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REGULATIONS

COUNCIL REGULATION (EC) No 617/2007

of 14 May 2007

on the implementation of the 10th European Development Fund under the ACP-EC Partnership Agreement

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to the Partnership Agreement between the members of the African, Caribbean and Pacific Group of States of the one part, and the European Community and its Member States, of the other part, signed in Cotonou on 23 June 2000 ⁽¹⁾ as revised in Luxembourg on 25 June 2005 ⁽²⁾ (hereinafter referred to as the ACP-EC Partnership Agreement),

Having regard to the Internal Agreement between the Representatives of the Governments of the Member States, meeting within the Council, on the financing of Community aid under the multiannual financial framework for the period 2008 to 2013 in accordance with the ACP-EC Partnership Agreement and on the allocation of financial assistance for the Overseas Countries and Territories to which Part Four of the EC Treaty applies ⁽³⁾ (hereinafter referred to as the Internal Agreement), and in particular Article 10(1) thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Investment Bank,

Whereas:

- (1) Decision No 1/2006 of the ACP-EC Council of Ministers ⁽⁴⁾ specifies the multiannual financial framework for the period 2008 to 2013 and inserts a new Annex Ib in the ACP-EC Partnership Agreement.
- (2) The Internal Agreement defines the various financial envelopes of the 10th European Development Fund (hereinafter referred to as the EDF), the contribution key and contributions to the 10th EDF, sets up the EDF Committee and the Investment Facility Committee (here-

inafter referred to as the IF Committee), and determines the voting weight and qualified majority rule therein.

- (3) Furthermore, the Internal Agreement sets the aggregate amount of Community aid to the African, Caribbean and Pacific Group of States (hereinafter referred to as ACP States) (excluding the Republic of South Africa) and to the Overseas Countries and Territories (hereinafter referred to as the OCTs) for the six-year period 2008 to 2013 at EUR 22 682 million from the 10th EDF contributed by Member States. From the amount of the 10th EDF set by the Internal Agreement, EUR 21 966 million should be allocated to the ACP States as specified in the multiannual financial framework 2008 to 2013 referred to in Annex Ib to the ACP-EC Partnership Agreement, EUR 286 million should be allocated to the OCTs and EUR 430 million should be allocated to the Commission for support expenditures linked to programming and implementation of the EDF by the Commission.
- (4) The 10th EDF allocation to the OCTs is governed by Council Decision 2001/822/EC of 27 November 2001 on the association of the overseas countries and territories with the European Community ⁽⁵⁾ and by its implementing Commission Regulation (EC) No 2304/2002 ⁽⁶⁾ and any subsequent updates thereof.
- (5) Measures covered by, and eligible for funding under Council Regulation (EC) No 1257/96 of 20 June 1996 concerning humanitarian aid ⁽⁷⁾, should only in exceptional circumstances be financed under the 10th EDF, where such assistance is required to ensure continuity of cooperation from crisis to stable conditions for development and cannot be financed from the general budget of the European Union.

⁽¹⁾ OJ L 317, 15.12.2000, p. 3.

⁽²⁾ OJ L 209, 11.8.2005, p. 27.

⁽³⁾ OJ L 247, 9.9.2006, p. 32.

⁽⁴⁾ OJ L 247, 9.9.2006, p. 22.

⁽⁵⁾ OJ L 314, 30.11.2001, p. 1. Decision as amended by Decision 2007/249/EC (OJ L 109, 26.4.2007, p. 33).

⁽⁶⁾ OJ L 348, 21.12.2002, p. 82.

⁽⁷⁾ OJ L 163, 2.7.1996, p. 1. Regulation as amended by Regulation (EC) No 1882/2003 of the European Parliament and of the Council (OJ L 284, 31.10.2003, p. 1).

- (6) On 11 April 2006, the Council adopted the principle of funding the African Peace Facility from the 10th EDF for an amount of up to EUR 300 million covering the period 2008 to 2010 and agreed on future modalities and design for the facility.
- (7) The Sugar Protocol countries as referred to in Protocol 3 to ACP-EC Partnership Agreement affected by the Community sugar reform should be able to benefit from accompanying measures funded through Regulation (EC) No 1905/2006 of the European Parliament and of the Council of 18 December 2006 establishing a financing instrument for development cooperation ⁽¹⁾. The ACP countries will also access Community assistance from thematic programmes provided by the instrument for development cooperation and by Regulation (EC) No 1889/2006 of the European Parliament and of the Council of 20 December 2006 establishing a financing instrument for the promotion of democracy and human rights worldwide ⁽²⁾. Those thematic programmes should add value to, be consistent with and subsidiary and additional to the geographic programmes funded under the EDF.
- (8) The ACP-EC Partnership Agreement stresses the importance of regional cooperation among the ACP States, the OCTs and the Community's outermost regions.
- (9) The Decision 2005/446/EC ⁽³⁾ of the Representatives of the Governments of the Member States meeting within the Council sets as 31 December 2007 the date beyond which the funds of the 9th EDF managed by the Commission, the interest subsidies managed by the European Investment Bank (hereinafter referred to as the EIB) and the revenue accruing from the interest on these appropriations are no longer to be committed. This date could be reviewed if necessary.
- (10) In order to implement the EDF, the procedure for programming, examining and approving aid should be decided and the detailed rules for supervising the use of aid should be laid down. On 17 July 2006 the representatives of the Governments of the Member States meeting within the Council adopted Decision 2006/610/EC ⁽⁴⁾ on the provisional application of the Internal Agreement, for the purpose of the adoption of the Implementation Regulation and the Financial Regulation and, *inter alia*, for the purposes of establishing the EDF Committee and the IF Committee.
- (11) On 24 November 2004 the Council adopted conclusions on the effectiveness of EU external actions, including further strengthening complementarity and coordination between Community and Member States' development

cooperation. On 24 May 2005 the Council committed itself to timely implementation and monitoring of the Paris Declaration on Aid Effectiveness and of the EU specific commitments adopted at the Paris Forum of 28 February to 2 March 2005. The Council of 11 April 2006 adopted conclusions on the common framework for country strategy papers thus enabling a joint multi-annual programming by the EU and other interested donors. On 16 October 2006 the Council adopted conclusions on the importance of complementarity and division of labour as constitutive parts of aid effectiveness.

- (12) On 22 December 2005, the Council and the representatives of the Governments of the Member States meeting within the Council, the European Parliament and the Commission adopted a Joint Statement on a European Union Development Policy ⁽⁵⁾. Subsequently the European Council adopted a strategy for Africa in December 2005 and the Council adopted conclusions on a strategy for the Caribbean (10 April 2006) and the Pacific (17 July 2006).
- (13) On 16 October 2006 the Council adopted conclusions on Governance in the European Consensus on Development: Towards a Harmonised Approach within the European Union, recalling that the allocation of incentive tranches of the Governance Initiative should be thoroughly discussed between Member States and the Commission and stressing the need for the Commission to involve the competent bodies of the Council,

HAS ADOPTED THIS REGULATION:

TITLE I

GENERAL PRINCIPLES

Article 1

General framework for programming and implementation

1. The primary and overarching objective of cooperation under this Regulation shall be the eradication of poverty in partner countries and regions in the context of sustainable development, including pursuit of the Millennium Development Goals.

2. Geographic cooperation with the ACP countries and regions in the context of the 10th EDF shall be founded on the basic principles and values reflected in the general provisions of the ACP-EC Partnership Agreement and taking into account the development objectives and cooperation strategies set out in Title XX of the Treaty.

⁽¹⁾ OJ L 378, 27.12.2006, p. 41.

⁽²⁾ OJ L 386, 29.12.2006, p. 1.

⁽³⁾ OJ L 156, 18.6.2005, p. 19.

⁽⁴⁾ OJ L 247, 9.9.2006, p. 30.

⁽⁵⁾ OJ C 46, 24.2.2006, p. 1.

The Joint Development Policy Statement of 22 December 2005: 'The European Consensus' shall provide the general framework to guide the programming and implementation of the 10th EDF, including the principles set out in the 2005 Paris Declaration on Aid Effectiveness.

3. The Paris Declaration on Aid Effectiveness includes the principles of ownership, alignment, harmonisation, results oriented aid management and mutual accountability, valid for partner countries and regions as well as for donors.

Those principles shall create the conditions for the partner countries and regions to exercise effective leadership over their development policies and strategies and lead to a country or region-based and country or region-led approach, involving broad stakeholder consultation and increasingly aligning with national or regional development objectives and strategies, particularly those for reducing poverty. This requires effective donor coordination, based on a search for complementarity, a non-exclusive approach and the promotion of donor-wide initiatives, aligned with and based on existing analyses, processes and strategies and country or region specific procedures and institutions.

4. Without prejudice to the need to ensure continuity of cooperation from crisis to stable conditions for development, measures covered by, and eligible for funding under Regulation (EC) No 1257/96 shall, in principle, not be funded under this Regulation.

TITLE II

PROGRAMMING

Article 2

The programming process

1. The process of programming for assistance to the ACP countries and regions managed by the Commission under the ACP-EC Partnership Agreement shall be undertaken in accordance with Articles 1 to 14 of Annex IV to that Agreement and in accordance with the general principles referred to in Article 1 of this Regulation.

2. Programming for the purpose of this Regulation shall mean, *inter alia*:

- (a) the preparation and development of Country Support Strategies (hereinafter referred to as country strategy papers) and Regional Support Strategies (hereinafter referred to as regional strategy papers);
- (b) a clear indication from the Community of the indicative programmable financial allocation from which the countries and regions may benefit during the six-year period of the 10th EDF;
- (c) the preparation and adoption of a multiannual indicative programme for implementing the country strategy papers and regional strategy papers;

(d) a review process covering the country strategy papers and regional strategy papers, the multiannual indicative programmes and the volume of resources allocated to them.

3. The programming at national and regional level shall be conducted in a coordinated way. Coordination for the purpose of this Regulation shall mean, *inter alia*:

(a) the partner country or region concerned shall to the extent possible be the leading force in the programming of Community assistance. Programming shall, except in the cases provided for in paragraph 5, be done jointly with the partner country or region concerned and increasingly aligned with the partner country or region's poverty reduction or equivalent strategies; the joint process shall include other stakeholders where relevant, including parliaments, local authorities and representative non-State actors, that shall be associated in the programming process as early as appropriate;

(b) for the preparation and development of the strategy papers the Commission shall work in coordination with the Member States locally represented and the EIB on matters relating to its areas of expertise and operations, including as regards the Investment Facility. Coordination will remain open to the Member States that are not permanently represented in the country or region concerned;

(c) the Commission and the Member States locally represented shall strive where possible and appropriate to joint programming, including a joint response strategy. Participation in joint programming will, through flexible mechanisms, remain open to the Member States that are not permanently represented in the country or region concerned;

(d) the Commission and Member States shall seek regular and frequent exchanges of information, including with other donors and development banks, and promote better coordination of policies, harmonisation of procedures, complementarity and division of labour, thereby enhancing improved impact of policies and programming. Donor coordination shall as far as possible take place through existing mechanisms of donor coordination and build on existing harmonisation processes in the partner country or region concerned. The partner country or region concerned should to the extent possible be the leading force in the coordination of Community assistance with other donors; whenever the development of common strategies is already under way, joint programming should remain open to other donors and complement, strengthen, and whenever possible be part of these existing processes.

4. In addition to country strategy papers and regional strategy papers, an intra-ACP strategy paper and related multiannual indicative programme shall be prepared and developed with the ACP-EC Committee of Ambassadors, based on criteria set out for an intra-ACP policy framework compliant with the principles of complementarity and geographic scope inherent in Article 12 of Annex IV to the ACP-EC Partnership Agreement.

5. In the exceptional circumstances referred to in Article 3(4) and Article 4(5) of Annex IV to the ACP-EC Partnership Agreement, when countries cannot access normal programmable funds and/or the national authorising officer is prevented from carrying out his/her duty, the Community shall make specific provisions as referred to in Article 4(7) of this Regulation.

6. Programming shall be designed so as to fulfil to the greatest extent possible the criteria for official development assistance (hereinafter referred to in as 'ODA') established by the OECD/DAC.

