



COMMISSION OF THE EUROPEAN COMMUNITIES

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Proposal for a

COUNCIL DECISION

amending Council Decision 2001/822/EC on the association of the overseas countries and territories with the European Community

(presented by the Commission)

Proposal for a

COUNCIL DECISION

amending Council Decision 2001/822/EC on the association of the overseas countries and territories with the European Community

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community and in particular Article 187 thereof,

Having regard to the proposal from the Commission¹,

Whereas:

- (1) Council Decision 2001/822/EC of 27 November 2001 on the association of the Overseas Countries and Territories with the Community² (hereinafter referred to as ‘the Overseas Association Decision’) establishes the legal framework for promoting the economic and social development of the Overseas Countries and Territories (hereinafter referred to as ‘OCTs’) and for enhancing economic relations between them and the Community. The Overseas Association Decision is applicable until 31 December 2011. In order to coincide with the duration of the 10th European Development Fund (2008-2013) (hereinafter referred to as ‘10th EDF’) and the Multiannual Financial Framework 2007-2013, it should be extended until 31 December 2013.
- (2) Annex II A of the Overseas Association Decision lays down the financial allocations for the period 2000 to 2007. In the light of the newly established 10th EDF, the amount for the period 2008 to 2013 should be allocated.
- (3) Provisions should be made for rules governing the transition from the 9th EDF to the 10th EDF as far as the OCTs are concerned. Those rules should be established in accordance with the general rules on the commitment of funds of the 9th EDF and of previous EDFs after 31 December 2007 set out in Article 1 of Decision 2005/446/EC of the Representatives of the Governments of the Member States meeting within the Council of 30 May 2005 setting the deadline for the commitment of the funds of the 9th European Development Fund (EDF)³ and in Article 1(3) and (4) of the Internal Agreement establishing the 10th EDF⁴.

¹ OJ C , , p. .

² OJ L 314, 30.11.2001, p. 1.

³ OJ L 156, 18.6.2005, p. 19.

⁴ OJ L 247, 9.9.2006, p. 32.

- (4) The Internal Agreement establishing the 10th EDF lays down an overall amount of EUR 286 million to be allocated to the OCTs. The apportionment of that amount of between the different instruments for development finance cooperation related to the EDF, on the one hand, and the criteria and elements for determining the beneficiary OCTs' initial indicative allocations, on the other hand, should be laid down.
- (5) Regarding the apportionment between the different instruments for development finance cooperation related to the EDF, coordination should be ensured in particular between support to regional cooperation and integration and support at territorial level, to enhance the resilience of the OCTs towards the challenges that they are facing regardless of their GNP per capita or other elements used to determine the territorial allocations.
- (6) The financial assistance to the OCTs should be allocated on the basis of standard, objective and transparent criteria. Such criteria should include in particular the level of GNP of an OCT, the size of its population and continuity compared to previous EDFs. Special treatment should be reserved for 'least developed OCTs' referred to in Annex I B of the Overseas Association Decision, as well as for OCTs which, due to geographical isolation or other constraints, have more difficulties in engaging in regional cooperation and integration.
- (7) Special attention should be paid to strengthening the institutional capacities of the OCTs and to good governance, including in the financial, tax and judicial areas.
- (8) Special attention should also be paid to strengthening cooperation between OCTs, ACP States and the most remote regions referred to in Article 299(2) of the Treaty or other actors in the respective regions in which OCTs are situated.
- (9) The terms and conditions of financing in relation to the operations of the Investment Facility referred to in Annex II C of the Overseas Association Decision should be brought into line with the revision of the corresponding Articles in Annex II of 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 2000⁵, as revised in Luxembourg on 25 June 2005⁶ (hereinafter referred to as 'the ACP-EC Partnership Agreement').
- (10) It is crucial to ensure continuity as regards the eligibility of OCTs for funding from the general thematic budget lines of the General Budget of the European Communities, outside the EDF. The thematic regulations referred to in Annex II E of the Overseas Association Decision will expire or be replaced by [Regulation (EC) No [...] of the European Parliament and of the Council of [...] establishing a financing instrument for development cooperation] by 1 January 2007. Annex II E should therefore be amended in order to replace references to those thematic Regulations with a reference to the new financing instrument. In order to ensure continuity, such amendment should apply as from 1 January 2007.

