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(Acts whose publication is obligatory)

COUNCIL REGULATION (EC) No 1290/2005
of 21 June 2005
on the financing of the common agricultural policy

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular the third subparagraph of Article 37(2) thereof,

Having regard to the proposal from the Commission,

Having regard to the Opinion of the European Parliament ⁽¹⁾,

Whereas:

(1) The common agricultural policy consists of a series of measures, some of which relate to rural development. It is important that financing be provided for those measures in order to contribute to the attainment of the objectives of the common agricultural policy. Since the measures have certain elements in common but also differ in a number of respects, their financing should be combined under one regulatory framework which allows for different treatment where necessary. In order to take account of those differences, two European agricultural funds should be created, namely the European Agricultural Guarantee Fund (hereinafter 'EAGF'), for the financing of market measures, and the European Agricultural Fund for Rural Development (hereinafter 'EAFRD'), for the financing of rural development programmes.

(2) The Community budget should finance common agricultural policy expenditure, including that on rural development, through the abovementioned Funds. In line with Article 53 of Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities ⁽²⁾, this is done either centrally or in the context of shared management with the Member States. All the types of measure that can be financed using the said Funds should be specified.

(3) During the clearance of accounts, if the Commission does not have satisfactory assurance that the national controls are adequate and transparent and that the paying agencies verify the legality and correctness of the declarations of expenditure which they execute, it cannot determine within a reasonable period of time the total expenditure to be entered against the European Agricultural Funds. Provision should therefore be made for the accreditation of paying agencies by Member States, the establishment by them of procedures for obtaining the requisite declarations of assurance, and the certification of management and control systems, as well as the certification of annual accounts by independent bodies.

⁽¹⁾ Opinion delivered on 26 May 2005 (not yet published in the Official Journal).

⁽²⁾ OJ L 248, 16.9.2002, p. 1.

- (4) In order to ensure consistency in the standards required for accreditation in the Member States, the Commission should provide guidance on the criteria to be applied. Moreover, in order to ensure the transparency of national controls, in particular as regards authorisation, validation and payment procedures, the number of authorities and bodies to which these responsibilities are delegated should, where appropriate, be restricted taking account of the constitutional arrangements of each Member State.
- (5) Where a Member State accredits more than one paying agency, it is important that it designate a single coordinating body to ensure consistency in the management of the funds, to provide liaison between the Commission and the various accredited paying agencies and to ensure that the information requested by the Commission concerning the operations of several paying agencies is made rapidly available.
- (6) To ensure harmonious cooperation between the Commission and the Member States regarding the financing of common agricultural policy expenditure and, more particularly, to allow the Commission to monitor closely financial management by the Member States and clear the accounts of the accredited paying agencies, certain information has to be communicated by the Member States to the Commission or has to be kept available to the Commission. Information technology must be used as fully as possible to that end.
- (7) For the purposes of compiling the data to be sent to the Commission, and so that the Commission has full immediate access to expenditure data in both paper and electronic form, suitable rules on the presentation and transmission of data, and also on time limits to be observed, need to be laid down.
- (8) The financing of measures and operations under the common agricultural policy will in part involve shared management. To ensure that Community funds are soundly managed, the Commission should perform checks on the management of the Funds by the Member State authorities responsible for making payments. It is appropriate to define the nature of the checks to be made by the Commission, to specify the terms of its responsibilities for implementing the budget and to clarify the Member States' cooperation obligations.
- (9) Only paying agencies accredited by the Member States offer reasonable assurance that the necessary controls have been carried out before granting Community aid to beneficiaries. It should therefore be stipulated that only expenditure effected by accredited paying agencies should be liable for reimbursement by the Community budget.
- (10) The financial resources required to cover the expenditure effected by the accredited paying agencies, in respect of the EAGF, are to be made available to the Member States by the Commission in the form of reimbursements against the booking of the expenditure effected by these agencies. Until these reimbursements, in the form of monthly payments, have been paid, financial resources must be mobilised by the Member States in accordance with the needs of their accredited paying agencies. The personnel costs and the administrative costs of the Member States and the beneficiaries involved in the execution of the common agricultural policy should be borne by themselves.
- (11) Community aid should be paid to beneficiaries in good time so that they may use it efficiently. A failure by the Member States to comply with the payment deadlines laid down in Community legislation could create serious difficulties for the beneficiaries and could jeopardise the Community's yearly budgeting. Therefore, expenditure made without respecting deadlines for payments should be excluded from Community financing. In order to respect the principle of proportionality, the Commission should be able to provide for exceptions to this general rule.
- (12) Provision should be made for an administrative procedure allowing the Commission to take a decision to reduce or temporarily suspend monthly payments where the information communicated by the Member States does not enable it to confirm that the Community rules applicable have been observed and indicates a clear misuse of Community funds. In clearly defined cases, a reduction or a suspension should also be possible without such a procedure. In both cases, the Commission should inform the Member State, indicating that any decision to reduce or suspend the monthly payments will be without prejudice to the decisions taken in the context of the clearance of accounts.
- (13) In the context of respecting budget discipline, it is necessary to define the annual ceiling for the expenditure financed by the EAGF by taking into account the maximum amounts laid down for this Fund in the Financial Perspective and the sums fixed by the Commission under Article 10(2) of Council Regulation (EC) No 1782/2003 of 29 September 2003 establishing common rules for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers⁽¹⁾ and the sums laid down in Articles 143d and 143e of that Regulation.
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- (¹) OJ L 270, 21.10.2003, p. 1. Regulation as last amended by Commission Regulation (EC) No 118/2005 (OJ L 24, 27.1.2005, p. 15).

- (14) Budget discipline also requires that the annual ceiling for expenditure financed by the EAGF be respected under all circumstances and at all stages of the budget procedure and the execution of the budget. This requires that the national ceiling for the direct payments per Member State, after correction in accordance with Article 10 of Regulation (EC) No 1782/2003, be regarded as a financial ceiling for such direct payments for the Member State concerned and that the reimbursement of these payments remain within this financial ceiling. Furthermore, budget discipline demands that all the legislative measures proposed by the Commission or adopted by the Council or by the Commission under the common agricultural policy and financed by the EAGF comply with the annual ceiling for the expenditure financed by this Fund. In the same context, it is necessary to authorise the Commission to set the adjustments referred to in Article 11(1) of Regulation (EC) No 1782/2003 where the Council does not fix these before 30 June of the calendar year in respect of which the adjustments apply.
- (15) The measures taken to determine the financial contribution from the EAGF and the EAFRD in respect of the calculation of financial ceilings do not affect the powers of the budgetary authority designated by the Treaty. These measures must therefore be based on the reference amounts fixed in accordance with the Interinstitutional Agreement of 6 May 1999 between the European Parliament, the Council and the Commission on budgetary discipline and improvement of the budgetary procedure⁽¹⁾ (hereinafter referred to as 'the Interinstitutional Agreement') and the Financial Perspective set out in Annex I to that Agreement.
- (16) Budget discipline also demands a continuous examination of the medium-term budget situation. The Commission, when submitting the preliminary draft budget for a given year, must therefore present its forecasts and analyses to the European Parliament and the Council and propose, if necessary, appropriate measures to the Council. Furthermore, the Commission should make full use of its management powers at all times to ensure compliance with the annual ceiling and, if necessary, propose appropriate measures to the Council to redress the budget situation. If, at the end of a budget year, the annual ceiling cannot be complied with as a result of the reimbursements requested by the Member States, the Commission should be able to take measures allowing, on the one hand, provisional distribution of the available budget among the Member States in proportion to their requests for reimbursement not yet paid and, on the other hand, compliance with the ceiling fixed for the year concerned. Payments for that year should be charged to the following budget year and the total amount of Community financing per Member State should be definitively established, as should compensation between Member States in order to comply with the established amount.
- (17) When implementing the budget, the Commission should operate a monthly early-warning and monitoring system for agricultural expenditure, so that, if there is a risk of the annual ceiling being exceeded, the Commission may at the earliest opportunity take the appropriate measures under the management powers at its disposal, and then, if these measures prove insufficient, propose other measures to the Council, which should act as soon as possible. In order to have a smoothly functioning system, it should allow for the comparison of actual expenditure with profiles of expenditure established on the basis of expenditure in preceding years. A monthly report by the Commission to the European Parliament and the Council should compare the evolution of the expenditure effected so far with the profiles and give an assessment of the foreseeable implementation for the remainder of the budget year.
- (18) The exchange rate used by the Commission in drawing up the budget documents which it submits to the Council should, while making allowances for the time lag between drafting and submission, reflect the most recent information available.
- (19) The rural development programmes are financed from the Community budget on the basis of commitments in annual instalments. Member States must be able to draw on the Community funds provided for as soon as they begin the programmes. A suitably restricted prefinancing system ensuring a steady flow of funds so that payments to beneficiaries under the programmes are made at the appropriate time is therefore needed.
- (20) Prefinancing apart, a distinction should be drawn between payments by the Commission to the accredited paying agencies, intermediate payments and payment of balances, and rules on their payment should be set.
- (21) To protect the Community's financial interests the Commission must be able to suspend or reduce intermediate payments in cases where expenditure has been unduly incurred. A procedure for Member States to show that their expenditure has been correct should be set up.

⁽¹⁾ OJ C 172, 18.6.1999, p. 1. Interinstitutional Agreement as last amended by Decision 2003/429/EC of the European Parliament and of the Council (OJ L 147, 14.6.2003, p. 25).

- (22) The automatic decommitment rule should help speed up execution of programmes and contribute to sound financial management.
- (23) In order to establish the financial relationship between the accredited paying agencies and the Community budget, the Commission should clear the accounts of these paying agencies annually. The clearance of accounts decision should cover the completeness, accuracy and veracity of the accounts but not the conformity of the expenditure with Community legislation.
- (24) The Commission, which is responsible for the proper application of Community law under Article 211 of the Treaty, should decide whether the expenditure incurred by the Member States complies with Community legislation. Member States should be given the right to justify their decisions to make payments and should have recourse to conciliation where there is no common agreement between them and the Commission. In order to give Member States legal and financial assurances as to expenditure effected in the past, a maximum period should be set for the Commission to decide which financial consequences should follow from non-compliance.
- (25) In order to protect the financial interests of the Community budget, measures should be taken by Member States to satisfy themselves that transactions financed by the Funds are actually carried out and are executed correctly. Member States should also prevent and deal effectively with any irregularities committed by beneficiaries.
- (26) As regards the EAGF, sums recovered should be paid back to this Fund where the expenditure is not in conformity with Community legislation and no entitlement existed. Provision should be made for a system of financial responsibility for irregularities in the absence of total recovery. In this respect a procedure should be established permitting the Commission to safeguard the interests of the Community budget by deciding on a partial charging to the Member State concerned of sums lost as a result of irregularities and not recovered within reasonable deadlines. In certain cases of negligence on the part of the Member State, it is justified to charge the full sum to the Member State concerned. However, subject to Member States complying with obligations under their internal procedures, the financial burden should be divided fairly between the Community and the Member State.
- (27) The recovery procedures used by the Member States may have the effect of delaying recovery for a number of years, with no guarantee that the outcome will actually be successful. The cost of implementing these procedures may also be out of proportion to the amounts which are or may be collected. Consequently, Member States should be permitted to halt recovery procedures in certain cases.
- (28) As regards the EAFRD, sums recovered or cancelled following irregularities should remain available to the approved rural development programmes of the Member State concerned as these sums have been allocated to that Member State. In order to protect the financial interests of the Community budget, provision should be made for cases where the required measures are not taken by Member States following the detection of irregularities.
- (29) In order to permit reuse of EAGF and EAFRD funds, rules are needed on assignment of the sums recovered by Member States when conformity clearance is carried out or following proceedings in the event of discovery of irregularity or negligence and for additional levies in the milk and milk products sector.
- (30) So that the Commission can fulfil its obligation to check on the existence and proper functioning of management and inspection systems for Community expenditure in the Member States, provision should be made, irrespective of the inspection carried out by Member States themselves, for checks by persons delegated by the Commission who will be able to request assistance from the Member States in their work.
- (31) Information technology needs to be used as fully as possible for producing the information to be sent to the Commission. When carrying out checks, the Commission should have full and immediate access to expenditure information recorded both in paper form and in electronic files.

- (32) A date should be set for the last payments for the approved rural development programmes for the period 2000 to 2006 financed by the European Agricultural Guidance and Guarantee Fund (EAGGF) Guarantee Section. In order to allow Member States to receive reimbursements for payments made after this date, specific transitional measures should be envisaged. These measures should also include provisions for the recovery of the advances paid by the Commission on the basis of the second subparagraph of Article 5(1) of Council Regulation (EC) No 1258/1999 of 17 May 1999 on the financing of the common agricultural policy⁽¹⁾ and for the amounts subjected to the voluntary modulation arrangements referred to in Articles 4 and 5 of Council Regulation (EC) No 1259/1999 of 17 May 1999 establishing common rules for direct support schemes under the common agricultural policy⁽²⁾.
- (33) A date should be set at which the Commission can automatically decommit the sums committed but not spent under the approved rural development programmes financed by the EAGGF Guidance Section where the necessary documents relating to the closure of the operations have not reached the Commission by that date. The documents which are necessary for the Commission to establish whether the measures are closed should be defined.
- (34) The Commission is responsible for managing the Funds and close cooperation between it and the Member States is provided for through a Committee on the agricultural funds.
- (35) The extent of Community financing makes it necessary for the European Parliament and the Council to be kept regularly informed by means of financial reports.
- (36) As personal data or business secrets might be involved in the application of the national control systems and the conformity clearance, the Member States and the Commission should guarantee the confidentiality of the information received in the context of these operations.
- (37) In the interests of sound financial management of the Community budget and impartiality of treatment at both Member State and farmer level, rules on the use of the euro should be specified.
- (38) Council Regulation No 25 on the financing of the common agricultural policy⁽³⁾, Council Regulation (EC) No 723/97 of 22 April 1997 on the implementation of Member States' action programmes on control of EAGGF Guarantee Section expenditure⁽⁴⁾ and Council Regulation (EC) No 1258/1999 should be repealed. Certain Articles in Council Regulation (EEC) No 595/91 of 4 March 1991 concerning irregularities and the recovery of sums wrongly paid in connection with the financing of the common agricultural policy and the organisation of an information system in this field and repealing Regulation (EEC) No 283/72⁽⁵⁾ should also be deleted as this Regulation provides for their arrangements.
- (39) The measures necessary for the implementation of this Regulation should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission⁽⁶⁾, with a distinction being made between those measures which are subject to the management committee procedure and those which are subject to the advisory committee procedure, the advisory committee procedure being, in certain cases and with a view to increased efficiency, the most appropriate.
- (40) The switch-over from the arrangements in the Regulations repealed to those in this Regulation could give rise to practical and specific difficulties, particularly in connection with the transition to the new arrangements, which are not dealt with in this Regulation. In order to deal with that eventuality, provision should be made for the Commission to adopt the necessary and duly justified measures. Those measures should be able to derogate from the provisions of this Regulation but only to the extent necessary and for a limited period.
- (41) As the programming period for the rural development programmes financed on the basis of this Regulation runs from 1 January 2007, this Regulation should be applicable as from that date. However, certain provisions should apply as from an earlier date.

⁽¹⁾ OJ L 160, 26.6.1999, p. 103.

⁽²⁾ OJ L 160, 26.6.1999, p. 113.

⁽³⁾ OJ 30, 20.4.1962, p. 991. Regulation as last amended by Regulation (EEC) No 728/70 (OJ L 94, 28.4.1970, p. 9).

⁽⁴⁾ OJ L 108, 25.4.1997, p. 6. Regulation amended by Regulation (EC) No 2136/2001 (OJ L 288, 1.11.2001, p. 1).

⁽⁵⁾ OJ L 67, 14.3.1991, p. 11.

⁽⁶⁾ OJ L 184, 17.7.1999, p. 23.

(42) The Court of Auditors has delivered an Opinion ⁽¹⁾.

Article 3

(43) The Economic and Social Committee has delivered an Opinion ⁽²⁾,

EAGF expenditure

HAS ADOPTED THIS REGULATION:

TITLE I

GENERAL PROVISIONS

Article 1

Purpose and scope

This Regulation sets specific requirements and rules on the financing of expenditure falling under the common agricultural policy, including expenditure on rural development.

Article 2

Funds financing agricultural expenditure

1. In order to attain the objectives of the common agricultural policy defined by the Treaty and finance the various measures falling under it, including rural development, the following are hereby set up:

- (a) a European Agricultural Guarantee Fund, hereinafter referred to as the 'EAGF';
- (b) a European Agricultural Fund for Rural Development, hereinafter referred to as the 'EAFRD'.

2. The EAGF and the EAFRD shall come under the general budget of the European Communities.

1. The EAGF shall finance in a context of shared management between the Member States and the Community the following expenditure, which shall be effected in accordance with Community law:

- (a) refunds for the exportation of agricultural products to third countries;
- (b) intervention measures to regulate agricultural markets;
- (c) direct payments to farmers under the common agricultural policy;
- (d) the Community's financial contribution to information and promotion measures for agricultural products on the internal market of the Community and in third countries, undertaken by Member States on the basis of programmes other than those referred to in Article 4 and selected by the Commission.

2. The EAGF shall finance the following expenditure in a centralised manner and in accordance with Community legislation:

- (a) the Community's financial contribution to specific veterinary measures, veterinary inspection measures, inspection measures for foodstuffs and animal feed, animal disease eradication and control programmes (veterinary measures) and plant-health measures;
- (b) promotion of agricultural products, undertaken either directly by the Commission or via international organisations;
- (c) measures, undertaken in accordance with Community legislation, to ensure the conservation, characterisation, collection and utilisation of genetic resources in agriculture;
- (d) establishment and maintenance of agricultural accounting information systems;
- (e) agricultural survey systems, including surveys on the structure of agricultural holdings;
- (f) expenditure relating to fisheries markets.