7. Programming shall, where appropriate, ensure European visibility in partner countries and regions.

Article 3

Resource allocation

1. At the beginning of the programming processes the Commission shall, on the basis of the needs and performance criteria identified in Articles 3, 9 and 12 of Annex IV to the ACP-EC Partnership Agreement, determine the multiannual indicative fund allocation for each ACP country and region and for the intra-ACP envelope on which the programming process is based, within the limits set out in Article 2 of the Internal Agreement. These criteria shall be standard, objective and transparent.

2. Regarding the national indicative grant allocation, the resources shall comprise a programmable amount, including an incentive tranche allocated on the basis of governance related criteria in line with the principles on governance adopted by the Council on 16 October 2006, and an allocation for unforeseen needs as referred to in Article 3(2)(b) of Annex IV to the ACP-EC Partnership Agreement.

3. The EDF Committee referred to in Article 11 shall give its opinion in accordance with the management procedure set out in Article 11(3) on the method used in the application of the general criteria for resource allocation as presented by the Commission.

The consolidated country and regional aid allocations shall be consistent with the amounts set out in Article 2 of the Internal Agreement. They shall be integrated into the country and regional strategy papers and multiannual indicative programmes, and adopted by the Commission in accordance with the management procedure set out in Article 11(3). Funds earmarked for special support programmes and actions as referred to in Article 4(7) shall also be adopted by the Commission in accordance with the management procedure set out in Article 11(3).

Article 4

Country and regional strategy papers and multiannual programming

1. The country and regional strategy papers shall be prepared on the basis of the general principles of coordination, ownership and aid effectiveness referred to in Articles 1 and 2, following the common framework for country strategy papers and the principles towards joint multiannual programming adopted by the Council on 11 April 2006.

2. The strategy papers shall aim to provide a coherent framework for cooperation between the Community and the partner country or region concerned, consistent with the overall purpose and scope, objectives and principles of the ACP-EC Partnership Agreement. The strategy paper shall not only cover the development cooperation funded out of the EDF, but also reflect all other Community instruments having an impact on the partner country or region aiming to ensure policy coherence with other areas of the Community's external action including, where relevant, the EIB.

3. Except in the circumstances referred to in Article 2(5), multiannual indicative programmes shall be drawn up on the basis of the respective strategy papers and shall be the subject of an agreement with the country or region concerned. Emphasis shall be placed on shared assessments of needs and performance and sector analysis, as well as priorities. In the context of Article 11(3) and in cases where the Commission participates in a joint programming process, the multiannual indicative programme shall where appropriate be integrated in a document drafted jointly with the other participating donors. The multiannual indicative programmes shall include:

- (a) the priority areas selected for Community financing, the overall objectives, the targeted beneficiaries, the general policy commitments and the expected impact;
- (b) the indicative financial allocation, both overall and per priority area. The allocation per priority area may be given in the form of a limited range, where appropriate. Community assistance shall be concentrated in a limited number of priority areas and, where appropriate, through general budget support, and shall ensure alignment with operations financed by the ACP country or region concerned and complementarity and coherence with operations financed by Member States and by other donors;
- (c) per priority area, and in case of general budget support, specific objectives and sectoral policy commitments and the most appropriate measures and operations for attaining these objectives and targets. The indicative programme shall also describe the expected impact, and define results and quantitative and qualitative performance indicators and a timetable for implementation, including commitments and disbursement of resources, and for expected results. Indicators shall to the maximum extent possible be aligned with and based on the partner country or region's own monitoring system;

- (d) the resources reserved for programmes and projects outside the priority areas and, where possible, the broad outlines of such activities as well as an indication of the resources to be deployed for each of these activities. They may include the priorities and specific resources for the purpose of strengthening cooperation with the Community's outermost regions, OCTs or neighbouring partner countries and regions as referred to in Article 10 of this Regulation and the modalities for identifying and coordinating the selection of those common interest projects;
- (e) the type of non-State actors eligible for funding and, where possible, the resources to be allocated and the type of activities to be supported.

Resources may be channelled through different modalities that may be complementary according to what will work best in each country. The use of budget support shall be done in accordance with the eligibility criteria set out in Article 61.2 of the ACP-EC Partnership Agreement.

4. The strategy papers and multiannual indicative programmes shall take account of, and avoid duplication with, measures and programmes eligible for funding under other EDF or Community instruments. Particular care shall be paid to the interaction between national, regional and intra-ACP support strategies and to consistency with Community instruments, in particular Regulation (EC) No 1905/2006, Regulation (EC) No 1889/2006, and Regulation (EC) No 1257/96, taking into account the actions undertaken under Regulation (EC) No 1717/2006 of the European Parliament and the Council of 15 November 2006 establishing an Instrument for Stability⁽¹⁾. The multiannual adaptation strategies for Sugar Protocol countries provided for in the instrument for development cooperation shall be integrated in the country strategy papers.

5. The strategy paper referred to in paragraph 4, including its multiannual indicative programme, shall be adopted by the Commission in accordance with the management procedure set out in Article 11(3). At the same time as the strategy papers referred to in paragraph 1 are transmitted to Member States in the EDF Committee, the Commission shall also transmit them to the Joint Parliamentary Assembly for information, while fully respecting the decision-making procedure according to Title IV of this Regulation.

6. The strategy papers, including the multiannual indicative programmes, shall subsequently be adopted by common agreement between the Commission and the ACP State or region concerned and shall, when adopted, be binding on both the Community and that State or region. Countries without a signed strategy paper remain eligible to funding from the allocation for unforeseen needs referred to in Article 3(2)(b) of Annex IV to the ACP-EC Partnership Agreement.

7. The provisions referred to in Article 2(5) of this Regulation may take the form of special support programmes replacing the national strategy paper in cases as set out in Article 4 (5) of Annex IV to the ACP-EC Partnership Agreement where

the national authorising officer in the partner country is prevented from carrying out his duty, or they may take the form of actions funded from the allocation for unforeseen needs referred to in Article 3(2)(b) of Annex IV to the ACP-EC Partnership Agreement in situations set out in Article 3(4) of that Annex when the partner country can not access the normal programmable funds referred to in Article 3(2)(a) of that Annex. These special support programmes and actions funded from the allocation for unforeseen needs shall comply with the previous paragraphs and take into account the special considerations referred to in Article 5(4)(c) of this Regulation. They shall be adopted by the Commission in accordance with the management procedure set out in Article 11(3) of this Regulation.

Article 5

Reviews

1. Strategy papers and multiannual indicative programmes as well as the special support programmes and actions referred to in Article 4(7) of this Regulation shall be submitted to annual operational reviews, to reviews at mid-term and at the end of term and, when necessary, to ad hoc reviews. These reviews shall be carried out locally by the Commission and the partner country or region concerned in line with Article 5 of Annex IV of the ACP-EC Partnership Agreement, and shall be prepared on the basis of the general principles of coordination, ownership and aid effectiveness referred to in Articles 1 and 2. The strategy papers and multiannual indicative programmes may also be submitted to ad hoc reviews in between annual, mid-term and end-of-term reviews in line with Article 3(5) of Annex IV of the ACP-EC Partnership Agreement.

2. The mid-term and end-of-term reviews shall constitute an integral part of the programming process. They shall assess the strategy paper, including the multiannual adaptation strategies for the Sugar Protocol countries and any other programmes funded from Community instruments referred to in Article 4(4), and the multiannual indicative programme in the light of current needs and performance. The review shall include, to the extent possible, an impact assessment of the Community's development cooperation in relation to the general objective of poverty reduction referred to in Article 1(1), to the objectives, allocated resources and indicators set out in the strategy papers and an assessment of the adherence to, and the possibilities for furthering, the aid effectiveness principles referred to in Articles 1 and 2. Following the completion of the mid-term or end-of-term review exercise:

- (a) the strategy papers and multiannual indicative programmes may be adjusted where the reviews indicate specific problems or lack of progress towards meeting the objectives and indicated results, or in the light of changed circumstances, including as a result of ongoing harmonisation processes such as division of labour among Commission and Member States and possibly other donors;

⁽¹⁾ OJL 327, 24.11.2006, p. 1.

(b) the national and regional multiannual indicative allocation may be increased or decreased in the light of current needs and performance.

3. The annual operational reviews shall be conducted in accordance with Article 5(4) of Annex IV to the ACP-EC Partnership Agreement. In cases of new or special needs, set out in Articles 3(5) and 9(2) of Annex IV to the ACP-EC Partnership Agreement, such as those resulting from a post-crisis situation, or exceptional performance when a multiannual indicative allocation is totally committed and additional funding can be absorbed against a background of effective poverty-reduction policies and sound financial management, a multiannual indicative allocation may be increased following the completion of the annual operational review exercise.

The general results of the annual operational reviews shall be presented to the EDF Committee for an exchange of views in accordance with Article 11(4) of this Regulation.

4. Ad hoc reviews can be carried out at the request of either the ACP State concerned or the Commission in cases of new or special needs or exceptional performance as described in paragraph 3 of this Article or in the case of exceptional circumstances referred to in Article 72 and Article 73 of the ACP-EC Partnership Agreement regarding humanitarian and emergency aid. The Commission shall take into account requests for ad hoc reviews by Member States. The occurrence of sudden and unforeseeable serious humanitarian, economic and social difficulties of an exceptional nature resulting from natural disasters, man-made crises such as wars and other conflicts, post-conflict situations, threats to democracy, the rule of law, human rights or fundamental freedoms or extraordinary circumstances within a country or within a region that have comparable effects, may be considered as cases justifying the conducting of an ad hoc review.

(a) Following the completion of the ad hoc review exercise, special measures referred to in Article 8 of this Regulation may be proposed. If required, the allocation of the multiannual indicative programme or the special action programme may be increased within the limits of available funds set out in Article 2 of the Internal Agreement. Where no strategy paper has been signed, special support can be funded from the allocation for unforeseen needs as referred to in Article 3(2)(b) of Annex IV to the ACP-EC Partnership Agreement.

(b) The measures taken shall be consistent and coherent with and complement other Community instruments, including the instrument for humanitarian aid referred to in Article 4(4).

(c) Where partner countries or groups of partner countries are directly involved in, or affected by, a crisis or post-crisis

situation, multiannual programming shall place special emphasis on stepping up coordination between relief, rehabilitation and development to help them make the transition from an emergency situation to the development phase; programmes for countries and regions regularly subject to natural disasters shall provide for disaster preparedness and prevention.

5. In cases of new needs as defined in the Joint Declaration VI referring to Article 12(2) of Annex IV to the ACP-EC Partnership Agreement regarding intra-ACP cooperation, an increase in the intra-ACP programmable allocation may be financed from the intra-ACP reserves within the global limits set out in Article 2(b) of the Internal Agreement.

6. Any change in strategy papers and/or resource allocation resulting from a review referred to in paragraphs 1 to 4 shall be adopted by the Commission in accordance with the management procedure set out in Article 11(3). The addenda to the strategy papers, including the multiannual indicative programmes and to the special support programmes shall subsequently be adopted by common agreement between the Commission and the ACP State or region concerned and shall, when adopted, be binding on both the Community and that State or region.

TITLE III

IMPLEMENTATION

Article 6

General framework for implementation

The implementation of the assistance provided to the ACP countries and regions managed by the Commission under the ACP-EC Partnership Agreement shall be undertaken in accordance with Annex IV to that Agreement and the Financial Regulation referred to in Article 10(2) of the Internal Agreement and in accordance with the principles of ownership and aid effectiveness referred to in Article 1.

Article 7

Annual action programmes

1. The Commission shall adopt annual action programmes based on the strategy papers and multiannual indicative programmes referred to in Article 4.

Exceptionally, for instance where an annual action programme has not yet been adopted, the Commission may, on the basis of the strategy papers and multiannual indicative programmes, adopt measures not provided for in the annual action programme under the same rules and procedures.

2. The annual action programmes shall be prepared by the Commission with the partner country or region, involving the Member States locally represented and coordinating where appropriate with other donors, notably in cases of joint programming, and the EIB. The annual action programmes shall describe the general context and assess Community assistance and lessons learnt, including regarding budget support, based especially on the annual operational reviews referred to in Article 5(3). They shall specify the objectives pursued, the fields of intervention, the total amount of financing planned and an indication of the amounts allocated for each operation. They shall include detailed individual fiches for each foreseen operation which shall contain an analysis of the specific sector context, a description of the actions to be financed, the main stakeholders, the expected results based on quantitative and qualitative indicators, the management procedure, an indicative implementation timetable, and, in case of budget support, the criteria for disbursement, inclusive of possible variable tranches. Objectives shall be specific, measurable, realistic and have time-bound benchmarks, aligning with the partner country or region's own objectives and benchmarks to the maximum extent possible. They shall state how they take current or planned EIB activities into account.

