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COMMISSION OF THE EUROPEAN COMMUNITIES

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2010/0381 (NLE)

Proposal for a

COUNCIL REGULATION

**amending Regulation (EC) No 215/2008 on the Financial Regulation applicable to the
10th European Development Fund, as regards the European external action service**

(presented by the Commission)

EXPLANATORY MEMORANDUM

The Financial Regulation applicable to the 10th European Development Fund (10th EDF FR) governs all the rules and procedures applicable to the use of EDF resources. It is aligned as far as possible with the provisions of the Financial Regulation applicable to the general budget of the European Union, while taking into account the specificity of the EDF, whose financing remains outside the EU budget.

The present Commission proposal aims at amending the Financial Regulation applicable to the 10th European Development Fund to take into account the creation of the European External Action Service (hereinafter EEAS) as foreseen in the Lisbon Treaty.

The changes proposed are in line with the modifications brought to the Financial Regulation applicable to the general budget for the same purpose, by Regulation No 1081/2010 of the European Parliament and of the Council of 24 November 2010 amending Financial Regulation applicable to the general budget, as regards the European External Action Service. As the current proposal could not be presented before the final adoption of the Regulation No. 1081/2010 on 24 November 2010, the Commission considers that it is urgent to amend the 10th EDF FR as soon as possible, in order to provide a stable legal framework for the implementation of the EDF and to prevent discrepancies in implementation of the budget and the EDF resources.

As provided for in Article 10(2) of the Internal Agreement, the present Commission's proposal should be adopted by Council, after having received the opinions of the European Investment Bank and the Court of Auditors.

Main changes relating to the creation of the EEAS:

The modifications introduced aim at integrating the EEAS within the financial governance framework of the Commission whenever it participates in the implementation of EDF resources.

Main changes proposed to the 10th EDF FR in order to align it with the proposed amendments of the Financial Regulation, as regards the European external action service:

- Heads of Union Delegations are to be given sub-delegated implementation powers by the responsible Commission Directors Generals (DG) and become authorising officers by sub-delegation (AOSDs). When they implement EDF resources Heads of Union Delegations should apply the Commission rules and are submitted to the same duties and obligations as any other authorising officer by sub-delegation. To this effect the Commission may give them instructions where necessary and appropriate;
- The Commission remains responsible for the implementation of EDF resources, including for EDF resources implemented by Heads of Delegations who are authorising officers by sub-delegation;
- In order to facilitate the implementation by the Union Delegations of the support expenditure foreseen in Article 6 of the Internal Agreement, detailed arrangements may be agreed between the Commission and the EEAS;

- In order to allow the Commission to fulfil its responsibilities, the Heads of Union Delegations should provide the necessary information and provide an assurance, together with a report including information on the efficiency and effectiveness of internal management and control systems in their delegation, as well as the management of operations sub-delegated to them;
- In the context of discharge, the EEAS should be fully subject to the procedures provided for in Articles 142 to 144 of the 10th EDF FR and should fully cooperate with institutions involved;
- The panel of irregularities of the Commission should also be the panel of irregularities for the EEAS in cases where the Commission sub-delegates implementation powers to Heads of Union Delegations;
- The Accounting Officer and the Internal Auditor of the Commission remain responsible for the entire implementation of EDF resources, including for EDF resources sub-delegated to the Heads of Union Delegations.
- New provisions are also proposed to ensure that the High Representative plays a central role for the proper coordination and exchange of information between the EEAS and the Commission.

Proposal for a

COUNCIL REGULATION

amending Regulation (EC) No 215/2008 on the Financial Regulation applicable to the 10th European Development Fund, as regards the European external action service

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the functioning of the European Union,

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 2000¹ and revised in Luxembourg on 25 June 2005² (the ACP-EC 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 Agreement and on the allocation of financial assistance for the Overseas Countries and Territories to which Part Four of the EC Treaty applies³ (the Internal Agreement) and in particular Article 10(2) thereof,

Having regard to the proposal from the European Commission⁴,

Having regard to the opinion of the Court of Auditors⁵,

Having regard to the opinion of the European Investment Bank⁶

Whereas:

- (1) Council Regulation (EC) No 215/2008 of 18 February 2008 on the Financial Regulation applicable to the 10th European Development Fund⁷, lays down the rules for the establishment and financial implementation of the resources of the 10th European Development Fund (hereinafter 'EDF').
- (2) The Treaty of Lisbon establishes a European External Action Service (hereinafter 'EEAS'). In order to take into account the establishment of the EEAS, Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation

¹ OJ L 317, 15.12.2000, p. 3.

