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ANNEX 1

ANNEX

to the

Proposal for a

COUNCIL DECISION

**on the position to be taken by the European Union within the ACP-EU Committee of
Ambassadors regarding the revision of Annex III of the ACP-EU Partnership
Agreement**

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DECISION N° ... /2015

OF THE ACP-EU COMMITTEE OF AMBASSADORS

of .././2015

regarding the revision of Annex III of the ACP-EU Partnership Agreement

THE ACP-EU COMMITTEE OF AMBASSADORS,

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 part¹ (hereinafter referred to as the 'ACP-EU Partnership Agreement'), and in particular Article 100 thereof,

Whereas:

- (1) Article 100 of the ACP-EU Partnership Agreement states that its Annexes Ia, Ib, II, III, IV and VI 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) Article 15(4) of the ACP-EU Partnership Agreement states that the ACP-EU Council of Ministers may delegate powers to the ACP-EU Committee of Ambassadors.
- (3) Article 2 of Annex III of the ACP-EU Partnership Agreement relates to the Centre for the Development of Enterprise (hereinafter referred to as 'CDE'). Its article 2(6)a appoints the ACP-EU Committee of Ambassadors as the supervisory authority of the CDE with amongst others the responsibility to lay down the Statutes and rules of procedures of the Centre for Development of the Enterprise adopted by Decision No 8/2005 of the ACP-EU Committee of Ambassadors² (hereinafter referred to as the 'CDE Statutes'). Its article 2(7)a awards the CDE Executive Board amongst others the responsibility to lay down the Financial Regulation of the Centre for the Development of the Enterprise adopted by Decision No 5/2004 of the ACP-EU Committee of

¹ OJ L 317, 15.12.2000, p.3. Agreement signed in Cotonou on 23 June 2000, as amended by the Agreement signed in Luxembourg on 25 June 2005 (OJ L209, 11.8.2005, p.27) and by the Agreement signed in Ouagadougou on 22 June 2010 (OJ L287, 4.11.2010, p 3).

² OJ L 66, 8.3.2006, p.16

Ambassadors³ (hereinafter referred to as 'CDE Financial Regulation') and the Staff Regulation of the Centre for the Development of the Enterprise adopted by Decision No 9/2005 of the ACP-EU Committee of Ambassadors⁴ (hereinafter referred to as 'CDE Staff Regulation').

- (4) Article 1 of the CDE Statutes defines the principle of the legal personality of the CDE.
- (5) Articles 9 and 10 of the CDE Statutes define the CDE Executive Board's mandate and composition.
- (6) At its 39th session held on 19 and 20 June 2014 in Nairobi, the ACP-EU Council of Ministers agreed, in a Joint Declaration, to proceed with "*the orderly closing of the CDE and the amendment of Annex III*" to the ACP-EU Partnership Agreement. For this purpose, the ACP-EU Council of Ministers decided to grant a delegation of powers to the ACP-EU Committee of Ambassadors to take the matter forward with a view to adopting the necessary decisions.
- (7) The above-mentioned Joint Declaration of the ACP-EU Council of Ministers established the ACP-EU Joint Working Group (hereinafter referred to as the 'JWG') to ensure that the CDE is closed under the best possible conditions.
- (8) The ACP-EU Committee of Ambassadors, in its Decision 4/2014 on 23 October 2014⁵ mandated the CDE Executive Board to take all appropriate measures to prepare for the closure of the CDE. Subsequently, the CDE Executive Board signed a contract with a Curator until 31 December 2016.
- (9) In accordance with Article 2(3) of the above-mentioned Decision 4/2014, the closure plan envisages the finalisation of the closure phase by 31 December 2016. With the Executive Board's approval of the definitive closure plan on 29-30 June 2015, the CDE entered into its closure phase.
- (10) The closure phase will be followed by a 'passive phase' in which the CDE will solely exist for the needs of its liquidation. This phase, to be managed by a Curator, may comprise administrative tasks, amongst others, keeping the archives of the CDE, replying to any administrative formality, or managing residual litigations that could not have been settled during the closure phase. The passive phase shall start on the day after the closure phase, i.e on 1st January 2017.