⁵ OJ L 317, 15.12.2000, p. 3. Agreement as last amended by Decision No 1/2006 of the ACP-EC Council of Ministers (OJ L 247, 9.9.2006, p. 22).

⁶ OJ L 209, 11.8.2005, p. 26.

- (11) Taking into account the special relation between the OCTs and the Member States to which they are linked, the possible participation of OCTs in horizontal Community programmes should be generalised so that the OCTs are allowed to participate in the programmes that are open to the Member States to which the OCTs are linked, subject to the rules and objectives of the programmes and the arrangements applicable to the Member States to which the OCTs are linked. In order to allow participation of the OCTs since the beginning of the new programming period, this amendment should be introduced as from 1 January 2007.
- (12) The current technical amendments are without prejudice to subsequent revision of the Overseas Association Decision, in particular pursuant to Article 62 thereof,

HAS DECIDED AS FOLLOWS:

Article 1

Council Decision 2001/822/EC is hereby amended as follows:

- (1) In Article 23, the last paragraph is replaced by the following:

“The financial and accounting procedures applicable to development finance cooperation for the OCTs by virtue of the 9th EDF shall be those laid down in the 9th EDF Financial Regulation. The financial and accounting procedures applicable to development finance cooperation for the OCTs by virtue of the 10th EDF shall be those laid down in the 10th EDF Financial Regulation.”

- (2) In Article 24, the following paragraph is added:

“9. For the implementation of the 10th EDF, the respective provisions of the Internal Agreement establishing the 10th EDF shall be applicable.”

- (3) In Article 25(1), “the period from 2000 to 2007” is replaced by “the periods from 2000 to 2007 and from 2008 to 2013”.

- (4) Article 31 is replaced by the following:

“Article 31

Technical assistance

1. On the initiative of or on behalf of the Commission, studies or technical assistance measures may be financed in order to ensure the preparation, monitoring, evaluation and supervision necessary for implementing this Decision and the overall evaluation of this Decision referred to in Article 1(1)(c) of Annex II A.

Such studies or technical assistance measures shall be financed by the overall grant allocation.

2. On the initiative of the OCT, studies or technical assistance measures may be financed in relation to the implementation of the activities contained in the SPD, subject to the Commission's opinion.

In the framework of the 9th EDF, such studies or technical assistance measures shall be financed from the allocation of the OCT concerned. In the framework of the 10th EDF, they shall be financed by the overall grant allocation.”

- (5) The following Article 33a is inserted:

“Article 33a

1. After 31 December 2007, or after the date of entry into force of the Internal Agreement establishing the 10th EDF if this date falls later later, balances from the 9th EDF or from previous EDFs shall no longer be committed, with the exception of the balances and funds decommitted after this date of entry into force resulting from the system guaranteeing the stabilisation of export earnings from primary agricultural products (STABEX) under the EDFs prior to the 9th EDF and the remaining balances and reimbursements of the funds allocated under the 9th EDF to finance the resources of the Investment Facility set out in Annex II C, excluding the related interest-rate subsidies.

2. Funds decommitted from projects under the 9th EDF or from previous EDFs after 31 December 2007 shall no longer be committed, unless decided otherwise by the Council unanimously, on the basis of a proposal by the Commission, with the exception of the STABEX funds decommitted after this date of entry into force which shall be automatically transferred to the respective territorial indicative programmes financed in accordance with Article 3(1) of Annex II Aa and of the funds allocated under the 9th EDF to finance the resources of the Investment Facility set out in Annex II C, excluding the related interest-rate subsidies.”

- (6) Article 58 is replaced by the following:

“Article 58

Programmes open to the OCTs

Individuals from an OCT and where applicable the relevant public and/or private bodies and institutions in an OCT shall be eligible for Community programmes, subject to the rules and objectives of the programmes and the arrangements applicable to the Member State to which they are linked. The programmes shall apply to OCT nationals within the framework of the quota for the Member State to which the OCT concerned is linked, if the programme concerned uses such a quota.

The main programmes that are open to the OCTs are those listed in Annex II F, as well as any programme succeeding them.”

