possible to identify the source of financing for any activity undertaken as part of the project or programme.

2. When the Commission is involved in joint co-financing arrangements, the implementing arrangements governing such funds, including, when appropriate, the necessity for joint evaluations and the coverage of the possible administrative costs incurred by the body in charge of the management of the pooled funds shall be laid down in the financing agreement according to the rules and procedures which shall be detailed in the Financial Regulation referred to in Article 10(2) of the Internal Agreement.

Where the Commission receives and manages funds on behalf of:

- (a) Member States and their regional and local authorities, and in particular their public and parastatal agencies;
- (b) other donor countries, and in particular their public and parastatal agencies;

- (c) international organisations, including regional organisations, and in particular international and regional financial institutions;

for the purpose of implementing joint measures, such funds shall be treated as assigned revenue, in accordance with the Financial Regulation referred to in Article 10(2) of the Internal Agreement and shall be integrated as such in the annual action programmes. The visibility of the Member States' contributions shall be assured.

Where the Commission entrusts the bodies referred to in precedent subparagraph with funds for the financing of tasks of public authority, and in particular EDF implementation tasks, such co-financing shall be reflected and duly justified in the annual action programmes and visibility of the EDF contribution shall be ensured.

3. When the EIB is designated as the manager for a joint co-financing arrangement, the implementing arrangements governing such funds, including, when appropriate the coverage of the administrative costs incurred by the EIB, shall be drawn up in compliance with the statutes and internal regulations of the EIB.

4. At their own initiative, Member States may also provide to the Commission or the EIB voluntary contributions to help achieve the objectives of the ACP-EC Partnership Agreement outside joint co-financing arrangements. Such contributions shall not affect the overall allocation of funds under the 10th EDF and earmarking shall only be made in duly justified circumstances, for example in response to the exceptional circumstances as referred to in Article 5(4). The additional funds shall be integrated in the programming and review process and in the annual action programmes referred to in this Regulation and reflect partner country or region ownership. Voluntary contributions entrusted to the Commission shall be treated as assigned revenue in accordance with the Financial Regulation referred to in Article 10(2) of the Internal Agreement. 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.

5. Member States entrusting the Commission or the EIB with additional voluntary contributions to help achieve the objectives of the ACP-EC Partnership Agreement shall inform the Council and the EDF Committee of these contributions in advance. Any earmarking shall be duly justified and any resulting change in the annual action programmes or in the strategy papers shall be adopted by the Commission in accordance with the management procedure set out in Article 11(3).

## Article 10

**Participation by a third country or region**

In order to ensure the coherence and effectiveness of Community assistance, the Commission may decide that non-ACP developing countries and regional integration bodies with ACP participation that promote regional cooperation and integration eligible for Community Assistance under Regulation (EC) No 1905/2006, Regulation (EC) No 1638/2006 of the European Parliament and of the Council of 24 October 2006 establishing a European Neighbourhood and Partnership instrument<sup>(1)</sup>, the OCTs eligible for Community assistance under Decision 2001/822/EC, and the Community's outermost regions are eligible for funds referred to in Article 1(2)(a)(i) of the Internal Agreement, where the project or programme concerned is of a regional or cross-border nature and complies with Article 6 of Annex IV of the ACP-EC Partnership Agreement. Provision may be made for this funding in the strategy papers and multiannual indicative programmes and in the special measures referred to in Article 8 of this Regulation. Those provisions shall be integrated into the annual action programmes.

## TITLE IV

**DECISION-MAKING PROCEDURES**

## Article 11

**Responsibilities of the EDF Committee**

1. The EDF Committee set up according to Article 8 of the Internal Agreement shall give its opinion, in accordance with the management procedure set out in paragraph 3, on the substantive issues of development cooperation at country, regional and intra-ACP level funded from the 10th EDF and other Community resources referred to in Article 4(3).
2. The EDF Committee's tasks shall cover the responsibilities spelled out in Titles II and III of this Regulation:
  - (a) programming of Community aid under the 10th EDF and programming reviews focusing in particular on country, regional and intra-ACP strategies; and
  - (b) monitoring the implementation of Community aid, 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 1.
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 the Council Decision on the rules and procedures of the EDF Committee referred to in Article 8(5) of the Internal Agreement, 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. The EIB shall take part in the exchange of

views. The opinion shall be delivered by the qualified majority laid down in Article 8(3) of the Internal Agreement on the basis of the votes of the Member States weighted in the manner set out in Article 8(2) of the Internal Agreement.