The passive phase will end after a period of five years, or until the CDE has settled all its liabilities and realised all its assets.

- (11) As per article 26.1 of the Financial Regulation, the accounts shall be closed at the end of the financial year in order to draw-up the Centre's financial statements. Therefore, the statutory audit of the year 2016 related to the closure phase shall be finalized at the latest by 30 June 2017.
- (12) The modification of Annex III of the ACP-EU Partnership Agreement concerns the deletion of the references to the CDE. The present Decision constitutes the new legal framework of the CDE as from the start of the passive phase, i.e on 1st January 2017.
- (13) Pursuant to Article 95(1) of the ACP-EU Partnership Agreement, the Agreement will expire in 2020. The governance structures applicable to the CDE's functioning in the

³ OJ L 70, 9.3.2006, p.52

⁴ OJ L 348, 30.12.2005, p.54

⁵ OJ L 330, 15.11.2014, p. 61

passive phase should therefore be determined also for the period after 28 February 2020.

HAS DECIDED AS FOLLOWS:

Article 1

Annex III to the ACP-EU Partnership Agreement is amended as follows:

1. The title of Annex III is replaced by the following:
‘Institutional Support’
2. Article 1 is replaced by the following:
‘Cooperation shall support the institutional mechanism to promote agriculture and rural development. In this context, cooperation shall help to strengthen and reinforce the role of the Technical Centre for Agricultural and Rural Cooperation (CTA) in ACP institutional capacity development, particularly information management, in order to improve access to technologies for increasing agricultural productivity, commercialization, food security and rural development.’
3. Article 3 becomes Article 2 replacing it.

Article 2

1. Before the end of the closure phase the CDE Executive Board shall designate a Curator to ensure the implementation of the passive phase as from 1st January 2017 and for a period of 5 years or until the CDE has settled all its liabilities and realised all its assets.
2. A Curator will be responsible for the implementation of the passive phase. The Curator shall provide yearly reports to the ACP-EU Committee of Ambassadors on the progress made on the implementation of the passive phase.

Article 3

1. The CDE Statutes, the CDE Financial Regulation and the CDE Staff Regulation shall remain in force until the end of the closure phase, i.e. 31 December 2016.
The present Decision constitutes the new legal framework of the CDE as from 1 January 2017.
2. As from 1 January 2017 the legal personality of the CDE, as defined in Article 1 of the CDE Statutes, shall be maintained solely for the needs of its liquidation.
3. During the passive phase, the CDE Executive Board, as established in Article 9 and 10 of the CDE Statutes, will continue to exist until the date of the ACP-EU Committee of Ambassadors decision on the discharge proposal pursuant to Article 4 of the Decision 4/2014.

As from the passive phase, the tasks of the CDE Executive Board shall be limited to the approval of the closure report, adoption of the accounts related to the closure phase and the transmission of a discharge proposal to the ACP-EU Committee of Ambassadors for decision. From January 2017, it shall hold no more than one meeting per year.

Unless decided otherwise by the ACP-EU Committee of Ambassadors, three months following the date of the transmission of the proposal, the discharge is deemed to be approved.

4. The costs related to the passive phase shall be financed under the 11th European Development Fund.
5. The entitlements of the CDE in respect of third parties and entitlement of third parties in respect of the CDE shall be subject to a limitation period of 5 years as from 1st January 2017.

Article 4

The assignment of the ACP-EU Joint Working Group on the CDE closure, as established by the Joint Declaration of the ACP-EU Council of Ministers of 19-20 June 2014, shall end with the ACP-EU Committee of Ambassadors decision on the discharge proposal pursuant to Article 4 of the Decision 4/2014.

Article 5

The present Decision shall enter into force upon its adoption, with the exception of article 1 which shall enter into force on 1 January 2017.

Done at [...], [...]

*For the ACP-EU Committee of Ambassadors
The President*