3. The annual action programmes shall be adopted by the Commission in accordance with the management procedure set out in Article 11(3) of this Regulation. Each Member State may request the withdrawal of a project or programme from the annual action programme. If this request is supported by a blocking minority of Member States as laid down in Article 8(3) in connection with 8(2) of the Internal Agreement, the annual action programme shall be adopted by the Commission without the project or programme concerned in accordance with the management procedure set out in Article 11(3) of this Regulation. Unless the Commission, in line with the views of the Member States in the EDF Committee, wishes not to pursue the withdrawn project or programme it shall, at a later stage, be re-submitted to the EDF Committee outside the annual action programme as provided for in paragraph 1, second subparagraph of this Article in the form of a financing proposal which shall then be adopted by the Commission in accordance with the management procedure set out in Article 11(3) of this Regulation.

4. Amendments to annual action programmes or to measures not provided for in the annual action programmes shall be adopted in accordance with the management procedure set out in Article 11(3). In cases where amendments to Annual Action Programmes or measures not provided for in the annual action programmes do not exceed 20 % of the initial projects, programmes or consolidated allocation thereof, but do not represent more than EUR 10 million, such amendments shall be adopted by the Commission provided they do not affect the initial objectives set out in the Commission decision. The Commission shall inform the EDF Committee of any such amendments within one month.

5. The Commission shall adopt specific action programmes in accordance with the management procedure set out in Article 11(3) of this Regulation for support expenditures referred to in Article 6(2) of the Internal Agreement and not covered by the multiannual indicative programmes. Any changes in the action programmes for support expenditures shall be adopted in accordance with paragraph 4 of this Article.

6. Member States represented in the country or region, other interested Member States and where appropriate the EIB shall be kept regularly informed by the Commission on the implementation of Community projects and programmes. In turn, each Member State and the EIB shall also regularly inform the Commission, at country or region level, of the cooperation activities that they are implementing or programming, in each particular country or region.

7. In accordance with Article 11(4) of this Regulation, each Member State may at any moment request to include on the agenda of the EDF Committee an exchange of views on implementation issues relating to a particular project or programme managed by the Commission. This exchange of views may include the way the Commission applies the criteria for disbursement of budget support referred to under paragraph 2 of this Article.

Article 8

Adoption of special measures

1. In the cases referred to in Article 5(4), the Commission may adopt special measures not provided for in the strategy papers and multiannual indicative programmes in accordance with Article 2(5).

2. Special measures shall specify the objectives pursued, the areas of intervention, the targeted beneficiaries, the expected results, the management procedure and the total amount of financing. They shall contain a description of the operations to be financed, an indication of the amounts allocated for each operation and the indicative timetable for their implementation. They shall include a definition of the type of performance indicators that will have to be monitored when implementing the special measures. These indicators shall take into account the partner country or region's monitoring systems where relevant.

3. Where the cost of such special measures exceeds EUR 10 million, the Commission shall adopt them under the management procedure set out in Article 11(3). For special measures below EUR 10 million, the Commission shall inform the EDF Committee within one month of their adoption. In accordance with Article 11(4), each Member State may at any moment request to include on the agenda of the EDF Committee an exchange of views on these operations. This exchange of views may lead to the formulation of recommendations which the Commission shall take into account.

4. Amendments to special measures, such as those making technical adjustments, extending the implementation period, reassigning funds within the forecast budget, or increasing or reducing the size of the budget by less than 20 % of the initial budget, but not more than EUR 10 million, do not require adoption under the management procedure set out in Article 11 (3), provided that such amendments do not affect the initial objectives set out in the Commission decision. Any such technical adjustments shall be communicated within one month to the Member States.

5. The special measures shall be subject to an annual exchange of views within the EDF Committee on the basis of a report prepared by the Commission.

Article 9

Co-financing and additional Member State contributions

1. Co-financing shall occur when a project or programme is funded from different sources:

- (a) in the case of parallel co-financing, the project or programme is split into a number of clearly identifiable components, each of which is financed by the different partners providing co-financing, in such a way that the end-use of the financing can always be identified;
- (b) in the case of joint co-financing, the total cost of a project or programme is shared between the partners providing co-financing and the resources are pooled in such a way that it is no longer possible to identify the source of financing for any activity undertaken as part of the project or programme.

2. When the Commission is involved in joint co-financing arrangements, the implementing arrangements governing such funds, including, when appropriate, the necessity for joint evaluations and the coverage of the possible administrative costs incurred by the body in charge of the management of the pooled funds shall be laid down in the financing agreement according to the rules and procedures which shall be detailed in the Financial Regulation referred to in Article 10(2) of the Internal Agreement.

Where the Commission receives and manages funds on behalf of:

- (a) Member States and their regional and local authorities, and in particular their public and parastatal agencies;
- (b) other donor countries, and in particular their public and parastatal agencies;

- (c) international organisations, including regional organisations, and in particular international and regional financial institutions;

for the purpose of implementing joint measures, such funds shall be treated as assigned revenue, in accordance with the Financial Regulation referred to in Article 10(2) of the Internal Agreement and shall be integrated as such in the annual action programmes. The visibility of the Member States' contributions shall be assured.

Where the Commission entrusts the bodies referred to in precedent subparagraph with funds for the financing of tasks of public authority, and in particular EDF implementation tasks, such co-financing shall be reflected and duly justified in the annual action programmes and visibility of the EDF contribution shall be ensured.

3. When the EIB is designated as the manager for a joint co-financing arrangement, the implementing arrangements governing such funds, including, when appropriate the coverage of the administrative costs incurred by the EIB, shall be drawn up in compliance with the statutes and internal regulations of the EIB.

4. At their own initiative, Member States may also provide to the Commission or the EIB voluntary contributions to help achieve the objectives of the ACP-EC Partnership Agreement outside joint co-financing arrangements. Such contributions shall not affect the overall allocation of funds under the 10th EDF and earmarking shall only be made in duly justified circumstances, for example in response to the exceptional circumstances as referred to in Article 5(4). The additional funds shall be integrated in the programming and review process and in the annual action programmes referred to in this Regulation and reflect partner country or region ownership. Voluntary contributions entrusted to the Commission shall be treated as assigned revenue in accordance with the Financial Regulation referred to in Article 10(2) of the Internal Agreement. They shall be treated in the same way as Member States' regular contributions referred to in Article 1(2) of the Internal Agreement except for the provisions in Articles 6 and 7 of the Internal Agreement for which specific arrangements may be laid down in a bilateral contribution agreement.

5. Member States entrusting the Commission or the EIB with additional voluntary contributions to help achieve the objectives of the ACP-EC Partnership Agreement shall inform the Council and the EDF Committee of these contributions in advance. Any earmarking shall be duly justified and any resulting change in the annual action programmes or in the strategy papers shall be adopted by the Commission in accordance with the management procedure set out in Article 11(3).

*Article 10***Participation by a third country or region**

In order to ensure the coherence and effectiveness of Community assistance, the Commission may decide that non-ACP developing countries and regional integration bodies with ACP participation that promote regional cooperation and integration eligible for Community Assistance under Regulation (EC) No 1905/2006, Regulation (EC) No 1638/2006 of the European Parliament and of the Council of 24 October 2006 establishing a European Neighbourhood and Partnership instrument⁽¹⁾, the OCTs eligible for Community assistance under Decision 2001/822/EC, and the Community's outermost regions are eligible for funds referred to in Article 1(2)(a)(i) of the Internal Agreement, where the project or programme concerned is of a regional or cross-border nature and complies with Article 6 of Annex IV of the ACP-EC Partnership Agreement. Provision may be made for this funding in the strategy papers and multiannual indicative programmes and in the special measures referred to in Article 8 of this Regulation. Those provisions shall be integrated into the annual action programmes.

TITLE IV

DECISION-MAKING PROCEDURES*Article 11***Responsibilities of the EDF Committee**

1. The EDF Committee set up according to Article 8 of the Internal Agreement shall give its opinion, in accordance with the management procedure set out in paragraph 3, on the substantive issues of development cooperation at country, regional and intra-ACP level funded from the 10th EDF and other Community resources referred to in Article 4(3).
2. The EDF Committee's tasks shall cover the responsibilities spelled out in Titles II and III of this Regulation:
 - (a) programming of Community aid under the 10th EDF and programming reviews focusing in particular on country, regional and intra-ACP strategies; and
 - (b) monitoring the implementation of Community aid, covering amongst others the impact of assistance on the reduction of poverty, sectoral aspects, cross-cutting issues, the functioning of field-level coordination with Member States and other donors and progress on the aid effectiveness principles referred to in Article 1.
3. When the EDF Committee is called upon to give its opinion, the representative of the Commission shall submit to the EDF committee within the time-limits set out in the Council Decision on the rules and procedures of the EDF Committee referred to in Article 8(5) of the Internal Agreement, a draft of the measures to be taken. The EDF Committee shall deliver its opinion within a time-limit which the chairman may lay down according to the urgency of the matter but which shall not exceed 30 days. The EIB shall take part in the exchange of

views. The opinion shall be delivered by the qualified majority laid down in Article 8(3) of the Internal Agreement on the basis of the votes of the Member States weighted in the manner set out in Article 8(2) of the Internal Agreement.

When the EDF Committee has delivered its opinion, the Commission shall adopt measures which shall apply immediately. However, if these measures are not in accordance with the opinion of the EDF Committee, they shall be communicated by the Commission to the Council forthwith. In that event, the Commission shall defer application of the measures for a period which shall in principle not exceed 30 days from the date of such communication but which may be prolonged for a period of up to 30 days in exceptional circumstances. The Council, acting by the same qualified majority as the EDF Committee, may take a different decision within this period.

4. The EDF Committee shall have an exchange of views on the general conclusions of the annual operational reviews and of the annual report referred to in Article 14(3). Each Member State may also call for an exchange of views on the evaluations referred to in Article 15(3).

Each Member State can invite the Commission at any moment to provide the EDF Committee with information and to have an exchange of views on issues related to the tasks described under paragraph 2.

Such exchanges of view may lead to the formulation of recommendations by the Member States, which the Commission shall take into account.

5. On the basis of conclusions of the reviews prepared by the Commission, the EDF Committee shall also examine the consistency and complementarity between Community aid and aid from the Member States and where appropriate other donors, in line with Articles 1 and 2.

*Article 12***The African Peace Facility**

In accordance with the Council conclusions of 11 April 2006 to fund the African Peace Facility from the 10th EDF for a three-year period with EUR 300 million, the intra-ACP indicative programme shall earmark funding for the African Peace Facility. Specific management procedure shall apply as follows:

- (a) on a request from the African Union, endorsed by the ACP-EC Committee of Ambassadors, an action programme shall be prepared by the Commission covering the period 2008 to 2010. This action programme shall among others specify the objectives pursued, the scope and nature of the possible interventions, the implementation arrangements, and an agreed format for background documents and requests and for reporting. An annex to the action programme shall describe the specific decision making procedures for each possible intervention according to its nature, size and urgency;

⁽¹⁾ OJL 310, 9.11.2006, p. 1.

- (b) this action programme, including the annex referred to in point (a), and any changes thereto shall be discussed by the relevant preparatory Council working groups and the Political and Security Committee and approved by Coreper by qualified majority as defined in Article 8(3) of the Internal Agreement before being adopted by the Commission in accordance with the management procedure set out in Article 11(3) of this Regulation;
- (c) the action programme, excluding the annex referred to in point (a), shall be the basis for the financing agreement to be concluded between the Commission and the African Union;
- (d) each intervention to be implemented under the financing agreement shall be subject to prior approval by the Political and Security Committee; the relevant preparatory Council working groups shall be informed or consulted in due time prior to their submission to the Political and Security Committee according to the specific decision making procedures referred to in point (a) in order to ensure that, besides the military and security dimension, the development related aspects of the envisaged measures are being taken into account. Special attention shall hereby be given to activities recognised as ODA;
- (e) the Commission shall prepare an activity report on the use of the funds for information of the Council and the EDF Committee on an annual basis and at the request of Council or the EDF Committee, distinguishing between ODA and non-ODA related commitments and disbursements;
- (f) An evaluation shall be undertaken in 2010 reviewing the procedures of the African Peace Facility as well as the possibilities of alternative future sources of funding, including common foreign and security policy funding.