- (7) In Article 63, “2011” is replaced by “2013”.
- (8) In Article 1(1)(c) of Annex II A, “two years” is replaced by “four years”.
- (9) After Annex II A, a new Annex II Aa is inserted, the text of which is set out in Annex I to this Decision.
- (10) Annex II B is amended as follows:

(a) Article 1 is replaced by the following:

“1. An amount of up to EUR 20 million as laid down in Article 5 of the Internal Agreement establishing the 9th EDF shall be provided by the EIB in the form of loans from its own resources in accordance with the conditions provided for by its statutes and this Annex.

2. An amount of up to EUR 30 million as laid down in Article 3 of the Internal Agreement establishing the 10th EDF shall be provided by the EIB in the form of loans from its own resources in accordance with the conditions provided for by its statutes and this Annex.”

(b) In Article 2(2), point (c) is replaced by the following:

“(c) during the period covered by the 9th EDF, the amount of the interest rate subsidy calculated in terms of its value at the times of disbursement of the loan shall be charged against the interest subsidy allocation laid down in Annex II A, Article 3(3)(d), and paid directly to the EIB;

During the period covered by the 10th EDF, the amount of the interest rate subsidy calculated in terms of its value at the times of disbursement of the loan shall be charged against the interest subsidy allocation laid down in Annex II Aa, Article 1(1)(b), and paid directly to the EIB;

Interest subsidies may be capitalised or used in the form of grants to support project-related technical assistance, particularly for financial institutions in the OCTs.”

(11) Annex II C is replaced by the text set out in Annex II to this Decision.

(12) Annex II E is replaced by the text set out in Annex III to this Decision.

(13) Annex II F is replaced by the text set out in Annex IV to this Decision.

Article 2

Taking of effect

This Decision shall take effect on the day of its publication in the Official Journal of the European Union.

However, Article 1, points (6), (12) and (13) shall apply as from 1 January 2007.

Done at Brussels,

For the Council
The President

ANNEX I

"ANNEX II Aa

COMMUNITY FINANCIAL ASSISTANCE: 10th EDF

Article 1

Allocation between the various instruments

1. For the purposes set out in this Decision, for the six-year period from 1 January 2008 to 31 December 2013, the overall amount of Community financial assistance of EUR 286 million under the 10th European Development Fund (EDF) fixed by the Internal Agreement shall be allocated as follows:

(a) EUR 250 million in the form of grants for programmable support for long-term development, humanitarian aid, emergency aid, refugee aid and additional support in the event of fluctuations in export earnings as well as for support for regional cooperation and integration.

(b) EUR 30 million shall be allocated to finance the OCT Investment Facility referred to in Annex II C and of which a maximum amount of EUR 1.5 million is set aside to fund the interest subsidies for operations to be financed by the Bank from its own resources, in accordance with Annex II B, or under the OCT Investment Facility.

(c) EUR 6 million shall be allocated to studies or technical assistance measures in accordance with Article 31 of the present Decision.

2. The funds of the 10th EDF may no longer be committed after 31 December 2013, unless the Council decides otherwise unanimously, on a proposal from the Commission.

3. Should the funds provided for in paragraph 1 be exhausted before this Decision expires, the Council shall take the appropriate measures.

Article 2

Administration of resources

The EIB shall administer the loans made from its own resources referred to in Annex II B, as well as the operations financed under the OCT Investment Facility referred to in Annex II C. All other financial resources under this Decision shall be administered by the Commission.

Article 3

Allocation between the OCTs

The amount of EUR 250 million mentioned in Article 1(1)(a) shall be allocated on the basis of the needs and performance of the OCTs in accordance with the following criteria:

1. An amount A of EUR 195 million shall be allocated to the OCTs in particular to finance the initiatives referred to in the Single Programming Documents, including priority actions for social development and environmental protection, within the framework of the fight against

poverty. All the Single Programming Documents shall pay particular attention to actions aimed at strengthening the institutional capacities of the beneficiary OCTs and to the level of governance and the extent and the calendar of reforms.

The allocation of amount A shall take into account the size of the population, the level of Gross National Product (GNP), the level and use of previous EDF allocations, constraints due to geographical isolation and structural and other obstacles of the least developed OCTs mentioned in Article 3 of this Decision. Any allocation shall be such as to allow its effective use. It should be decided in conformity with the principle of subsidiarity.

This amount shall in principle be allocated to the OCTs with a per capita GNP not exceeding the Community GNP, according to the available statistical data.