² OJ L 287, 28.10.2005, p. 4.

³ OJ L 247, 9.9.2006, p. 32.

⁴ OJ C , , p. .

⁵ OJ C , , p. .

⁶ OJ C , , p. .

⁷ OJ L 78, 19.03.2008, p. 1.

applicable to the general budget of the European Communities⁸ (hereinafter 'Financial Regulation') has been amended⁹. In order to provide for a stable legal framework for the implementation of EDF and to take into account the establishment of the EEAS and amendments to the Financial Regulation, it is necessary to amend Regulation (EC) No 215/2008.

- (3) According to the Council decision 2010/427/EU of 26 July 2010 establishing the organisation and functioning of the European External Action Service¹⁰, the EEAS is a service of a sui generis nature and should be treated as an institution for the purposes of the Financial Regulation.
- (4) The Treaty on the Functioning of the European Union provides that Commission Delegations will become part of the EEAS as Union Delegations. It is necessary to ensure the continuity of the functioning of Union Delegations and in particular the continuity and efficiency in the management of EDF resources by the Delegations. Therefore the Commission should be authorised to sub-delegate its powers of implementation of EDF resources to Heads of Union Delegations belonging to EEAS as a separate institution. The authorising officers by delegation should continue to be responsible for the definition of internal management and control systems, while the Heads of Union Delegations should be responsible for the adequate setting up and functioning of internal management and control systems and for the management of the funds and the operations carried out within their Delegations. They should report twice a year to that effect. It is appropriate to provide for withdrawal of such delegation in accordance with the rules applicable to the Commission.
- (5) In order to comply with the principle of sound financial management, Heads of Union Delegations, when acting as authorising officers by sub-delegation, should apply the Commission rules and should be subject to the same duties, obligations and accountability as any other authorising officers by sub-delegation. For those purposes, they should also refer to the Commission as their institution.
- (6) In the context of discharge, given that the EEAS should be treated as an institution for the purposes of the Financial Regulation, the EEAS should be fully subject to the procedures provided for in Articles 142, 143 and 144 of Regulation (EC) No 215/2008. The EEAS should fully cooperate with institutions involved in the discharge procedure and provide, as appropriate, any additional necessary information, including through attendance at meetings of the relevant bodies. The Commission should remain responsible, in accordance with Article 2 of Regulation (EC) No 215/2008 for the implementation of EDF resources, including for EDF resources implemented by Heads of Union Delegations who are authorising officers by sub-delegation. In order to allow the Commission to fulfil its responsibilities, the Heads of Union Delegations should provide the necessary information. The High Representative of the Union for Foreign Affairs and Security Policy should be informed at the same time and should facilitate the cooperation between Union Delegations and Commission departments.

⁸ OJ L 248, 16.9.2002, p.1.

⁹ Regulation (EU, EURATOM) No 1081/2010 of the European Parliament and of the Council of 24 November 2010 amending Council Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities, as regards the European External Action Service, OJ L 311, 26.11.2010, p.9.

¹⁰ OJ L 201, 3.8.2010, p.30.

Given the novelty of this structure, high standard provisions on transparency and financial accountability need to be applied.