Article 13

The IF Committee

1. The IF Committee set up under the auspices of the EIB according to Article 9 of the Internal Agreement shall consist of the representatives of the Member States and a representative of the Commission. Each Government shall nominate one representative and one designated alternate. The Commission shall act in the same way for its representative. With a view to maintaining continuity, the Chairman of the IF Committee shall be elected by and from among the members of the IF Committee for a period of two years. The EIB shall provide the Committee's secretariat and support services. Only the members of the IF Committee designated by the Member States, or their alternates, shall vote.

The Council, acting unanimously, shall adopt the rules of procedure of the IF Committee on the basis of a proposal drawn up by the EIB after consulting the Commission.

The IF Committee shall act by qualified majority. The weighting of the votes shall be as laid down in Article 8 of the Internal Agreement.

The IF Committee shall meet at least four times a year. Additional meetings may be convened at the request of the EIB or of the members of the Committee as set out in the rules of procedure. In addition, the IF Committee may deliver an opinion by written procedure, in the terms established by its Rules of Procedure.

2. The IF Committee shall approve:

- (a) guidelines on the implementation of the Investment Facility, its development impact assessment framework and proposals for their revision;
- (b) the investment strategies and business plans of the Investment Facility, including performance indicators, on the basis of the objectives of the ACP-EC Partnership Agreement and of the broad principles of Community development policy;
- (c) the annual reports of the Investment Facility;
- (d) any general policy document, including evaluation reports, concerning the Investment Facility.

3. Furthermore, the IF Committee shall deliver an opinion on:

- (a) proposals to grant an interest subsidy under Article 2(7), and Article 4(2), of Annex II to the ACP-EC Partnership Agreement. In such cases, the IF Committee shall also deliver an opinion on the use of such an interest subsidy. In order to streamline the approval process for small operations, the IF Committee may give its favourable opinion to proposals from the EIB for a global allocation for interest subsidies that shall subsequently, without further opinion from the IF Committee and/or the Commission, be sub-allocated by the EIB to individual projects according to criteria set out in the global allocation, including the maximum interest subsidy sub-allocation per project;
- (b) proposals for an IF investment for any project for which the Commission has delivered a negative opinion;
- (c) other proposals relating to the Investment Facility based on the general principles defined in the operational guidelines.

In addition, the governing bodies of the EIB may, from time to time, request that the IF Committee provides an opinion on all financing proposals, or on certain categories of financing proposals.

4. It shall be the EIB's responsibility to submit to the IF Committee in a timely manner any matters that require the approval or opinion of the IF Committee, as provided for in paragraphs 1, 2 and 3. Any proposal submitted to the Committee for an opinion shall be made in accordance with the relevant criteria and principles set out in the operational guidelines.

5. The EIB shall cooperate closely with the Commission and, where applicable, shall coordinate its operations with other donors. In particular:

- (a) the EIB shall prepare or revise jointly with the Commission the guidelines on the implementation of the Investment Facility referred to under paragraph 2(a). The EIB shall be held accountable for compliance to the guidelines and shall ensure that the projects it supports respect international social and environmental standards and are coherent with the objectives of the ACP-EC Partnership Agreement and of the broad principles of Community development policy and with the relevant country or regional cooperation strategies;
- (b) the EIB shall request the opinion of the Commission beforehand on investment strategies, business plans and general policy documents;
- (c) the EIB shall inform the Commission on the projects it administers in accordance with Article 14(2) and request the opinion of the Commission at the appraisal stage of a project on the conformity of projects with the relevant country cooperation strategy or regional cooperation strategy or, as the case may be, with the general objectives of the Investment Facility;
- (d) with the exception of interest subsidies falling within the global allocation referred to under paragraph 3(a), the EIB shall also request the agreement of the Commission at the appraisal stage of a project on any proposal made to the IF Committee for an interest subsidy, as to its compliance with Article 2(7) and Article 4(2) of Annex II to the ACP-EC Partnership Agreement, and with the criteria defined in the operational guidelines of the Investment Facility.

The Commission shall be deemed to have rendered a favourable opinion on or to have agreed to a proposal unless it notifies a negative opinion on such a proposal within two weeks following the submission of the proposal. As regards opinions for financial or public sector projects, as well as agreement to interest rate subsidies, the Commission may request that the final project proposal be submitted for its opinion or approval two weeks before being sent to the IF Committee.

6. The EIB shall not proceed with any action mentioned in paragraph 2 unless the IF Committee has given a favourable opinion.

Following a favourable opinion of the IF Committee, the EIB shall decide on the proposal in accordance with its own procedures. In particular it may decide not to proceed with the proposal. The EIB shall periodically inform the IF Committee and the Commission of cases where it decides not to proceed.

For loans from its own resources and for IF investments for which no opinion of the IF Committee is required, the EIB shall

decide on the proposal in accordance with its own procedures and, in the case of the Investment Facility, in accordance with the guidelines and the investment strategies approved by the IF Committee.

Notwithstanding a negative opinion of the IF Committee on a proposal to grant an interest subsidy, the EIB may proceed with the loan in question without the benefit of the interest subsidy. The EIB shall periodically inform the IF Committee and the Commission of each occasion on which it so decides to proceed.

The EIB may, subject to conditions laid down in the operational guidelines, and the condition that the essential objective of the loan or Investment Facility investment in question be unchanged, decide to modify the terms of an Investment Facility loan or investment on which the IF Committee has given a favourable opinion under paragraph 2 or of any loan on which the IF Committee has given a favourable opinion regarding interest subsidies. In particular, the EIB may decide to increase the amount of the loan or Investment Facility investment by up to 20 %.

Such an increase may, for projects with interest subsidies referred to in Article 2(7) of Annex II to the ACP-EC Partnership Agreement, result in a proportionate increase in the value of the interest subsidy. The EIB shall periodically inform the IF Committee and the Commission of each occasion on which it so decides to proceed. For projects falling under Article 2(7) of Annex II to the ACP-EC Partnership Agreement, if an increase in the value of the subsidy is requested, the IF Committee shall be required to deliver an opinion before the EIB proceeds.

7. The EIB shall manage Investment Facility investments and all funds held on account of the said Investment Facility in accordance with the objectives of the Agreement. It may, in particular, take part in the management and supervisory bodies of legal persons in which the Investment Facility is invested, and may compromise, discharge and modify the rights held on account of the Investment Facility in accordance with the operational guidelines.

TITLE V

FINAL PROVISIONS

Article 14

Monitoring and reporting requirements regarding the progress in implementation of EDF assistance

1. The Commission and the EIB shall monitor, each to the extent to which it is concerned, the use of EDF assistance by the recipients.

2. The EIB shall periodically inform the Commission regarding the implementation of projects and programmes financed from the 10th EDF resources it administers, following the procedures set out in the operational guidelines of the Investment Facility.

3. The Commission shall examine the progress made in implementing the 10th EDF and shall submit to the Council an annual report on the implementation and results and, as far as possible, the main outcomes, results and impacts of the assistance. This report shall also be sent to the EDF Committee for an exchange of views, to the European Parliament, the European Economic and Social Committee and the Committee of the Regions.

It shall contain information relating to the previous year on the measures financed, the results of monitoring and evaluation exercises, the involvement of and harmonisation with partners, including implementation through delegated cooperation as defined in the Financial Regulation referred to in Article 10(2) of the Internal Agreement, and the implementation of commitments and payments, broken down by country, region and cooperation sector.

It shall assess the results of the assistance on the eradication of poverty, using as far as possible specific and measurable indicators of its role in meeting the objectives of the ACP-EC Partnership Agreement. Such indicators shall be aligned with partner country or region's monitoring systems and indicators shared between the donor community and the partner country or region for monitoring their development strategy.

Particular attention shall be given to progress made towards achieving the Millennium Development Goals.

The reports shall also address progress made towards implementing the principles of coordination, ownership and aid effectiveness referred to in Article 1 of this Regulation and cover the accompanying measures of the Economic Partnership Agreements.

4. The EIB shall provide the IF Committee with information as regards progress towards the objectives of the Investment Facility. Following Article 6b of Annex II to the ACP-EC Partnership Agreement, the overall performance of the Investment Facility shall be subject to a joint review at the mid- and end-term of the 10th EDF. The mid-term review shall be carried out by an independent external expert, in cooperation with the EIB, and shall be made available to the IF Committee.

5. The Commission shall provide the Council in 2010 with a proposal for the overall performance review to be undertaken with the ACP States on the basis of paragraph 7 of Annex Ib of the ACP-EC Partnership Agreement. This review shall assess the financial performance, and in particular the degree of realisation

of commitments and disbursements as well as the quantitative and qualitative performance, and in particular the results and the impact, measured in terms of progress towards achieving the Millennium Development Goals. The review shall also explore the possibilities for and recommend how to enhance alignment of future Community support to the ACP with partner country or region's existing strategies, programming and budget cycles, and further harmonisation among donors.

Article 15

Evaluation

1. The Commission and the EIB shall regularly evaluate the results of the implementation of geographical and thematic policies and programmes and of sectoral policies and the effectiveness of programming on the eradication of poverty, where appropriate by means of independent external evaluations, in order to ascertain whether the objectives have been met and to enable it to formulate recommendations with a view to improving future operations. Particular attention shall be given to ensuring coherence of Community development policy and progress made towards achieving the Millennium Development Goals.

2. These evaluations shall be conducted in association with the partner country or region and in coordination with the Member States locally represented. Other interested Member States and, where relevant, also other donors will be involved. The Commission shall strive to implement the aid effectiveness recommendations on joint evaluations.

3. The Commission shall send its country and regional evaluation reports to the Council, the EDF Committee and the EIB for information. In accordance with Article 11(4), Member States may at any moment request a discussion of specific evaluations in the EDF Committee. The results shall feed back into programme design and resource allocation, donor coordination and aid effectiveness.

4. The Commission shall associate relevant stakeholders, including non-State actors, in the evaluation phase of the Community assistance provided.

Article 16

Entry into force

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

It shall be applicable for the same period as the Internal Agreement.

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

Done at Brussels, 14 May 2007.

For the Council
The President
F.-W. STEINMEIER

III

(Acts adopted under the EU Treaty)

ACTS ADOPTED UNDER TITLE V OF THE EU TREATY

COUNCIL DECISION 2007/384/CFSP

of 14 May 2007

establishing a mechanism to administer the financing of the common costs of European Union operations having military or defence implications (Athena)

(codified version)

THE COUNCIL OF THE EUROPEAN UNION,

- (4) The Council in its conclusions of 14 May 2003 confirmed the need for a rapid reaction capability, in particular for humanitarian and rescue tasks.

Having regard to the Treaty on European Union, and in particular Articles 13(3) and 28(3) thereof,

- (5) The European Council, meeting in Thessaloniki on 19 and 20 June 2003, welcomed the conclusions of the Council meeting on 19 May 2003, which in particular confirmed the need for a European Union military rapid reaction capability.

Whereas:

(1) Council Decision 2004/197/CFSP of 23 February 2004 establishing a mechanism to administer the financing of the common costs of European Union operations having military or defence implications ⁽¹⁾ has been substantially amended several times ⁽²⁾. In the interests of clarity and rationality the said Decision should be codified.

- (6) On 22 September 2003, the Council decided that the European Union should acquire the flexible capacity for managing the financing of common costs of military operations of any scale, complexity or urgency, in particular by setting up, by 1 March 2004, a permanent financing mechanism to assume charge of the financing of common costs of any future Union military operation.

(2) The European Council, meeting in Helsinki on 10 and 11 December 1999, agreed in particular that, cooperating voluntarily in EU-led operations, Member States must be able by 2003 to deploy within 60 days, and sustain for at least one year, military forces of up to 50 000 to 60 000 persons, capable of the full range of Petersberg tasks.