2. EUR 40 million shall be allocated to support regional cooperation and integration in accordance with Article 16 of this Decision, including the dialogue and partnership actions laid down in Article 7, regional disaster preparedness and alleviation initiatives and, in coordination with other Community financial instruments, cooperation between the OCTs and the most remote regions referred to in Article 299(2) of the Treaty.

3. Paragraph 1 of this Article shall not apply to Greenland.

4. A non-allocated reserve B of EUR 15 million shall be set aside in order:

(a) to finance humanitarian, emergency and refugee aid for the OCTs and, if necessary, the additional support in the event of fluctuations in export earnings, in accordance with Annex II D;

(b) to make new allocations in accordance with the development of the needs and performance of the OCTs referred to under paragraph 1.

Performance shall be evaluated in an objective and transparent way, taking into account the use of the allocated resources, the effective implementation of the ongoing operations, the alleviation or reduction of poverty and the sustainable development measures adopted.

5. In accordance with the paragraphs above, the indicative amounts allocated under the 10th EDF shall be adopted by the Commission, in accordance with Article 24 of this Decision.

6. The Commission, following a mid-term review, may decide a different allocation of the funds mentioned in this Article. The procedures for this review and the decision on any new allocation shall be adopted in accordance with Article 24 of this Decision."

ANNEX II

"ANNEX II C

COMMUNITY FINANCIAL ASSISTANCE: THE OCT INVESTMENT FACILITY

Article 1

Objective

An OCT Investment Facility (hereinafter referred to as ‘the Facility’) shall be set up to promote commercially viable enterprises, mainly in the private sector but also those in the public sector supporting private sector development.

The terms and conditions of financing in relation to the operations of the Facility, the loans from own resources of the EIB shall be as laid down in this Annex and Annex II B. For the implementation of the 9th EDF, Articles 29 and 30 of the 9th EDF Internal Agreement shall be applicable. For the implementation of the 10th EDF, the respective provisions of the Internal Agreement establishing the 10th EDF shall be applicable.

These resources may be channelled to eligible enterprises, either directly or indirectly, through eligible investment funds and/or financial intermediaries.

Article 2

Resources of the Facility

1. The resources of the Facility may be used, *inter alia*, to:

(a) provide risk capital in the form of:

- (1) equity participation in OCT enterprises, including financial institutions;
- (2) quasi-capital assistance to OCT enterprises, including financial institutions;
- (3) guarantees and other credit enhancements which may be used to cover political and other investment-related risks, both for foreign and local investors or lenders;

(b) provide ordinary loans.

2. Equity participation shall normally be for non-controlling minority holdings and shall be remunerated on the basis of the performance of the project concerned.

3. Quasi-capital assistance may consist of shareholders' advances, convertible bonds, conditional, subordinated and participating loans or any other similar form of assistance. Such assistance may consist in particular of:

- (a) conditional loans, the servicing and/or the duration of which shall be linked to the fulfilment of certain conditions with regard to the performance of the project; in the specific case of conditional loans for pre-investment studies or other project-related technical assistance, servicing may be waived if the investment is not carried out;
- (b) participating loans, the servicing and/or the duration of which shall be linked to the financial return of the project;
- (c) subordinated loans, which shall be repaid only after other claims have been settled.

4. The remuneration of each operation shall be specified when the loan is made.

However:

(a) in the case of conditional or participating loans, the remuneration shall normally comprise a fixed interest rate of not more than 3% and a variable component related to the performance of the project;

(b) in the case of subordinated loans, the interest rate shall be market related.

5. Guarantees shall be priced so as to reflect the risks insured and the particular characteristics of the operation.

6. The interest rate of ordinary loans shall comprise a reference rate applied by the EIB for comparable loans with the same terms and conditions as to grace and repayment periods and a mark up determined by the EIB.

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

(a) for infrastructure projects in the Least Developed OCTs, in post-conflict OCTs or in post-natural disaster OCTs that are prerequisites for private sector development. In such cases, the interest rate of the loan will be reduced by 3%;

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

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

8. The funds to be provided for these concessional purposes will be made available from the Investment Facility and shall not exceed 5% of the overall amount allocated for investment financing by the Investment Facility and by the Bank from its own resources.

