

DECISIONS

COUNCIL DECISION

of 5 June 2014

on the position to be taken by the European Union within the ACP-EU Council of Ministers regarding the revision of Annex IV to the ACP-EC Partnership Agreement

(2014/361/EU)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 209(2) in conjunction with Article 218(9) thereof,

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⁾ (hereinafter referred to as the 'ACP-EC Partnership Agreement'),

Having regard to the proposal from the European Commission,

Whereas:

- (1) Article 100 of the ACP-EC Partnership Agreement states that Annexes Ia, Ib, II, III, IV and VI to the ACP-EC Partnership Agreement may be revised, reviewed and/or amended by the ACP-EU Council of Ministers on the basis of a recommendation from the ACP-EU Development Finance Cooperation Committee.
- (2) International commitments toward aid effectiveness were taken by the Parties to the ACP-EC Partnership Agreement in Busan, Accra and at the OECD-DAC in Paris in 2010.
- (3) The rules of nationality and origin could be further improved in line with those international commitments.
- (4) Clarification and simplification of the provisions of Annex IV to the ACP-EC Partnership Agreement could improve the efficiency of the implementation of the EDF,

HAS ADOPTED THIS DECISION:

Article 1

The position to be taken by the European Union within the ACP-EU Council of Ministers regarding the revision of Annex IV to the ACP-EC Partnership Agreement shall be based on the draft Decision of the ACP-EU Council of Ministers annexed hereto.

Article 2

After its adoption, the Decision of the ACP-EU Council of Ministers shall be published in the *Official Journal of the European Union*.

Done at Luxembourg, 5 June 2014.

For the Council
The President
N. DENDIAS

⁽¹⁾ OJ L 317, 15.12.2000, p. 3. Agreement as amended by the Agreement signed in Luxembourg on 25 June 2005 (OJ L 287, 28.10.2005, p. 4) and by the Agreement signed in Ouagadougou on 22 June 2010 (OJ L 287, 4.11.2010, p. 3).

DRAFT

DECISION OF THE ACP-EU COUNCIL OF MINISTERS**of****regarding the revision of Annex IV to the ACP-EC Partnership Agreement**

THE ACP-EU COUNCIL OF MINISTERS

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 amended in Luxembourg on 25 June 2005 ⁽²⁾ and in Ouagadougou on 22 June 2010 ⁽³⁾ (the 'ACP-EC Partnership Agreement'), and in particular Article 100 thereof,

Whereas:

- (1) Article 100 of the ACP-EC Partnership Agreement states that Annexes Ia, Ib, II, III, IV and VI to the ACP-EC Partnership Agreement may be revised, reviewed and/or amended by the ACP-EU Council of Ministers on the basis of a recommendation from the ACP-EU Development Finance Cooperation Committee.
- (2) International commitments toward aid effectiveness were taken by the Parties to the ACP-EC Partnership Agreement in Busan, Accra and at the OECD-DAC in Paris in 2010.
- (3) The rules of nationality and origin could be further improved in line with the abovementioned international commitments.
- (4) Clarification and simplification of the provisions of Annex IV to the ACP-EC Partnership Agreement could improve the efficiency of the implementation of the EDF,

HAS ADOPTED THIS DECISION:

Article 1

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

- (1) In Article 19C, paragraph 5 is replaced by the following:

'5. Pursuant to the commitment referred to in Articles 32(1)(a) and Article 50 of this Agreement, contracts and grants financed from resources from the multi-annual financial framework of cooperation with the ACP shall be performed in accordance with applicable environmental legislation and internationally recognised basic standards in the field of labour law;'

- (2) Article 20(1) is replaced by the following:

'1. Participation in procedures for the awarding of procurement contracts or grants financed from the multi-annual financial framework of cooperation under this Agreement shall be open to all natural persons who are nationals of, or legal persons who are effectively established in:

- a. an ACP State, a Member State of the European Community, beneficiaries of the Instrument for pre-accession assistance of the European Community, a Member State of the European Economic Area, and overseas countries and territories covered by Council Decision 2013/755/EU of 25 November 2013 on the association of the overseas countries and territories with the European Union (*);
- b. developing countries and territories, as included in the OECD-DAC list of ODA Recipients, which are not members of the G-20 group, without prejudice to the status of the Republic of South Africa, as governed by Protocol 3;
- c. countries for which reciprocal access to external assistance has been established by the Commission in agreement with ACP countries;

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

⁽²⁾ OJ L 209, 11.8.2005, p. 27.

⁽³⁾ OJ L 287, 4.11.2010, p. 3.

Reciprocal access may be granted, for a limited period of at least one year, whenever a country grants eligibility on equal terms to entities from the Community and from countries eligible under this Article;

- d. Member State of the OECD, in the case of contracts implemented in a Least Developed Country (LDC) or a Highly Indebted Poor Country (HIPC), as included in the OECD-DAC list of ODA Recipients published by the OECD-DAC.