- (7) The EU Military Committee defined in detail the concept of EU Military Rapid Response in its Report of 3 March 2004. It further defined the EU Battle Groups concept on 14 June 2004.

(3) On 17 June 2002, the Council approved Document 10155/02 on the financing of EU-led crisis-management operations having military or defence implications.

- (8) The European Council on 17 June 2004 endorsed a Report on ESDP which underlined that work on EU Rapid Response capacities should be taken forward with a view to an initial operational capability by early 2005.

⁽¹⁾ OJ L 63, 28.2.2004, p. 68. Decision as last amended by Decision 2007/91/CFSP (OJ L 41, 13.2.2007, p. 11).

⁽²⁾ See Annex V.

- (9) In view of these developments, the early financing of EU military operations should be improved, in particular in view of Rapid Response operations. The new scheme for the early financing is therefore intended first and foremost for Rapid Response operations; under specific circumstances, a contribution paid in anticipation may however be used for the early financing of a regular operation, in particular one with a short delay between the adoption of the Joint Action to take action and the decision to launch the operation.
- (10) The Council decides on a case-by-case basis whether an operation has military or defence implications, within the meaning of Article 28(3) of the Treaty.
- (11) The Treaty on European Union provides in its Article 28 (3) that Member States whose representatives in the Council have made a formal declaration pursuant to its Article 23(1), second subparagraph, shall not be obliged to contribute to the financing of the operation having military or defence implications concerned.
- (12) In conformity with Article 6 of the Protocol on the position of Denmark annexed to the Treaty on European Union and the Treaty establishing the European Community, Denmark does not participate in the elaboration and implementation of decisions and actions of the European Union which have defence implications, and Denmark does not participate in the financing of the mechanism,

HAS DECIDED AS FOLLOWS:

Article 1

Definitions

For the purpose of this Decision:

- (a) 'participating Member States' shall mean the Member States of the European Union, except Denmark;
- (b) 'contributing States' shall mean the Member States contributing to the financing of the military operation in question in accordance with Article 28(3) of the Treaty on European Union and the third States contributing to the financing of the common costs of this operation pursuant to agreements between themselves and the European Union;
- (c) 'operations' shall mean the EU operations having military or defence implications;
- (d) 'military supporting actions' shall mean the EU operations, or parts thereof, decided by the Council in support of a third State or a third organisation, which have military or defence implications, but which are not under the authority of EU Headquarters.

CHAPTER 1

MECHANISM

Article 2

Establishment of the mechanism

1. A mechanism to administer the financing of the common costs of operations is hereby established.
2. The mechanism shall be called Athena.
3. Athena shall act on behalf of the participating Member States or, regarding the specific operations, the contributing States as defined in Article 1.

Article 3

Legal capacity

With a view to the administrative management of the financing of European Union operations with military or defence implications, Athena shall have the necessary legal capacity, in particular, to hold a bank account, acquire, hold or dispose of property, enter into contracts and administrative arrangements and be a party to legal proceedings. Athena shall be non-profit-making.

Article 4

Coordination with third parties

To the extent necessary to achieve its tasks, and in conformity with the objectives and policies of the European Union, Athena shall coordinate its activities with the Member States, Community institutions and international organisations.

CHAPTER 2

ORGANISATIONAL STRUCTURE

Article 5

Management bodies and staff

1. Athena shall be managed, under the authority of the Special Committee, by:
 - (a) the administrator;
 - (b) the commander of each operation, in relation to the operation which he/she commands (hereinafter referred to as the 'operation commander');
 - (c) the accounting officer.
2. Athena shall use existing administrative structures of the European Union to the greatest possible extent. Athena shall resort to staff made available as necessary by the EU institutions or seconded by Member States.

3. The Secretary-General of the Council may provide the administrator or the accounting officer with the staff needed for them to carry out their functions, which may be on the basis of a proposal by a participating Member State.

4. Athena's bodies and staff shall be activated on the basis of operational needs.

Article 6

The Special Committee

1. A Special Committee composed of one representative of each participating Member State is established (Special Committee). The Commission shall attend the meetings of the Special Committee without taking part in its votes.

2. Athena shall be managed under the authority of the Special Committee.

3. When the Special Committee is discussing the financing of the common costs of a given operation:

- (a) the Special Committee shall be composed of one representative of each contributing Member State;
- (b) the representatives of contributing third States shall participate in the proceedings of the Special Committee. They shall neither take part in nor be present at its votes;
- (c) the operation commander or his/her representative shall participate in the proceedings of the Special Committee, without taking part in its votes.

4. The Presidency of the Council of the European Union shall convene and chair the meetings of the Special Committee. The administrator shall provide the secretariat for the Special Committee. He/she shall draw up the minutes of the result of the Committee's discussions. He/she shall not take part in its votes.

5. The accounting officer shall participate as necessary in the proceedings of the Special Committee, without taking part in its votes.

6. If a participating Member State, the administrator or the operation commander so requests, the Presidency shall convene the Special Committee within at most 15 days.

7. The administrator shall suitably inform the Special Committee of any claim or dispute addressed to Athena.

8. The Special Committee shall decide unanimously amongst its members, taking into account its composition as defined in paragraphs 1 and 3. Its decisions shall be binding.

9. The Special Committee approves all budgets, taking into account the relevant reference amounts, and generally exercises

the competences foreseen by Articles 20, 21, 22, 23, 26, 27, 29, 31, 33, 34, 38, 39, 40 and 41.

10. The Special Committee shall be informed by the administrator, the operation commander and the accounting officer as provided for in the present Decision.

11. The text of the acts approved by the Special Committee pursuant to articles 20, 21, 22, 23, 24, 26, 29, 31, 33, 34, 39, 40 and 41 shall be signed by the chairman of the Special Committee at the time of their approval and by the administrator.

Article 7

The administrator

1. The Secretary-General of the Council, after informing the Special Committee, shall appoint the administrator and at least one deputy administrator for a period of three years.

2. The administrator shall discharge his/her duties on behalf of Athena.

3. The administrator:

- (a) shall draw up and submit to the Special Committee any draft budget. The expenditure section for an operation in any draft budget shall be drawn up on the basis of a proposal from the operation commander;
- (b) shall adopt the budgets after their approval by the Special Committee;
- (c) shall be the authorising officer for the revenue, common costs incurred in preparation for, or further to, operations and operational common costs incurred outside the active phase of the operation;
- (d) as regards revenue, shall implement the financial arrangements made with third parties in relation to the financing of the common costs of the Union's military operations.

4. The administrator shall ensure that the rules established by the present Decision are complied with, and that the decisions of the Special Committee are applied.

5. The administrator shall be authorised to adopt any measures which he/she deems necessary to implement the expenditure financed through Athena. He/she shall inform the Special Committee thereof.

6. The administrator shall coordinate work on financial questions relating to the Union's military operations. He/she shall be the contact point with national administrations and, as appropriate, international organisations on these matters.

7. The administrator shall be accountable before the Special Committee.

*Article 8***The operation commander**

1. The operation commander shall discharge his/her duties on behalf of Athena in relation to the financing of the common costs of the operation which he/she commands.
2. For the operation which he/she commands, the operation commander shall:
 - (a) send the administrator his/her proposals for the 'expenditure — operational common costs' section of the draft budgets;
 - (b) as authorising officer, implement the appropriations relating to the operational common costs; he/she shall exercise his/her authority over any person participating in the implementation of those appropriations, including pre-financing; he/she may award contracts and enter into contracts on behalf of Athena; he/she shall open a bank account on behalf of Athena for the operation which he/she commands.
3. The operation commander shall be authorised to adopt any measures which he/she deems necessary to implement the expenditure financed through Athena, for the operation which he/she commands. He/she shall inform the administrator and the Special Committee thereof.

*Article 9***The accounting officer**

1. The Secretary-General of the Council shall appoint the accounting officer and at least one deputy accounting officer for a period of two years.
2. The accounting officer shall discharge his/her duties on behalf of Athena.
3. The accounting officer shall be responsible for:
 - (a) proper implementation of payments, collection of revenue and recovery of amounts established as being receivable;
 - (b) preparing the accounts for Athena each year, and, after completion of each operation, the accounts for that operation;
 - (c) supporting the administrator when he/she submits the annual accounts or the accounts for an operation to the Special Committee for approval;
 - (d) keeping the accounts for Athena;
 - (e) laying down the accounting rules and methods and the chart of accounts;

(f) laying down and validating the accounting systems for revenue and, where appropriate, validating systems laid down by the authorising officer to supply or justify accounting information;

(g) keeping supporting documents;

(h) treasury management, jointly with the administrator.

4. The administrator and the operation commander shall provide the accounting officer with all the information necessary for the production of accounts which accurately represent Athena's financial assets and budget implementation administered by Athena. They shall guarantee its reliability.

5. The accounting officer shall be accountable before the Special Committee.

*Article 10***General provisions applicable to the administrator, the accounting officer and Athena's staff**

1. The functions of administrator or deputy administrator, on the one hand, and accounting officer or deputy accounting officer, on the other, shall be mutually incompatible.

2. Any deputy administrator shall act under the authority of the administrator. Any deputy accounting officer shall act under the authority of the accounting officer.

3. A deputy administrator shall stand in for the administrator when he/she is absent or prevented from attending. A deputy accounting officer shall stand in for the accounting officer when he/she is absent or prevented from attending.

4. Officials and other servants of the European Communities, when carrying out functions on behalf of Athena, shall remain subject to the rules and regulations applicable to them.

5. The staff made available to Athena by the Member States shall be subject to the same rules as those set out in the Council decision concerning the rules applicable to national experts on secondment, and to the provisions agreed on by their national administration and the Community institution or Athena.

6. Before their appointment, the staff of Athena must have received clearance for access to classified information up to at least 'Secret UE' level held by the Council, or equivalent clearance by a Member State.

7. The administrator may negotiate and enter into arrangements with the Member States or Community institutions with a view to designating in advance those staff who could, if need be, be made immediately available to Athena.

CHAPTER 3

ADMINISTRATIVE ARRANGEMENTS WITH MEMBER STATES, EU INSTITUTIONS, THIRD STATES AND INTERNATIONAL ORGANISATIONS*Article 11***Administrative arrangements with Member States or EU institutions**

1. Administrative arrangements may be negotiated with Member States or EU institutions in order to facilitate procurement in operations at the most economical conditions. These arrangements shall take the form of an Exchange of Letters between Athena represented by the operation commander or, where there is no operation commander, the administrator, and the competent administrative authorities of the Member States or EU institutions concerned.
2. The Special Committee shall be consulted before any such arrangement is signed.

*Article 12***Administrative arrangements with a third State or an international organisation**

1. An administrative arrangement may be negotiated with a third State or an international organisation in order notably to facilitate procurement in theatre at the most economical conditions taking into account operational constraints. These arrangements shall take the form of an Exchange of Letters between Athena, represented by the operation commander or, where there is no operation commander, the administrator, and the competent administrative authorities of the third State or the international organisation concerned.
2. Any such arrangement shall be submitted to the Special Committee for approval before it is signed.

*Article 13***Standing and ad hoc administrative arrangements on modalities for the payment of third States' contributions**

1. In the framework of the agreements concluded between the EU and third States indicated by the Council as potential contributors to EU operations or as contributors to a specific EU operation, the administrator shall negotiate with these third States standing or ad hoc administrative arrangements, respectively. These arrangements shall take the form of an exchange of Letters between Athena and the competent administrative services of the third States concerned establishing the modalities necessary to facilitate swift payment of contributions to any future EU military operation.
2. Pending the conclusion of the agreements referred to in paragraph 1, the administrator may take the necessary measures to facilitate payments by the contributing third States.

3. The administrator shall inform the Special Committee in advance of the envisaged arrangements, before signing them on behalf of Athena.

4. When a military operation is launched by the Union, the administrator shall, for the amounts of contributions decided by the Council, implement the arrangements with the third States contributing to that operation.

CHAPTER 4

BANK ACCOUNTS*Article 14***Opening and purpose**

1. The administrator shall open one or more bank accounts on behalf of Athena.
2. Any bank account shall be opened at a first-rate financial institution with its head office in a Member State.
3. The contributions from contributing States shall be paid into these accounts. They shall be used to pay for the costs administered by Athena and to make the necessary advances to the operation commander for the implementation of expenditure relating to the common costs of a military operation. No bank account may be overdrawn.

