Council Regulation (EC) No 215/2008 of 18 February 2008 on the Financial Regulation applicable to the 10th European Development Fund

COUNCIL REGULATION (EC) No 215/2008

of 18 February 2008

on the Financial Regulation applicable to the 10th European Development Fund

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[(1)] and revised in Luxembourg on 25 June 2005[(2)] (the ACP-EC Agreement),

Having regard to Council Decision 2001/822/EC of 27 November 2001 on the association of the overseas countries and territories with the European Community (the Overseas Association Decision)[(3)], and in particular the fourth paragraph of Article 23 thereof,

Having regard to Decision No 1/2006 of the ACP-EC Council of Ministers of 2 June 2006 specifying the multiannual financial framework for the period 2008 to 2013 and modifying the revised ACP-EC Agreement[(4)],

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 Agreement and on the allocation of financial assistance for the Overseas Countries and Territories to which Part Four of the EC Treaty applies[(5)] (the Internal Agreement) and in particular Article 10(2) thereof,

Having regard to 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[(6)],

Having regard to the proposal from the Commission,

Having regard to the opinion of the Court of Auditors[(7)],

Having regard to the opinion of the European Investment Bank,

Whereas:

(1) It is necessary to determine the detailed rules for the payment of contributions by the Member States to the 10th European Development Fund (the EDF), set up by the Internal Agreement, and for the allocation of financial assistance for the Overseas Countries and Territories to which Part Four of the EC Treaty applies (OCTs).

(2) Rules should be laid down for the treatment of the balances remaining from the previous EDFs, in particular as regards the detailed arrangements for their transfer to the 10th

Changes to legislation: *There are currently no known outstanding effects for the Council Regulation (EC) No 215/2008. (See end of Document for details)*

EDF and the rules applicable for their implementation, or the consequences of their decommitment in relation with Member States contributions.

(3) It is necessary to lay down the conditions in accordance with which the Court of Auditors must exercise its powers in respect of the EDF.

(4) It is necessary to lay down the conditions in accordance with which the European Investment Bank (EIB) manages EDF resources.

(5) The provisions concerning scrutiny by the Court of Auditors of the 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 248(4) of the Treaty.

(6) It is appropriate to ensure the proper, prompt and efficient execution of programmes and projects financed under the ACP-EC Agreement and to establish management procedures which are transparent and easy to apply, and which facilitate the decentralisation of tasks and responsibilities.

(7) The parties to the ACP-EC Agreement have reaffirmed their commitment to the social and ethic clauses as defined by the relevant International Labour Organisation (ILO) Conventions,

(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 Authorising Officer.

(9) As far as possible, Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities[(8)] should, as the cornerstone of the reform of the Commission's internal management, be taken into account in this Regulation, for reasons of efficiency and simplification. If appropriate Commission Regulation (EC, Euratom) No 2342/2002 of 23 December 2002 laying down detailed rules for the implementation of Council Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities[(9)] should be applied *mutatis mutandis* in certain cases.

(10) All changes in comparison with the Financial Regulation of 27 March 2003 applicable to the Ninth European Development Fund[(10)] should contribute to achieving the objectives of the Commission's reforms, should improve or ensure sound financial management, and should enhance the protection of the financial interests of the Community against fraud and other illegal activities, and thus enhance legality and regularity of financial operations.

(11) Some changes in comparison with the Financial Regulation for the Ninth EDF are necessary in the light of practical experience in order to facilitate EDF implementation and the realisation of the underlying policy objectives and to adjust some procedural and documentary requirements. Transparency, in particular, has to be reinforced by providing for information on beneficiaries of Community funds.

(12) The principle of sound financial management should imply effective and efficient internal control for the implementation of EDF resources.

(13) As regards EDF resources, it should be made possible for Member States to make voluntary financial contributions to help achieve the objectives of the ACP-EC Partnership Agreement outside co-financing arrangements, as provided for in Regulation (EC) No 617/2007.

(14) The principle of specification should apply to the EDF.

(15) As regards the methods of implementation of the EDF resources, the provisions on centralised, decentralised and joint management as laid down in the Financial Regulation for the Ninth EDF should be restructured for the purpose of clarity and some requirements should be made clearer. In particular, the requirements for joint management, the conditions for the delegation of tasks and the criteria for using national public-sector bodies should be simplified in order to facilitate their use and to respond to growing operational needs.

(16) The prohibition on delegating implementation tasks to private bodies should be adjusted in respect to centralised management because the terms of that prohibition have turned out to be unnecessarily strict. It should be possible for the Commission to engage the services of a travel agency or a conference organiser to take charge of reimbursing the costs of participants at conferences, provided that care is taken to ensure that no discretionary powers are exercised by the private company.

(17) As regards the accounting officer, his responsibility for certifying the accounts on the basis of the financial information supplied to him by the authorising officers has to be made clearer. To this end, the accounting officer should be empowered to check the information received by the authorising officer by delegation and to enter reservations, if necessary.