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

4. The EDF Committee shall have an exchange of views on the general conclusions of the annual operational reviews and of the annual report referred to in Article 14(3). Each Member State may also call for an exchange of views on the evaluations referred to in Article 15(3).

Each Member State can invite the Commission at any moment to provide the EDF Committee with information and to have an exchange of views on issues related to the tasks described under paragraph 2.

Such exchanges of view may lead to the formulation of recommendations by the Member States, which the Commission shall take into account.

5. On the basis of conclusions of the reviews prepared by the Commission, the EDF Committee shall also examine the consistency and complementarity between Community aid and aid from the Member States and where appropriate other donors, in line with Articles 1 and 2.

## Article 12

**The African Peace Facility**

In accordance with the Council conclusions of 11 April 2006 to fund the African Peace Facility from the 10th EDF for a three-year period with EUR 300 million, the intra-ACP indicative programme shall earmark funding for the African Peace Facility. Specific management procedure shall apply as follows:

- (a) on a request from the African Union, endorsed by the ACP-EC Committee of Ambassadors, an action programme shall be prepared by the Commission covering the period 2008 to 2010. This action programme shall among others specify the objectives pursued, the scope and nature of the possible interventions, the implementation arrangements, and an agreed format for background documents and requests and for reporting. An annex to the action programme shall describe the specific decision making procedures for each possible intervention according to its nature, size and urgency;

<sup>(1)</sup> OJL 310, 9.11.2006, p. 1.

- (b) this action programme, including the annex referred to in point (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 in accordance with the management procedure set out in Article 11(3) of this Regulation;
- (c) the action programme, excluding the annex referred to in point (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 approval by the Political and Security Committee; the relevant preparatory Council working groups shall be informed or consulted in due time prior to their submission to the Political and Security Committee according to the specific decision making procedures referred to in point (a) in order to ensure that, besides the military and security dimension, the development related aspects of the envisaged measures are being taken into account. Special attention shall hereby be given to activities recognised as ODA;
- (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;
- (f) An evaluation shall be undertaken in 2010 reviewing the procedures of the African Peace Facility as well as the possibilities of alternative future sources of funding, including common foreign and security policy funding.

### Article 13

#### The IF Committee

1. The IF Committee set up under the auspices of the EIB according to Article 9 of the Internal Agreement shall consist of the representatives of the Member States and a representative of the Commission. Each Government shall nominate one representative and one designated alternate. The Commission shall act in the same way for its representative. With a view to maintaining continuity, the Chairman of the IF Committee shall be elected by and from among the members of the IF Committee for a period of two years. The EIB shall provide the Committee's secretariat and support services. Only the members of the IF Committee designated by the Member States, or their alternates, shall vote.

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

3. Furthermore, the IF Committee shall deliver an opinion on:

- (a) proposals to grant an interest subsidy under Article 2(7), and Article 4(2), of Annex II to the ACP-EC Partnership Agreement. In such cases, the IF Committee shall also deliver an opinion on the use of such an interest subsidy. 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 for interest subsidies that shall subsequently, without further opinion from the IF Committee and/or the Commission, be sub-allocated by the EIB to individual projects according to criteria set out in the global allocation, including the maximum interest subsidy sub-allocation per project;
- (b) proposals for an IF investment for any project for which the Commission has delivered a negative opinion;
- (c) other proposals relating to the Investment Facility based on the general principles defined in the operational guidelines.

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

4. It shall be the EIB's responsibility to submit to the IF Committee in a timely manner any matters that require the approval or opinion of the IF Committee, as provided for in paragraphs 1, 2 and 3. Any proposal submitted to the Committee for an opinion shall be made in accordance with the relevant criteria and principles set out in the operational guidelines.

5. The EIB 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 guidelines on the implementation of the Investment Facility referred to under paragraph 2(a). The EIB shall be held accountable for compliance to the guidelines and shall ensure that the projects it supports respect international social and environmental standards and are coherent with the objectives of the ACP-EC Partnership Agreement and of the broad principles of Community development policy and with the relevant country or regional cooperation strategies;
- (b) the EIB shall request the opinion of the Commission beforehand on investment strategies, business plans and general policy documents;
- (c) the EIB shall inform the Commission on the projects it administers in accordance with Article 14(2) and request the opinion of the Commission at the appraisal stage of a project on the conformity of projects with the relevant country cooperation strategy or regional cooperation strategy or, as the case may be, with the general objectives of the Investment Facility;
- (d) with the exception of interest subsidies falling within the global allocation referred to under 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 ACP-EC Partnership Agreement, and with the criteria defined in the operational guidelines of the Investment Facility.