⁽¹⁾ OJ C 121, 20.5.2005, p. 1.

⁽²⁾ Opinion of 9 February 2005 (not yet published in the Official Journal).

*Article 4***EAFRD expenditure**

The EAFRD shall finance, in a context of shared management between the Member States and the Community, the Community's financial contribution to rural development programmes implemented in accordance with the Community legislation on support for rural development by the EAFRD.

*Article 5***Other financing, including technical assistance**

The EAGF and the EAFRD may each respectively finance on a centralised basis, on the initiative of the Commission and/or on its behalf, the preparatory, monitoring, administrative and technical support, evaluation, audit and inspection measures required to implement the common agricultural policy, including rural development. Those measures shall include in particular:

- (a) measures required for the analysis, management, monitoring, information exchange and implementation of the common agricultural policy, as well as measures relating to the implementation of control systems and technical and administrative assistance;
- (b) measures required to maintain and develop methods and technical means for information, interconnection, monitoring and control of the financial management of the funds used to finance the common agricultural policy;
- (c) provision of information on the common agricultural policy, undertaken on the Commission's initiative;
- (d) studies on the common agricultural policy and evaluation of measures financed by the EAGF and the EAFRD, including improvement of evaluation methods and exchange of information on practices;
- (e) where relevant, executive agencies set up in accordance with Council Regulation (EC) No 58/2003 of 19 December 2002 laying down the statute for executive agencies to be entrusted with certain tasks in the management of Community programmes ⁽¹⁾, acting in connection with the common agricultural policy;

- (f) measures relating to dissemination, raising awareness, promoting cooperation and exchanging experience at Community level, undertaken in the context of rural development, including networking of the parties concerned.

*Article 6***Accreditation and withdrawal of accreditation of paying agencies and coordinating bodies**

1. Paying agencies shall be the departments or bodies of the Member States which, in respect of payments made by them and as regards communicating and keeping information, provide sufficient guarantees that:

- (a) the eligibility of requests and, in the framework of rural development, the procedure for allocating aid, as well as their compliance with Community rules are checked before payment is authorised;
- (b) accurate and exhaustive accounts are kept of the payments made;
- (c) the checks laid down by Community legislation are made;
- (d) the requisite documents are presented within the time-limits and in the form stipulated by Community rules;
- (e) the documents are accessible and kept in a manner which ensures their completeness, validity and legibility over time, including with regard to electronic documents within the meaning of Community rules.

With the exception of the payment of Community aid, the execution of these tasks may be delegated.

2. Member States shall accredit as paying agencies departments or bodies which fulfil the conditions laid down in paragraph 1.

Each Member State shall, taking into account its constitutional provisions and institutional structure, restrict the number of its accredited paying agencies to the minimum necessary to ensure that the expenditure referred to in Article 3(1) and Article 4 is effected under sound administrative and accounting conditions.

⁽¹⁾ OJ L 11, 16.1.2003, p. 1.

3. Where more than one paying agency is accredited, the Member State shall communicate to the Commission the particulars of the department or body to which it assigns the following tasks:

- (a) collecting the information to be made available to the Commission and sending that information to the Commission;
- (b) promoting harmonised application of the Community rules.

This department or body, hereinafter referred to as the 'coordinating body', shall be subject to specific accreditation by the Member States as regards the processing of the financial information referred to in point (a).

4. Where an accredited paying agency does not meet or no longer meets one or more of the conditions laid down in paragraph 1, the Member State shall withdraw accreditation unless the paying agency makes the necessary changes within a period to be determined according to the severity of the problem.

Article 7

Certification bodies

The certification body shall be a public or private legal entity designated by the Member State with a view to certifying the truthfulness, completeness and accuracy of the accounts of the accredited paying agency, taking account of the management and control systems set up.

Article 8

Communication of information and access to documents

1. In addition to the provisions laid down in the sectoral Regulations, Member States shall send to the Commission the following information, declarations and documents:

- (a) for accredited paying agencies and accredited coordinating bodies:
 - (i) their accreditation document;
 - (ii) their function (accredited paying agency or accredited coordinating body);
 - (iii) where relevant, the withdrawal of their accreditation,

(b) for certification bodies:

- (i) their name;
- (ii) their address details,

(c) for measures relating to operations financed by the EAGF and the EAFRD:

- (i) declarations of expenditure, which also act as payment requests, signed by the accredited paying agency or the accredited coordinating body and accompanied by the requisite information;
- (ii) estimates of their financial requirements, with regard to the EAGF and, with regard to the EAFRD, an update of estimated declarations of expenditure which will be submitted during the year and estimated declarations of expenditure in respect of the following financial year;
- (iii) the annual accounts of the accredited paying agencies with a statement of assurance signed by the person in charge of the accredited paying agency, accompanied by the requisite information for their clearance, and a certification report drawn up by the certification body referred to in Article 7.

The annual accounts of accredited paying agencies relating to EAFRD expenditure shall be submitted at the level of each programme.

2. The accredited paying agencies shall keep supporting documents relating to payments made and documents relating to the performance of the administrative and physical checks required by Community legislation, and shall make the documents and information available to the Commission.

Where those documents are kept by an authority acting under delegation from a paying agency and responsible for authorising expenditure, that authority shall send reports to the accredited paying agency on the number of checks made, their content and the measures taken in the light of their results.

*Article 9***Protection of the financial interests of the Community and assurances regarding the management of Community funds**

1. Member States shall:

- (a) within the framework of the common agricultural policy, adopt all legislative, regulatory and administrative provisions and take any other measures necessary to ensure effective protection of the financial interests of the Community, and particularly in order to:
- (i) check the genuineness and compliance of operations financed by the EAGF and the EAFRD;
- (ii) prevent and pursue irregularities;
- (iii) recover sums lost as a result of irregularities or negligence,
- (b) set up an efficient management and control system comprising the certification of accounts and a declaration of assurance based on the signature of the person in charge of the accredited paying agency.

2. The Commission shall ensure that Member States check the legality and compliance of the expenditure referred to in Articles 3(1) and 4, and that they observe the principles of sound financial management; it shall carry out the following measures and checks in this connection:

- (a) it shall check that management and control systems exist and function properly in the Member States;
- (b) it shall reduce or suspend intermediate payments in full or in part and apply the requisite financial corrections, particularly where the management and control systems fail;
- (c) it shall check that prefinancing is reimbursed and shall, if necessary, automatically decommit budget commitments.

3. Member States shall inform the Commission of the provisions adopted and measures taken under paragraph 1 and, with regard to rural development programmes, the

measures taken for management and control in compliance with Community legislation concerning support for rural development by the EAFRD in order to protect the financial interests of the Community.

*Article 10***Admissibility of payments made by the paying agencies**

The expenditure referred to in Articles 3(1) and 4 may be covered by Community financing only if it has been effected by accredited paying agencies designated by Member States.

*Article 11***Payment in full to beneficiaries**

Save provision to the contrary under Community legislation, payments relating to the financing provided for under this Regulation or to amounts corresponding to the public financial contribution under the rural development programmes shall be disbursed in full to the beneficiaries.

TITLE II

EAGF

CHAPTER 1

Community financing*Article 12***Budget ceiling**

1. The annual ceiling for EAGF expenditure shall be constituted by the maximum amounts set for it under the multiannual financial framework provided for in the Inter-institutional Agreement, less the amounts referred to in paragraph 2.

2. The Commission shall set the amounts which, pursuant to Articles 10(2), 143d and 143e of Regulation (EC) No 1782/2003, are made available to the EAFRD.

3. The Commission shall set, on the basis of the data referred to in paragraphs 1 and 2, the net balance available for EAGF expenditure.

*Article 13***Administrative and personnel costs**

Expenditure relating to administrative and personnel costs incurred by Member States and beneficiaries of aid from the EAGF shall not be borne by the Fund.

*Article 14***Monthly payments**

1. The appropriations necessary to finance the expenditure referred to in Article 3(1) shall be made available to Member States by the Commission in the form of monthly reimbursements, hereinafter referred to as 'monthly payments', on the basis of the expenditure effected by the accredited paying agencies during a reference period.

2. Until transfer of the monthly payments by the Commission, the resources required to undertake expenditure shall be mobilised by the Member States according to the needs of their accredited paying agencies.

*Article 15***Procedure for making monthly payments**

1. Monthly payments shall be made by the Commission, without prejudice to the decisions referred to in Articles 30 and 31, for expenditure effected by Member States' accredited paying agencies during the reference month.

2. The Commission shall decide, in accordance with the procedure referred to in Article 41(3), the monthly payments which it makes, on the basis of a declaration of expenditure from the Member States and the information supplied in accordance with Article 8(1), taking into account reductions or suspensions applied under Article 17.

3. Monthly payments shall be made to each Member State at the latest on the third working day of the second month following that in which the expenditure is effected.

4. Expenditure effected by Member States between 1 and 15 October shall count as being made in the month of October. Expenditure effected between 16 and 31 October shall count as being made in the month of November.

5. The Commission may decide to make supplementary payments or deductions. In such cases, the Committee on the agricultural funds shall be informed at its next meeting.

*Article 16***Compliance with payment deadlines**

Where payment deadlines are laid down by Community legislation, any overrun of those deadlines by the paying agencies shall make the payments ineligible for Community financing, except in the cases, conditions and limits determined, according to the principle of proportionality.

*Article 17***Reduction and suspension of monthly payments**

1. Where the declarations of expenditure or the information referred to in Article 15(2) do not enable the Commission to establish that the commitment of funds is in accordance with the applicable Community rules, the Commission shall ask the Member State concerned to supply further information within a period which the Commission shall determine according to the severity of the problem and which generally may not be less than 30 days.

If the Member State fails to respond to the Commission request referred to in the first subparagraph, or if the response is considered unsatisfactory or demonstrates that the Community rules applicable have not been complied with or that Community funds have been improperly used, the Commission may reduce or temporarily suspend monthly payments to the Member State. It shall inform the Member State accordingly, pointing out that reduction or suspension has taken place.

2. Where the declarations of expenditure or the information referred to in Article 15(2) enable the Commission to establish that a financial ceiling set by Community legislation has been exceeded or that the Community rules applicable have clearly not been complied with, the Commission may apply the reductions or suspensions referred to in the second subparagraph of paragraph 1 of this Article, after giving the Member State an opportunity to submit its comments.

3. Reductions and suspensions shall be applied according to the principle of proportionality, under the decision on monthly payments referred to in Article 15(2), without prejudice to the decisions referred to in Articles 30 and 31.

CHAPTER 2

Article 19

Budget discipline procedure**Budget discipline**

Article 18

Compliance with the ceiling

1. Throughout the budget procedure and the implementation of the budget, appropriations relating to EAGF expenditure shall not exceed the net balance referred to in Article 12(3).

All legislative instruments proposed by the Commission or adopted by the Council or the Commission and having an influence on the EAGF budget shall comply with the net balance referred to in Article 12(3).

2. Where Community legislation stipulates a financial ceiling in euro for agricultural expenditure in respect of a Member State, such expenditure shall be reimbursed subject to that limit set in euro, with any necessary adjustments being made if Article 11 of Regulation (EC) No 1782/2003 applies.

3. National ceilings for direct payments set by Community legislation, including those set by Articles 41(1) and 71c of Regulation (EC) No 1782/2003, corrected by the percentages and adjustments laid down in Articles 10(1) and 11(1) of that Regulation, shall be deemed to be financial ceilings in euro.

4. If by 30 June in any year the Council has not set the adjustments referred to in Article 11(1) of Regulation (EC) No 1782/2003, the Commission shall set those adjustments in accordance with the procedure laid down in Article 41(3) of this Regulation and shall inform the Council of them immediately.

5. Until 1 December, on a proposal by the Commission, on the basis of new information in its possession, the Council may adapt the adjustment rate for direct payments set in accordance with Article 11(1) of Regulation (EC) No 1782/2003.

1. The Commission shall present to the European Parliament and to the Council, at the same time as the preliminary draft budget for financial year N, its forecasts for financial years N — 1, N and N + 1. It shall simultaneously present an analysis of the differences observed between the initial forecasts and actual expenditure for financial years N — 2 and N — 3.

2. If, on drawing up the preliminary draft budget for financial year N, there appears to be a risk that the net balance referred to in Article 12(3) for financial year N will be exceeded, taking account of the margin laid down in Article 11 of Regulation (EC) No 1782/2003, the Commission shall propose to the Council the measures necessary, including those required under Article 11(2) of Regulation (EC) No 1782/2003.

3. At any time, if the Commission considers that there is a risk of the net balance referred to in Article 12(3) being exceeded and that it cannot take adequate measures to remedy the situation under its management powers, it shall propose other measures to the Council to ensure compliance with that balance.

The Council shall decide on those measures, in accordance with the procedure laid down in Article 37 of the Treaty, within two months following receipt of the proposal from the Commission. The European Parliament shall give its opinion in time for the Council to take note of it and decide within the period stated.

4. If, at the end of financial year N, reimbursement requests from the Member States exceed or are likely to exceed the net balance set in accordance with Article 12(3), the Commission shall:

- (a) consider the requests presented by Member States pro rata and within the limit of the available budget, and shall provisionally set the amount of the payments for the month concerned;
- (b) determine, for all Member States, at the latest by 28 February of the following year, their situation with regard to Community financing for the previous financial year;
- (c) set, in accordance with the procedure laid down in Article 41(3), the total amount of Community financing broken down by Member State, on the basis of a single rate of Community financing, within the limit of the budget which was available for the monthly payments;
- (d) effect, at the latest when the monthly payments are made for March of year N + 1, any compensations to be carried out between Member States.

Article 20

the latest quarter ending at least 20 days before adoption of the budget document by the Commission.

Early-warning system

In order to ensure that the budget ceiling will not be exceeded, the Commission shall implement a monthly early-warning and monitoring system in respect of EAGF expenditure.

Before the beginning of each financial year, the Commission shall determine for that purpose monthly expenditure profiles based, if necessary, on average monthly expenditure during the previous three years.

The Commission shall present to the European Parliament and to the Council a monthly report examining the development of expenditure effected in relation to the profiles and containing an assessment of the foreseeable implementation for the current financial year.

*Article 21***Reference exchange rates**

1. When adopting the preliminary draft budget, or a letter of amendment to the preliminary draft budget which concerns agricultural expenditure, the Commission shall use for EAGF budget estimates the average euro/US dollar exchange rate recorded on the market during the latest quarter ending at least 20 days before adoption of the budget document by the Commission.

2. When adopting a preliminary draft amending and supplementary budget or a letter of amendment thereto, in so far as those documents concern appropriations relating to the measures referred to in Article 3(1)(a) and (b), the Commission shall use:

- (a) firstly, the average euro/US dollar exchange rate actually recorded on the market from 1 August of the previous financial year until the end of the latest quarter ending at least 20 days before adoption of the budget document by the Commission and at the latest on 31 July of the current financial year, and
- (b) secondly, as a forecast for the remainder of the financial year, the average exchange rate actually recorded during

TITLE III

EAFRD

CHAPTER 1

Method of financing*Article 22***Financial contribution from the EAFRD**

The financial contribution from the EAFRD towards expenditure under rural development programmes shall be determined for each programme, within the ceilings established by Community legislation concerning support for rural development by the EAFRD, plus the amounts set by the Commission under Article 12(2) of this Regulation.

Expenditure financed under this Regulation shall not be the subject of any other financing under the Community budget.

*Article 23***Budget commitments**

The Community's budget commitments for rural development programmes (hereinafter referred to as 'budget commitments') shall be made in annual instalments over the period from 1 January 2007 to 31 December 2013.

The Commission decision adopting each rural development programme submitted by a Member State shall constitute a financing decision within the meaning of Article 75(2) of Regulation (EC) No 1605/2002 and, once notified to the Member State concerned, a legal commitment within the meaning of that Regulation.

For each programme, the budget commitment for the first instalment shall follow the adoption of the programme by the Commission. The budget commitments for subsequent instalments shall be made by the Commission, before 1 May of each year, on the basis of the decision referred to in the second paragraph of this Article.

CHAPTER 2

Article 26

Financial management*Article 24***Provisions applying to all payments**

1. Payment by the Commission of the EAFRD contribution shall be in line with the budget commitments.
2. The Commission shall make the appropriations needed to cover expenditure as indicated in Article 4 available to the Member States through prefinancing, intermediate payments and the payment of a balance. Articles 25, 26, 27 and 28 shall apply to these appropriations.
3. Payments shall be assigned to the oldest open budget commitment.
4. The combined total of prefinancing and intermediate payments shall not exceed 95 % of the EAFRD's contribution to each rural development programme.

*Article 25***Prefinancing arrangements**

1. After adopting a rural development programme, the Commission shall pay a single prefinancing amount for that programme to the Member State. This shall represent 7 % of the EAFRD contribution to the programme concerned. It may be split between two financial years depending on resource availability.
2. The total amount paid as prefinancing shall be reimbursed to the Commission if no declaration of expenditure for the rural development programme is sent within 24 months of the date on which the Commission pays the first instalment of the prefinancing amount.
3. Interest generated on the prefinancing shall be posted to the rural development programme concerned and deducted from the amount of public expenditure indicated on the final declaration of expenditure.
4. The total prefinancing amount shall be cleared when the rural development programme is closed.

Intermediate payments

1. Intermediate payments shall be made for each rural development programme. They shall be calculated by applying the part-financing rate for each priority to the certified public expenditure pertaining to it.
2. Subject to resource availability, the Commission shall make intermediate payments in order to reimburse the expenditure incurred by accredited paying agencies in implementing the programmes.
3. Each intermediate payment shall be made subject to compliance with the following requirements:
 - (a) transmission to the Commission of a declaration of expenditure signed by the accredited paying agency, in accordance with Article 8(1)(c);
 - (b) no overrun of the total EAFRD contribution to each priority for the entire period covered by the programme concerned;
 - (c) transmission to the Commission of the last annual execution report on the implementation of the rural development programme.

