

COUNCIL DECISION (EU) 2020/2233**of 23 December 2020****concerning the commitment of the funds stemming from reflows under the ACP Investment Facility from operations under the 9th, 10th and 11th European Development Funds**

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 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 ⁽¹⁾ ('the 11th EDF Internal Agreement'), and in particular Article 1(5) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) Funds stemming from reflows under the African, Caribbean and Pacific (ACP) Investment Facility from operations under the 9th, 10th and 11th European Development Funds (EDFs) ('funds stemming from reflows') cannot be committed beyond 31 December 2020 unless the Council, acting unanimously on a proposal of the Commission, decides otherwise.
- (2) There is strong evidence that, while the ACP Investment Facility contributed to the objectives of poverty reduction, integration into the world economy and sustainable development of the ACP countries, as set out in 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 ⁽²⁾ ('the ACP-EU Partnership Agreement'), it did not maximise its contribution in that regard. The continued use of the ACP Investment Facility reflows under a new framework and governance could lead to better development results.
- (3) On 14 June 2018 the Commission adopted a proposal for a regulation of the European Parliament and of the Council establishing the Neighbourhood, Development and International Cooperation Instrument ('the NDICI proposal'), which provides for the establishment of the European Fund for Sustainable Development Plus ('EFSD+') and an External Action Guarantee, to which Member States could make contributions that they could earmark for the initiation of actions in specific regions, countries, sectors or existing investment windows.
- (4) On 4 December 2020 the ACP-EU Committee of Ambassadors adopted Decision No 2/2020 ⁽³⁾, amending Decision No 3/2019 ⁽⁴⁾ to adopt transitional measures pursuant to Article 95(4) of the ACP-EU Partnership Agreement to further extend the application of the provisions of the ACP-EU Partnership Agreement until 30 November 2021, or until the entry into force of a new ACP-EU Agreement ('the new Agreement'), or the provisional application between the Union and the ACP States of the new Agreement, whichever comes first. The period laid down in Article 1(5) of the 11th EDF Internal Agreement, during which the funds stemming from reflows under the ACP Investment Facility from operations under the 9th, 10th, and 11th European Development Funds may be committed, should be extended until 30 June 2021 in order to allow for new commitments of reflows under the ACP Investment Facility and continuous support to ACP countries until an instrument for funding neighbourhood, development and international cooperation to be adopted on the basis of the NDICI proposal ('the external financing instrument') becomes fully operational.

⁽¹⁾ OJ L 210, 6.8.2013, p. 1.

⁽²⁾ OJ L 317, 15.12.2000, p. 3.

⁽³⁾ Decision No 2/2020 of the ACP-EU Committee of Ambassadors of 4 December 2020 to amend Decision No 3/2019 of the ACP-EU Committee of Ambassadors to adopt transitional measures pursuant to Article 95(4) of the ACP-EU Partnership Agreement (OJ L 420, 14.12.2020, p. 32).

⁽⁴⁾ Decision No 3/2019 of the ACP-EU Committee of Ambassadors of 17 December 2019 to adopt transitional measures pursuant to Article 95(4) of the ACP-EU Partnership Agreement (OJ L 1, 3.1.2020, p. 3).

