Council Regulation (EC) No 309/2007 of 19 March 2007 amending the Financial Regulation of 27 March 2003 applicable to the 9th European Development Fund

COUNCIL REGULATION (EC) No 309/2007

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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)] (ACP-EC Agreement),

Having regard to Decision No 5/2005 of the ACP-EC Council of Ministers of 25 June 2005 on transitional measures applicable from the date of signing to the date of entry into force of the revised ACP-EC Partnership Agreement[(2)],

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 (Overseas Association Decision)[(3)],

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 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[(4)] (Internal Agreement), and in particular Article 31 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the Court of Auditors[(5)],

Having consulted the European Investment Bank,

Whereas:

(1) On 27 March 2003, the Council adopted the Financial Regulation applicable to the 9th European Development Fund[(6)], which lays down the legal framework for the financial management of the 9th European Development Fund (EDF).

(2) That Regulation takes into account as a cornerstone Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities[(7)], (General Financial Regulation).

Changes to legislation: *There are currently no known outstanding effects for the Council Regulation (EC) No 309/2007. (See end of Document for details)*

(3) Decision No 2/2002 of the ACP-EC Council of Ministers of 7 October 2002 regarding the implementation of Articles 28, 29 and 30 of Annex IV to the Cotonou Agreement[8] specifies the general regulations and general conditions applicable to works, supply and service contracts financed by the EDF, as well as the rules governing procedure, conciliation and arbitration in relation to such contracts.

(4) This Regulation should anticipate the envisaged amendments to Annex IV of the amended ACP-EC Agreement which will refer in a more generic way to the Community regulations for the tendering procedures and which should be reflected by references to Annex IV in Articles 74, 76, 77 and 78 of the Financial Regulation applicable to the 9th EDF.

(5) It is appropriate to take into account those amendments and the modifications proposed by Regulation (EC, Euratom) No 1995/2006 amending Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities in order to facilitate the implementation of the 9th EDF.

(6) The Financial Regulation applicable to the 9th European Development Fund should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

The Financial Regulation of 27 March 2003 applicable to the 9th European Development Fund is hereby amended as follows:

1. Article 13(1) shall be replaced by the following:

1. In the context of decentralised management, the Commission shall undertake the financial implementation of EDF resources in accordance with the detailed rules laid down in paragraphs 2, 3, and 4 without prejudice to delegation of residual tasks to bodies referred to in Article 14(3).;

2. The following subparagraph shall be added to Article 14(1):

Indirect implementation, in accordance with paragraphs 2 to 7 of this Article and with Article 15 also applies in the case of delegation of residual tasks to bodies referred to in paragraph 3 of this Article in the case of decentralised management.;

3. The following second subparagraph shall be inserted in Article 14(3):

The Commission shall inform annually the Council of the cases and bodies concerned by providing commensurate motivation of the use of national agencies.;

4. In Article 54(3), the first subparagraph shall be replaced by the following:

The Commission shall be under an obligation to effect payment from EDF resources whenever the responsible authorising officer:

(a) endorses contracts and programme estimates, as provided for in Article 80(4);

(b) endorses grant agreements.;

5. In Article 74(1), the first subparagraph shall be replaced by the following:

The procedures for the award of contracts relating to operations financed by the EDF to assist ACP States shall be those defined in Annex IV to the ACP-EC Agreement.;

6. Articles 76, 77 and 78 shall be replaced by the following:

Article 76

Within the limits of the powers conferred on it by the ACP-EC Agreement and in accordance with the conditions laid down in Annex IV thereto, the Commission shall ensure the broadest possible participation, on equal terms, in tendering procedures for contracts financed by the EDF and shall ensure compliance with the principles of transparency, proportionality, equal treatment and non-discrimination.;

Article 77

Within the limits of the powers conferred on it by the ACP-EC Agreement the Commission shall take steps to establish, by analogy with the relevant rules of the general financial regulation, a central database containing details of candidates and tenderers who are, according to the rules defined in Annex IV to the ACP-EC Agreement, in a situation that excludes them from participation in procedures for the award of contracts relating to operations financed by the EDF.;

Article 78

Within the limits of the powers conferred on it by the ACP-EC Agreement and in accordance with the conditions laid down in Annex IV thereto, the Commission shall take the necessary steps to have international tendering procedures published in the *Official Journal of the European Union* and on the Internet.;

7. In Title V, the heading shall be replaced by the following:
DIRECT LABOUR AND INDIRECT DECENTRALISED OPERATIONS;

8. Article 80 shall be replaced by the following:

Article 80

1 This Title shall govern the direct labour and indirect decentralised operations provided for in Article 24 of Annex IV to the ACP-EC Agreement. It shall apply *mutatis mutandis* to financial cooperation with the OCTs.

2 In the case of direct labour operations, projects and programmes shall be implemented directly through public departments of the ACP State or States concerned.

The Community shall contribute to the costs of the departments involved by providing the equipment and/or materials that they lack and/or the resources to acquire any additional staff required, such as experts from within the ACP States concerned or other ACP States. The Community's participation shall cover only costs incurred by supplementary measures and temporary expenditure relating to execution that are strictly confined to the requirements of the project in question.

The financial management of a project implemented by direct labour in accordance with the first and second subparagraphs shall be carried out by imprest accounts administered by an imprest administrator and an accounting officer, appointed by the National Authorising Officer with the prior approval of the Commission's responsible authorising officer.

3 In the case of indirect decentralised operations, the contracting authority within the meaning of Article 73(1)(a) shall entrust tasks relating to the