4. If one of the requirements laid down in paragraph 3 of this Article is not met and the declaration of expenditure cannot therefore be accepted, the Commission shall forthwith inform the accredited paying agency and the coordinating body, where one has been appointed.

5. The Commission shall make intermediate payments within 45 days of registering a declaration of expenditure for which the requirements set out in paragraph 3 of this Article are met, without prejudice to the decisions referred to in Articles 30 and 31.

6. Accredited paying agencies shall establish and forward, via the intermediary of the coordinating body or directly, where one has not been appointed, intermediate declarations of expenditure relating to rural development programmes to the Commission, at intervals set by the Commission. Declarations of expenditure shall cover expenditure that the agency has incurred during each of the periods concerned.

Intermediate declarations of expenditure in respect of expenditure incurred from 16 October onwards shall be booked to the following year's budget.

Article 27

Suspension and reduction of intermediate payments

1. Intermediate payments shall be made on the basis of the declarations of expenditure and financial information provided by Member States. Article 81 of the Regulation (EC) No 1605/2002 shall apply.

2. If the declarations of expenditure or financial information communicated by a Member State do not make it possible to find that the declaration of expenditure satisfies the relevant Community rules, the Member State shall be asked to provide additional information within a period set according to the seriousness of the problem but which may not normally be less than 30 days.

3. If the Member State fails to respond to the request referred to in paragraph 2, or if the response is considered unsatisfactory or demonstrates that the rules applicable have not been complied with or that Community funds have been improperly used, the Commission may reduce or temporarily suspend intermediate payments to the Member State. It shall inform the Member State accordingly.

4. The suspension or reduction of intermediate payments as indicated in Article 26 shall comply with the principle of proportionality and shall be without prejudice to the decisions referred to in Articles 30 and 31.

Article 28

Payment of the balance and closure of the programme

1. After receiving the last annual execution report on the implementation of a rural development programme, the Commission shall pay the balance, subject to resource availability, on the basis of the part-financing rate per priority, the annual accounts for the last execution year for the relevant rural development programme and of the corresponding clearance decision. These accounts shall be presented to the Commission by 30 June 2016 and shall cover the expenditure incurred by the paying agency up to 31 December 2015.

2. The balance shall be paid not later than six months after the information and documents mentioned in paragraph 1 of this Article are received. The amounts still committed after the balance is paid shall be decommitted by the Commission within a period of six months, without prejudice to Article 29 (6).

3. If by 30 June 2016 the Commission has not been sent the last annual execution report and the documents needed for

clearance of the accounts of the last execution year for the programme the balance shall be automatically decommitted in accordance with Article 29.

Article 29

Automatic decommitment

1. The Commission shall automatically decommit any portion of a budget commitment for a rural development programme that has not been used for the purpose of prefinancing or making intermediate payments or for which no declaration of expenditure meeting the conditions laid down in Article 26(3) has been presented to it in relation to expenditure incurred by 31 December of the second year following that of the budget commitment.

2. That part of budget commitments still open on 31 December 2015 for which a declaration of expenditure has not been made by 30 June 2016 shall be automatically decommitted.

3. If a Commission decision subsequent to the decision approving the rural development programme is needed for authorisation of assistance or of an aid scheme, the period leading to automatic decommitment shall run from the date of that subsequent decision. The amount in question shall be established using a schedule provided by the Member State.

4. In the event of any legal proceedings or an administrative appeal having suspensory effect, the period for automatic decommitment referred to in paragraph 1 or paragraph 2 shall be interrupted, in respect of the amount relating to the operations concerned, for the duration of those proceedings or that administrative appeal, provided that the Commission receives substantiated notification from the Member State by 31 December of year N + 2.

5. The following shall be disregarded in calculating the automatic decommitment:

- (a) that part of the budget commitments for which a declaration of expenditure has been made but reimbursement of which has been reduced or suspended by the Commission at 31 December of year N + 2;
- (b) that part of the budget commitments which a paying agency has been unable to disburse for reasons of *force majeure* seriously affecting implementation of the rural development programme. National authorities claiming *force majeure* must demonstrate the direct consequences on the implementation of all or part of the programme.

6. The Commission shall inform Member States and the authorities concerned in good time if there is a risk of automatic decommitment. It shall inform them of the amount involved as indicated by the information in its possession. The Member States shall have two months from receiving this information to agree to the amount in question or present observations. The Commission shall carry out the automatic decommitment not later than nine months after the time-limit laid down in paragraphs 1 to 4.

7. In the event of automatic decommitment, the EAFRD contribution to the rural development programme concerned shall be reduced, for the year in question, by the amount automatically decommitted. The Member State shall produce a revised financing plan splitting the reduction of the aid between the priorities. If it does not do so, the Commission shall reduce the amounts allocated to each priority pro rata.

8. If this Regulation enters into force after 1 January 2007, the periods on expiry of which the first automatic decommitment referred to in paragraph 1 is liable to occur shall be extended for the first commitment by the number of months between 1 January 2007 and the date of adoption by the Commission of the corresponding rural development programme.

TITLE IV

CLEARANCE OF ACCOUNTS AND COMMISSION MONITORING

CHAPTER 1

Clearance

Article 30

Clearance of accounts

1. Prior to 30 April of the year following the budget year in question, the Commission shall take a decision concerning the clearance of the accounts of the accredited paying agencies under the procedure laid down in Article 41(3), on the basis of the information transmitted in accordance with Article 8(1)(c) (iii).

2. The clearance decision shall cover the completeness, accuracy and veracity of the annual accounts submitted. The decision shall be without prejudice to decisions taken subsequently under Article 31.

Article 31

Conformity clearance

1. If the Commission finds that expenditure as indicated in Article 3(1) and Article 4 has been incurred in a way that has infringed Community rules, it shall decide what amounts are to be excluded from Community financing in accordance with the procedure referred to in Article 41(3).

2. The Commission shall assess the amounts to be excluded on the basis of the gravity of the non-conformity recorded. It shall take due account of the nature and gravity of the infringement and of the financial damage caused to the Community.

3. Before any decision to refuse financing is taken, the findings from the Commission's inspection and the Member State's replies shall be notified in writing, following which the two parties shall attempt to reach agreement on the action to be taken.

If agreement is not reached, the Member State may request opening of a procedure aimed at reconciling each party's position within four months. A report of the outcome of the procedure shall be given to the Commission, which shall examine it before deciding on any refusal of financing.

4. Financing may not be refused for:

(a) expenditure as indicated in Article 3(1) which is incurred more than 24 months before the Commission notifies the Member State in writing of its inspection findings;

(b) expenditure on multiannual measures falling within the scope of Article 3(1) or within the scope of the programmes as indicated in Article 4, where the final obligation on the recipient occurs more than 24 months before the Commission notifies the Member State in writing of its inspection findings;

(c) expenditure on measures in programmes, as indicated in Article 4, other than those referred to in point (b), for which the payment or, as the case may be, the payment of the balance, by the paying agency, is made more than 24 months before the Commission notifies the Member State in writing of its inspection findings.

5. Paragraph 4 shall not apply in the case of:

- (a) irregularities covered by Articles 32 and 33;
- (b) national aids or infringements for which the procedure indicated in Article 88 or Article 226 of the Treaty has begun.

CHAPTER 2

Irregularities

Article 32

Provisions specific to the EAGF

1. Sums recovered following the occurrence of irregularity or negligence and the interest on these shall be made over to the paying agency and booked by it as revenue assigned to the EAGF in the month in which the money is actually received.
2. When the Community budget is credited, the Member State may retain 20 % of the corresponding amounts as flat-rate recovery costs, except in cases of irregularity or negligence attributable to its administrative authorities or other official bodies.
3. When the annual accounts are sent, as provided for in Article 8(1)(c)(iii), Member States shall provide the Commission with a summary report on the recovery procedures undertaken in response to irregularities. This shall give a breakdown of the amounts not yet recovered, by administrative and/or judicial procedure and by year of the primary administrative or judicial finding of the irregularity.

Member States shall make available to the Commission detailed particulars of the individual recovery procedures and of the individual sums not yet recovered.

4. After the procedure laid down in Article 31(3) has been followed, the Commission may decide to charge the sums to be recovered to the Member State in the following cases:

- (a) if the Member State has not for recovery purposes initiated all the appropriate administrative or judicial procedures laid down in national and Community legislation within one year of the primary administrative or judicial finding;

- (b) if there has been no administrative or judicial finding, or the delay in making it is such as to jeopardise recovery, or the irregularity has not been included in the summary report provided for in the first subparagraph of paragraph 3 of this Article for the year in which the primary administrative or judicial finding is made.

5. If recovery has not taken place within four years of the primary administrative or judicial finding, or within eight years where recovery action is taken in the national courts, 50 % of the financial consequences of non-recovery shall be borne by the Member State concerned and 50 % by the Community budget.

Member States shall indicate separately in the summary report referred to in the first subparagraph of paragraph 3 the amounts not recovered within the time-limits specified in the first subparagraph of this paragraph.

The distribution of the financial burden of non-recovery in line with the first subparagraph shall be without prejudice to the requirement that the Member State concerned must pursue recovery procedures in compliance with Article 9(1) of this Regulation. Fifty percent of the amounts recovered in this way shall be credited to the EAGF, after application of the deduction provided for in paragraph 2 of this Article.

Where, in the context of the recovery procedure, the absence of any irregularity is recorded by an administrative or legal instrument of a definitive nature, the Member State concerned shall declare as expenditure to the EAGF the financial burden borne by it under the first subparagraph.

However, if for reasons not attributable to the Member State concerned, recovery could not take place within the time-limits specified in the first subparagraph, and the amount to be recovered exceeds EUR 1 million, the Commission may, at the request of the Member State, extend the time-limits by a maximum of 50 % of the initial time-limits.

6. If there is justification for doing so, Member States may decide not to pursue recovery. A decision to this effect may be taken only in the following cases:

- (a) if the costs already and likely to be incurred total more than the amount to be recovered, or
- (b) if recovery proves impossible owing to the insolvency, recorded and recognised under national law, of the debtor or the persons legally responsible for the irregularity.

The Member State shall show separately in the summary report referred to in the first subparagraph of paragraph 3 the amounts for which it has been decided not to pursue recovery and the grounds for its decision.

7. Member States shall enter in the annual accounts to be sent to the Commission under Article 8(1)(c)(iii) the amounts to be borne by them under paragraph 5. The Commission shall check that this has been done and make any adjustments needed as part of the decision specified in Article 30(1).

8. Following completion of the procedure laid down in Article 31(3), the Commission may decide to exclude from financing sums charged to the Community budget in the following cases:

- (a) under paragraphs 5 and 6 of this Article, if it finds that the irregularity or lack of recovery is the outcome of irregularity or negligence attributable to the administrative authorities or another official body of the Member State;
- (b) under paragraph 6 of this Article, if it considers that the grounds stated by the Member State do not justify its decision to halt the recovery procedure.

Article 33

Provisions specific to the EAFRD

1. Member States shall make financial adjustments where irregularities or negligence are detected in rural development operations or programmes by totally or partially cancelling the Community financing concerned. Member States shall take into consideration the nature and gravity of the irregularities detected and the level of the financial loss to the EAFRD.

2. Where the Community funds have already been paid to the beneficiary, they shall be recovered by the accredited paying agency in accordance with its own recovery procedures and reused in accordance with paragraph 3(c).

3. The financial adjustments and reuse of funds shall be undertaken by Member States subject to the following conditions:

- (a) where irregularities are detected, Member States shall extend their inquiries to cover all operations liable to be affected by such irregularities;

- (b) Member States shall notify the corresponding adjustments to the Commission;

- (c) amounts of Community financing which are cancelled and amounts recovered, as well as the interest thereon, shall be reallocated to the programme concerned. However, the cancelled or recovered Community funds may be reused by Member States only for an operation under the same rural development programme and provided the funds are reallocated to operations which have been the subject of a financial adjustment.

4. When the annual accounts are sent, as provided for in Article 8(1)(c)(iii), Member States shall provide the Commission with a summary report on the recovery procedures undertaken in response to irregularities. This shall give a breakdown of the amounts not yet recovered, by administrative and/or judicial procedure and by year of the primary administrative or judicial finding of the irregularity.

They shall inform the Commission how they have decided or plan to reuse the cancelled funds and, where appropriate, to amend the financing plan for the rural development programme concerned.

5. After the procedure laid down in Article 31(3) has been followed, the Commission may decide to charge the sums to be recovered to the Member State in the following cases:

- (a) where the Member State has not initiated all the administrative or judicial procedures laid down in national and Community legislation for the recovery of the funds paid to the beneficiaries within the year which follows the first administrative or judicial finding;
- (b) where the Member State has failed to comply with its obligations under paragraph 3(a) and (c) of this Article.

6. Where it has been possible to effect the recovery referred to in paragraph 2 after closure of a rural development programme, the Member State shall refund the sums recovered to the Community budget.

7. After closure of a rural development programme a Member State may decide to halt the recovery procedure, subject to the conditions laid down in Article 32(6).

8. If recovery has not taken place prior to the closure of a rural development programme, 50 % of the financial consequences of non-recovery shall be borne by the Member State concerned and 50 % by the Community budget and shall be taken into account either at the end of the period of four years following the first administrative or judicial finding or eight years where recovery action is taken in the national courts, or on the closure of the programme if those deadlines expire prior to such closure.

However, if for reasons not attributable to the Member State concerned, recovery could not take place within the time-limits specified in the first subparagraph, and the amount to be recovered exceeds EUR 1 million, the Commission may, at the request of the Member State, extend the time-limits by a maximum of 50 % of the initial time-limits.

9. In cases as referred to in paragraph 8, the amounts corresponding to the 50 % borne by the Member State shall be paid by the Member State to the Community budget.

10. Where the Commission makes a financial adjustment, this shall not affect the obligations of the Member State to recover the sums paid as part of its own financial contribution under Article 14 of Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty ⁽¹⁾

Article 34

Assignment of revenue from the Member States

1. The following shall be regarded as assigned revenue within the meaning of Article 18 of Regulation (EC) No 1605/2002:

- (a) sums which, under Articles 31, 32 and 33 of this Regulation, must be paid to the Community budget, including interest thereon;
- (b) sums which are collected or recovered under Council Regulation (EC) No 1788/2003 of 29 September 2003 establishing a levy in the milk and milk products sector ⁽²⁾

2. The sums referred to in paragraph 1(a) and (b) shall be paid to the Community budget and, in the event of reuse, shall be used exclusively to finance EAGF or EAFRD expenditure.

Article 35

Definition of administrative or judicial finding

For the purposes of this Chapter the primary administrative or judicial finding means the first written assessment of a competent authority, either administrative or judicial, concluding on the basis of actual facts that an irregularity has been committed, without prejudice to the possibility that this conclusion may subsequently have to be adjusted or withdrawn as a result of developments in the course of the administrative or judicial procedure.

CHAPTER 3

Commission monitoring

Article 36

Access to information

1. Member States shall make available to the Commission all information necessary for the smooth operation of the EAGF and the EAFRD and shall take all appropriate measures to facilitate the checks which the Commission deems appropriate in connection with the management of Community financing, including on-the-spot checks.

2. Member States shall communicate to the Commission on request the laws, regulations and administrative provisions which they have adopted for implementing the Community instruments relating to the common agricultural policy, where those acts have a financial impact on the EAGF or the EAFRD.

3. Member States shall make available to the Commission all information about irregularities detected, in accordance with Articles 32 and 33, and about the steps taken to recover undue payments in connection with those irregularities.

⁽¹⁾ OJ L 83, 27.3.1999, p. 1. Regulation as amended by the 2003 Act of Accession.

⁽²⁾ OJ L 270, 21.10.2003, p. 123. Regulation as amended by Regulation (EC) No 2217/2004 (OJ L 375, 23.12.2004, p. 1).

Article 37

On-the-spot checks

1. Without prejudice to the checks carried out by Member States under national laws, regulations and administrative provisions or Article 248 of the Treaty, and any check organised under Article 279 of the Treaty, the Commission may organise on-the-spot checks with a view to verifying in particular:

- (a) compliance of administrative practices with Community rules;
- (b) the existence of the requisite supporting documents and their correlation with the operations financed by the EAGF or the EAFRD;
- (c) the terms on which the operations financed by the EAGF or the EAFRD have been undertaken and checked.

Persons delegated by the Commission to carry out on-the-spot inspections or Commission agents acting within the scope of the powers conferred upon them shall have access to the books and all other documents, including documents and metadata drawn up or received and recorded on an electronic medium, relating to expenditure financed by the EAGF or the EAFRD.

The aforementioned powers of inspection shall not affect the application of national provisions which reserve certain acts for agents specifically designated by national legislation. Persons delegated by the Commission shall not take part, *inter alia*, in home visits or the formal questioning of persons within the framework of the national legislation of the Member State concerned. However, they shall have access to information thus obtained.

2. The Commission shall give sufficient prior notice of an inspection to the Member State concerned or the Member State within whose territory the inspection is to take place. Personnel from the Member State concerned may take part in such checks.

At the request of the Commission and with the agreement of the Member State, additional checks or inquiries into the operations covered by this Regulation shall be undertaken by the competent bodies of that Member State. Commission agents or persons delegated by the Commission may take part in such checks.

In order to improve checks, the Commission may, with the agreement of the Member States concerned, enlist the assistance of the authorities of those Member States for certain inspections or inquiries.

TITLE V

TRANSITIONAL AND FINAL PROVISIONS

Article 38

Expenditure under the EAGGF Guarantee Section other than on rural development

1. The Guarantee Section of the EAGGF shall finance the expenditure incurred by Member States in accordance with Article 2 and Article 3(2) and (3) of Regulation (EC) No 1258/1999 until 15 October 2006.