- (7) The accounting officer of the Commission should remain responsible for the entire implementation of EDF resources, including accounting operations relating to EDF resources sub-delegated to Heads of Union Delegations.
- (8) In order to ensure coherence and equality of treatment between authorising officers by sub-delegation who are EEAS staff and those who are Commission staff, and to ensure that the Commission is properly informed, the special financial irregularities panel of the Commission should also be responsible for handling irregularities within the EEAS where the Commission sub-delegated implementation powers to Heads of Union Delegations. Nevertheless, in order to maintain the link between financial management responsibility and disciplinary action, the Commission should be entitled to request the High Representative to initiate proceedings if the panel finds irregularities concerning those competencies of the Commission sub-delegated to the Heads of Union Delegations. In such a case the High Representative should take the appropriate action in accordance with the Staff Regulations.
- (9) In order to ensure effective and efficient internal control Heads of Union Delegations shall be subject to the verifying powers of the internal auditor of the Commission for the financial management sub-delegated to them.
- (10) In order to ensure democratic scrutiny of the implementation of the EDF resources Heads of Union Delegations should provide an assurance, together with a report including information on the efficiency and effectiveness of internal management and control systems in their delegation, as well as on the management of operations sub-delegated to them. The Heads of Union Delegations' reports should be annexed to the annual activity report of the responsible authorising officer by delegation and made available to the European Parliament and the Council.
- (11) Regulation (EC) No 215/2008 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 215/2008 is amended as follows:

- (1) In Article 14(3), the first subparagraph is replaced by the following:

"3. The Commission shall make available, in an appropriate manner, information on the beneficiaries of funds deriving from the EDF held by it when EDF resources are implemented on a centralised basis and directly by its departments or by Union Delegations in accordance with the second paragraph of Article 17, and information on the beneficiaries of funds as provided by the entities to which financial implementation tasks are delegated under other modes of management."

- (2) In Article 17, the following paragraphs are added:

"However, the Commission may delegate its powers to implement EDF resources to the Heads of Union Delegations. It shall, at the same time, inform the High Representative thereof. When Heads of Union Delegations act as authorising officers by sub-delegation, they shall apply the Commission rules for the implementation of EDF resources and shall be submitted to the same duties, obligations and accountability as any other authorising officer by sub-delegation.

The Commission may withdraw that delegation in accordance with its own rules.

For the purposes of the second paragraph, the High Representative shall take the measures necessary to facilitate the cooperation between Union Delegations and Commission departments.

Detailed arrangements may be agreed between the Commission and the European External Action Service (hereinafter 'EEAS') in order to facilitate the implementation by Union Delegations of the resources foreseen for support expenditure linked to the EDF under Article 6 of the Internal Agreement."

(3) Article 25(1), the first subparagraph is replaced by the following:

"1. Where the Commission implements EDF resources on a centralised basis, implementation tasks shall be performed, either directly, by its departments or by Union Delegations in accordance with the second paragraph of Article 17, or indirectly, in accordance with paragraphs 2 to 4 of this Article and with Articles 26 to 29."

(4) In Article 32, the following paragraph 5 is added:

"5. Where Heads of Union Delegations act as authorising officers by sub-delegation in accordance with the second paragraph of Article 17, they shall be subject to the Commission as the institution responsible for the definition, exercise, control and appraisal of their duties and responsibilities as authorising officers by sub-delegation. The Commission shall, at the same time, inform the High Representative thereof."

(5) At the end of second paragraph of Article 38 the following sentence shall be added:

"The annual activity reports of the authorising officers by delegation shall also be made available to the European Parliament and the Council."

(6) In Part one, Title IV, Chapter 3, Section 2, the following Article 38a is added:

"Article 38a

1. Where Heads of Union Delegations act as authorising officers by sub-delegation in accordance with the second paragraph of Article 17, they shall cooperate closely with the Commission for the proper implementation of the funds, in order to ensure, in particular, the legality and regularity of financial transactions, the respect of the principle of sound financial management in the management of the funds and the effective protection of the financial interests of the Union.

To this effect, they shall take the measures necessary to prevent any situation susceptible to put at stake the responsibility of the Commission for the implementation of EDF resources sub-delegated to them as well as any conflict of priorities which is likely to have an impact on the implementation of the financial management tasks sub-delegated to them.

Where a situation or conflict of the type referred to in the second subparagraph arises, the Heads of Union Delegations shall inform the responsible Directors-General of the Commission and of the EEAS thereof without delay. Those Directors-General shall take appropriate steps to remedy the situation.

