Council Regulation (EU) 2018/1877 of 26 November 2018 on the financial regulation applicable to the 11th European Development Fund, and repealing Regulation (EU) 2015/323

COUNCIL REGULATION (EU) 2018/1877

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on the financial regulation applicable to the 11th European Development Fund, and repealing Regulation (EU) 2015/323

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union and 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,[(1)] as last amended ('ACP-EU Partnership Agreement'),

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[(2)] ('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 Court of Auditors[(3)],

Having regard to the opinion of the European Investment Bank,

Whereas:

(1) Council Regulation (EU) 2015/323[(4)] determines detailed rules for the financial implementation of the 11th European Development Fund ('11th EDF'). Those rules concern, inter alia: the applicable principles; the constitution of the 11th EDF 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; and the Investment Facility managed by the European Investment Bank (EIB).

(2) For the sake of simplification and coherence, Regulation (EU) 2015/323 was aligned, as much as possible, with Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council[(5)] and Commission Delegated Regulation (EU) No 1268/2012[(6)]. That alignment was achieved by means of direct references to those

Regulations and has, on the one hand, allowed for the easy identification of specificities in the financial implementation of the 11th EDF and, on the other hand, reduced the diversity of Union funding rules in the area of external action that creates an unnecessary burden for the recipients, the Commission and other actors involved.

(3) Regulation (EU, Euratom) No 966/2012 and Delegated Regulation (EU) No 1268/2012 have been merged and replaced by a single legal act, Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council[(7)], which introduced significant changes and improvements and simplified the financial rules applicable to the general budget of the Union. In the interest of simplification, the financial regulation applicable to the 11th EDF should be aligned as much as possible with that Regulation. For reasons of legal clarity and taking into consideration the significant number of amendments required for that alignment, Regulation (EU) 2015/323 should be repealed and replaced by this Regulation.

(4) It is necessary to recall that the framework for the financial implementation of the 11th EDF is constituted by, in addition to this Regulation, the ACP-EU Partnership Agreement, in particular Annex IV thereto, by the Internal Agreement, by Council Decision 2013/755/EU[(8)] and by Council Regulation (EU) 2015/322[(9)].

(5) The financial implementation of the 11th EDF should be guided by the principles of unity and budgetary accuracy, unit of account, specification, sound financial management and transparency. Having regard to the multiannual set-up of the 11th EDF, the budgetary principle of annuality should not apply to the 11th EDF.

(6) It is necessary to determine the detailed rules for the payment of the contributions by the Member States to the 11th EDF and for the country allocation of financial assistance for the overseas countries and territories ('OCTs') to which Part IV of the Treaty on the Functioning of the European Union (TFEU) applies.

(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) 2018/1046, as those actors act within the framework of the Commission when it implements the 11th EDF under this Regulation.

(8) It is necessary to establish the detailed rules in accordance with which the authorising officer by delegation establishes the necessary arrangements to ensure the proper execution of operations, in close cooperation with the national, regional, intra-ACP or territorial authorising officer.

(9) The rules on methods of implementation, i.e. on the entrustment of budget-implementation tasks and on its conditions and limits, should be aligned with Regulation (EU, Euratom) 2018/1046. In addition, a provision on further entrustment of budget-implementation tasks mirroring that in Regulation (EU) No 236/2014 of the European Parliament and of the Council[(10)] should be included in order to ensure the coherent implementation of the funding of external action. This Regulation should nonetheless contain specific provisions on temporary acting in 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 the financial interests of the Union in the case of indirect management with ACP States and OCTs.

(10) The provisions on financing decisions should be aligned with those of Regulation (EU, Euratom) 2018/1046 where the Commission implements the 11th EDF under this Regulation.

(11) The rules on commitments should be aligned with those set out in Regulation (EU, Euratom) 2018/1046 with the exception of provisional commitments. In addition, an extension of deadlines should be provided for where it is necessary for actions carried out in indirect management by ACP States or OCTs.

(12) The time limits for payments should be aligned with those set out in Regulation (EU, Euratom) 2018/1046. 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.