2. Expenditure by Member States from 16 October 2006 shall follow the rules laid down in this Regulation.

Article 39

Expenditure on rural development under the EAGGF Guarantee Section

1. For Member States belonging to the European Union before 1 May 2004, the following rules shall apply to rural development programmes for the period 2000 to 2006, which are financed by the EAGGF Guarantee Section in accordance with Article 3(1) of Regulation (EC) No 1258/1999.

- (a) Payments to beneficiaries shall cease no later than 15 October 2006 and related expenditure by the Member States shall be reimbursed to them by the Commission no later than under the declaration concerning expenditure for October 2006. However, the Commission may in justified cases and in accordance with the procedure referred to in Article 41(2) authorise payments until 31 December 2006, subject to reimbursement of identical amounts to the EAGF of the advances made to the Member States for the period of implementation of these programmes under the second subparagraph of Article 5(1) of Regulation (EC) No 1258/1999.

(b) Advances made to the Member States for the period of implementation of these programmes under the second subparagraph of Article 5(1) of Regulation (EC) No 1258/1999 shall be deducted by them from expenditure financed by the EAGF at the latest with the declaration of expenditure for December 2006.

(c) At the request of the Member States, expenditure incurred by accredited paying agencies between 16 October and 31 December 2006 with the exception of expenditure authorised in accordance with the second sentence of point (a) of this Article shall be taken over by the EAFRD budget under the programming of rural development for 2007 to 2013.

(d) The financial resources available in a Member State on 1 January 2007 following reductions in or cancellations of the amounts of payments which that State has made voluntarily or by way of a penalty, under Articles 3, 4 and 5 of Regulation (EC) No 1259/1999, shall be used by that Member State to finance the rural development measures referred to in Article 4 of this Regulation.

(e) If Member States do not use the financial resources referred to in paragraph (d) within a period to be determined in accordance with the procedure laid down in Article 41(2), the corresponding amounts shall be repaid to the EAGF budget.

2. For Member States joining the European Union on 1 May 2004, amounts committed to finance rural development measures in accordance with Article 3(1) under a Commission decision taken between 1 January 2004 and 31 December 2006, in respect of which the documents required for closure of the assistance have not been sent to the Commission by the end of the time allowed for transmission of the final report, shall be automatically decommitted by the Commission no later than 31 December 2010 and shall result in the reimbursement by the Member States of amounts wrongly received.

3. Amounts relating to operations or programmes which are the subject of legal proceedings or an administrative appeal which, under the legislation of the Member State, has a suspensory effect shall be excluded from the calculation of the amount to be automatically decommitted, as provided for in paragraphs 1 and 2.

Article 40

Expenditure under the EAGGF Guidance Section

1. Amounts committed to finance rural development measures from the EAGGF Guidance Section under a Commission decision adopted between 1 January 2000 and 31 December 2006, in respect of which the documents required for closure of the assistance have not been sent to the Commission by the end of the time allowed for transmission of the final report, shall be automatically decommitted by the Commission no later than 31 December 2010 and shall result in the reimbursement by the Member States of amounts wrongly received. The documents required for closure of the assistance shall be the declaration of expenditure relating to payment of the balance, the final implementing report and the declaration provided for in Article 38(1)(f) of Council Regulation (EC) No 1260/99 of 21 June 1999 laying down general provisions on the Structural Funds ⁽¹⁾.

2. Amounts relating to operations or programmes which are the subject of legal proceedings or an administrative appeal which, under the legislation of the Member State, has a suspensory effect shall be excluded from the calculation of the amount to be automatically decommitted, as provided for in paragraph 1.

Article 41

Committee on the Funds

1. The Commission shall be assisted by a Committee on the Agricultural Funds (hereinafter referred to as the 'Committee').

2. Where reference is made to this paragraph, Articles 4 and 7 of Decision 1999/468/EC shall apply.

The period laid down in Article 4(3) of Decision 1999/468/EC shall be set at one month.

3. Where reference is made to this paragraph, Articles 3 and 7 of Decision 1999/468/EC shall apply.

4. The Committee shall adopt its Rules of Procedure.

⁽¹⁾ OJ L 161, 26.6.1999, p. 1. Regulation as last amended by Regulation (EC) No 173/2005 (OJ L 29, 2.2.2005, p. 3).

*Article 42***Scope**

Detailed rules for the application of this Regulation shall be adopted by the Commission in accordance with the procedure provided for in Article 41(2). Pursuant to this Regulation and in particular Articles 6, 7, 8, 9, 16, 26, 28, 31, 32, 33, 34, 37 and 48 thereof, the Commission shall adopt:

1. the conditions applicable to the accreditation of paying agencies and certification bodies as well as the specific accreditation of coordinating bodies; their respective functions, the information required and the arrangements for it to be made available or transmitted to the Commission;
2. the conditions under which the tasks of the paying agencies may be delegated;
3. the admissible standards for certification, the nature of certification, its scope, and the time-limits in which certification must take place;
4. the implementing rules for the procedures for automatic decommitment, conformity clearance and the clearance of accounts;
5. arrangements for receiving and assigning revenue from the Member States;
6. the general rules applicable to on-the-spot checks;
7. the form, content, timing, deadlines and arrangements for transmitting or making available to the Commission:
 - declarations of expenditure and estimates of expenditure and their updates,
 - the statement of assurance and annual accounts of the paying agencies,
 - the account certification reports,
 - the names and particulars of accredited paying agencies, accredited coordinating bodies and certification bodies,
 - arrangements for taking account of and paying expenditure financed by the EAGF and the EAFRD,

— notifications of financial adjustments made by Member States in connection with rural development operations or programmes, and summary reports on the recovery procedures undertaken by the Member States in response to irregularities,

— information on the measures taken pursuant to Article 9,

8. rules on the conservation of documents and information;
9. the transitional measures necessary for this Regulation to be implemented.

*Article 43***Annual financial report**

By 1 September of each year following the budget year, the Commission shall draw up a financial report on the administration of the EAGF and the EAFRD during the previous financial year and shall submit it to the European Parliament and the Council.

*Article 44***Confidentiality**

Member States and the Commission shall take all necessary steps to ensure the confidentiality of the information communicated or obtained under inspection and clearance of accounts measures implemented under this Regulation.

The principles mentioned in Article 8 of Council Regulation (Euratom, EC) No 2185/96 of 11 November 1996 concerning on-the-spot checks and inspections carried out by the Commission in order to protect the European Communities' financial interests against fraud and other irregularities ⁽¹⁾ shall apply to that information.

⁽¹⁾ OJ L 292, 15.11.1996, p. 2.

*Article 45***Use of the euro**

1. The amounts given in the Commission decisions adopting rural development programmes, the amounts of commitments and payments by the Commission and the amounts of expenditure attested or certified and amounts in declarations of expenditure by the Member States shall be expressed and paid in euro.

2. Where a direct payment as provided for in Regulation (EC) No 1782/2003 is made to a beneficiary in a currency other than the euro, Member States shall convert the amount of aid expressed in euro into the national currency on the basis of the most recent exchange rate set by the European Central Bank prior to 1 October of the year for which the aid is granted.

3. Where paragraph 2 applies, reimbursements to Member States of the amounts paid to beneficiaries shall be made by the Commission on the basis of declarations of expenditure by the Member States. When drawing up those declarations of expenditure, Member States shall use the same conversion rate as that used for payment to the beneficiary.

*Article 46***Amendment to Regulation (EEC) No 595/91**

Regulation (EEC) No 595/91 is hereby amended as follows:

1. Article 5(2) shall be deleted;
2. Article 7(1) shall be deleted.

*Article 47***Repeal**

1. Regulation No 25, Regulation (EC) No 723/97 and Regulation (EC) No 1258/1999 are hereby repealed.

However, Regulation (EC) No 1258/1999 shall continue to apply until 15 October 2006 to expenditure incurred by Member States and until 31 December 2006 for expenditure incurred by the Commission.

2. References to the Regulations repealed shall be construed as references to this Regulation and shall be read in accordance with the correlation table in the Annex.

*Article 48***Transitional measures**

For the implementation of this Regulation, the Commission shall adopt the measures which are both necessary and duly justified to resolve, in cases of urgency, practical and specific problems, in particular those relating to the transition between the provisions of Regulations No 25, (EC) No 723/97 and (EC) No 1258/1999 and this Regulation. These measures may derogate from certain parts of this Regulation, but only to the extent and for the time strictly necessary.

*Article 49***Entry into force**

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

It shall apply from 1 January 2007, except for Article 18(4), which shall apply as soon as it enters into force, without prejudice to the provisions of Article 47.

However, the following provisions shall apply from 16 October 2006:

- Articles 30 and 31, as regards expenditure incurred from 16 October 2006,
- Article 32, as regards cases notified under Article 3 of Regulation (EEC) No 595/91 and for which full recovery has not yet taken place by 16 October 2006,
- Articles 38, 39, 41, 44 and 45 for expenditure declared in 2006 under the 2007 budget year.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Luxembourg, 21 June 2005.

For the Council

The President

F. BODEN

ANNEX

Correlation table

Regulation (EEC) No 25	This Regulation
Article 1	Article 2(2)
Articles 2 to 8	—

Regulation (EEC) No 595/91	This Regulation
Article 5(2)	Article 32(3) Article 8
Article 7(1)	Article 32(2)

Regulation (EC) No 723/97	This Regulation
Articles 1 to 3	—
Article 4(1) and (2)	—
Article 4(3)	Article 5(1)(b)
Articles 5 to 9	—

Regulation (EC) No 1258/1999	This Regulation
Article 1(1), first subparagraph	Article 2(2)
Article 1(2)(a)	Article 3(1)(a)
Article 1(2)(b)	Article 3(1)(b)
Article 1(2)(c)	Article 4
Article 1(2)(d)	Article 3(2)(a)
Article 1(2)(e)	Article 3(1)(d) Article 5(1)(c) Article 5(1)(d)
Article 1(3)	Article 4
Article 1(4)	Article 13
Article 2(1) and (2)	Article 3
Article 2(3)	Article 42
Article 3(1)	Article 4
Article 3(2)	Article 3(2)(a)

Regulation (EC) No 1258/1999	This Regulation
Article 3(3)	Article 5
Article 3(4)	Article 42
Article 4(1)(a)	Article 8(1)(a) Article 8(1)(b)
Article 4(2)	Article 6(1)
Article 4(3)	Article 8(2)
Article 4(4)	Article 10
Article 4(5)	Article 6(2)
Article 4(6)	Article 8(1)(a)
Article 4(7)	Article 6(3)
Article 4(8)	Article 42
Article 5(1), first subparagraph	Article 14(1)
Article 5(1), second subparagraph	Article 25(1)
Article 5(2)	Article 14(2)
Article 5(3)	Article 42
Article 6(1)	Article 8(1)(c)
Article 6(2)	Article 42
Article 7(1)	Article 15(2)
Article 7(2), first subparagraph	Article 15(2)
Article 7(2), second subparagraph	Article 15(3) and (4)
Article 7(2), third subparagraph	Article 15(5)
Article 7(3), first subparagraph	Article 30(1)
Article 7(3), second subparagraph	Article 30(2)
Article 7(4), first subparagraph	Article 31(1)
Article 7(4), second subparagraph	Article 31(3), first subparagraph
Article 7(4), third subparagraph	Article 31(3), second subparagraph
Article 7(4), fourth subparagraph	Article 31(2)
Article 7(4), fifth subparagraph	Article 31(4)
Article 7(4), sixth subparagraph	Article 31(5)
Article 7(5)	Article 42
Article 8(1), first subparagraph	Article 9(1)
Article 8(1), second subparagraph	Article 9(3)
Article 8(2)	Article 32(1) and (8)
Article 8(3)	Article 42
Article 9(1), first subparagraph	Article 36(1)

Regulation (EC) No 1258/1999	This Regulation
Article 9(1), second subparagraph	Article 36(2)
Article 9(2)	Article 37(1)
Article 9(3)	Article 42
Article 10	Article 43
Articles 11 to 15	Article 41
Article 16	Article 41
Article 17	—
Article 18	Article 48
Article 19	—
Article 20	Article 49

II

(Acts whose publication is not obligatory)

COUNCIL

COUNCIL DECISION

of 21 June 2005

concerning the signing, on behalf of the European Community, of the Agreement amending 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

(2005/599/EC)

THE COUNCIL OF THE EUROPEAN UNION,

HAS DECIDED AS FOLLOWS:

Having regard to the Treaty establishing the European Community, and in particular Article 310 thereof, in conjunction with the second sentence of the first subparagraph of Article 300(2) thereof,

Having regard to the proposal from the Commission,

Whereas:

(1) The Council, by virtue of its Decision of 27 April 2004, authorised the Commission to open negotiations with the ACP States with a view to amending 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⁾ (hereinafter referred to as the 'Cotonou Agreement'). The negotiations were concluded in February 2005.

(2) The Agreement amending the Cotonou Agreement should therefore be signed on behalf of the European Community,

Article 1

The signing of the Agreement amending 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, together with the declarations made by the Community unilaterally or jointly with other Parties that are attached to the Final Act, is hereby approved on behalf of the Community, subject to the Council Decision concerning the conclusion of the said Agreement.

The texts of the Agreement and of the Final Act are attached to this Decision.

Article 2

The President of the Council is hereby authorised to designate the person(s) empowered to sign the Agreement on behalf of the Community subject to its conclusion.

Done at Luxembourg, 21 June 2005.

The Council

The President

F. BODEN

⁽¹⁾ OJ L 317, 15.12.2000, p. 3. Agreement as rectified by OJ L 385, 29.12.2004, p. 88.

AGREEMENT

amending 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

HIS MAJESTY THE KING OF THE BELGIANS,

THE PRESIDENT OF THE CZECH REPUBLIC,

HER MAJESTY THE QUEEN OF DENMARK,

THE PRESIDENT OF THE FEDERAL REPUBLIC OF GERMANY,

THE PRESIDENT OF THE REPUBLIC OF ESTONIA,

THE PRESIDENT OF THE HELLENIC REPUBLIC,

HIS MAJESTY THE KING OF SPAIN,

THE PRESIDENT OF THE FRENCH REPUBLIC,

THE PRESIDENT OF IRELAND,

THE PRESIDENT OF THE ITALIAN REPUBLIC,

THE PRESIDENT OF THE REPUBLIC OF CYPRUS,

THE PRESIDENT OF THE REPUBLIC OF LATVIA,

THE PRESIDENT OF THE REPUBLIC OF LITHUANIA,

HIS ROYAL HIGHNESS THE GRAND DUKE OF LUXEMBOURG,

THE PRESIDENT OF THE REPUBLIC OF HUNGARY,

THE PRESIDENT OF MALTA,

HER MAJESTY THE QUEEN OF THE NETHERLANDS,

THE FEDERAL PRESIDENT OF THE REPUBLIC OF AUSTRIA,

THE PRESIDENT OF THE REPUBLIC OF POLAND,

THE PRESIDENT OF THE PORTUGUESE REPUBLIC,

THE PRESIDENT OF THE REPUBLIC OF SLOVENIA,

THE PRESIDENT OF THE SLOVAK REPUBLIC,

THE PRESIDENT OF THE REPUBLIC OF FINLAND,

THE GOVERNMENT OF THE KINGDOM OF SWEDEN,

HER MAJESTY THE QUEEN OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND,

Contracting Parties to the Treaty establishing the European Community, hereinafter referred to as 'the Community',
the States of the Community being hereinafter referred to as 'Member States',