2. If Heads of a Union Delegations find themselves in a situation referred to in Article 37(4), they shall refer the matter to the specialised financial irregularities panel set up pursuant to Article 54(3). In the event of any illegal activity, fraud or corruption which may harm the interests of the Union, they shall inform the authorities and bodies designated by the applicable legislation.
3. Heads of Union Delegations acting as authorising officers by sub-delegation in accordance with the second paragraph of Article 17 shall report to their authorising officer by delegation so that the latter can integrate their reports in his annual activity report referred to in Article 38. The reports of the Heads of Union Delegations shall include information on the efficiency and effectiveness of internal management and control systems put in place in their Delegation, as well as on the management of operations sub-delegated to them, and provide the assurance pursuant to Article 54(2a). These reports shall be annexed to the annual activity report of the authorising officer by delegation, and shall be made available to the European Parliament and the Council taking into account, where appropriate, their confidentiality.

The Heads of Union Delegations shall fully cooperate with institutions involved in the discharge procedure and provide, as appropriate, any additional necessary information. In this context, they may be requested to attend meetings of the relevant bodies and assist the responsible authorising officer by delegation.

4. Heads of Union Delegations acting as authorising officers by sub-delegation in accordance with the second paragraph of Article 17 shall reply to any request by the authorising officer by delegation at its own request or, in the context of discharge, at the request of the European Parliament.
5. The Commission shall ensure that sub-delegating powers are not detrimental to the discharge procedure, in accordance with Articles 142, 143 and 144."

(7) In Article 39(1) the following subparagraph is added:

"The accounting officer of the Commission shall remain responsible for the entire implementation of EDF resources, including accounting operations relating to EDF resources sub-delegated to Heads of Union Delegations."

(8) Article 54 is amended as follows:

(a) the following paragraph is inserted:

"2a. In the event of sub-delegation to the Heads of Union Delegations, the authorising officer by delegation shall be responsible for the definition of the internal management and control systems put in place, their efficiency and effectiveness. The Heads of Union Delegations shall be responsible for the adequate setting up and functioning of those systems, in accordance with the instructions of the authorising officer by delegation, and for the management of the funds and the operations they carry out within the Union Delegation under their responsibility. Before taking up their duties, they must complete specific training courses on the tasks and responsibilities of authorising officers and the implementation of EDF resources, in accordance with Article 37(3).

Heads of Union Delegations shall report on their responsibilities pursuant to the first subparagraph of this paragraph in accordance with Article 38a(4).

Each year, Heads of Union Delegations provide to the authorising officer by delegation the assurance on the internal management and control systems put in place in their Delegation, as well as on the management of operations sub-delegated to them and the results thereof, in order to allow the authorising officer to establish his statement of assurance, as provided for in Article 38."

(b) the following paragraph is added:

"4. Where Heads of Union Delegations act as authorising officers by sub-delegation in accordance with the second paragraph of Article 17, the specialised financial irregularities panel set up by the Commission pursuant to paragraph 3 of this Article shall be competent for cases referred to in that paragraph.

If the panel detects systemic problems, it shall send a report with recommendations to the authorising officer, the High Representative and to the authorising officer by delegation, provided the latter is not the person involved, as well as to the internal auditor.

On the basis of the opinion of the panel, the Commission may request the High Representative to initiate, in the High Representative's capacity as appointing authority, proceedings entailing liability to disciplinary action or to payment of compensation against authorising officers by sub-delegation if irregularities concern the competencies of the Commission sub-delegated to them. In such a case the High Representative will take appropriate action in accordance with the Staff Regulations in order to enforce decisions on disciplinary action and/or the payment of compensation, as recommended by the Commission.

The Member States shall fully support the Union in the enforcement of any liability under Article 22 of the Staff Regulations of temporary staff to whom Article 2, point (e) of the Conditions of Employment of other servants of the Communities applies."

(9) In Article 89, the following paragraph is added:

"For the purposes of the internal auditing of the EEAS, Heads of Union Delegations, acting as authorising officers by sub-delegation in accordance with the second paragraph of Article 17 shall be subject to the verifying powers of the internal auditor of the Commission for the financial management sub-delegated to them."

(10) The following Article is inserted:

"Article 144a

The EEAS shall be fully subject to the procedures provided for in Articles 142, 143 and 144. The EEAS shall fully cooperate with the institutions involved in the discharge procedure and provide, as appropriate, any additional necessary information, including through attendance at meetings of the relevant bodies."

Article 2

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

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

Done at Brussels,

For the Council
The President