Council Regulation (EU) No 370/2011 of 11 April 2011 amending Regulation (EC) No 215/2008 on the Financial Regulation applicable to the 10th European Development Fund, as regards the European External Action Service

COUNCIL REGULATION (EU) No 370/2011

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 217 thereof,

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[(1)] as last amended in Ouagadougou, Burkina Faso, on 22 June 2010[(2)],

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[(3)] ('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[(4)],

Having consulted the European Investment Bank,

Whereas:

(1) Council Regulation (EC) No 215/2008[(5)], lays down the rules for the establishment and financial implementation of the resources of the 10th European Development Fund (hereinafter 'EDF').

(2) The Treaty of Lisbon establishes a European External Action Service (hereinafter 'EEAS'). In order to take into account the establishment of the EEAS, Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities[(6)] (hereinafter the 'Financial Regulation') has been amended by Regulation (EU, Euratom) No 1081/2010 of the European Parliament and of the Council[(7)]. In order to provide for a stable legal framework for the implementation of the EDF and to take into account the establishment of the EEAS and amendments to the Financial Regulation, it is necessary to amend Regulation (EC) No 215/2008.

Changes to legislation: *There are currently no known outstanding effects for the Council Regulation (EU) No 370/2011. (See end of Document for details)*

(3) According to Council Decision 2010/427/EU of 26 July 2010 establishing the organisation and functioning of the European External Action Service[8], the EEAS is a service of a *sui generis* nature and should be treated as an institution for the purposes of the Financial Regulation.

(4) The Treaty on the Functioning of the European Union provides that Commission Delegations will become part of the EEAS as Union Delegations. It is necessary to ensure the continuity of the functioning of Union Delegations and in particular the continuity and efficiency in the management of EDF resources by the Delegations. Therefore the Commission should be authorised to sub-delegate its powers of implementation of EDF resources to Heads of Union Delegations belonging to EEAS as a separate institution. The authorising officers by delegation should continue to be responsible for the definition of internal management and control systems, while the Heads of Union Delegations should be responsible for the adequate setting up and functioning of internal management and control systems and for the management of the funds and the operations carried out within their Delegations. They should report twice a year to that effect. It is appropriate to provide for withdrawal of such delegation in accordance with the rules applicable to the Commission.

(5) In order to comply with the principle of sound financial management, Heads of Union Delegations, when acting as authorising officers by sub-delegation, should apply the Commission rules and should be subject to the same duties, obligations and accountability as any other authorising officers by sub-delegation. For those purposes, they should also refer to the Commission as their institution.

(6) In the context of discharge, given that the EEAS should be treated as an institution for the purposes of the Financial Regulation, the EEAS should be fully subject to the procedures provided for in Articles 142, 143 and 144 of Regulation (EC) No 215/2008. The EEAS should fully cooperate with institutions involved in the discharge procedure and provide, as appropriate, any additional necessary information, including through attendance at meetings of the relevant bodies. The Commission should remain responsible, in accordance with Article 2 of Regulation (EC) No 215/2008, for the implementation of EDF resources, including for EDF resources implemented by Heads of Union Delegations who are authorising officers by sub-delegation. In order to allow the Commission to fulfil its responsibilities, the Heads of Union Delegations should provide the necessary information. The High Representative of the Union for Foreign Affairs and Security Policy (hereinafter the 'High Representative') should be informed at the same time and should facilitate the cooperation between Union Delegations and Commission departments. Given the novelty of this structure, high standard provisions on transparency and financial accountability need to be applied.

(7) The accounting officer of the Commission should remain responsible for the entire implementation of EDF resources, including accounting operations relating to EDF resources sub-delegated to Heads of Union Delegations.

(8) In order to ensure coherence and equality of treatment between authorising officers by sub-delegation who are EEAS staff and those who are Commission staff, and to ensure that the Commission is properly informed, the special financial irregularities

panel of the Commission should also be responsible for handling irregularities within the EEAS where the Commission has sub-delegated implementation powers to Heads of Union Delegations. Nevertheless, in order to maintain the link between financial management responsibility and disciplinary action, the Commission should be entitled to request the High Representative to initiate proceedings if the panel finds irregularities concerning those competencies of the Commission sub-delegated to the Heads of Union Delegations. In such a case the High Representative should take the appropriate action in accordance with the Staff Regulations.