and

THE EUROPEAN COMMUNITY,

of the one part, and

THE PRESIDENT OF THE REPUBLIC OF ANGOLA,

HER MAJESTY THE QUEEN OF ANTIGUA AND BARBUDA,

THE HEAD OF STATE OF THE COMMONWEALTH OF THE BAHAMAS,

THE HEAD OF STATE OF BARBADOS,

HER MAJESTY THE QUEEN OF BELIZE,

THE PRESIDENT OF THE REPUBLIC OF BENIN,

THE PRESIDENT OF THE REPUBLIC OF BOTSWANA,

THE PRESIDENT OF BURKINA FASO,

THE PRESIDENT OF THE REPUBLIC OF BURUNDI,

THE PRESIDENT OF THE REPUBLIC OF CAMEROON,

THE PRESIDENT OF THE REPUBLIC OF CAPE VERDE,

THE PRESIDENT OF THE CENTRAL AFRICAN REPUBLIC,

THE PRESIDENT OF THE ISLAMIC FEDERAL REPUBLIC OF THE COMOROS,

THE PRESIDENT OF THE DEMOCRATIC REPUBLIC OF CONGO,

THE PRESIDENT OF THE REPUBLIC OF CONGO,

THE GOVERNMENT OF THE COOK ISLANDS,

THE PRESIDENT OF THE REPUBLIC OF CÔTE D'IVOIRE,

THE PRESIDENT OF THE REPUBLIC OF DJIBOUTI,

THE GOVERNMENT OF THE COMMONWEALTH OF DOMINICA,

THE PRESIDENT OF THE DOMINICAN REPUBLIC,

THE PRESIDENT OF THE STATE OF ERITREA,

THE PRESIDENT OF THE FEDERAL DEMOCRATIC REPUBLIC OF ETHIOPIA,

THE PRESIDENT OF THE SOVEREIGN DEMOCRATIC REPUBLIC OF FIJI,

THE PRESIDENT OF THE GABONESE REPUBLIC,

THE PRESIDENT AND HEAD OF STATE OF THE REPUBLIC OF THE GAMBIA,

THE PRESIDENT OF THE REPUBLIC OF GHANA,

HER MAJESTY THE QUEEN OF GRENADA,

THE PRESIDENT OF THE REPUBLIC OF GUINEA,

THE PRESIDENT OF THE REPUBLIC OF GUINEA-BISSAU,

THE PRESIDENT OF THE REPUBLIC OF EQUATORIAL GUINEA,

THE PRESIDENT OF THE REPUBLIC OF GUYANA,

THE PRESIDENT OF THE REPUBLIC OF HAITI,

THE HEAD OF STATE OF JAMAICA,

THE PRESIDENT OF THE REPUBLIC OF KENYA,

THE PRESIDENT OF THE REPUBLIC OF KIRIBATI,

HIS MAJESTY THE KING OF THE KINGDOM OF LESOTHO,

THE PRESIDENT OF THE REPUBLIC OF LIBERIA,

THE PRESIDENT OF THE REPUBLIC OF MADAGASCAR,

THE PRESIDENT OF THE REPUBLIC OF MALAWI,

THE PRESIDENT OF THE REPUBLIC OF MALI,

THE GOVERNMENT OF THE REPUBLIC OF THE MARSHALL ISLANDS,

THE PRESIDENT OF THE ISLAMIC REPUBLIC OF MAURITANIA,

THE PRESIDENT OF THE REPUBLIC OF MAURITIUS,

THE GOVERNMENT OF THE FEDERATED STATES OF MICRONESIA,

THE PRESIDENT OF THE REPUBLIC OF MOZAMBIQUE,

THE PRESIDENT OF THE REPUBLIC OF NAMIBIA,

THE GOVERNMENT OF THE REPUBLIC OF NAURU,

THE PRESIDENT OF THE REPUBLIC OF NIGER,

THE PRESIDENT OF THE FEDERAL REPUBLIC OF NIGERIA,

THE GOVERNMENT OF NIUE,

THE GOVERNMENT OF THE REPUBLIC OF PALAU,

HER MAJESTY THE QUEEN OF THE INDEPENDENT STATE OF PAPUA NEW GUINEA,

THE PRESIDENT OF THE RWANDESE REPUBLIC,

HER MAJESTY THE QUEEN OF SAINT KITTS AND NEVIS,

HER MAJESTY THE QUEEN OF SAINT LUCIA,

HER MAJESTY THE QUEEN OF SAINT VINCENT AND THE GRENADINES,

THE HEAD OF STATE OF THE INDEPENDENT STATE OF SAMOA,

THE PRESIDENT OF THE DEMOCRATIC REPUBLIC OF SÃO TOMÉ AND PRÍNCIPE,

THE PRESIDENT OF THE REPUBLIC OF SENEGAL,

THE PRESIDENT OF THE REPUBLIC OF SEYCHELLES,

THE PRESIDENT OF THE REPUBLIC OF SIERRA LEONE,

HER MAJESTY THE QUEEN OF SOLOMON ISLANDS,

THE PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA,

THE PRESIDENT OF THE REPUBLIC OF THE SUDAN,

THE PRESIDENT OF THE REPUBLIC OF SURINAME,

HIS MAJESTY THE KING OF THE KINGDOM OF SWAZILAND,

THE PRESIDENT OF THE UNITED REPUBLIC OF TANZANIA,

THE PRESIDENT OF THE REPUBLIC OF CHAD,

THE PRESIDENT OF THE TOGOLESE REPUBLIC,

HIS MAJESTY KING TAUFU'AHAU TUPOU IV OF TONGA,

THE PRESIDENT OF THE REPUBLIC OF TRINIDAD AND TOBAGO,

HER MAJESTY THE QUEEN OF TUVALU,

THE PRESIDENT OF THE REPUBLIC OF UGANDA,

THE GOVERNMENT OF THE REPUBLIC OF VANUATU,

THE PRESIDENT OF THE REPUBLIC OF ZAMBIA,

THE GOVERNMENT OF THE REPUBLIC OF ZIMBABWE,

whose States are hereinafter referred to as 'ACP States',

of the other part,

HAVING REGARD to the Treaty establishing the European Community, on the one hand, and the Georgetown Agreement establishing the Group of African, Caribbean and Pacific States (ACP), on the other,

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 (hereinafter referred to as the Cotonou Agreement),

CONSIDERING that Article 95(1) of the Cotonou Agreement lays down that the duration of the Agreement shall be 20 years, starting on 1 March 2000,

CONSIDERING that the second subparagraph of Article 95(3) of the Cotonou Agreement provides that 10 months before the expiry of each five-year period, the Parties shall enter into negotiations with a view to examining any possible amendments to the provisions of the Cotonou Agreement,

HAVE DECIDED to sign this Agreement amending the Cotonou Agreement and to this end have designated as their Plenipotentiaries:

HIS MAJESTY THE KING OF THE BELGIANS,

THE PRESIDENT OF THE CZECH REPUBLIC,

HER MAJESTY THE QUEEN OF DENMARK,

THE PRESIDENT OF THE FEDERAL REPUBLIC OF GERMANY,

THE PRESIDENT OF THE REPUBLIC OF ESTONIA,

THE PRESIDENT OF THE HELLENIC REPUBLIC,

HIS MAJESTY THE KING OF SPAIN,

THE PRESIDENT OF THE FRENCH REPUBLIC,

THE PRESIDENT OF IRELAND,

THE PRESIDENT OF THE ITALIAN REPUBLIC,

THE PRESIDENT OF THE REPUBLIC OF CYPRUS,

THE PRESIDENT OF THE REPUBLIC OF LATVIA,

THE PRESIDENT OF THE REPUBLIC OF LITHUANIA,

HIS ROYAL HIGHNESS THE GRAND DUKE OF LUXEMBOURG,

THE PRESIDENT OF THE REPUBLIC OF HUNGARY,

THE PRESIDENT OF MALTA,

HER MAJESTY THE QUEEN OF THE NETHERLANDS,

THE FEDERAL PRESIDENT OF THE REPUBLIC OF AUSTRIA,

THE PRESIDENT OF THE REPUBLIC OF POLAND,

THE PRESIDENT OF THE PORTUGUESE REPUBLIC,

THE PRESIDENT OF THE REPUBLIC OF SLOVENIA,

THE PRESIDENT OF THE SLOVAK REPUBLIC,

THE PRESIDENT OF THE REPUBLIC OF FINLAND,

THE GOVERNMENT OF THE KINGDOM OF SWEDEN,

HER MAJESTY THE QUEEN OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND,

THE EUROPEAN COMMUNITY,

THE PRESIDENT OF THE REPUBLIC OF ANGOLA,

HER MAJESTY THE QUEEN OF ANTIGUA AND BARBUDA,

THE HEAD OF STATE OF THE COMMONWEALTH OF THE BAHAMAS,

THE HEAD OF STATE OF BARBADOS,

HER MAJESTY THE QUEEN OF BELIZE,

THE PRESIDENT OF THE REPUBLIC OF BENIN,

THE PRESIDENT OF THE REPUBLIC OF BOTSWANA,

THE PRESIDENT OF BURKINA FASO,

THE PRESIDENT OF THE REPUBLIC OF BURUNDI,

THE PRESIDENT OF THE REPUBLIC OF CAMEROON,

THE PRESIDENT OF THE REPUBLIC OF CAPE VERDE,

THE PRESIDENT OF THE CENTRAL AFRICAN REPUBLIC,

THE PRESIDENT OF THE ISLAMIC FEDERAL REPUBLIC OF THE COMOROS,

THE PRESIDENT OF THE DEMOCRATIC REPUBLIC OF CONGO,

THE PRESIDENT OF THE REPUBLIC OF CONGO,

THE GOVERNMENT OF THE COOK ISLANDS

THE PRESIDENT OF THE REPUBLIC OF CÔTE D'IVOIRE,

THE PRESIDENT OF THE REPUBLIC OF DJIBOUTI,

THE GOVERNMENT OF THE COMMONWEALTH OF DOMINICA,

THE PRESIDENT OF THE DOMINICAN REPUBLIC,

THE PRESIDENT OF THE STATE OF ERITREA,

THE PRESIDENT OF THE FEDERAL DEMOCRATIC REPUBLIC OF ETHIOPIA,

THE PRESIDENT OF THE SOVEREIGN DEMOCRATIC REPUBLIC OF FIJI,

THE PRESIDENT OF THE GABONESE REPUBLIC,

THE PRESIDENT AND HEAD OF STATE OF THE REPUBLIC OF THE GAMBIA,

THE PRESIDENT OF THE REPUBLIC OF GHANA,

HER MAJESTY THE QUEEN OF GRENADA,

THE PRESIDENT OF THE REPUBLIC OF GUINEA,

THE PRESIDENT OF THE REPUBLIC OF GUINEA-BISSAU,

THE PRESIDENT OF THE REPUBLIC OF EQUATORIAL GUINEA,

THE PRESIDENT OF THE REPUBLIC OF GUYANA,

THE PRESIDENT OF THE REPUBLIC OF HAITI,

THE HEAD OF STATE OF JAMAICA,

THE PRESIDENT OF THE REPUBLIC OF KENYA,

THE PRESIDENT OF THE REPUBLIC OF KIRIBATI,

HIS MAJESTY THE KING OF THE KINGDOM OF LESOTHO,

THE PRESIDENT OF THE REPUBLIC OF LIBERIA,

THE PRESIDENT OF THE REPUBLIC OF MADAGASCAR,

THE PRESIDENT OF THE REPUBLIC OF MALAWI,

THE PRESIDENT OF THE REPUBLIC OF MALI,

THE GOVERNMENT OF THE REPUBLIC OF THE MARSHALL ISLANDS,

THE PRESIDENT OF THE ISLAMIC REPUBLIC OF MAURITANIA,

THE PRESIDENT OF THE REPUBLIC OF MAURITIUS,

THE GOVERNMENT OF THE FEDERATED STATES OF MICRONESIA,

THE PRESIDENT OF THE REPUBLIC OF MOZAMBIQUE,

THE PRESIDENT OF THE REPUBLIC OF NAMIBIA,

THE GOVERNMENT OF THE REPUBLIC OF NAURU,

THE PRESIDENT OF THE REPUBLIC OF NIGER,

THE PRESIDENT OF THE FEDERAL REPUBLIC OF NIGERIA,

THE GOVERNMENT OF NIUE,

THE GOVERNMENT OF THE REPUBLIC OF PALAU,

HER MAJESTY THE QUEEN OF THE INDEPENDENT STATE OF PAPUA NEW GUINEA,

THE PRESIDENT OF THE RWANDESE REPUBLIC,

HER MAJESTY THE QUEEN OF SAINT KITTS AND NEVIS,

HER MAJESTY THE QUEEN OF SAINT LUCIA,

HER MAJESTY THE QUEEN OF SAINT VINCENT AND THE GRENADINES,

THE HEAD OF STATE OF THE INDEPENDENT STATE OF SAMOA,

THE PRESIDENT OF THE DEMOCRATIC REPUBLIC OF SÃO TOMÉ AND PRÍNCIPE,

THE PRESIDENT OF THE REPUBLIC OF SENEGAL,

THE PRESIDENT OF THE REPUBLIC OF SEYCHELLES,

THE PRESIDENT OF THE REPUBLIC OF SIERRA LEONE,

HER MAJESTY THE QUEEN OF SOLOMON ISLANDS,

THE PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA,

THE PRESIDENT OF THE REPUBLIC OF THE SUDAN,

THE PRESIDENT OF THE REPUBLIC OF SURINAME,

HIS MAJESTY THE KING OF THE KINGDOM OF SWAZILAND,

THE PRESIDENT OF THE UNITED REPUBLIC OF TANZANIA,

THE PRESIDENT OF THE REPUBLIC OF CHAD,

THE PRESIDENT OF THE TOGOLESE REPUBLIC,
 HIS MAJESTY KING TAUFUFA'AHAU TUPOU IV OF TONGA,
 THE PRESIDENT OF THE REPUBLIC OF TRINIDAD AND TOBAGO,
 HER MAJESTY THE QUEEN OF TUVALU,
 THE PRESIDENT OF THE REPUBLIC OF UGANDA,
 THE GOVERNMENT OF THE REPUBLIC OF VANUATU,
 THE PRESIDENT OF THE REPUBLIC OF ZAMBIA,
 THE GOVERNMENT OF THE REPUBLIC OF ZIMBABWE,
 WHO, having exchanged their Full Powers, found in good and due form,

HAVE AGREED AS FOLLOWS:

Sole Article

2. The tenth recital, commencing 'CONSIDERING that the development targets and principles ...', shall be replaced by the following:

In accordance with the procedure laid down in Article 95 thereof, the Cotonou Agreement shall be amended by the following provisions:

'CONSIDERING that the Millennium Development Goals emanating from the Millennium Declaration adopted by the United Nations General Assembly in 2000, in particular the eradication of extreme poverty and hunger, as well as the development targets and principles agreed in the United Nations Conferences, provide a clear vision and must underpin ACP-EU cooperation within this Agreement;'

A. PREAMBLE

1. After the eighth recital, commencing 'CONSIDERING the Convention for the Protection of Human Rights ...', the following recitals shall be inserted:

'REAFFIRMING that the most serious crimes of concern to the international community must not go unpunished and that their effective prosecution must be ensured by taking measures at national level and by enhancing global collaboration;

CONSIDERING that the establishment and effective functioning of the International Criminal Court constitutes an important development for peace and international justice;'

**B. TEXT OF THE ARTICLES
OF THE COTONOU AGREEMENT**

1. In Article 4, the introductory part shall be replaced by the following:

'The ACP States shall determine the development principles, strategies and models of their economies and societies in all sovereignty. They shall establish, with the Community, the cooperation programmes provided for under this Agreement. However, the Parties recognise the complementary role of and potential for contributions by non-State actors and local decentralised authorities to the development process. To this end, under the conditions laid down in this Agreement, non-State actors and local decentralised authorities shall, where appropriate;'

2. Article 8 shall be amended as follows:

(a) paragraph 2 shall be replaced by the following:

'2. The objective of this dialogue shall be to exchange information, to foster mutual understanding and to facilitate the establishment of agreed priorities and shared agendas, in particular by recognising existing links between the different aspects of the relations between the Parties and the various areas of cooperation as laid down in this Agreement. The dialogue shall facilitate consultations between the Parties within international fora. The objectives of the dialogue shall also include preventing situations arising in which one Party might deem it necessary to have recourse to the consultation procedures envisaged in Articles 96 and 97.'

(b) paragraph 6 shall be replaced by the following:

'6. The dialogue shall be conducted in a flexible manner. The dialogue shall be formal or informal according to the need, and conducted within and outside the institutional framework, including the ACP Group, the Joint Parliamentary Assembly, in the appropriate format and at the appropriate level, including regional, sub-regional or national level.'

(c) the following paragraph shall be inserted:

'6a. Where appropriate, and in order to prevent situations arising in which one Party might deem it necessary to have recourse to the consultation procedure foreseen in Article 96, dialogue covering the essential elements shall be systematic and formalised in accordance with the modalities set out in Annex VII.'

3. The title of Article 9 shall be replaced by the following:

'Essential elements regarding human rights, democratic principles and the rule of law, and fundamental element regarding good governance'.

4. Article 11 shall be amended as follows:

(a) the following paragraph shall be inserted:

'3a. The Parties also undertake to cooperate in the prevention of mercenary activities in accordance with their obligations under international conventions and instruments, and their respective legislations and regulations.'

(b) the following paragraph shall be added:

'6. In promoting the strengthening of peace and international justice, the Parties reaffirm their determination to:

- share experience in the adoption of legal adjustments required to allow for the ratification and implementation of the Rome Statute of the International Criminal Court; and
- fight against international crime in accordance with international law, giving due regard to the Rome Statute.

The Parties shall seek to take steps towards ratifying and implementing the Rome Statute and related instruments.'

5. The following Articles shall be inserted:

Article 11a

Fight against terrorism

The Parties reiterate their firm condemnation of all acts of terrorism and undertake to combat terrorism through international cooperation, in accordance with the Charter of the United Nations and international law, relevant conventions and instruments and in particular full implementation of UN Security Council Resolutions 1373 (2001) and 1456 (2003) and other relevant UN resolutions. To this end, the Parties agree to exchange:

- information on terrorist groups and their support networks; and
- views on means and methods to counter terrorist acts, including in technical fields and training, and experiences in relation to the prevention of terrorism.

Article 11b

Cooperation in countering the proliferation of weapons of mass destruction

1. The Parties consider that the proliferation of weapons of mass destruction and their means of delivery, both to State and non-State actors, represents one of the most serious threats to international stability and security.

The Parties therefore agree to cooperate and to contribute to countering the proliferation of weapons of mass destruction and their means of delivery through full compliance with and national implementation of their existing obligations under international disarmament and non-proliferation treaties and agreements and other relevant international obligations.

The Parties agree that this provision constitutes an essential element of this Agreement.

2. The Parties furthermore agree to cooperate and to contribute to the objective of non-proliferation by:

- taking steps to sign, ratify or accede to, as appropriate, and fully implement all other relevant international instruments,
- the establishment of an effective system of national export controls, controlling the export as well as transit of weapons of mass destruction related goods, including a weapons of mass destruction end-use control on dual-use technologies and containing effective sanctions for breaches of export controls.

Financial and technical assistance in the area of cooperation to counter the proliferation of weapons of mass destruction will be financed by specific instruments other than those intended for the financing of ACP-EC cooperation.

3. The Parties agree to establish a regular political dialogue that will accompany and consolidate their cooperation in this area.

4. If, after having conducted a strengthened political dialogue, a Party, informed in particular by reports by the International Atomic Energy Agency (IAEA), the Organisation for the Prohibition of Chemical Weapons (OPCW) and other relevant multilateral institutions, considers that the other Party has failed to fulfil an obligation stemming from paragraph 1, it shall, except in cases of special urgency, supply the other Party and both the ACP and the EU Councils of Ministers with the relevant information required for a thorough examination of the situation with a view to seeking a solution acceptable to the Parties. To this end, it shall invite the other Party to hold consultations that focus on the measures taken or to be taken by the Party concerned to remedy the situation.