9. Interest subsidies may be capitalised or may be used in the form of grants. Up to 10% of the budget for interest rate subsidies may be used to support project-related technical assistance, particularly for financial institutions in the OCTs.

Article 3

Operations of the Investment Facility

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

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

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

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

(d) seek to channel funds through OCT institutions and programmes that promote the development of small and medium-sized enterprises (SMEs).

2. The EIB shall be remunerated for the cost incurred in managing the Investment Facility. For the first two years after the entry into force of the second financial protocol, this remuneration shall be up to an amount of 2% p.a. of the total initial endowment of the Investment Facility. Thereafter, the remuneration of the EIB shall include a fixed component of 0.5 % p.a. of the initial endowment and a variable component of an amount of up to 1.5 % p.a. of the portfolio of the Investment Facility that is invested in projects in OCTs. The remuneration shall be financed out of the Investment Facility.

3. On expiry of this Decision, and in the absence of a specific decision by the Council, the cumulative net reflows to the Investment Facility shall be carried over to the next OCT Financial Instrument.

Article 4

Conditions for foreign exchange rate risk

In order to minimise the effects of exchange rate fluctuations, the problems of exchange rate risk shall be dealt with in the following way:

(a) in the case of equity participation designed to strengthen an enterprise's own funds, the exchange rate risk shall, as a general rule, be borne by the Facility;

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

(c) where feasible and appropriate, particularly in countries characterised by macroeconomic and financial stability, the Facility will endeavour to extend loans in local OCT currencies, thus taking the foreign exchange risk."

ANNEX III

"ANNEX II E

COMMUNITY FINANCIAL ASSISTANCE: BUDGETARY AID FOR DEVELOPING COUNTRIES

Without prejudice to future amendments to of budgetary provisions, the OCTs shall benefit from the following actions adopted for developing countries within the general budget of the European Union:

1. Thematic programmes covered by [Regulation (EC) No [...] of the European Parliament and of the Council of [...] establishing a financing Instrument for Development Cooperation (DCI)] providing direct support for the European Community development and cooperation policy.
2. Rehabilitation and reconstruction operations as covered by [Regulation of the European Parliament and the Council establishing an Instrument for Stability].
3. Humanitarian aid as provided for by Council Regulation (EC) No 1257/96 of 20 June 1996 concerning humanitarian aid.⁷."

⁷ OJ L 163, 2.7.1996, p. 1.

ANNEX IV

"ANNEX II F

OTHER COMMUNITY ASSISTANCE: PARTICIPATION IN COMMUNITY PROGRAMMES

In accordance with Article 58 of the Decision, the following programmes and any programmes succeeding them, among others, shall apply to OCT nationals, within the framework of the quota for the Member State to which the OCT concerned is linked if the programme concerned uses such a quota:

1. Education and training programmes:

- An action programme in the field of lifelong learning (2007-2013), adopted by Decision 1720/2006/EC of the European Parliament and the Council of 15 November 2006⁸;
- The ‘Youth in Action’ programme (2007-2013), established by Decision 1719/2006/EC of the European Parliament and the Council of 15 November 2006⁹.

2. The programmes of the Competitiveness and Innovation Framework Programme (CIP) (2007-2013), established by Decision 1639/2006/EC of the European Parliament and the Council of 24 October 2006¹⁰.

3. The programmes of the seventh framework programme of the European Community for research, technological development and demonstration activities (2007 to 2013), established by Decision [...] of the European Parliament and the Council of [...] ¹¹.

4. Cultural and audio-visual programmes:

- Programme of support for the European audiovisual sector (MEDIA 2007), adopted by Decision 1718/2006/EC of the European Parliament and the Council of 15 November 2006¹²;
- Culture (2007-2013), established by [...] of the European Parliament and the Council of [...] ¹³.

5. The H RTP Japan programme (human resources training programme in Japan) and topical missions, provided for by Council Decision 92/278/EEC of 18 May 1992¹⁴."

⁸ OJ L 327, 24.11.2006, p. 45.

⁹ OJ L 327, 24.11.2006, p. 30.

¹⁰ OJ L 310, 09.11.2006, p. 15.

¹¹ OJ L [...], [...], p. [...].

¹² OJ L 327, 24.11.2006, p. 12.

¹³ OJ L [...], [...], p. [...].

¹⁴ OJ L 144, 26.5.1992, p. 19.