(9) In order to ensure effective and efficient internal control Heads of Union Delegations should be subject to the verifying powers of the internal auditor of the Commission for the financial management sub-delegated to them.

(10) In order to ensure democratic scrutiny of the implementation of the EDF resources, Heads of Union Delegations should provide an assurance, together with a report including information on the efficiency and effectiveness of internal management and control systems in their delegation, as well as on the management of operations sub-delegated to them. The Heads of Union Delegations' reports should be annexed to the annual activity report of the responsible authorising officer by delegation and made available to the European Parliament and the Council.

(11) Regulation (EC) No 215/2008 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 215/2008 is amended as follows:

(1) in Article 14(3), the first subparagraph is replaced by the following:

3. The Commission shall make available, in an appropriate manner, information on the beneficiaries of funds deriving from the EDF held by it when EDF resources are implemented on a centralised basis and directly by its departments or by Union Delegations in accordance with the second paragraph of Article 17, and information on the beneficiaries of funds as provided by the entities to which financial implementation tasks are delegated under other modes of management.;

(2) in Article 17, the following paragraphs are added:

> However, the Commission may delegate its powers to implement EDF resources to the Heads of Union Delegations. It shall, at the same time, inform the High Representative of the Union for Foreign Affairs and Security Policy (High Representative) thereof. When Heads of Union Delegations act as authorising officers by sub-delegation, they shall apply the Commission rules for the implementation of EDF resources and shall be submitted to the same duties, obligations and accountability as any other authorising officer by sub-delegation.
>
> The Commission may withdraw that delegation in accordance with its own rules.
>
> For the purposes of the second paragraph, the High Representative shall take the measures necessary to facilitate the cooperation between Union Delegations and Commission departments.

Changes to legislation: *There are currently no known outstanding effects for the Council Regulation (EU) No 370/2011. (See end of Document for details)*

Detailed arrangements may be agreed between the Commission and the European External Action Service (EEAS) in order to facilitate the implementation by Union Delegations of the resources foreseen for support expenditure linked to the EDF under Article 6 of the Internal Agreement. Those arrangements shall not contain any derogation from the provisions of this Regulation.;

(3) in Article 25(1), the first subparagraph is replaced by the following:

1. Where the Commission implements EDF resources on a centralised basis, implementation tasks shall be performed either directly, by its departments or by Union Delegations in accordance with the second paragraph of Article 17, or indirectly, in accordance with paragraphs 2, 3 and 4 of this Article and with Articles 26 to 29.;

(4) in Article 32, the following paragraph is added:

5. Where Heads of Union Delegations act as authorising officers by sub-delegation in accordance with the second paragraph of Article 17, they shall be subject to the Commission as the institution responsible for the definition, exercise, control and appraisal of their duties and responsibilities as authorising officers by sub-delegation. The Commission shall, at the same time, inform the High Representative thereof.;

(5) in Article 38, second paragraph, the following sentence is added:

'The annual activity reports of the authorising officers by delegation shall also be made available to the European Parliament and the Council.';

(6) the following Article is inserted:

Article 38a

1 Where Heads of Union Delegations act as authorising officers by sub-delegation in accordance with the second paragraph of Article 17, they shall cooperate closely with the Commission for the proper implementation of the funds, in order to ensure, in particular, the legality and regularity of financial transactions, the respect of the principle of sound financial management in the management of the funds and the effective protection of the financial interests of the Union.

To this effect, they shall take the measures necessary to prevent any situation susceptible to put at stake the responsibility of the Commission for the implementation of EDF resources sub-delegated to them as well as any conflict of priorities which is likely to have an impact on the implementation of the financial management tasks sub-delegated to them.

Where a situation or conflict of the type referred to in the second subparagraph arises, the Heads of Union Delegations shall inform the responsible Directors-General of the Commission and of the EEAS thereof without delay. Those Directors-General shall take appropriate steps to remedy the situation.

2 If Heads of Union Delegations find themselves in a situation referred to in Article 37(4), they shall refer the matter to the specialised financial irregularities panel set up pursuant to Article 54(3). In the event of any illegal activity, fraud or corruption which may harm the interests of the Union, they shall inform the authorities and bodies designated by the applicable legislation.

3 Heads of Union Delegations acting as authorising officers by sub-delegation in accordance with the second paragraph of Article 17 shall report to their authorising