5. The consultations shall be conducted at the level and in the form considered most appropriate for finding a solution.

The consultations shall begin no later than 30 days after the invitation and shall continue for a period established by mutual agreement, depending on the nature and gravity of the violation. In no case shall the dialogue under the consultation procedure last longer than 120 days.

6. If the consultations do not lead to a solution acceptable to both Parties, if consultation is refused or in cases of special urgency, appropriate measures may be taken. These measures shall be revoked as soon as the reasons for taking them no longer prevail.'

6. The following point shall be added to Article 23:

1) the promotion of traditional knowledge.'

7. In Article 25(1), point (d) shall be replaced by the following:

'(d) promoting the fight against:

- HIV/AIDS, ensuring the protection of sexual and reproductive health and rights of women;
- other poverty-related diseases, particularly malaria and tuberculosis;'

8. Article 26 shall be amended as follows:

(a) points (c) and (d) shall be replaced by the following:

'(c) helping community-based institutions to give children the opportunity to develop their physical, psychological, social and economic potential;

(d) reintegrating into society children in post-conflict situations through rehabilitation programmes; and';

(b) the following point shall be added:

'(e) promoting the active participation of young citizens in public life and fostering student exchanges and interaction of ACP and EU youth organisations.'

9. The introductory part of Article 28 shall be replaced by the following:

‘Cooperation shall provide effective assistance to achieve the objectives and priorities which the ACP States have set themselves in the context of regional and sub-regional cooperation and integration, including inter-regional and intra-ACP cooperation. Regional cooperation may also involve non-ACP developing countries as well as Overseas Countries and Territories (OCTs) and outermost regions. In this context, cooperation support shall aim to:’

10. In Article 29(a), point (i) shall be replaced by the following:

‘(i) regional integration institutions and organisations set up by the ACP States and those with ACP State participation that promote regional cooperation and integration, and’.

11. Paragraph 2 of Article 30 shall be replaced by the following:

‘2. Cooperation shall also support inter and intra-ACP cooperation schemes and initiatives, including those involving non-ACP developing countries.’

12. The following indent shall be added to Article 43(4):

‘ the development and encouragement of the use of local content for Information and Communication Technologies.’

13. Article 58 shall be replaced by the following:

Article 58

Eligibility for financing

1. The following entities or bodies shall be eligible for financial support provided under this Agreement:

- (a) ACP States;
- (b) regional or inter-State bodies to which one or more ACP States belong, including bodies with non-ACP State members, which are authorised by those ACP States; and
- (c) joint bodies set up by the ACP States and the Community to pursue certain specific objectives.

2. Subject to the agreement of the ACP State or States concerned, the following shall also be eligible for financial support:

- (a) national and/or regional public or semi-public agencies and departments of ACP States, including Parliaments, and, in particular, their financial institutions and development banks;
- (b) companies, firms and other private organisations and private operators of ACP States;
- (c) enterprises of a Community Member State to enable them, in addition to their own contribution, to undertake productive projects in the territory of an ACP State;
- (d) ACP or Community financial intermediaries providing, promoting and financing private investments in ACP States;
- (e) local decentralised authorities from ACP States and the Community; and
- (f) developing countries that are not part of the ACP Group where they participate in a joint initiative or regional organisation with ACP States.

3. Non-State actors from ACP States and the Community which have a local character shall be eligible for financial support provided under this Agreement, according to the modalities agreed in the national and regional indicative programmes.’

14. Paragraphs 2 and 3 of Article 68 shall be replaced by the following:

‘2. The purpose of support in cases of short-term fluctuations in export earnings is to safeguard socio-economic reforms and policies that could be affected negatively as a result of a drop in revenue and to remedy the adverse effects of instability of export earnings, in particular from agricultural and mining products.

3. The extreme dependence of the ACP States’ economies on exports, in particular from the agricultural and mining sectors, shall be taken into account in the allocation of resources in the year of application. In this context, the least developed, landlocked and island, post-conflict and post natural disaster ACP States shall receive more favourable treatment.’

15. In Article 89, paragraph 1 shall be replaced by the following:

'1. Specific actions shall be pursued to support island ACP States in their efforts to halt and reverse their increasing vulnerability caused by new and severe economic, social and ecological challenges. These actions shall seek to advance the implementation of the small island developing States' priorities for sustainable development, while promoting a harmonised approach to their economic growth and human development.'

16. Article 96 shall be amended as follows:

- (a) The following paragraph shall be inserted:

'1a. Both Parties agree to exhaust all possible options for dialogue under Article 8, except in cases of special urgency, prior to commencement of the consultations referred to in paragraph 2(a) of this Article.'

- (b) In paragraph 2, point (a) shall be replaced by the following:

'(a) If, despite the political dialogue on the essential elements as provided for under Article 8 and paragraph 1a of this Article, a Party considers that the other Party fails to fulfil an obligation stemming from respect for human rights, democratic principles and the rule of law referred to in Article 9(2), it shall, except in cases of special urgency, supply the other Party and the Council of Ministers with the relevant information required for a thorough examination of the situation with a view to seeking a solution acceptable to the Parties. To this end, it shall invite the other Party to hold consultations that focus on the measures taken or to be taken by the Party concerned to remedy the situation in accordance with Annex VII.

The consultations shall be conducted at the level and in the form considered most appropriate for finding a solution.

The consultations shall begin no later than 30 days after the invitation and shall continue for a period established by mutual agreement, depending on the nature and gravity of the violation. In no case shall the dialogue under the consultations procedure last longer than 120 days.

If the consultations do not lead to a solution acceptable to both Parties, if consultation is refused or in cases of special urgency, appropriate measures may be taken. These measures shall be revoked as soon as the reasons for taking them no longer prevail.'

17. In Article 97, paragraph 2 shall be replaced by the following:

'2. In such cases either Party may invite the other to enter into consultations. Such consultations shall begin no later than 30 days after the invitation and dialogue under the consultations procedure shall last no longer than 120 days.'

18. Article 100 shall be replaced by the following:

'Article 100

Status of the texts

The Protocols and Annexes attached to this Agreement shall form an integral part thereof. Annexes Ia, II, III, IV and VI may be revised, reviewed and/or amended by the Council of Ministers on the basis of a recommendation from the ACP-EC Development Finance Cooperation Committee.

This Agreement, drawn up in two copies in the Czech, Danish, Dutch, English, Estonian, Finnish, French, German, Greek, Hungarian, Italian, Latvian, Lithuanian, Maltese, Polish, Portuguese, Slovak, Slovenian, Spanish and Swedish languages, all texts being equally authentic, shall be deposited in the archives of the General Secretariat of the Council of the European Union and the Secretariat of the ACP States, which shall both transmit a certified copy to the government of each of the Signatory States.'

C. ANNEXES

1. In Annex I, the following point shall be added:

'9. By derogation from Article 58 of this Agreement, an amount of EUR 90 million shall be transferred to the intra ACP envelope under the 9th EDF. This amount may be allocated to finance devolution for the period 2006 to 2007, and shall be managed directly by the Commission.'

2. The following Annex shall be inserted:

'ANNEX Ia

Multiannual financial framework of cooperation under this Agreement

1. For the purposes set out in this Agreement and for a period beginning on 1 March 2005, a multiannual financial framework of cooperation shall cover commitments beginning on 1 January 2008 for a period of five or six years.

2. For this new period, the European Union shall maintain its aid effort to ACP States at least at the same level as that of the 9th EDF, not including balances; to this shall be added, based on Community estimates, the effects of inflation, growth within the European Union and enlargement to 10 new Member States in 2004.

3. Any required amendments to the multiannual financial framework or relative parts of the Agreement shall be decided by the Council of Ministers by derogation from Article 95 of this Agreement.'

3. Annex II shall be amended as follows:

(a) Article 2 shall be amended as follows:

(i) paragraph 7 shall be replaced by the following:

'7. Ordinary loans may be extended on concessional terms and conditions in the following cases:

(a) for infrastructure projects in the Least Developed Countries, in post-conflict countries and post-natural disaster countries — other than those referred to under (aa) — that are prerequisites for private sector development. In such cases, the interest rate of the loan will be reduced by 3 %;

(aa) for infrastructure projects by commercially-run public entities, that are prerequisites for private sector development in countries subject to restrictive borrowing conditions under the Heavily Indebted Poor Countries (HIPC) initiative or another internationally agreed debt sustainability framework. In such cases,

the Bank shall seek to reduce the average cost of funds through appropriate co-financing with other donors. Should this not be deemed possible, the interest rate of the loan may be reduced by such amount as required to comply with the level arising from the HIPC initiative or a new internationally agreed debt sustainability framework;

(b) for projects which involve restructuring operations in the framework of privatisation or for projects with substantial and clearly demonstrable social or environmental benefits. In such cases, loans may be extended with an interest rate subsidy the amount and form of which shall be decided with respect to the particular characteristics of the project. However, the interest rate subsidy shall not be higher than 3 %.

The final rate of loans falling under (a) or (b) shall, in any case, never be less than 50 % of the reference rate.;

(ii) paragraph 9 shall be replaced by the following:

'9. Interest subsidies may be capitalised or may be used in the form of grants. Up to 10 % of the budget for interest rate subsidies may be used to support project related technical assistance in ACP countries.;

(b) Article 3 shall be amended as follows:

(i) paragraph 1 shall be replaced by the following:

'1. The Investment Facility shall operate in all economic sectors and support investments of private and commercially run public sector entities, including revenue generating economic and technological infrastructure critical for the private sector. The Facility shall:

(a) be managed as a revolving fund and aim at being financially sustainable. Its operations shall be on market-related terms and conditions and shall avoid creating distortions on local markets and displacing private sources of finances;

(b) support the ACP financial sector and have a catalytic effect by encouraging the mobilisation of long-term local resources and attracting foreign private investors and lenders to projects in the ACP States;

(c) bear part of the risk of the projects it funds, its financial sustainability being ensured through the portfolio as a whole and not from individual interventions; and

(d) seek to channel funds through ACP national and regional institutions and programmes that promote the development of small-and medium-sized enterprises (SMEs).';

(ii) the following paragraph shall be inserted:

'1a. The Bank shall be remunerated for the cost incurred in managing the Investment Facility. For the first two years after the entry into force of the second financial protocol, this remuneration shall be up to an amount of 2 % p. a. of the total initial endowment of the Investment Facility. Thereafter, the remuneration of the Bank shall include a fixed component of 0,5 % p. a. of the initial endowment and a variable component of an amount of up to 1,5 % p. a. of the portfolio of the Investment Facility that is invested in projects in ACP countries. The remuneration shall be financed out of the Investment Facility.';

(c) In Article 5, point (b) shall be replaced by the following:

'(b) in the case of ordinary loans and risk capital financing for small-and medium-sized enterprises (SMEs), the exchange rate risk shall, as a general rule, be shared by the Community, on the one hand, and by the other Parties involved, on the other. On average, the foreign exchange rate risk should be shared equally; and';

(d) The following Articles shall be inserted:

'Article 6a

Annual reporting on the Investment Facility

Representatives of the EU Member States responsible for the Investment Facility, Representatives of the ACP States, as well as the European Investment Bank, the European Commission, the EU Council Secretariat and the ACP Secretariat shall meet annually to discuss the operations, performance and policy questions concerning the Investment Facility.

Article 6b

Review of performance of the Investment Facility

The overall performance of the Investment Facility shall be subject to a joint review at the mid-term and end-term of a financial protocol. Such an exercise may include a recommendation on how to improve the implementation of the Facility.'

4. Annex IV shall be amended as follows:

(a) Article 3 shall be amended as follows:

(i) in paragraph 1, point (a) shall be replaced by the following:

'(a) needs shall be assessed on the basis of criteria pertaining to per capita income, population size, social indicators and level of indebtedness, export earning losses and dependence on export earnings, in particular in the sectors of agriculture and mining. Special treatment shall be accorded to the least developed ACP States, and the vulnerability of island and landlocked States shall duly be taken into account. In addition, account shall be taken of the particular difficulties of countries dealing with the aftermath of conflict or natural disaster; and';

(ii) the following paragraph shall be added:

'5. Without prejudice to Article 5(7) concerning reviews, the Community may, in order to take account of special needs or exceptional performance, increase a country's allocation.';

(b) Article 4 shall be amended as follows:

(i) paragraph 1 shall be replaced by the following:

‘1. Upon receipt of the information referred to above, each ACP State shall draw up and submit to the Community a draft indicative programme on the basis of and consistent with its development objectives and priorities as expressed in the CSS. The draft indicative programme shall contain:

- (a) the focal sector, sectors or areas on which support should be concentrated;
- (b) the most appropriate measures and operations for attaining the objectives and targets in the focal sector, sectors or areas;
- (c) the resources reserved for programmes and projects outside the focal sector(s) and/or the broad outlines of such activities, as well as an indication of the resources to be deployed for each of these elements;
- (d) the types of non-State actors eligible for funding, in accordance with the criteria laid down by the Council of Ministers, the resources allocated for non-State actors and the type of activities to be supported, which must be not-for-profit;
- (e) proposals for regional programmes and projects; and
- (f) a reserve for insurance against possible claims and to cover cost increases and contingencies.’;

(ii) paragraph 3 shall be replaced by the following:

‘3. The draft indicative programme shall be the subject of an exchange of views between the ACP State concerned and the Community. The indicative programme shall be adopted by common agreement between the Commission on behalf of the Community and the ACP State concerned. It shall, when adopted, be binding on both the Community and that State. This indicative programme shall be annexed to the CSS and shall in addition contain:

- (a) specific and clearly identified operations, especially those that can be committed before the next review;
- (b) a timetable for implementation and review of the indicative programme, including commitments and disbursements of resources; and
- (c) the parameters and criteria for the reviews.’;

(iii) the following paragraph shall be added:

‘5. When an ACP State faces a crisis situation as the result of a war or other conflict, or exceptional circumstances with a comparable effect, preventing the National Authorising Officer from carrying out his duty, the Commission may itself manage the resources allocated to the State in question in accordance with Article 3 and use it for special support. Special support may concern peace-building policies, conflict management and resolution, post-conflict support, including institution-building, economic and social-development activities, taking particular account of the needs of the most vulnerable sections of the population. The Commission and the ACP State concerned shall revert to normal implementation and normal management procedures as soon as the authorities responsible for managing cooperation are able to do so once more.’;

(c) Article 5 shall be amended as follows:

- (i) throughout this article, the term ‘Head of Delegation’ shall be replaced by the term ‘Commission’;
- (ii) in paragraph 4, point (b) shall be replaced by the following:

‘(b) programmes and projects outside the focal sector(s);’;

(iii) paragraph 7 shall be replaced by the following:

‘7. Following the completion of the mid-term and end-of-term reviews, the Commission may, on behalf of the Community, revise the resource allocation in the light of current needs and performance of the ACP State concerned.’;

- (d) In Article 6, paragraph 1 shall be replaced by the following:

'1. Regional cooperation shall cover operations benefiting and involving:

- (a) two or more or all ACP States as well as any non-ACP developing countries participating in these operations, and/or
- (b) a regional body of which at least two ACP States are members, including those with members which are non-ACP countries.;

- (e) Article 9 shall be replaced by the following:

'Article 9

Resource allocation

1. At the beginning of the period covered by the Financial Protocol, each region shall receive from the Community an indication of the volume of resources from which it may benefit during a five-year period. The indicative resource allocation shall be based on an estimate of needs and the progress and prospects in the process of regional cooperation and integration. In order to achieve an adequate scale and to increase efficiency, regional and national funds may be mixed for financing regional operations with a distinct national component.

2. Without prejudice to Article 11 concerning reviews, the Community may, in order to take account of new needs or exceptional performance, increase a region's allocation.;

- (f) In Article 10(1), point (c) shall be replaced by the following:

'(c) the programmes and projects enabling those objectives to be attained, insofar as they have been clearly identified, as well as an indication of the resources to be deployed for each of these elements and a timetable for their implementation.;

- (g) Article 12 shall be replaced by the following:

'Article 12

Intra-ACP cooperation

1. At the beginning of the period covered by the Financial Protocol, the Community shall indicate to the ACP Council of Ministers the part of the funds earmarked for regional operations that shall be set aside for operations that benefit many or all ACP States. Such operations may transcend the concept of geographic location.

2. The Community may, in order to take account of new needs for increasing the impact of intra-ACP activities, increase the allocation for intra-ACP cooperation.;

- (h) Article 13 shall be replaced by the following:

'Article 13

Requests for financing

1. Requests for financing of regional programmes shall be submitted by:

- (a) a duly mandated regional body or organisation; or
- (b) a duly mandated sub-regional body or organisation or an ACP State in the region concerned at the programming stage, provided that the operation has been identified in the RIP.

2. Requests for financing of intra-ACP programmes shall be submitted by:

- (a) at least three duly mandated regional bodies or organisations belonging to different geographic regions, or at least two ACP States from each of the three regions; or
- (b) the ACP Council of Ministers, or the ACP Committee of Ambassadors; or

(c) international organisations carrying out operations that contribute to the objectives of regional cooperation and integration, such as the African Union, subject to prior approval by the ACP Committee of Ambassadors.;

(i) Article 14 shall be replaced by the following:

'Article 14

Procedures for implementation

1. (deleted)

2. (deleted)

3. Account being taken of the objectives and inherent characteristics of regional cooperation, including intra-ACP cooperation, operations undertaken in this sphere shall be governed by the procedures established for development finance cooperation where applicable.

4. In particular and subject to paragraphs 5 and 6, any regional programme or project financed from the Fund shall give rise to:

(a) either, in accordance with Article 17, a financing agreement drawn up between the Commission and one of the bodies mentioned in Article 13; in such cases, the relevant body shall designate a Regional Authorising Officer whose duties correspond *mutatis mutandis* with those of the National Authorising Officer;

(b) or a grant contract as defined in Article 19a drawn up between the Commission and one of the bodies mentioned in Article 13, depending on the nature of the action and where the relevant body, other than an ACP State, is responsible for carrying out the programme or project.

