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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 11.10.2007
COM(2007) 590 final

Proposal for a

**DECISION OF THE REPRESENTATIVES OF THE GOVERNMENTS
OF THE MEMBER STATES, MEETING WITHIN THE COUNCIL,**

**Amending the decision No 2005/446/EC of 30 May 2005
setting the deadline for the commitment of the funds of the 9th European Development
Fund (EDF)**

(presented by the Commission)

EXPLANATORY MEMORANDUM

According to Article 2(4) of the Internal Agreement between representatives of the Governments of the Member States, meeting within the Council, on the Financing and Administration of Community Aid under the Financial Protocol to the Partnership Agreement between the African, Caribbean and Pacific States and the European Community and its Member States signed in Cotonou (Benin) on 23 June 2000 and the allocation of financial assistance for the Overseas Countries and Territories to which Part Four of the EC Treaty applies (hereinafter referred to as '9th EDF Internal Agreement')¹, the Member States shall set before the expiry of the 9th EDF a date beyond which the funds of the 9th EDF may no longer be committed.

By Decision No 2005/446/EC of 30 May 2005 and based on an assessment of the degree of realisation of commitments and disbursements under the 9th EDF, the representatives of the Governments of the Member States, meeting within the Council, set at 31 December 2007 the date beyond which the funds of the 9th EDF may no longer be committed, specifying that this date could be reviewed if need be (the 'sunset clause').²

The date beyond which the funds of the 9th EDF may no longer be committed can now be confirmed. However, in light of the evolving context, three substantive amendments to the decision are being proposed, broadening the exceptions to the general rule which were initially limited to the amount allocated to finance the Investment Facility managed by the EIB as a revolving fund which will not be affected by the sunset clause:

- In line with a legal advice on the status of the funds allocated from the system guaranteeing the stabilisation of export earnings from primary agricultural products under the EDFs prior to the 9th EDF (STABEX), the ACP-EC Council of Ministers, when adopting the Multi-annual Financial Framework for the period 2008 to 2013³, accepted that the balances and funds decommitted after 31 December 2007 under the STABEX system shall not be affected by the sunset clause. By Commission Decision C(2007)2149 of 24 May 2007, these funds will be transferred to the respective national indicative programmes of the ACP States concerned.
- In view of a possible late entry into force of the 10th EDF and when adopting the Multi-annual Financial Framework for the period 2008 to 2013, the ACP-EC Council of Ministers, also accepted the principle that funds can still be committed until the entry into force of the 10th EDF, but exclusively "to ensure the working ability of the EU administration and to cover the ongoing costs to sustain running projects".
- The revenue accruing from the interest on the appropriation of the EDF shall not be affected by the sunset clause. The reason for this is that those revenues are used solely for "costs linked to the implementation of the resources of the 9th EDF", unless agreed otherwise by the Council (9th EDF Internal Agreement, Article 9), or "support expenditure linked to the EDF" (10th EDF Internal Agreement, Article 6)⁴.

Two Commission administrators and several civil servants from the French Overseas Countries and Territories (OCTs) in the Pacific region in charge of the instruction of the 9th EDF projects and programmes in these OCTs died in an airplane accident on 9 August 2007. In view of this tragic *force majeure*, it is also proposed to postpone the date beyond which the

¹ OJ L 317, 15.12.2000, p. 355.

² OJ L 156, 18.6.2005, p. 19.

³ OJ L 247, 9.9.2006, p. 22.

⁴ OJ L 247, 9.9.2006, p. 32.

funds of the 9th EDF may no longer be committed to 30 June 2008 for projects and programmes to be funded in the French OCTs to which Part Four of the EC Treaty applies (New Caledonia and French Polynesia).

The Commission therefore suggests that the Representatives of the Governments of the Member States adopt the attached decision.

Proposal for a

**DECISION OF THE REPRESENTATIVES OF THE GOVERNMENTS
OF THE MEMBER STATES, MEETING WITHIN THE COUNCIL,**

**Amending the decision No 2005/446/EC of 30 May 2005
setting the deadline for the commitment of the funds of the 9th European Development
Fund (EDF)**

THE REPRESENTATIVES OF THE GOVERNMENTS OF THE MEMBER STATES OF
THE EUROPEAN COMMUNITIES, MEETING WITHIN THE COUNCIL,

Having regard to the Treaty establishing the European Community,

Having regard to the proposal from the Commission,

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 2000⁵ as revised in Luxembourg on 25 June 2005⁶ (hereinafter referred to as the 'ACP-EC Partnership Agreement'),

Having regard to the Council Decision of 27 November 2001 on the association of the overseas countries and territories with the European Community⁷, hereinafter referred to as the 'Overseas Association Decision', and in particular Article 33a thereof,

Having regard to the Internal Agreement between Representatives of the Governments of the Member States, meeting within the Council, on the Financing and Administration of Community Aid under the Financial Protocol to the ACP-EC Partnership Agreement⁸ (hereinafter referred to as '9th EDF Internal Agreement'), and in particular Article 2(4) thereof,

Having regard to the Internal Agreement between Representatives of the Governments of the Member States, meeting within the Council, on the Financing of Community Aid under the Multi-annual 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 applies⁹ (hereinafter referred to as '10th EDF Internal Agreement')

Whereas:

- (1) The decision of the Representatives of the Governments of the Member States meeting within the Council No 2005/446/EC of 30 May 2005¹⁰ sets at 31 December 2007 the date beyond which the funds of the 9th European Development Fund (hereinafter referred to as "EDF") managed by the Commission, the interest subsidies managed by

⁵ OJ L 317, 15.12.2000, p. 3.