*Article 15***Management of funds**

1. Any payment from Athena's account shall require the joint signature of the administrator or a deputy administrator on the one hand and the accounting officer or a deputy accounting officer on the other.
2. Funds administered by Athena, including those entrusted to an operation commander, may not be deposited other than with a first-rate financial institution in euro in a current or short-term account.

CHAPTER 5

COMMON COSTS*Article 16***Definition of common costs and periods for eligibility**

1. The common costs listed in Annex I shall be at the expense of Athena whenever they are incurred. When entered in an article of the budget showing the operation to which they are most related, they shall be regarded as operational costs of this operation. Otherwise, they shall be regarded as common costs incurred in preparation for, or following, operations.

2. Furthermore, Athena shall bear the operational common costs listed in Annex II during the period from the approval of the Crisis Management Concept for the operation until the appointment of the operation commander. In particular circumstances, after the Political and Security Committee has been consulted, the Special Committee may modify the period during which these costs shall be borne by Athena.

3. During the active phase of an operation, which runs from the date on which the operation commander is appointed to the day on which the operation headquarters ceases its activity, Athena shall bear as operational common costs:

- (a) the common costs listed in Annex III-A;
- (b) the common costs listed in Annex III-B, when the Council so decides.

4. During the active phase of a military supporting action, as determined by the Council, Athena shall bear as operational common costs the common costs defined by the Council on a case-by-case basis by reference to Annex III.

5. The operational common costs of an operation also include the expenditure necessary to wind it up, as listed in Annex IV.

The operation is wound up when the equipment and infrastructure commonly funded for the operation have found their final destination and the accounts for the operation have been drawn up.

6. No expenditure incurred with a view to covering costs which would in any case have been borne by one or more contributing States, a Community institution or an international organisation, independently of the organisation of an operation, may be eligible as a common cost.

7. The Special Committee may decide on a case-by-case basis that, in view of particular circumstances, certain incremental costs other than those listed in Annex IIIB shall be regarded as common costs for one given operation during its active phase.

8. The Council and the Special Committee shall be informed by the Member States, through the administrator, of cost-sharing arrangements in which they take part in the context of an EU operation.

Article 17

Exercises

1. The common costs of the European Union's exercises shall be financed through Athena following rules and procedures similar to those for operations to which all participating Member States contribute.

2. These exercise common costs shall be composed of, firstly, incremental costs for deployable or fixed headquarters and, secondly, incremental costs incurred by EU recourse to NATO common assets and capabilities when made available for an exercise.

3. Exercise common costs shall not include costs related to:

- (a) capital acquisitions, including those related to buildings, infrastructure and equipment;
- (b) the planning and preparatory phase of exercises;
- (c) transport, barracks and lodging for forces.

Article 18

Reference amount

Any joint action by which the Council decides that the Union will conduct a military operation and any joint action or decision by which the Council decides to extend a Union operation shall contain a reference amount for the common costs of this operation. The administrator shall, with the support in particular of the Union military staff and, if he/she is in post, the operation commander, evaluate the amount judged necessary to cover the common costs of the operation for the planned period. The administrator shall propose this amount through the Presidency to the Council bodies responsible for examining the draft joint action or decision.

CHAPTER 6

BUDGET

Article 19

Budgetary principles

1. The budget, drawn up in euro, is the act which for each financial year lays down and authorises all the revenue and expenditure administered by Athena.

2. All expenditure shall be linked to a specific operation, except where appropriate for the costs listed in Annex I.

3. The appropriations entered in the budget are authorised for the duration of a financial year which begins on 1 January and ends on 31 December of the same year.

4. Budget revenue and expenditure must balance.

5. No revenue nor expenditure may be implemented other than by allocation to a heading in the budget and within the limit of the appropriations entered there.

*Article 20***Establishment and adoption of the annual budget**

1. Each year the administrator shall draw up a draft budget for the following financial year, with the assistance of each operation commander for the 'operational common costs' section. The administrator shall propose the draft budget to the Special Committee by 31 October at the latest.
2. The draft shall include:
 - (a) the appropriations deemed necessary to cover the common costs incurred in preparation for, or further to, operations;
 - (b) the appropriations deemed necessary to cover the operational common costs for ongoing or planned operations, including, where appropriate, to reimburse common costs which have been prefinanced by a State or third party;
 - (c) a forecast of the revenue needed to cover expenditure.
3. The commitment and payment appropriations shall be classified in titles and chapters grouping expenditure together by type or purpose, subdivided as necessary into articles. Detailed comments by chapter or article shall be included in the draft budget. One specific title shall be dedicated to each operation. One specific title shall be the general part of the budget and shall include the common costs incurred in preparation for, or further to, operations.
4. Each title may include a chapter entitled 'provisional appropriations'. These appropriations shall be entered where there is uncertainty, based on serious grounds, about the amount of appropriations needed or the scope for implementing the appropriations entered.
5. Revenue shall consist of:
 - (a) contributions payable by the participating and contributing Member States and, where appropriate, by contributing third States;
 - (b) miscellaneous revenue, subdivided by title, which includes interest received, revenue from sales and the budget outturn from the previous financial year, after it has been determined by the Special Committee.
6. The Special Committee shall approve the draft budget by 31 December. The administrator shall adopt the approved budget and notify the participating and contributing States.

*Article 21***Amending budgets**

1. In the case of unavoidable, exceptional or unforeseen circumstances, in particular when an operation arises during the

course of the financial year, the administrator shall propose a draft amending budget. The draft amending budget substantially exceeds the reference amount for the operation concerned, the Special Committee may request the Council to approve it.

2. The draft amending budget shall be drawn up, proposed, approved and adopted and notification given in accordance with the same procedure as the annual budget. However, when the amending budget is linked to the launch of a Union military operation, it shall be accompanied by a detailed financial statement on the common costs anticipated for the whole of the operation. The Special Committee shall discuss it taking account of its urgency.

*Article 22***Transfers**

1. The administrator, where appropriate on the basis of a proposal by the operation commander, may make transfers of appropriations. The administrator shall inform the Special Committee of his/her intention, in so far as the urgency of the situation permits, at least one week in advance. However, the prior approval of the Special Committee shall be required when:

- (a) the planned transfer will amend the total of the appropriations provided for an operation;

or

- (b) the planned transfers between chapters during the financial year exceed 10 % of the appropriations entered in the chapter from which the appropriations are being drawn, as appearing in the adopted budget for the financial year on the date when the proposal for the transfer in question is made.

2. When he/she deems this to be necessary for the proper conduct of an operation, in the three months following the date of launching of the operation, the operation commander may make transfers of appropriations allocated for the operation, between articles and between chapters in the 'operational common costs' section of the budget. He/she shall inform the administrator and the Special Committee thereof.

*Article 23***Carryover of appropriations**

1. In principle, the appropriations intended to cover the common costs incurred in preparation for, or further to, operations, which have not been committed are cancelled at the end of the financial year.

2. Appropriations intended to cover the cost of storing material and equipment administered by Athena may be carried over once to the following financial year, when a commitment to that effect was made before 31 December of the current financial year. Appropriations intended to cover operational common costs may be carried over if they are necessary for an operation which has not been fully wound up.

3. The administrator shall submit proposals for the carrying over of appropriations from the preceding financial year to the Special Committee by 15 February. These proposals shall be deemed approved unless the Special Committee decides otherwise by 15 March.

Article 24

Anticipated implementation

Once the annual budget has been approved, appropriations may be used to cover commitments and payments in so far as operationally necessary.

CHAPTER 7

CONTRIBUTIONS AND REIMBURSEMENTS

Article 25

Determination of contributions

1. Payment appropriations to cover the common costs incurred in preparation for, or further to, operations which are not covered by miscellaneous revenue shall be financed by contributions from the participating Member States.

2. Payment appropriations to cover the operational common costs of an operation shall be covered by contributions from the Member States and third States contributing to the operation.

3. The contributions payable by the contributing Member States for an operation shall be equal to the amount of the payment appropriations entered in the budget and intended to cover the operational common costs of that operation, minus the amounts of the contributions payable for the same operation by contributing third States pursuant to Article 13.

4. The breakdown of contributions between the Member States from whom a contribution is required shall be determined in accordance with the gross national product scale as specified in Article 28(3) of the Treaty on European Union and in accordance with the Council Decision 2000/597/EC, Euratom of 29 September 2000 on the system of the European Communities' own resources ⁽¹⁾, or any other Council Decision which may replace it.

⁽¹⁾ OJ L 253, 7.10.2000, p. 42.

5. The data for the calculation of contributions shall be those set out in the 'GNI own resources' column in the 'Summary of financing of the general budget by type of own resource and by Member State' table appended to the latest budget adopted by the European Communities. The contribution of each Member State from whom a contribution is due shall be proportional to the share of Gross National Income (GNI) of that Member State in the total GNI aggregate of the Member States from whom a contribution is due.

Article 26

Schedule for payment of contributions

1. When the Council has adopted a reference amount for a Union military operation, the contributing Member States, shall pay their contributions at the level of 30 % of the reference amount, unless the Council decides on a higher percentage.

2. The Special Committee, on the basis of a proposal by the administrator, may decide that additional contributions will be called before the adoption of an amending budget for the operation. The Special Committee may decide to refer the matter to the competent preparatory bodies at the Council.

3. When the appropriations intended to cover the operational common costs of the operation have been entered in the budget, the Member States shall pay the balance of the contributions which they owe for that operation in application of Article 25 after deduction of the contributions already called from them for the same operation in the same financial year. However, when the operation is planned to last more than six months, the balance of contributions shall be paid in half-yearly instalments. In such a case, the first instalment shall be paid within two months of the launching of the operation; the second instalment shall be paid by a deadline to be set by the Special Committee acting on a proposal from the administrator, taking into account operational needs. The Special Committee may depart from these provisions.

4. When a reference amount or a budget has been adopted, the administrator shall send the corresponding calls for contributions by letter to the national administrations whose details have been communicated to him/her.

5. Without prejudice to the other provisions in this Decision, the contributions shall be paid within 30 days following despatch of the relevant call for contributions.

6. Each contributing State shall pay the bank charges relating to the payment of its own contribution.

7. The administrator shall acknowledge receipt of contributions.

*Article 27***Early financing**

1. In the case of an EU Military Rapid Response operation, contributions shall be due by contributing Member States at the level of the reference amount. Without prejudice to Article 26 (3), payments shall be made as defined below.

2. For the purpose of the early financing of EU Military Rapid Response operations, the participating Member States shall:

(a) either pay contributions to Athena in anticipation;

(b) or, when the Council decides to conduct an EU Military Rapid Response operation to the financing of which they contribute, pay their contributions to the common costs of that operation within five days following despatch of the call at the level of the reference amount, unless the Council decides otherwise.

3. For the purpose referred to above, the Special Committee, composed of one representative of each of the Member States which have chosen to pay contributions in anticipation (hereafter anticipating Member States), shall establish provisional appropriations in a specific title in the budget. These provisional appropriations shall be covered by contributions payable by the anticipating Member States within 90 days following despatch of the call for these contributions.

4. Without prejudice to Article 26(3), the contributions due by an anticipating Member State for a Rapid Response operation, up to the level of the contribution it has paid to the provisional appropriations referred to in paragraph 3 of this Article, shall be payable within 90 days following despatch of the call. A similar amount may be made available to the operation commander from the contributions paid in anticipation.

5. Notwithstanding Article 22, any provisional appropriations referred to under paragraph 3 of this Article which are used for an operation shall be replenished within 90 days following despatch of the call.

6. Without prejudice to paragraph 1, any anticipating Member State may in specific circumstances authorise the administrator to use its contribution paid in anticipation to cover its contribution to an operation in which it participates, other than a Rapid Response operation. The contribution paid in anticipation shall be replenished by the Member State concerned within 90 days following despatch of the call.

7. Where funds are required for an operation, other than a Rapid Response operation, before sufficient contributions to that operation have been received, contributions paid in anticipation by Member States which contribute to financing that

operation, after approval by the anticipating Member States, may be used up to 50 % of their amount to cover contributions due to that operation. The contributions paid in anticipation shall be replenished by the anticipating Member States within 90 days following despatch of the call.