(*) OJ L 344, 19.12.2013, p. 1.;

- (3) In Article 20, paragraph 1a is deleted;

- (4) Article 20(3) is replaced by the following:

‘3. All supplies and materials purchased under a procurement contract, or in accordance with a grant agreement, financed from the multi-annual financial framework of cooperation under this Agreement shall originate from an eligible country, as defined in this Article.

However, they may originate from any State when the amount value of the supplies and materials to be purchased is below the threshold for the use of the competitive negotiated procedure, established in accordance with paragraph 1 of Article 19C.

In this context, the definition of the concept of “originating products” shall be assessed by reference to the relevant international agreements, and supplies originating in the Community shall include supplies originating in the Overseas Countries and Territories.’;

- (5) Article 20(5) is replaced by the following:

‘5. Whenever the multi-annual financial framework of cooperation under this Agreement finances an operation implemented through an international organisation, participation in procedures for the awarding of procurement contracts or grants shall be open to all natural and legal persons who are eligible under paragraph 1, and to all natural and legal persons who are eligible according to the rules of the organisation, care being taken to ensure equal treatment of all donors. The same rules apply for supplies and materials.’;

- (6) Article 20(6) is replaced by the following:

‘6. Whenever the multi-annual financial framework of cooperation under this Agreement finances an operation implemented as part of a regional initiative, participation in procedures for the awarding of procurement contracts or grants shall be open to all natural and legal persons who are eligible under paragraph 1, and to all natural and legal persons from a country participating in the relevant initiative. The same rules apply for supplies and materials.’;

- (7) Article 20(7) is replaced by the following:

‘7. Whenever the multi-annual financial framework of cooperation under this Agreement finances an operation jointly co-financed with a partner or other donor or implemented through any Trust Fund established by the Commission, participation in procedures for the awarding of procurement contracts or grants shall be open to all natural and legal persons who are eligible under paragraph 1 and to all natural and legal persons eligible under the rules of that partner, other donor or under the rules determined in the Trust Fund constitutive act.

In the case of actions implemented through entrusted bodies, which are Member States or their agencies, the European Investment Bank or through international organisations or their agencies, natural and legal persons who are eligible under the rules of that entrusted body, as identified in the agreements concluded with the co-financing or implementing body shall also be eligible. The same rules apply for supplies and materials.’;

- (8) In Article 20, the following new paragraphs 8 and 9 are added:

‘8. Whenever the multi-annual financial framework of cooperation under this Agreement finances an operation co-financed under another EU financial Instrument, participation in procedures for the awarding of procurement contracts or grants shall be open to all natural and legal persons who are eligible under paragraph 1, and to all natural and legal persons eligible under any of these Instruments. The same rules apply for supplies and materials.

9. Eligibility as defined in this Article may be restricted with regard to the nationality, localisation or nature of applicants where required by the nature and the objectives of the action and as necessary for its effective implementation.’;

(9) Article 22(1) is replaced by the following:

'1. Tenderers, applicants and candidates from third countries not eligible under Article 20 may be authorised to participate in procedures for the awarding of procurement contracts or grants financed by the Community from the multiannual financial framework of cooperation under this Agreement or supplies and materials from non-eligible origin may be accepted as eligible at the justified request of the ACP States or the relevant organisation or body at regional or intra-ACP level in the case of:

- (a) countries having traditional economic, trade or geographical links with neighbouring beneficiary countries, or
- (b) urgency or unavailability of products and services in the markets of the countries concerned, or other duly substantiated cases where the eligibility rules would make the realisation of a project, a programme or an action impossible or exceedingly difficult.

The ACP State or the relevant organisation or body at regional or intra-ACP level shall, on each occasion, provide the Commission with the information needed to decide on such derogation.;

(10) Article 26(1)(a) is replaced by the following:

'(a) for works contracts of a value of less than EUR 5 000 000, tenderers of the ACP States, provided that at least one quarter of the capital stock and management staff originates from one or more ACP States, shall be accorded a 10 % price preference during the financial evaluation;';

(11) Article 26(1)(b) is replaced by the following:

'(b) for supply contracts of a value of less than EUR 300 000, tenderers of the ACP States, either individually or in a consortium with European partners, shall be accorded a 15 % price preference during the financial evaluation;';

(12) Article 26(1)(c) is replaced by the following:

'(c) in respect of service contracts other than the European Commission's Framework contracts, when technical offers are evaluated, a preference shall be given to tenders submitted by legal or natural persons of ACP States, either individually or in a consortium among them.;

(13) Article 26(2) is replaced by the following:

'2. Without prejudice to the provisions in paragraph 1, where two tenders for works, supplies or service contracts are acknowledged to be equivalent, preference shall be given:

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

Article 2

This Decision shall enter into force on the date of its adoption.

Done at ...,

*For the ACP-EU Council of Ministers
The Chair*