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

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

Following a favourable opinion of the IF Committee, the EIB shall decide on the proposal in accordance with its own procedures. In particular it may 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 guidelines and the investment strategies approved by the IF Committee.

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

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

Such an increase may, for projects with interest subsidies referred to in Article 2(7) of Annex II to the ACP-EC Partnership 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 ACP-EC Partnership 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 Investment Facility investments and all funds held on account of the said Investment Facility in accordance with the objectives of the Agreement. It may, in particular, take part in the management and supervisory bodies of legal persons in which the Investment Facility is invested, and may compromise, discharge and modify the rights held on account of the Investment Facility in accordance with the operational guidelines.

## TITLE V

### FINAL PROVISIONS

#### Article 14

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

1. The Commission and the EIB shall monitor, each to the extent to which it is concerned, the use of EDF assistance by the recipients.

2. The EIB shall periodically inform the Commission regarding the implementation of projects and programmes financed from the 10th EDF resources it administers, following the procedures set out in the operational guidelines of the Investment Facility.

3. The Commission shall examine the progress made in implementing the 10th EDF and shall submit to the Council an annual report on the implementation and results and, as far as possible, the main outcomes, results and impacts of the assistance. This report shall also be sent to the EDF Committee for an exchange of views, to the European Parliament, the European Economic and Social Committee and the Committee of the Regions.

It shall contain information relating to the previous year on the measures financed, the results of monitoring and evaluation exercises, the involvement of and harmonisation with partners, including implementation through delegated cooperation as defined in the Financial Regulation referred to in Article 10(2) of the Internal Agreement, and the implementation of commitments and payments, broken down by country, region and cooperation sector.

It shall assess the results of the assistance on the eradication of poverty, using as far as possible specific and measurable indicators of its role in meeting the objectives of the ACP-EC Partnership Agreement. Such indicators shall be aligned with partner country or region's monitoring systems and indicators shared between the donor community and the partner country or region for monitoring their development strategy.

Particular attention shall be given to progress made towards achieving the Millennium Development Goals.

The reports shall also address progress made towards implementing the principles of coordination, ownership and aid effectiveness referred to in Article 1 of this Regulation and cover the accompanying measures of the Economic Partnership Agreements.

4. The EIB shall provide the IF Committee with information as regards progress towards the objectives of the Investment Facility. Following Article 6b of Annex II to the ACP-EC Partnership Agreement, the overall performance of the Investment Facility shall be subject to a joint review at the mid- and end-term of the 10th EDF. 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.

5. The Commission shall provide the Council in 2010 with a proposal for the overall performance review to be undertaken with the ACP States on the basis of paragraph 7 of Annex Ib of the ACP-EC Partnership Agreement. This review shall assess the financial performance, and in particular the degree of realisation

of commitments and disbursements as well as the quantitative and qualitative performance, and in particular the results and the impact, measured in terms of progress towards achieving the Millennium Development Goals. The review shall also explore the possibilities for and recommend how to enhance alignment of future Community support to the ACP with partner country or region's existing strategies, programming and budget cycles, and further harmonisation among donors.

#### Article 15

### Evaluation

1. The Commission and the EIB shall regularly evaluate the results of the implementation of geographical and thematic policies and programmes and of sectoral policies and the effectiveness of programming on the eradication of poverty, where appropriate by means of independent external evaluations, in order to ascertain whether the objectives have been met and to enable it to formulate recommendations with a view to improving future operations. Particular attention shall be given to ensuring coherence of Community development policy and progress made towards achieving the Millennium Development Goals.

2. These evaluations shall be conducted in association with the partner country or region and in coordination with the Member States locally represented. Other interested Member States and, where relevant, also other donors will be involved. The Commission shall strive to implement the aid effectiveness recommendations on joint evaluations.

3. The Commission shall send its country and regional evaluation reports to the Council, the EDF Committee and the EIB for information. In accordance with Article 11(4), Member States may at any moment request a discussion of specific evaluations in the EDF Committee. The results shall feed back into programme design and resource allocation, donor coordination and aid effectiveness.

4. The Commission shall associate relevant stakeholders, including non-State actors, in the evaluation phase of the Community assistance provided.

#### Article 16

### Entry into force

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

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

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

Done at Brussels, 14 May 2007.

*For the Council*  
*The President*  
F.-W. STEINMEIER

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