

ACP-CE COUNCIL OF MINISTERS

DECISION No 3/2008 OF THE ACP-EC COUNCIL OF MINISTERS

of 15 December 2008

to adopt amendments to Annex IV to the Partnership Agreement

(2008/991/EC)

THE ACP-EC COUNCIL OF MINISTERS,

Having regard to the Partnership Agreement between the members of the African, Caribbean and Pacific Group of States ('the ACP States'), of the one part, and the European Community and its Member States, of the other part, signed in Cotonou (Benin) on 23 June 2000 and revised in Luxembourg on 25 June 2005 ('the ACP-EC Partnership Agreement')⁽¹⁾, and in particular Articles 15.3, 81 and 100 thereof,

Having regard to the recommendation of the ACP-EC Development Finance Cooperation Committee,

Whereas:

- (1) In order to improve efficiency and to promote harmonisation, a series of provisions were incorporated into Annex IV to the ACP-EC Partnership Agreement regarding management procedures and implementation. However, the provisions of Annex IV concerning the awarding and performance of contracts remained under discussion.
- (2) The signature of the revised ACP-EC Partnership Agreement on 25 June 2005 was accompanied by Declaration No VIII, under the title 'Joint Declaration on Article 19a of Annex IV', which states 'In accordance with Article 100 of the Cotonou Agreement, the Council of Ministers will examine the provisions of Annex IV concerning the awarding and performance of contracts with a view to adopting them before the Agreement amending the Cotonou Agreement enters into force'.
- (3) The text for the new Article 19c replacing Articles 21, 23, 25, 27, 28 and 29 of Annex IV fulfils the objectives of simplification, clarification and harmonisation of procurement and management procedures governing contracts which are funded by the European Community.

- (4) It is therefore appropriate to amend Annex IV to the ACP-EC Partnership Agreement accordingly,

HAS DECIDED AS FOLLOWS:

Article 1

Annex IV to the ACP-EC Partnership Agreement is hereby amended as follows:

1. Articles 21, 23, 25, 27, 28 and 29 shall be deleted;
2. the following Article shall be inserted:

'Article 19c

Awarding contracts, awarding grants and performing contracts

1. Except as provided for in Article 26, contracts and grants shall be attributed and implemented according to Community rules and, except in the specific cases provided for by these rules, according to the standard procedures and documentation set and published by the Commission for the purposes of implementing cooperation actions with third countries and in force at the time the procedure in question is launched.
2. In decentralised management, where a joint assessment shows that the procedures for awarding contracts and grants in the ACP State or the recipient region or the procedures approved by the fund providers are in accordance with the principles of transparency, proportionality, equal treatment and non-discrimination and preclude any kind of conflict of interest, the Commission shall use these procedures, in accordance with the Paris Declaration and without prejudice to Article 26, in full respect of the rules governing the exercise of its powers in this field.

⁽¹⁾ OJ L 287, 28.10.2005, p. 4.

3. The ACP State or recipient region shall undertake to check regularly that the operations financed by the Fund have been properly implemented, to take appropriate measures to prevent irregularities and fraud, and, if necessary, to take legal action to recover unduly paid funds.

4. In decentralised management, contracts are negotiated, established, signed and performed by the ACP States. These States may, however, call upon the Commission to negotiate, establish, sign and perform contracts on their behalf.

5. Pursuant to the commitment referred to in Article 50 of this Agreement, contracts and grants financed from Fund resources shall be performed in accordance with internationally recognised basic standards in the field of labour law.

6. An expert group of representatives of the Secretariat of the ACP Group of States and the Commission shall be set up to identify, at the request of one or other of the parties, any appropriate alterations and to suggest amendments and improvements to the rules and procedures referred to in paragraphs 1 and 2.

This group shall also submit a periodic report to the ACP-EC Development Finance Cooperation Committee to assist it in its task of examining the problems surrounding the implementation of development cooperation activities and proposing appropriate measures.'

Article 2

The procedure for adoption of the present Decision within the ACP-EC Council of Ministers shall be a written procedure.

Done at Brussels, 15 December 2008.

*The Chairman
of the ACP-EC Committee of Ambassadors by
delegation, for the ACP-EC Council of Ministers*
P. SELLAL