5. Programmes and projects financed from the Fund and for which requests for financing have been presented by international organisations in accordance with Article 13(2)(c) shall give rise to the drawing up of a grant contract.

6. Programmes and projects financed from the Fund for which requests for financing have been presented by the ACP Council of Ministers or Committee of Ambassadors shall be implemented either by the ACP Secretariat, in which case a financing agreement shall be drawn up between the Commission and the Secretariat in accordance with Article 17, or by the Commission, depending on the nature of the action.;

(j) In Chapter 3, the title shall be replaced by the following:

'APPRAISAL AND FINANCING';

(k) Article 15 shall be replaced by the following:

'Article 15

Identification, preparation and appraisal of programmes and projects

1. Programmes and projects that have been presented by the ACP State concerned shall be subject to joint appraisal. The ACP-EC Development Finance Cooperation Committee shall develop the general guidelines and criteria for appraisal of programmes and projects. These programmes and projects are generally multiannual and may incorporate a whole range of actions of a limited size in a particular area.

2. Programme and project dossiers prepared and submitted for financing must contain all information necessary for the appraisal of the programmes and projects or, where programmes and projects have not been completely defined, provide the broad outlines necessary for their appraisal.

3. Programme and project appraisal shall take due account of national human resource constraints and ensure a strategy favourable to the promotion of such resources. It shall also take into account the specific characteristics and constraints of each ACP State.

4. Programmes and projects to be implemented by non-State actors which are eligible in accordance with this Agreement may be appraised by the Commission alone and give rise to the establishment, between the Commission and non-State actors, of grant contracts as defined in Article 19a. This appraisal shall comply with Article 4(1)(d) regarding the types of actors, their eligibility and the type of activity to be supported. The Commission, through the Head of Delegation, shall inform the National Authorising Officer of such allocated grants.;

- (l) Article 16 shall be replaced by the following:

'Article 16

Financing proposal and decision

1. The conclusions of the appraisal shall be summarised in a financing proposal, the final version of which shall be drawn up by the Commission in close collaboration with the ACP State concerned.

2. (deleted)

3. (deleted)

4. The Commission, acting on behalf of the Community, shall communicate its financing decision to the ACP State concerned within 90 days from the date on which the final version of the financial proposal is drawn up.

5. Where the financing proposal is not adopted by the Commission on behalf of the Community, the ACP State concerned shall be informed immediately of the reasons for that decision. In such a case, the representatives of the ACP State concerned may, within 60 days thereafter, request either:

(a) that the matter be referred to the ACP-EC Development Finance Cooperation Committee set up under this Agreement; or

(b) that they be given a hearing by the Community's representatives.

6. Following such a hearing, a definitive decision to adopt or reject the financing proposal shall be taken by the Commission on behalf of the Community. Before any decision is taken, the ACP State concerned may forward to the Commission any facts which may appear necessary to supplement the information available to it.;

- (m) Article 17 shall be replaced by the following:

'Article 17

Financing Agreement

1. Save as otherwise provided for in this Agreement, for any programme or project financed from the Fund, a financing agreement shall be drawn up between the Commission and the ACP State concerned.

2. The financing agreement shall be drawn up between the Commission and the ACP State concerned within 60 days of the decision taken by the Commission on behalf of the Community. The financing agreement shall:

(a) specify, in particular, the details of the Community's financial contribution, the financing arrangements and terms and the general and specific provisions relating to the programme or project concerned; and

(b) make adequate provision for appropriations to cover cost increases and contingencies.

3. Any unexpended balance left upon closure of the accounts of programmes and projects shall accrue to the ACP State or States concerned.;

- (n) Article 18 shall be replaced by the following:

'Article 18

Overrun

1. Once it appears that there is a risk of cost overruns over and above the financing available under the financing agreement, the National Authorising Officer shall notify the Commission and request its prior approval on the measures which the National Authorising Officer intends to take in order to cover such cost overruns, either by reducing the scale of the programme or project or by calling on national or other non-Community resources.

2. If it is not possible to reduce the scale of the programme or project or to cover the overruns with other resources, the Commission, acting on behalf of the Community, may, on the basis of a reasoned request from the National Authorising Officer, take an additional financing decision on resources from the indicative programme.;

- (o) Article 19 shall be replaced by the following:

'Article 19

Retroactive financing

1. In order to ensure early project start-up, avoid gaps between sequential projects and prevent delays, the ACP States may, on completion of project appraisal and before the financing decision is taken, pre-finance activities linked to the start-up of programmes, preliminary and seasonal work,

orders for equipment with long delivery lead times as well as some on-going operations. Such expenditure shall satisfy the procedures provided for in this Agreement.

2. Any expenditure referred to in paragraph 1 shall be mentioned in the financing proposal and shall be without prejudice to the financing decision taken by the Commission on behalf of the Community.

3. Expenditure made by the ACP State under this Article shall be retroactively financed under the programme or project, once the financing agreement is signed.;

- (p) In Chapter 4, the title shall be replaced by the following:

'IMPLEMENTATION';

- (q) The following Articles shall be inserted:

'Article 19a

Implementation measures

1. Where financial execution is the Commission's responsibility, implementation of programmes and projects financed from the Fund shall consist chiefly of the following:

- (a) awarding of procurement contracts;
- (b) awarding of grants;
- (c) performance by direct labour;
- (d) direct payments as budgetary support, support for sectoral programmes, debt relief and support to cover short-term fluctuations in export earnings.

2. In the context of this Annex, procurement contracts are contracts for pecuniary interest concluded in writing in order to obtain, against payment of a price, the supply of movable assets, the execution of works or the provision of services.

3. In the context of this Annex, grants are direct financial contributions awarded by way of a donation in order to finance:

- (a) either an action designed to help achieve an objective of this Agreement or of a programme or project adopted in accordance with this Agreement, or
- (b) the functioning of a body which pursues such an objective.

Grants shall be covered by a written contract.

Article 19b

Tender procedure with suspension clause

In order to ensure early project start-up, the ACP States may, in all duly substantiated cases and in agreement with the Commission, issue invitations to tender for all types of contracts with a suspension clause, once project appraisal is completed but before the financing decision is taken. Such a provision must be mentioned in the financing proposal.;

- (r) Article 20 shall be replaced by the following:

'Article 20

Eligibility

Save where a derogation is granted in accordance with Article 22, and without prejudice to Article 26:

- 1. participation in procedures for the awarding of procurement contracts or grants financed from the Fund shall be open to all natural and legal persons from ACP States and Member States of the Community;
- 2. supplies and materials purchased under a contract financed from the Fund must originate in a State that is eligible under point 1. In this context, the definition of the concept of "originating products" shall be assessed by reference to the relevant international agreements, and supplies originating in the Community shall include supplies originating in the Overseas Countries and Territories;

3. participation in procedures for the awarding of procurement contracts or grants financed from the Fund shall be open to international organisations;
4. whenever the Fund finances an operation implemented through an international organisation, participation in procedures for the awarding of procurement contracts or grants shall be open to all natural and legal persons who are eligible under point 1, and to all natural and legal persons who are eligible according to the rules of the organisation, care being taken to ensure equal treatment of all donors. The same rules apply for supplies and materials;
5. whenever the Fund finances an operation implemented as part of a regional initiative, participation in procedures for the awarding of procurement contracts or grants shall be open to all natural and legal persons who are eligible under point 1, and to all natural and legal persons from a country participating in the relevant initiative. The same rules apply for supplies and materials;
6. whenever the Fund finances an operation co-financed with a third State, participation in procedures for the awarding of procurement contracts or grants shall be open to all natural and legal persons eligible under point 1, and to all persons eligible under the rules of the above mentioned third State. The same rules apply for supplies and materials.;
- (s) Article 22 shall be replaced by the following:

'Article 22

Derogations

1. In exceptional duly substantiated circumstances, natural or legal persons from third countries not eligible under Article 20 may be authorised to participate in procedures for the awarding of procurement contracts or grants financed by the Community at the justified request of the ACP States concerned. The ACP States concerned shall, on each occasion, provide the Commission with the information needed to decide on such derogation, with particular attention being given to:

- (a) the geographical location of the ACP State concerned;

- (b) the competitiveness of contractors, suppliers and consultants from the Member States and the ACP States;
- (c) the need to avoid excessive increases in the cost of performance of the contract;
- (d) transport difficulties or delays due to delivery times or other similar problems;
- (e) technology that is the most appropriate and best suited to local conditions;
- (f) cases of extreme urgency;
- (g) the availability of products and services in the relevant markets.

2. In the case of projects financed from the Investment Facility, the procurement rules of the Bank shall apply.;

- (t) Article 24 shall be replaced by the following:

'Article 24

Implementation by direct labour

1. In the case of direct labour operations, programmes and projects shall be implemented through public or semi-public agencies or departments of the ACP State or States concerned or by the legal person responsible for executing the operation.

2. The Community shall contribute to the costs of the department involved by providing the equipment and/or materials that it lacks and/or resources to allow it to acquire additional staff required in the form of 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 programmes and projects in question.

3. Programme estimates implementing direct-labour operations must comply with the Community rules, procedures and standard documents laid down by the Commission, as applicable at the time of approval of the programme estimates.;

(u) Article 26 shall be replaced by the following:

'Article 26

Preferences

1. Measures shall be taken to encourage the widest participation of the natural and legal persons of ACP States in the performance of contracts financed by the Fund in order to permit the optimization of the physical and human resources of those States. To this end:

- (a) for works contracts of a value of less than EUR 5 000 000, tenderers from the ACP States, provided that at least one quarter of the capital stock and management staff originates from one or more ACP States, shall be accorded a 10 % price preference where tenders of an equivalent economic, technical and administrative quality are compared;
- (b) for supply contracts, irrespective of the value of the supplies, tenderers from the ACP States who offer supplies of at least 50 % in contract value of ACP origin, shall be accorded a 15 % price preference where tenders of equivalent economic, technical and administrative quality are compared;
- (c) in respect of service contracts, where tenders of equivalent economic and technical quality are compared, preference shall be given to:
 - (i) experts, institutions or consultancy companies or firms from ACP States with the required competence;
 - (ii) offers submitted by ACP firms, either individually or in a consortium with European partners; and
 - (iii) offers presented by European tenderers with ACP sub-contractors or experts;
- (d) where subcontracting is envisaged, preference shall be given by the successful tenderer to natural persons, companies and firms of ACP States capable of performing the contract required on similar terms; and
- (e) the ACP State may, in the invitation to tender, offer prospective tenderers assistance from

other ACP States' companies or firms or national experts or consultants selected by mutual agreement. This cooperation may take the form either of a joint venture, or of a subcontract or of on-the-job training of trainees.

2. Where two tenders are acknowledged to be equivalent on the basis of the criteria stated above, preference shall be given:

- (a) to the tenderer of an ACP State; or
- (b) if no such tender is forthcoming, to the tenderer who:
 - (i) allows for the best possible use of the physical and human resources of the ACP States;
 - (ii) offers the greatest subcontracting possibilities for ACP companies, firms or natural persons; or
 - (iii) is a consortium of natural persons, companies and firms from ACP States and the Community.;
- (v) In Chapter 6, the title shall be replaced by the following:

'FUND-RESOURCE MANAGEMENT AND EXECUTING AGENTS';
- (w) Article 34 shall be replaced by the following:

'Article 34

The Commission

1. The Commission shall undertake the financial execution of operations carried out with Fund resources, with the exception of the Investment Facility and interest-rate subsidies, using the following main methods of management:

- (a) centralised management;
- (b) decentralised management.

2. As a general rule, the financial execution of the Fund resources by the Commission shall be decentralised.

In this instance, the execution duties shall be carried out by the ACP States in accordance with Article 35.

3. In order to carry out the financial execution of the Fund resources, the Commission shall delegate its executive powers within its own departments. The Commission shall inform the ACP States and the ACP-EC Development Finance Cooperation Committee of this delegation of tasks.;

(x) Article 35 shall be replaced by the following:

'Article 35

National Authorising Officer

1. The Government of each ACP State shall appoint a National Authorising Officer to represent it in all operations financed from the Fund resources managed by the Commission and the Bank. The National Authorising Officer shall appoint one or more deputy National Authorising Officers to replace him when he is unable to carry out his duties and shall inform the Commission of this appointment. Wherever the conditions regarding institutional capacity and sound financial management are met, the National Authorising Officer may delegate his functions for implementation of the programmes and projects concerned to the body responsible within the national administration. The National Authorising Officer shall inform the Commission of any such delegation.

When the Commission becomes aware of problems in carrying out procedures relating to management of Fund resources, it shall, in conjunction with the National Authorising Officer, make all contacts necessary to remedy the situation and take any appropriate steps.

The National Authorising Officer shall assume financial responsibility only for the executive tasks entrusted to him.

Where Fund resources are managed in a decentralised way and subject to any additional powers that might be granted by the Commission, the National Authorising Officer shall:

- (a) be responsible for the coordination, programming, regular monitoring and annual, mid-term and end-of-term reviews of implementation of cooperation, and for coordination with donors;
- (b) in close cooperation with the Commission, be responsible for the preparation, submission and appraisal of programmes and projects;

- (c) prepare tender dossiers and, where appropriate, the documents for calls for proposals;
- (d) submit tender dossiers and, where appropriate, documents for calls for proposals, to the Commission for approval before launching invitations to tender and, where appropriate, calls for proposals;
- (e) in close cooperation with the Commission, launch invitations to tender and, where appropriate, calls for proposals;
- (f) receive tenders and, if applicable, proposals, and transmit copies of tenders to the Commission; preside over the opening of tenders and decide on the results of their examination within the period of validity of the tenders, taking account of the time required for approval of contracts;
- (g) invite the Commission to the opening of tenders and, if applicable, proposals and notify the Commission of the results of the examination of tenders and proposals for approval of the proposals for the award of contracts and grants;
- (h) submit contracts and programme estimates and any addenda thereto to the Commission for approval;
- (i) sign the contracts and addenda thereto approved by the Commission;
- (j) clear and authorise expenditure within the limits of the funds assigned to him; and
- (k) during the execution operations, make any adaptation arrangements necessary to ensure the proper execution of approved programmes or projects from the economic and technical viewpoint.

2. The National Authorising Officer shall, during the execution of operations and subject to the requirement to inform the Commission, decide on:

- (a) technical adjustments and alterations to programmes and projects in matters of detail so long as they do not affect the technical solution adopted and remain within the limits of the reserve for adjustments provided for in the financing agreement;

- (b) changes of site for multiple-unit programmes or projects where justified on technical, economic or social grounds;
 - (c) imposition or remission of penalties for delay;
 - (d) acts discharging guarantors;
 - (e) purchase of goods, irrespective of their origin, on the local market;
 - (f) use of construction equipment and machinery not originating in the Member States or ACP States provided there is no production of comparable equipment and machinery in the Member States or ACP States;
 - (g) subcontracting;
 - (h) final acceptance, provided that the Commission is present at provisional acceptance, endorses the corresponding minutes and, where appropriate, is present at the final acceptance, in particular where the extent of the reservations recorded at the provisional acceptance necessitates major additional work; and
 - (i) hiring of consultants and other technical assistance experts.;
- (y) Article 36 shall be replaced by the following:

'Article 36

Head of Delegation

1. The Commission shall be represented in each ACP State or in each regional grouping which expressly so requests, by a delegation under the authority of a Head of Delegation, with the approval of the ACP State or States concerned. Appropriate measures shall be taken in any case in which a Head of Delegation is appointed to a group of ACP States. The Head of Delegation shall represent the Commission in all spheres of its competence and in all its activities.

2. The Head of Delegation shall be the main contact for ACP States and bodies or organisations eligible for financial support under the Agreement. He shall cooperate and work in close cooperation with the National Authorising Officer.

3. The Head of Delegation shall have the necessary instructions and delegated powers to facilitate and expedite all operations under the Agreement.

4. On a regular basis, the Head of Delegation shall inform the national authorities of Community activities which may directly concern cooperation between the Community and the ACP States.;

- (z) Article 37 shall be replaced by the following:

'Article 37

Payments

1. For the purpose of effecting payments in the national currencies of the ACP States, accounts denominated in the currencies of the Members States or in euro may be opened in the ACP States by and in the name of the Commission with a national public or semi-public financial institution chosen by agreement between the ACP State and the Commission. This institution shall exercise the functions of National Paying Agent.

2. The National Paying Agent shall receive no remuneration for its services and no interest shall be payable by it on deposited funds. The local accounts shall be replenished by the Commission in the currency of one of the Member States or in euro, based on estimates of future cash requirements, which shall be made sufficiently in advance to avoid the need for pre-financing by ACP States and to prevent delayed disbursements.

3. (deleted)

4. Payments shall be made by the Commission in accordance with the rules laid down by the Community and the Commission, where appropriate after the expenditure has been cleared and authorised by the National Authorising Officer.

5. (deleted)

6. The procedures for clearance, authorisation and payment of expenditure must be completed within a period of 90 days from the date on which the payment becomes due. The National Authorising Officer shall process and deliver the payment authorisation to the Head of Delegation not later than 45 days before the due date.

7. Claims for delayed payments shall be borne by the ACP State or States concerned, and by the Commission from its own resources, for that part of the delay for which each Party is responsible in accordance with the above procedures.'

5. The following Annex shall be added:

ANNEX VII

Political dialogue as regards human rights, democratic principles and the rule of law

Article 1

Objectives

1. The consultations envisaged in Article 96(2)(a) will take place, except in cases of special urgency, after exhaustive political dialogue as envisaged in Article 8 and Article 9(4) of the Agreement.

2. Both Parties should conduct such political dialogue in the spirit of the Agreement and bearing in mind the Guidelines for ACP-EU Political Dialogue established by the Council of Ministers.

3. Political Dialogue is a process which should foster the strengthening of ACP-EU relations and contribute towards achieving the objectives of the Partnership.