8. Notwithstanding Article 33(3), the operation commander may commit and pay the amounts made available to him.

9. Any Member State may reverse its option by notifying the administrator at least three months in advance.

*Article 28***Reimbursement of prefinancing**

1. A Member State, a third State or, as appropriate, an international organisation which has been authorised by the Council to prefinance a part of the common costs of an operation may obtain reimbursement from Athena by making a request accompanied by the necessary supporting documents and addressed to the administrator at the latest two months after the date of completion of the operation concerned.

2. No request for reimbursement may be honoured if it has not been approved by the operation commander and by the administrator.

3. If a request for reimbursement presented by a contributing State is approved, it may be deducted from the next call for contributions addressed to that State by the administrator.

4. If no call for contributions is anticipated when the request is approved, or if the approved request for reimbursement would exceed the anticipated contribution, the administrator shall make payment of the amount to be reimbursed within 30 days, taking account of Athena's cash flow and of what is needed to finance the common costs of the operation concerned.

5. Reimbursement shall be due in accordance with this Decision even if the operation is cancelled.

*Article 29***Management by Athena of expenditure not included in common costs**

1. The Special Committee, on the basis of a proposal by the administrator or a Member State, may decide that the administrative management of certain expenditure in relation to an operation, particularly in the area of manpower support/messing and laundry, while remaining the responsibility of the Member State which it concerns, should be entrusted to Athena.

2. The Special Committee, in its decision, may authorise the operation commander to enter into contracts on behalf of the Member States participating in an operation, for the acquisition of the supplies described. It may authorise Athena's budget to prefinance expenditure by the Member States or decide that Athena will collect the necessary funds from the Member States in advance to honour the contracts entered into.

3. Athena shall keep accounts of the expenditure borne by each Member State the management of which has been entrusted to it. Each month it shall send each Member State a statement of the expenditure borne by it and incurred by it or by its staff during the preceding month, and shall call for the necessary funds to pay for this expenditure. The Member States shall pay Athena the funds required within 30 days following despatch of the call for funds.

Article 30

Interest on late payment

1. If a State does not fulfil its financial obligations, the Community rules on interest on late payment determined by Article 71 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 ⁽¹⁾ in relation to the payment of contributions to the Community budget shall be applicable by analogy.

2. When payment is late by no more than ten days, no interest shall be charged. When payment is late by more than ten days, interests shall be charged for the entire delay.

CHAPTER 8

IMPLEMENTATION OF EXPENDITURE

Article 31

Principles

1. Athena's appropriations shall be used in accordance with the principles of sound financial management, that is in accordance with the principles of economy, effectiveness and efficiency.

2. Authorising officers shall be responsible for implementing Athena's revenue or expenditure in accordance with the principles of sound financial management to ensure that the requirements of legality and regularity are complied with. The authorising officers shall make budgetary and legal commitments, clear and authorise expenditure and carry out actions prior to this implementation of appropriations. An authorising officer may delegate his/her duties by a decision determining:

- (a) staff at an appropriate level for such delegation;
- (b) the extent of the conferred powers; and

⁽¹⁾ OJ L 248, 16.9.2002, p. 1.

(c) the scope for beneficiaries to subdelegate their powers.

3. The implementation of appropriations according to the principle of the segregation of the authorising officer and the accounting officer shall be ensured. The duties of authorising officer and accounting officer shall be mutually incompatible. Any payment made on funds administered by Athena shall require the joint signature of an authorising officer and an accounting officer.

4. Without prejudice to this Decision, when the implementation of common expenditure is entrusted to a Member State, a Community institution or, as appropriate, an international organisation, that State, institution or organisation shall apply the rules applicable to the implementation of its own expenditure. When the administrator implements expenditure directly, it shall comply with the rules applicable to the implementation of the 'Council' section of the general budget of the European Communities.

5. However the administrator may provide the Presidency with elements for proposal to the Council or the Special Committee on rules for the implementation of common expenditure.

6. The Special Committee may approve rules for the implementation of common expenditure which depart from paragraph 4.

Article 32

Common costs incurred in preparation for or further to, operations

The administrator shall perform the duties of authorising officer for expenditure covering the common costs incurred in preparation for, or further to, operations.

Article 33

Operational common costs

1. The operation commander shall carry out the duties of authorising officer for expenditure covering the operational common costs of the operation he/she commands. However, the administrator shall carry out the duties of authorising officer for expenditure covering the operational common costs incurred during the preparatory phase of a specific operation, which are implemented directly by Athena, or related to the operation after the end of its active phase.

2. The sums required for the implementation of expenditure on an operation shall be transferred by the administrator from Athena's bank account to the operation commander, upon his/her request, into the bank account opened on behalf of Athena, of which the operation commander has provided the details.

3. By way of derogation from Article 19(5), the adoption of a reference amount shall activate the right of the administrator and the operation commander, each in his/her area of competence, to commit and pay expenses for the operation concerned up to 30 % of the reference amount, unless the Council should set a higher percentage. The Special Committee, on the basis of a proposal from the administrator, may decide that additional expenditure may be committed and paid. The Special Committee may decide to refer the question to the competent preparatory bodies at the Council through the Presidency. This derogation shall no longer apply from the date of adoption of a budget for the operation concerned.

4. During the period prior to the adoption of a budget for an operation, the administrator and the operation commander or his/her representative shall report to the Special Committee every month, each reporting on the matters concerning him/her, as regards the expenses which are eligible as common costs for that operation. The Special Committee, on the basis of a proposal by the administrator, the operation commander or a Member State, may issue directives on the implementation of expenditure during this period.

5. By way of derogation from Article 19(5), in the case of imminent danger to the lives of personnel involved in a Union military operation, the operation commander for that operation may implement the necessary expenditure to save the lives of those personnel, in excess of the appropriations entered in the budget. He/she shall inform the administrator and the Special Committee as soon as possible. In such a case, the administrator shall, liaising with the operation commander, propose the transfers needed to finance this unexpected expenditure. If it is not possible to ensure sufficient funding for such expenditure by means of a transfer, the administrator shall propose an amending budget.

CHAPTER 9

FINAL DESTINATION OF EQUIPMENT AND INFRASTRUCTURE FINANCED IN COMMON

Article 34

1. With a view to winding up the operation which he/she has commanded, the operation commander shall act as necessary to find a final destination for the equipment and infrastructure acquired in common for that operation. He/she shall propose to the Special Committee the relevant rate of depreciation as necessary.

2. The administrator shall manage the equipment and infrastructure remaining after the end of the active phase of the operation, with a view if necessary to finding its final destination. He/she shall propose to the Special Committee the relevant rate of depreciation as necessary.

3. The depreciation rate for equipment, infrastructure and other assets shall be approved by the Special Committee at the earliest time possible.

4. The final destination of equipment and infrastructure financed in common shall be approved by the Special

Committee, taking into account operational needs and financial criteria. The final destination may be as follows:

- (a) in the case of infrastructure, be sold or transferred through Athena to the host country, a Member State or a third party;
- (b) in the case of equipment, be sold through Athena to a Member State, the host country or a third party, or be stored and maintained by Athena, a Member State or a third party.

5. Equipment and infrastructure shall be sold to a contributing State, the host country or a third party for their market value, or, where no market value can be determined, taking account of the relevant rate of depreciation.

6. Sale or transfer to the host country or a third party shall be in accordance with the security rules in force, particularly within the Council, the contributing States or NATO, as appropriate.

7. When it is decided that Athena shall retain equipment acquired for an operation, the contributing Member States may ask for financial compensation from the other participating Member States. The Special Committee, composed of the representatives of all the participating Member States, shall take the appropriate decisions on the basis of a proposal from the administrator.

CHAPTER 10

ACCOUNTING AND INVENTORY

Article 35

Principles

When the implementation of common expenditure has been entrusted to a Member State, a Community institution or, as appropriate, an international organisation, that State, institution or organisation shall apply the rules which are applicable to accounting for its own expenditure and its own inventory.

Article 36

Accounting for operational common costs

The operation commander shall keep accounts of transfers received from Athena, of expenditure he/she has committed and of payments made, as well as an inventory of the movable property financed by the Athena budget and used for the operation which he/she commands.

Article 37

Consolidated accounts

1. The accounting officer shall keep the accounts of contributions called for and transfers made. He/she shall also draw up the accounts for the common costs incurred in preparation for, or further to, operations, and for operational expenditure implemented under the direct responsibility of the administrator.

2. The accounting officer shall draw up the consolidated accounts for Athena's revenue and expenditure. Each operation commander shall send him/her the accounts for the expenditure he/she has committed and the payments he/she has made, as well as for the prefinancing he/she has approved to cover the operational common costs of the operation which he/she commands.

CHAPTER 11

AUDIT AND PRESENTATION OF ACCOUNTS

Article 38

Regular reports to the Special Committee

Every three months, the administrator shall present to the Special Committee a report on the implementation of revenue and expenditure during the preceding three months and since the beginning of the financial year. To this end, every operation commander shall provide the administrator in good time with a report on expenditure relating to the operational common costs of the operation which he/she commands.

Article 39

Auditing the accounts

1. When the implementation of Athena's expenditure has been entrusted to a Member State, a Community institution or an international organisation, that State, institution or organisation shall apply the rules which apply to the auditing of its own expenditure.

2. However, the administrator or persons appointed by him/her may at any time carry out an audit of the common costs of Athena incurred in preparation for, or further to, operations, or the operational common costs of an operation. Furthermore, the Special Committee, on the basis of a proposal by the administrator or a Member State, may at any time appoint external auditors, whose tasks and conditions of employment it shall determine.

3. With a view to external audits, a six-member college of auditors shall be established. Each year, the Special Committee shall appoint as of 1 January of the following year two members for a three-year period, renewable once, from candidates proposed by the Member States. The Special Committee may extend a member's mandate by up to six months. The candidates must be members of a national audit body in a Member State and offer adequate guarantees of security and independence. They must be available to carry out tasks on behalf of Athena as needed. In carrying out these tasks:

- (a) the members of the college shall continue to be paid by their audit body of origin and shall only receive from Athena reimbursement of their mission expenses in accordance with the rules applicable to officials of the European Communities of an equivalent grade;
- (b) they shall neither request nor receive instructions other than from the Special Committee; within its audit mandate the College of Auditors and its members shall be completely

independent and solely responsible for the conduct of the external audit;

- (c) they shall only report on their task to the Special Committee;
- (d) they shall check during the financial year as well as *ex post*, through controls on the spot as well as on supporting documents, that expenditure financed or pre-financed through Athena is implemented in accordance with the legislation applicable and the principles of sound financial management, i.e. in accordance with the principles of economy, effectiveness and efficiency, and that internal controls are adequate.

Each year, the College of auditors shall elect to change or extend its chairman from amongst its members. It shall adopt the rules applicable to audits carried out by its members in accordance with the highest international standards. The College of Auditors shall approve the audit reports drawn up by its members before their transmission to the administrator and to the Special Committee.

4. The Special Committee may decide on a case-by-case basis and upon specific motivations to use other external bodies.

5. The persons responsible for auditing Athena's expenditure must, before carrying out their task, have received clearance for access to classified information up to at least 'Secret UE' level held by the Council, or equivalent clearance from a Member State or NATO, as appropriate. Those persons shall ensure that they respect the confidentiality of the information and protect the data of which they acquire knowledge during their audit task, in accordance with the rules applicable to that information and data.

6. The administrator and the persons responsible for auditing Athena's expenditure shall have access without delay and without giving prior notice to the documents and to the contents of all data supports relating to that expenditure, and to the premises where those documents and supports are kept. They may make copies. The persons involved in implementing Athena's expenditure shall give the administrator and the persons responsible for the audit of that expenditure the necessary assistance in performing their task.

7. The cost of the audits carried out by auditors acting on behalf of Athena shall be considered as a common cost to be borne by Athena.

Article 40

Annual presentation of accounts

1. Each operation commander shall provide Athena's accounting officer by 31 March following the end of the financial year, or within four months following the end of the operation which he/she commands, whichever is the earlier, with the necessary information to establish the annual accounts for common costs, the annual accounts for expenditure pre-financed and reimbursed pursuant to Article 29 and the annual activity report.

2. The administrator, with the assistance of the accounting officer and each operation commander, shall establish and provide to the Special Committee and the College of auditors, by 30 April following the end of the financial year, the provisional annual accounts and the annual activity report.