(18) The conditions and limitations regarding financial liability of all financial actors and any other person involved in EDF implementation should be clarified.

(19) The rules on recovery of amounts receivable should be clarified and strengthened in order to better safeguard the financial interests of the Communities. In particular, the conditions in which interest on late payments is due to the EDF should be specified.

(20) Provision should be made for periods of limitation on the validity of claims. The Community, unlike many of its Member States, is not subject to a period of limitation under which financial claims are extinguished after a certain period of time. Nor is the Community restricted by a period of limitation in the pursuit of its claims against third persons. The introduction of such periods of limitation should correspond to the principle of sound financial management.

(21) In line with the general Financial Regulation and Directive 2004/18/EC of the European Parliament and the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts[(11)], the rules on exclusion from a procurement procedure need to be clarified. A clear distinction should be made between mandatory exclusion and exclusion on the basis of

Changes to legislation: *There are currently no known outstanding effects for the Council Regulation (EC) No 215/2008. (See end of Document for details)*

an administrative penalty. In addition, for reasons of legal certainty and proportionality, a maximum period of exclusion should be laid down. An exception to the rules on exclusion may be provided for as regards the purchase of supplies on particularly advantageous terms from either a supplier which is definitively winding up its business activities, or the receivers or liquidators of a bankruptcy, an arrangement with creditors, or a similar procedure under national law.

(22) It is appropriate to allow the use of the central database concerning candidates or tenderers in situations of exclusion set up under Regulation (EC, Euratom) No 1605/2002 in the context of the EDF.

(23) As regards grants, some clarifications need to be made in Article 103, in particular as regards their scope. To improve the management of grants and to simplify procedures, it should be possible to award grants either by decisions of the institution or by written agreements with beneficiaries, and to authorise the use of lump sum and flat-rate payments alongside the more traditional method of reimbursing costs actually incurred. Finally, requirements for checks and guarantees should be more proportionate to the financial risks involved.

(24) The rule that grants should be awarded on the basis of calls for proposals has proved its worth. Experience has shown, however, that in certain situations the nature of the action leaves no choice in the selection of beneficiaries. It should therefore be expressly recognised that such exceptional cases arise.

(25) Where grants are given for running costs, the rule that the necessary agreement may not be signed more than four months after the start of the beneficiary's financial year has proven unnecessarily rigid. That deadline should therefore be fixed at six months.

(26) As grants should continue to be awarded on the basis of selection and award criteria, there is no need to have those criteria evaluated in all cases by a committee. Other more flexible means should be allowed for the evaluation of the selection criteria.

(27) For the sake of clarity, the rule concerning the procurement requirements to be applied by beneficiaries of grants should be simplified. Moreover, it should be expressly provided for the case in which the implementation of an action necessitates financial support to third parties,

HAS ADOPTED THIS REGULATION:

***Changes to legislation:** There are currently no known outstanding effects for the Council Regulation (EC) No 215/2008. (See end of Document for details)*

[F1PART ONE

MAIN PROVISIONS

TITLE I

Subject Matter, Scope And General Provisions

Article 1

Scope

This Regulation lays down the rules for the financial implementation of the resources of the European Development Fund (EDF) and the presentation and auditing of its accounts.

Article 2

Relation to Regulation (EU, Euratom) No 966/2012

1 Unless specifically provided otherwise, direct references in this Regulation to the provisions of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council[(12)] shall be deemed to include also references to the corresponding provisions of Commission Delegated Regulation (EU) No 1268/2012[(13)].

2 References in this Regulation to the applicable provisions of Regulation (EU, Euratom) No 966/2012 shall not be deemed to include procedural provisions which are not relevant to the EDF, in particular those concerning the empowerment to adopt delegated acts.

3 Internal references in Regulation (EU, Euratom) No 966/2012 or in Delegated Regulation (EU) No 1268/2012 shall not render the provisions referred to indirectly applicable to the EDF.

4 Terms used in this Regulation shall have the same meaning as those in Regulation (EU, Euratom) No 966/2012, with the exception of the definitions referred to in points (a) to (e) of Article 2 of that Regulation.

However, for the purposes of this Regulation, the following terms in Regulation (EU, Euratom) No 966/2012 shall be defined as follows:

a ‘budget’ or ‘budgetary’ means ‘EDF’;

b ‘budgetary commitment’ means ‘financial commitment’;

c ‘institution’ means ‘the Commission’;

d ‘appropriations’ or ‘operational appropriations’ means ‘EDF resources’;

e ‘budget line’ or ‘line in the budget’ means ‘allocation’;

f ‘basic act’ means, according to the relevant context, the 10th EDF Internal Agreement, Council Decision 2013/755/EU[(14)] (‘the Overseas Association Decision’), or Council Regulation (EC) No 617/2007[(15)] (‘the Implementation Regulation’);

g ‘third country’ means any beneficiary country or territory covered by the geographical scope of the EDF.