Article 2

Intensified Political Dialogue preceding consultations under Article 96 of the Agreement

1. Political dialogue concerning respect for human rights, democratic principles and the rule of law shall be conducted pursuant to Article 8 and Article 9(4) of the Agreement and within the parameters of internationally recognised standards and norms. In the framework of this dialogue the Parties may agree on joint agendas and priorities.

2. The Parties may jointly develop and agree specific benchmarks or targets with regard to human rights, democratic principles and the rule of law within the parameters of internationally agreed standards and norms, taking into account special circumstances of the ACP State concerned. Benchmarks are mechanisms for reaching targets through the setting of intermediate objectives and timeframes for compliance.

3. The political dialogue set out in paragraphs 1 and 2 shall be systematic and formal and shall exhaust all possible options prior to consultations under Article 96 of the Agreement.

4. Except for cases of special urgency as defined in Article 96(2)(b) of the Agreement, consultations under Article 96 may also go ahead without preceding intensified political dialogue, when there is persistent lack of compliance with commitments taken by one of the Parties during an earlier dialogue, or by a failure to engage in dialogue in good faith.

5. Political dialogue under Article 8 of the Agreement shall also be utilised between the Parties to assist countries subject to appropriate measures under Article 96 of the Agreement, to normalise the relationship.

Article 3

Additional rules on consultation under Article 96 of the Agreement

1. The Parties shall strive to promote equality in the level of representation during consultations under Article 96 of the Agreement.

2. The Parties are committed to transparent interaction before, during and after the formal consultations, bearing in mind the specific benchmarks and targets referred to in Article 2(2) of this Annex.

3. The Parties shall use the 30-day notification period as provided for in Article 96(2) of the Agreement for effective preparation by the Parties, as well as for deeper consultations within the ACP Group and among the Community and its Member States. During the consultation process, the Parties should agree flexible timeframes, whilst acknowledging that cases of special urgency, as defined in Article 96(2)(b) of the Agreement and Article 2(4) of this Annex, may require an immediate reaction.

4. The Parties acknowledge the role of the ACP Group in political dialogue based on modalities to be determined by the ACP Group and communicated to the European Community and its Member States.

5. The Parties acknowledge the need for structured and continuous consultations under Article 96 of the Agreement. The Council of Ministers may develop further modalities to this end.'

IN WITNESS WHEREOF, the undersigned Plenipotentiaries have hereunto set their hands.

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FINAL ACT

The Plenipotentiaries of:

HIS MAJESTY THE KING OF THE BELGIANS,

THE PRESIDENT OF THE CZECH REPUBLIC,

HER MAJESTY THE QUEEN OF DENMARK,

THE PRESIDENT OF THE FEDERAL REPUBLIC OF GERMANY,

THE PRESIDENT OF THE REPUBLIC OF ESTONIA,

THE PRESIDENT OF THE HELLENIC REPUBLIC,

HIS MAJESTY THE KING OF SPAIN,

THE PRESIDENT OF THE FRENCH REPUBLIC,

THE PRESIDENT OF IRELAND,

THE PRESIDENT OF THE ITALIAN REPUBLIC,

THE PRESIDENT OF THE REPUBLIC OF CYPRUS,

THE PRESIDENT OF THE REPUBLIC OF LATVIA,

THE PRESIDENT OF THE REPUBLIC OF LITHUANIA,

HIS ROYAL HIGHNESS THE GRAND DUKE OF LUXEMBOURG,

THE PRESIDENT OF THE REPUBLIC OF HUNGARY,

THE PRESIDENT OF MALTA,

HER MAJESTY THE QUEEN OF THE NETHERLANDS,

THE FEDERAL PRESIDENT OF THE REPUBLIC OF AUSTRIA,

THE PRESIDENT OF THE REPUBLIC OF POLAND,

THE PRESIDENT OF THE PORTUGUESE REPUBLIC,

THE PRESIDENT OF THE REPUBLIC OF SLOVENIA,

THE PRESIDENT OF THE SLOVAK REPUBLIC,

THE PRESIDENT OF THE REPUBLIC OF FINLAND,

THE GOVERNMENT OF THE KINGDOM OF SWEDEN,

HER MAJESTY THE QUEEN OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND,

Contracting Parties to the Treaty establishing the European Community, hereinafter referred to as 'the Community', the States of the Community being hereinafter referred to as 'Member States',

and of THE EUROPEAN COMMUNITY,

of the one part, and

The Plenipotentiaries of:

THE PRESIDENT OF THE REPUBLIC OF ANGOLA,

HER MAJESTY THE QUEEN OF ANTIGUA AND BARBUDA,

THE HEAD OF STATE OF THE COMMONWEALTH OF THE BAHAMAS,

THE HEAD OF STATE OF BARBADOS,

HER MAJESTY THE QUEEN OF BELIZE,

THE PRESIDENT OF THE REPUBLIC OF BENIN,

THE PRESIDENT OF THE REPUBLIC OF BOTSWANA,

THE PRESIDENT OF BURKINA FASO,

THE PRESIDENT OF THE REPUBLIC OF BURUNDI,

THE PRESIDENT OF THE REPUBLIC OF CAMEROON,

THE PRESIDENT OF THE REPUBLIC OF CAPE VERDE,

THE PRESIDENT OF THE CENTRAL AFRICAN REPUBLIC,

THE PRESIDENT OF THE ISLAMIC FEDERAL REPUBLIC OF THE COMOROS,

THE PRESIDENT OF THE DEMOCRATIC REPUBLIC OF CONGO,

THE PRESIDENT OF THE REPUBLIC OF CONGO,

THE GOVERNMENT OF THE COOK ISLANDS,

THE PRESIDENT OF THE REPUBLIC OF CÔTE D'IVOIRE,

THE PRESIDENT OF THE REPUBLIC OF DJIBOUTI,

THE GOVERNMENT OF THE COMMONWEALTH OF DOMINICA,

THE PRESIDENT OF THE DOMINICAN REPUBLIC,

THE PRESIDENT OF THE STATE OF ERITREA,

THE PRESIDENT OF THE FEDERAL DEMOCRATIC REPUBLIC OF ETHIOPIA,

THE PRESIDENT OF THE SOVEREIGN DEMOCRATIC REPUBLIC OF FIJI,

THE PRESIDENT OF THE GABONESE REPUBLIC,

THE PRESIDENT AND HEAD OF STATE OF THE REPUBLIC OF THE GAMBIA,

THE PRESIDENT OF THE REPUBLIC OF GHANA,

HER MAJESTY THE QUEEN OF GRENADA,

THE PRESIDENT OF THE REPUBLIC OF GUINEA,

THE PRESIDENT OF THE REPUBLIC OF GUINEA-BISSAU,

THE PRESIDENT OF THE REPUBLIC OF EQUATORIAL GUINEA,

THE PRESIDENT OF THE REPUBLIC OF GUYANA,

THE PRESIDENT OF THE REPUBLIC OF HAITI,

THE HEAD OF STATE OF JAMAICA,

THE PRESIDENT OF THE REPUBLIC OF KENYA,

THE PRESIDENT OF THE REPUBLIC OF KIRIBATI,

HIS MAJESTY THE KING OF THE KINGDOM OF LESOTHO,

THE PRESIDENT OF THE REPUBLIC OF LIBERIA,

THE PRESIDENT OF THE REPUBLIC OF MADAGASCAR,

THE PRESIDENT OF THE REPUBLIC OF MALAWI,

THE PRESIDENT OF THE REPUBLIC OF MALI,

THE GOVERNMENT OF THE REPUBLIC OF THE MARSHALL ISLANDS,

THE PRESIDENT OF THE ISLAMIC REPUBLIC OF MAURITANIA,

THE PRESIDENT OF THE REPUBLIC OF MAURITIUS,

THE GOVERNMENT OF THE FEDERATED STATES OF MICRONESIA,

THE PRESIDENT OF THE REPUBLIC OF MOZAMBIQUE,

THE PRESIDENT OF THE REPUBLIC OF NAMIBIA,

THE GOVERNMENT OF THE REPUBLIC OF NAURU,

THE PRESIDENT OF THE REPUBLIC OF NIGER,

THE PRESIDENT OF THE FEDERAL REPUBLIC OF NIGERIA,

THE GOVERNMENT OF NIUE,

THE GOVERNMENT OF THE REPUBLIC OF PALAU,

HER MAJESTY THE QUEEN OF THE INDEPENDENT STATE OF PAPUA NEW GUINEA,

THE PRESIDENT OF THE RWANDESE REPUBLIC,

HER MAJESTY THE QUEEN OF SAINT KITTS AND NEVIS,

HER MAJESTY THE QUEEN OF SAINT LUCIA,

HER MAJESTY THE QUEEN OF SAINT VINCENT AND THE GRENADINES,

THE HEAD OF STATE OF THE INDEPENDENT STATE OF SAMOA,

THE PRESIDENT OF THE DEMOCRATIC REPUBLIC OF SÃO TOMÉ AND PRÍNCIPE,

THE PRESIDENT OF THE REPUBLIC OF SENEGAL,

THE PRESIDENT OF THE REPUBLIC OF SEYCHELLES,

THE PRESIDENT OF THE REPUBLIC OF SIERRA LEONE,

HER MAJESTY THE QUEEN OF SOLOMON ISLANDS,

THE PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA,
THE PRESIDENT OF THE REPUBLIC OF THE SUDAN,
THE PRESIDENT OF THE REPUBLIC OF SURINAME,
HIS MAJESTY THE KING OF THE KINGDOM OF SWAZILAND,
THE PRESIDENT OF THE UNITED REPUBLIC OF TANZANIA,
THE PRESIDENT OF THE REPUBLIC OF CHAD,
THE PRESIDENT OF THE TOGOLESE REPUBLIC,
HIS MAJESTY KING TAUFA'AHAU TUPOU IV OF TONGA,
THE PRESIDENT OF THE REPUBLIC OF TRINIDAD AND TOBAGO,
HER MAJESTY THE QUEEN OF TUVALU,
THE PRESIDENT OF THE REPUBLIC OF UGANDA,
THE GOVERNMENT OF THE REPUBLIC OF VANUATU,
THE PRESIDENT OF THE REPUBLIC OF ZAMBIA,
THE GOVERNMENT OF THE REPUBLIC OF ZIMBABWE,

whose States are hereinafter referred to as 'ACP States',

of the other part,

meeting in Luxembourg on the twenty-fifth day of June in the year two thousand and five for the signature of the Agreement amending 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,

have at the time of signature of this Agreement adopted the following declarations attached to this Final Act:

- | | |
|-----------------|--|
| Declaration I | Joint Declaration on Article 8 of the Cotonou Agreement |
| Declaration II | Joint Declaration on Article 68 of the Cotonou Agreement |
| Declaration III | Joint Declaration on Annex Ia |
| Declaration IV | Joint Declaration on Article 3(5) of Annex IV |
| Declaration V | Joint Declaration on Article 9(2) of Annex IV |
| Declaration VI | Joint Declaration on Article 12(2) of Annex IV |
| Declaration VII | Joint Declaration on Article 13 of Annex IV |

Declaration VIII	Joint Declaration on Article 19a of Annex IV
Declaration IX	Joint Declaration on Article 24(3) of Annex IV
Declaration X	Joint Declaration on Article 2 of Annex VII
Declaration XI	Community Declaration on Articles 4 and 58(2) of the Cotonou Agreement
Declaration XII	Community Declaration on Article 11a of the Cotonou Agreement
Declaration XIII	Community Declaration on Article 11b(2) of the Cotonou Agreement
Declaration XIV	Community Declaration on Articles 28, 29, 30 and 58 of the Cotonou Agreement and on Article 6 of Annex IV
Declaration XV	European Union Declaration on Annex Ia
Declaration XVI	Community Declaration on Articles 4(3), 5(7), 16(5) and (6) and 17(2) of Annex IV
Declaration XVII	Community Declaration on Article 4(5) of Annex IV
Declaration XVIII	Community Declaration on Article 20 of Annex IV
Declaration XIX	Community Declaration on Articles 34, 35 and 36 of Annex IV
Declaration XX	Community Declaration on Article 3 of Annex VII.

DECLARATION I**Joint declaration on article 8 of the Cotonou agreement**

In relation to dialogue at national and regional levels, for the purposes of Article 8 of the Cotonou Agreement, the 'ACP Group' shall be taken to mean the Troika of the ACP Committee of Ambassadors (CoA) and the Chairperson of the ACP Sub-committee on Political, Social, Humanitarian and Cultural Affairs (PSHCA); the Joint Parliamentary Assembly (JPA) shall be interpreted as the Co-Presidents of the JPA, or their designated nominees.

DECLARATION II**Joint declaration on article 68 of the cotonou agreement**

The ACP-EC Council of Ministers will examine, in application of the provisions contained in Article 100 of the Cotonou Agreement, the proposals of the ACP side concerning Annex II thereof on short-term fluctuations in export earnings (FLEX).

DECLARATION III**Joint declaration on annex Ia**

Should the Agreement amending the Cotonou Agreement not have entered into force by 1 January 2008, cooperation shall be financed from the balances of the 9th EDF and from the previous EDFs.

DECLARATION IV**Joint declaration on article 3(5) of annex IV**

For the purposes of Article 3(5) of Annex IV, 'special needs' are needs resulting from exceptional or unforeseen circumstances, such as post-crisis situations; 'exceptional performance' means a situation in which, outside the mid-term and end-of-term reviews, a country's allocation is totally committed and additional funding from the national indicative programme can be absorbed against a background of effective poverty-reduction policies and sound financial management.

DECLARATION V**Joint declaration on article 9(2) of annex IV**

For the purposes of Article 9(2) of Annex IV, 'new needs' are needs resulting from exceptional or unforeseen circumstances, such as post-crisis situations; 'exceptional performance' means a situation in which, outside the mid-term and end-of-term reviews, a region's allocation is totally committed and

additional funding from the regional indicative programme can be absorbed against a background of effective regional integration policies and sound financial management.

DECLARATION VI

Joint declaration on article 12(2) of annex VI

For the purposes of Article 12(2) of Annex VI, 'new needs' are needs which may arise from exceptional or unforeseen circumstances, such as those arising from new commitments to international initiatives or to address challenges which are common to ACP countries.

DECLARATION VII

Joint declaration on article 13 of annex IV

In view of the particular geographic situation of the Caribbean and Pacific regions, the ACP Council of Ministers or the ACP Committee of Ambassadors may, notwithstanding Article 13(2)(a) of Annex IV, present a specific funding request for one or the other of these regions.

DECLARATION VIII

Joint declaration on article 19a of annex IV

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.

DECLARATION IX

Joint declaration on article 24(3) of annex IV

The ACP States will be consulted, a priori, on any amendments to the Community rules referred to in Article 24(3) of Annex IV.

DECLARATION X

Joint declaration on article 2 of annex VII

The internationally recognised standards and norms are those of the instruments referred to in the Preamble of the Cotonou Agreement.

DECLARATION XI**Community declaration on articles 4 and 58(2) of the Cotonou agreement**

For the purpose of Articles 4 and 58(2), it is understood that the term 'local decentralised authorities' covers all levels of decentralisation including 'collectivités locales'.

DECLARATION XII**Community declaration on article 11a of the Cotonou agreement**

Financial and technical assistance in the area of cooperation in the fight against terrorism will be financed by resources other than those intended for the financing of ACP-EC development cooperation.

DECLARATION XIII**Community declaration on article 11b(2) of the Cotonou agreement**

It is understood that the measures set out in Article 11b(2) of the Cotonou Agreement will be undertaken within an adapted timeframe that takes into account each country specific constraints.

DECLARATION XIV**Community declaration on articles 28, 29, 30 And 58 of the Cotonou agreement and on article 6 of Annex IV**

The implementation of the provisions regarding regional cooperation where non-ACP countries are involved will be subject to the implementation of equivalent provisions in the framework of the Community's financial instruments on cooperation with other countries and regions of the world. The Community will inform the ACP Group upon the entry into force of these equivalent provisions.

DECLARATION XV**European union declaration on annex Ia**

1. The European Union undertakes to propose at the earliest opportunity, if at all possible by September 2005, an exact amount for the multiannual financial framework for cooperation under the Agreement amending the Cotonou Agreement and its period of application.
2. The minimum aid effort referred to in paragraph 2 of Annex Ia is guaranteed, without prejudice to the eligibility of the ACP countries for additional resources under other financial instruments which already exist or, potentially, may be created in support of actions in areas such as emergency humanitarian

aid, food security, poverty-related diseases, support for the implementation of the Economic Partnership Agreements, support for the measures envisaged following the reform of the sugar market, and relating to peace and stability.

3. The deadline for the commitment of funds of the 9th EDF, fixed at 31 December 2007, could be reviewed if necessary.

DECLARATION XVI

Community declaration on articles 4(3), 5(7), 16(5) and (6) and 17(2) of annex IV

These provisions are without prejudice to the role of the Member States in the decision-making process.

DECLARATION XVII

Community declaration on article 4(5) of annex IV

Article 4(5) of Annex IV and the return to the standard management arrangements will be implemented by means of a Council decision based on a Commission proposal. This decision will be duly notified to the ACP Group.

DECLARATION XVIII

Community declaration on article 20 of annex IV

The provisions of Article 20 of Annex IV will be implemented in accordance with the principle of reciprocity with other donors.

DECLARATION XIX

Community declaration on articles 34, 35 and 36 of annex IV

The detailed respective responsibilities of management and executing agents of Fund resources are included in a manual on procedures upon which ACP States will be consulted in accordance with Article 12 of the Cotonou Agreement. The manual will be made available to ACP States from the entry into force of the Agreement amending the Cotonou Agreement. Any amendments to the manual will be subject to the same procedure.

DECLARATION XX**Community declaration on article 3 of annex VII**

As regards the modalities foreseen in Article 3 of Annex VII, the position to be taken by the Council of the European Union within the Council of Ministers will be based on a proposal by the Commission.