(13) Various implementation provisions concerning the internal auditor, good administration and redress, the IT system, electronic transmission, e-government, and the administrative and financial penalties and the use of the central exclusion database should be aligned with those of Regulation (EU, Euratom) 2018/1046. In addition, the protection of the financial interests of the Union through the imposition of penalties should be strengthened where the 11th EDF is implemented in indirect management with ACP States and OCTs.

(14) The rules on procurement, grants, prizes and experts should be aligned with those set out in Regulation (EU, Euratom) 2018/1046. The rules on financial instruments and Union trust funds should be aligned with adjustments due to the nature of the 11th EDF. Budget support to OCTs should take the institutional links with the Member State concerned into account.

(15) The rules on the presentation of accounts and accounting and on external audit and discharge should mirror those set out in Regulation (EU, Euratom) 2018/1046.

(16) It is necessary to lay down the conditions in accordance with which the Court of Auditors should exercise its powers in respect of the 11th EDF.

(17) It is necessary to lay down the conditions in accordance with which the EIB should manage the 11th EDF resources.

(18) The provisions concerning scrutiny by the Court of Auditors of the 11th 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) TFEU.

(19) The transitional provisions should lay down the rules on treating balances and revenue from the 8th, 9th and 10th European Development Funds (‘previous EDFs’) as well as the application of this Regulation to residual operations under those EDFs.

(20) The interpretation of this Regulation should aim to ensure consistency with Regulation (EU, Euratom) 2018/1046 unless such an interpretation would be incompatible with the

Changes to legislation: *There are currently no known outstanding effects for the Council Regulation (EU) 2018/1877. (See end of Document for details)*

specificities of the 11th EDF as provided for in the ACP-EU Partnership Agreement, the Internal Agreement, Decision 2013/755/EU or Regulation (EU) 2015/322,

HAS ADOPTED THIS REGULATION:

PART ONE

MAIN PROVISIONS

TITLE I

Subject matter, scope and general provisions

Article 1

Subject matter

This Regulation lays down rules on the financial implementation of the resources of the 11th EDF and on the presentation and auditing of the accounts.

Article 2

Relation to Regulation (EU, Euratom) 2018/1046

1 For the purposes of this Regulation, references to the applicable provisions of Regulation (EU, Euratom) 2018/1046 shall not include procedural provisions which are not relevant to the 11th EDF.

2 Internal references in Regulation (EU, Euratom) 2018/1046 shall not render the provisions referred to indirectly applicable to the 11th EDF.

3 Specific references in this Regulation to the provisions of Regulation (EU, Euratom) 2018/1046 are understood to be dynamic references, which include the subsequent amendments to those provisions.

4 The Commission Decision on the Internal Rules on the implementation of the general budget of the European Union (European Commission section) for the attention of the Commission departments shall apply to the 11th EDF *mutatis mutandis*.

Article 3

General provisions

1 The definitions set out in Article 2 of Regulation (EU, Euratom) 2018/1046 shall apply.

2 For the purposes of this Regulation, the following terms in Regulation (EU, Euratom) 2018/1046 shall be construed as follows:

a ‘appropriations’ or ‘operational appropriations’ means ‘11th EDF resources’;

b ‘basic act’ means, according to the relevant context, the Internal Agreement, Decision 2013/755/EU or Regulation (EU) 2015/322;

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c ‘budget’ or ‘budgetary’ means ‘11th EDF’;

d ‘budgetary commitment’ means ‘financial commitment’;

e ‘budget line’ means ‘allocation’;

f ‘third country’ means any partner country or territory covered by the geographical scope of the 11th EDF.

3 Articles 4 and 5 of Regulation (EU, Euratom) 2018/1046 shall apply.

TITLE II

Financial principles

Article 4

Financial principles

The 11th 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 and performance;

(f) transparency.

The financial year shall run from 1 January to 31 December.

Article 5

Principles of unity and budgetary accuracy

No revenue shall be collected and no expenditure shall be effected unless booked to the 11th EDF.

Article 8(2), (3) and (4) of Regulation (EU, Euratom) 2018/1046 shall apply.

Article 6

Principle of unit of account

Article 19 of Regulation (EU, Euratom) 2018/1046 shall apply.