- (5) The European Fund for Sustainable Development established by Regulation (EU) 2017/1601 of the European Parliament and of the Council ⁽⁵⁾ (EFSD) is considered to be highly relevant to the investment needs of the regions covered (Sub-Saharan Africa and the European Neighbourhood), as well as to the Union's priorities and commitments.
- (6) In their joint communication of 9 March 2020 entitled 'Towards a comprehensive Strategy with Africa' ('the joint communication'), the Commission and the High Representative of the Union for Foreign Affairs and Security Policy ('the High Representative') called for the Union to support sustainable growth and jobs throughout the African continent. The Union wants, inter alia, to partner with Africa on the promotion of investments by scaling up the use of innovative financing mechanisms.
- (7) In the joint communication, the Commission and the High Representative underlined that financial instruments are to encourage investments with a high development impact, largely in support of the private sector, in accordance with the criteria established by the Commission communication of 13 May 2014 entitled 'A Stronger Role of the Private Sector in Achieving Inclusive and Sustainable Growth in Developing Countries', namely measurable development impact, additionality, neutrality, shared interest and co-financing, demonstration effect and adherence to social, environmental and fiscal standards.
- (8) It is necessary to allow for the reflows referred to in this Decision to constitute contributions to the external financing instrument ('earmarked external assigned revenue' as referred to in point (a)(ii) of Article 21(2) of Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council ⁽⁶⁾) in order to finance support to ACP countries under a single-package approach, and in accordance with the objectives, principles and governance of the external financing instrument, through financial instruments, blending operations, budgetary guarantees or any other non-repayable form of support, in accordance with Regulation (EU, Euratom) 2018/1046. This will allow for an uninterrupted transition from the ACP Investment Facility and continuity in terms product range.
- (9) The funds stemming from reflows should not be received as external assigned revenue by the external financing instrument beyond 31 December 2027. Without prejudice to the decisions to be taken with respect to the subsequent multiannual financial frameworks, after that date those funds will be received by subsequent financing mechanisms until they are exhausted.
- (10) The ACP Investment Facility reflows, in view of the estimated overall amount expected for the period 2021–2027, should be transferred annually as a top-up to the relevant budget lines of the external financing instrument, in line with the programming documents.
- (11) The Commission should channel the funds stemming from reflows through the European Investment Bank (EIB), including through the EFSD+, with the aim of maximising their development impact and additionality, and also taking into account debt sustainability issues. All operations should be subject to the EFSD+ governance and to the 'policy first' principle.
- (12) In line with the NDICI proposal, the funds stemming from reflows should be primarily directed towards development instruments with high financial risks, in particular impact finance, equity funds and activity in least developed countries (LDCs). The operations should seek to maximise the development impact.

⁽⁵⁾ Regulation (EU) 2017/1601 of the European Parliament and of the Council of 26 September 2017 establishing the European Fund for Sustainable Development (EFSD), the EFSD Guarantee and the EFSD Guarantee Fund (OJ L 249, 27.9.2017, p. 1).

⁽⁶⁾ Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012 (OJ L 193, 30.7.2018, p. 1).

- (13) Pursuant to Article 152(4) of the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community ⁽⁷⁾, the United Kingdom's share of the ACP Investment Facility from the EDF, accumulated through successive EDF periods, is to be reimbursed to the United Kingdom as the investment matures. Unless agreed otherwise, the United Kingdom's capital share should not be recommitted beyond the end of the 11th EDF commitment period or rolled over into subsequent periods,

HAS ADOPTED THIS DECISION:

Article 1

For operations under the ACP Investment Facility, the period laid down in Article 1(5) of the 11th EDF Internal Agreement, during which the funds stemming from reflows under the ACP Investment Facility from operations under the 9th, 10th, and 11th European Development Funds may be committed, is extended until 30 June 2021, or until the entry into force of a regulation establishing the external financing instrument, whichever is the later, and in any case no later than 30 November 2021, to allow for new commitments of reflows under the ACP Investment Facility.

Article 2

1. The funds stemming from reflows under the ACP Investment Facility from operations under the 9th, 10th, and 11th European Development Funds after 30 June 2021 shall constitute contributions to the external financing instrument in the form of external assigned revenues for the purpose of providing funding through the EIB by means of budgetary guarantees and blending operations under the EFSD+, an External Action Guarantee and financial instruments or any other non-repayable form of support in accordance with the principles, objectives and governance of the EFSD+.

2. Without prejudice to the decisions to be taken with respect to the subsequent multiannual financial frameworks, after 31 December 2027, and until the depletion of the reflows, the funds stemming from reflows shall constitute contributions to subsequent Union external financing instruments which replace the external financing instrument.

3. For the purposes of this Decision, 'reflows' means any income, including dividends, capital gains, guarantee fees and interest on loans, on amounts on any account opened for the purpose of recording cash held for the account of the ACP Investment Facility. It also means remuneration from treasury investments, and repayments, including capital repayments, guarantees released and repayment of the principal of loans resulting from operations under the ACP Investment Facility. Funds stemming from the decommitment of reflows shall also be considered to be reflows.

4. Reflows shall be subject to the applicable rules and procedures of the external financing instrument.

Article 3

The contributions shall be earmarked for ACP countries.

Article 4

This Decision shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

(7) OJ L 29, 31.1.2020, p. 7.

It shall apply from 1 January 2021, except for Article 2, which shall apply from 1 July 2021 or from the entry into force of a regulation establishing the external financing instrument, whichever is the later.

Done at Brussels, 23 December 2020.

For the Council
The President
M. ROTH