⁶ OJ L 209, 11.8.2005, p. 27.

⁷ OJ L 314, 30.11.2001, p. 1, as amended by Council Decision 2007/249/EC of 19 March 2007, OJ L 109, 26.4.2007, p. 33.

⁸ OJ L 317, 15.12.2000, p. 355.

⁹ OJ L 247, 9.9.2006, p. 32.

¹⁰ OJ L 156, 18.6.2005, p. 19.

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.

- (2) Point 4 of Annex Ib (Multi-annual financial framework for the period 2008 to 2013) to the ACP-EC Partnership Agreement provides an exception to that general rule for balances and funds decommitted after 31 December 2007 resulting from the system guaranteeing the stabilisation of export earnings from primary agricultural products (STABEX) under EDFs prior to the 9th EDF and for the remaining balances and reimbursements of the amounts allocated for the financing of the Investment Facility, excluding the related interest subsidies¹¹.
- (3) Point 4 of Annex Ib to the ACP-EC Partnership Agreement further provides that funds may still be committed after 31 December 2007 to ensure the working ability of the EU administration and to cover the ongoing costs to sustain running projects until the 10th EDF comes into force.
- (4) The entry into force of the 10th EDF may be delayed beyond 01 January 2008.
- (5) The Decision of the Representatives of the Governments of the Member States meeting within the Council N° 2005/446/EC of 30 May 2005 and point 4 of Annex Ib to the ACP-EC Partnership Agreement need to be reconciled.
- (6) Due to *force majeure*, the instruction of the projects and programmes, funded from financial allocations available under the 9th EDF after the mid-term review reallocation Decision of the Commission N° C(2007)3856 of 16 August 2007, has been delayed by six months in the French Overseas Countries and Territories (hereinafter referred to as 'OCTs') in the Pacific Region to which Part Four of the EC Treaty applies.

HAVE DECIDED AS FOLLOWS:

Sole Article

(1) Articles 1 and 2 of the Decision of the Representatives of the Governments of the Member States meeting within the Council No 2005/446/EC are replaced by the following:

"Article 1

- (1) The date beyond which the funds of the 9th EDF managed by the Commission, will not be committed, shall be set at 31 December 2007, except for the balances and funds decommitted resulting from the system guaranteeing the stabilisation of export earnings from primary agricultural products (STABEX) under the EDFs prior to the 9th EDF and for the balances of the 9th EDF allocations to finance the initiatives referred to in the Single Programming Documents of the French OCTs in the Pacific Region. This date could be reviewed if need be.
- (2) Balances and funds decommitted after 31 December 2007 resulting from the system guaranteeing the stabilisation of export earnings from primary agricultural products (STABEX) under EDFs prior to the 9th EDF shall be transferred to the 10th EDF and shall be allocated to the indicative programme of the respective ACP States and OCTs. The date beyond which the funds of the 9th EDF managed by the Commission to

¹¹ Annex Ib as contained in Annex to Decision No 1/2006 of the ACP-EC Council of Ministers of 2.6.2006, OJ L 247, 9.9.2006, p. 22.

finance the initiatives referred to in the Single Programming Documents of the French OCTs in the Pacific Region shall no longer be committed, shall be set at 30 June 2008.

- (3) When the entry into force of the 10th EDF falls after 31 December 2007, balances from the 9th EDF or from previous EDFs and funds decommitted from projects under these EDFs may be committed during the period between 31 December 2007 and the entry into force of the 10th EDF, in which case they will be used exclusively to ensure the working ability of the EU administration and to cover the ongoing costs to sustain running projects until the 10th EDF comes into force.
- (4) The revenue accruing from the interest on the appropriations of the EDF will be used to cover the costs linked to implementation of the resources of the 9th EDF in line with Article 9 of the 9th EDF Internal Agreement until the 10th EDF comes into force, where after they will be reserved for support expenditures linked to the EDF as described in Article 6 of the 10th EDF Internal Agreement.

Article 2

- (1) The date beyond which the interest rate subsidies managed by the European Investment Bank (EIB) to provide resources of the Investment Facility on concessional terms will not be committed, shall be set at 31 December 2007 or the date of entry into force of the 10th EDF, whichever is the latest. This date could be reviewed if need be.
- (2) The remaining balances and reimbursements of the amounts allocated for the financing of the Investment Facility managed by the EIB, excluding the related interest subsidies, shall be transferred to the 10th EDF and shall remain allocated to the Investment Facility."

Done at Brussels, [...]

On behalf of the Governments of the Member States
The President