3. The Special Committee shall be provided by 31 July following the end of the financial year, by the College of Auditors with an annual audit report and by the administrator, assisted by the accounting officer and each operation commander, with Athena's final annual accounts. The Special Committee shall examine by 30 September following the end of the financial year the annual accounts in the light of the College's audit report, with a view to granting a discharge to the administrator, the accounting officer and each operation commander.

4. All accounts and inventories shall be retained, each at his/her level, by the accounting officer and each operation commander for a period of five years from the date on which the corresponding discharge was granted.

5. The Special Committee shall decide to enter the balance of the budget outturn for a financial year for which the accounts have been approved in the budget for the following financial year, as revenue or expenditure depending on the circumstances, by means of an amending budget.

6. That part of the balance of the budget outturn for a financial year which comes from the implementation of appropriations intended to cover common costs incurred in preparation for, or further to, operations, shall be entered against the next contributions from participating Member States.

7. That part of the balance of the budget outturn which comes from the implementation of appropriations intended to cover the operational common costs of a given operation shall be entered against the next contributions from the Member States which have contributed to that operation.

8. If reimbursement cannot be done by deduction from the contributions due to Athena, the balance of the budget outturn shall be repaid to the Member States concerned.

9. Each Member State participating in an operation shall provide on a voluntary basis information by 31 March each year to the administrator where appropriate through the Operation Commander, on the incremental costs it has incurred for the operation during the previous financial year. This information shall be broken down to show the main items of expenditure. The administrator shall compile this information in order to provide the Special Committee with an overview of the incremental costs of the operation.

Article 41

Presentation of the accounts of an operation

1. When an operation is complete, the Special Committee may decide, on the basis of a proposal by the administrator or by a Member State, that the administrator, with the assistance of the accounting officer and of the operation commander, shall

submit to the Special Committee the management accounts and the balance sheet for that operation, at least up to the date on which it was completed, and, if possible, up to the date on which it was wound up. The deadline imposed on the administrator may not be less than four months from the date on which the operation was completed.

2. If the management accounts and balance sheet cannot, within the given deadline, include the revenue and expenditure connected with the winding up of that operation, then that revenue and expenditure shall appear in the annual management account and balance sheet for Athena and shall be examined by the Special Committee in connection with the annual presentation of accounts.

3. The Special Committee shall approve the management account and balance sheet for the operation which have been submitted to it. It shall grant a discharge to the administrator, the accounting officer and each operation commander for the operation in question.

4. If reimbursement cannot be done by deduction from the contributions due to Athena, the balance of the budget outturn shall be repaid to the Member States concerned.

CHAPTER 12

LEGAL LIABILITY

Article 42

1. The conditions governing the disciplinary or criminal liability of the operation commander, the administrator and other staff made available in particular by the Community institutions or Member States in the event of misconduct or negligence in the implementation of the budget shall be governed by the Staff Regulations or the arrangements applicable to them. In addition, Athena may at its own initiative or at the request of a contributing State bring a civil action against the abovementioned staff.

2. In no case may the European Communities or the Secretary-General of the Council be held liable by a contributing State as a result of the performance of their duties by the administrator, the accounting officer or the staff assigned to them.

3. The contractual liability which may arise from contracts concluded in the context of implementation of the budget shall be covered through Athena by the contributing States. It shall be governed by the law applicable to the contracts in question.

4. In the case of non-contractual liability, any damage caused by the operation headquarters, force headquarters and component headquarters of the crisis structure, the composition of which shall be approved by the operation commander, or by their staff in the course of their duties shall be covered through Athena by the contributing States, in accordance with the general principles common to the laws of the Member States and the Staff Regulations of the forces, applicable in the theatre of operations.

5. In no case may the European Communities or the Member States be held liable by a contributing State for contracts concluded in the framework of budget implementation or for damage caused by the units and departments of the crisis structure, the composition of which shall be approved by the operation commander, or by their staff in the course of their duties.

Article 43

Review

This Decision, including its Annexes, shall be reviewed after every operation and at least every 18 months. The first review shall take place before end 2004 at the latest. Athena's management bodies shall contribute to such reviews.

Article 44

Repeal

Decision 2004/197/CFSP is hereby repealed.

References made to the repealed Decision shall be construed as being made to this Decision and should be read in accordance with the correlation table in Annex VI.

Article 45

Taking of effect

This Decision shall take effect on the day of its adoption.

Article 46

Publication

This Decision shall be published in the *Official Journal of the European Union*.

Done at Brussels, 14 May 2007.

For the Council

The President

F.-W. STEINMEIER

ANNEX I

Common costs borne by Athena whenever they are incurred

In cases when the following common costs cannot be linked directly to a specific operation, the Special Committee may decide to allocate the corresponding appropriations to the general part of the annual budget. These appropriations should, as much as possible, be entered in articles showing the operation to which they are most related.

1. Mission expenditure incurred by the operation commander and his/her staff for submitting an operation's accounts to the Special Committee
2. Indemnities for damages and costs resulting from claims and actions to be paid through Athena
3. Costs pursuant to any decision to store material which was acquired in common for an operation (where these costs are attributed to the general part of the annual budget, a link to a specific operation shall be indicated).

The general part of the annual budget shall furthermore include appropriations, where necessary, to cover the following common costs in operations to the financing of which the participating Member States contribute:

1. Banking costs
2. Auditing costs
3. Common costs relative to the preparatory phase of an operation as defined at Annex II.

ANNEX II

Operational common costs relative to the preparatory phase of an operation borne by Athena

Incremental costs of transport and accommodation necessary for exploratory missions and preparations (in particular fact-finding missions and reconnaissance) by military forces with a view to a specific Union military operation.

Medical services: the cost of emergency medical evacuations (Medevac) of persons taking part in exploratory missions and preparations by military forces with a view to a specific Union military operation, when medical treatment cannot be provided in theatre.

ANNEX III

III-A

Operational common costs relative to the active phase of operations always borne by Athena

For any Union military operation, Athena will bear as operational common costs the incremental costs required for the operation defined below.

1. Incremental costs for (deployable or fixed) headquarters for EU-led operations or exercises

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| (a) Headquarters (HQ): | operation, force and component headquarters. |
| (b) Operation Headquarters (OHQ): | the static, out-of-area headquarters of the operation commander, which is responsible for building up, launching, sustaining, and recovering an EU force; |
| | The definition of common costs applicable to an OHQ for an operation shall also be applicable to the General Secretariat of the Council and Athena in so far as they are acting directly for that operation; |
| (c) Force Headquarters (FHQ): | the headquarters of an EU force deployed to the area of operations; |
| (d) Component Headquarters (CCHQ): | the headquarters of an EU component commander deployed for the operation (i.e. air, land, maritime and other specific functions commanders that could be deemed necessary to designate depending on the nature of the operation); |
| (e) transport costs: | transport to and from the theatre of operations to deploy, sustain and recover FHQs and CCHQs; transport costs incurred by the OHQ necessary to an operation; |
| (f) administration: | additional office and accommodation equipment, contractual services and utilities, maintenance costs of the buildings; |
| (g) locally hired personnel: | civilian personnel, international consultants and locally hired (national and expatriate) personnel needed for the conduct of the operation over and above the normal operational requirements (including any overtime compensation payments); |
| (h) communications: | capital expenditure for the purchase and the use of additional communications and IT equipment and costs for rendered services (lease and maintenance of modems, telephone lines, satphones, cryptofax, secure lines, Internet providers, data lines, local area networks); |
| (i) transportation/travel (excluding 'per diem' costs) within the operations area of HQs: | expenditure related to vehicle transportation and other travel by other means and freight costs, including travel by national augmentees and visitors; incremental costs of fuel over and above what normal operations would have cost; lease of additional vehicles; costs of official journeys between the operational location and Brussels and/or EU-organised meetings; third-party insurance costs imposed by some countries upon international organisations conducting operations on their territory; |
| (j) barracks and lodging/infrastructure: | expenditure for acquisition, rental or refurbishing of required HQ facilities in theatre (rental of buildings, shelters, tents), if required; |
| (k) public information: | costs related to information campaigns and to inform media at OHQ and FHQ, in accordance with the information strategy developed by the operational HQ; |
| (l) representation and hospitality: | representational costs; costs at HQ level necessary for the conduct of an operation. |

2. Incremental costs incurred for providing support to the force as a whole:

The costs defined below are those incurred as a consequence of the force deployment to its location:

- (a) works for deployment/infrastructure: expenditure absolutely needed for the force as a whole to fulfil its mission (common used airport, railway, harbours, roads, including points of disembarkation and forward assembly areas; power and water supply, static force protection, storage facilities, parking lots; engineering support);
- (b) identification marking: specific identification marks, 'European Union' identity cards, badges, medals, flags in European Union colours or other Force or HQ identification marking (excluding clothes, hats or uniforms);
- (c) medical services: emergency medical evacuations (Medevac).

3. Incremental costs incurred by EU recourse to NATO common assets and capabilities made available for an EU-led operation.

The cost for the European Union of the application for one of its military operations of the arrangements between the EU and NATO relating to release, monitoring and return or recall of NATO common assets and capabilities made available for an EU-led operation. Reimbursements by NATO to the EU.

4. Incremental costs incurred by the EU for goods, services or works included in the list of common costs and made available in an EU-led operation by a Member State, an EU institution, a third State or an international organisation pursuant to an arrangement referred to at Articles 11 and 12. Reimbursements by a State, an EU institution or an international organisation based on such an arrangement.

III-B

Operational common costs relative to the active phase of a specific operation, borne by Athena when the Council so decides

- Transport costs: transport to and from the theatre of operations to deploy, support and recover the forces necessary for the operation.
- Barracks and lodging/infrastructure: expenditure for acquisition, rental or refurbishing of premises in theatre (rental of buildings, shelters, tents), as necessary for the forces deployed for the operation.
- Multinational task-force headquarters: the multi-national headquarters of EU task-forces deployed in the area of operation
- Acquisition of information: acquisition of information (satellite images; theatre level intelligence, reconnaissance and surveillance (ISR), including Air-to-Ground Surveillance (AGSR); human intelligence).

III-C

Operational common costs borne by Athena when requested by the Operation Commander and approved by the Special Committee

- (a) essential additional equipment: the rental or purchase in the course of the operation of unforeseen specific equipment essential for the execution of the operation, in so far as the purchased equipment is not repatriated at the end of the mission;
- (b) medical services: Roles 1, 2 and 3 facilities in theatre;
- (c) acquisition of information: acquisition of information (satellite images; theatre level intelligence, reconnaissance and surveillance (ISR), including Air-to-Ground Surveillance (AGSR); human intelligence);
- (d) other critical theatre-level capabilities: theatre-level capabilities (demining within theatre in so far as necessary to the operation; chemical, biological, radiological and nuclear protection (CBRN); fuel storage and supply facilities; storage and destruction of arms and ammunitions collected within the area of operation), in accordance with the Joint Action.

ANNEX IV

Operational common costs relative to the winding-up of an operation, borne by Athena

Costs incurred for finding the final destination for the equipment and infrastructure commonly funded for the operation.

Incremental costs of drawing up the accounts for the operation. The eligible common costs shall be determined in accordance with Annex III, keeping in view the fact that the staff needed to draw up the accounts belong to the headquarters for that operation, even after the latter has ceased its activities.

ANNEX V

Repealed Decision with its successive amendments

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|--------------------------------|--------------------------------|
| Council Decision 2004/197/CFSP | (OJ L 63, 28.2.2004, p. 68). |
| Council Decision 2004/925/CFSP | (OJ L 395, 31.12.2004, p. 68). |
| Council Decision 2005/68/CFSP | (OJ L 27, 29.1.2005, p. 59). |
| Council Decision 2007/91/CFSP | (OJ L 41, 13.2.2007, p. 11). |

ANNEX VI

Correlation Table

| Decision 2004/197/CFSP | This Decision |
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| Article 43, first sentence | Article 45 |
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| Annex I, first subparagraph, point 2 | Annex I, first subparagraph, point 1 |
| Annex I, first subparagraph, point 3 | Annex I, first subparagraph, point 2 |
| Annex I, first subparagraph, point 5 | Annex I, first subparagraph, point 3 |
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