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2016/0013 (NLE)

Proposal for a

COUNCIL DECISION

on the position to be taken by the European Union within the ACP-EU Committee of Ambassadors regarding approval of derogations to the Financial Regulation of the Centre for Development of the Enterprise (CDE)

EXPLANATORY MEMORANDUM

The Centre for the Development of the Enterprise (hereinafter referred to as 'CDE') is a body established by Annex III of the ACP-EU Partnership Agreement¹.

The CDE's legal framework is composed of the Statutes and Rules of Procedure of the Centre for the Development of the Enterprise, adopted by Decision No 8/2005 of the ACP-EU Committee of Ambassadors² (hereinafter referred to as 'CDE Statutes'), the Staff Regulation of the Centre for the Development of the Enterprise adopted by Decision No 9/2005 of the ACP-EU Committee of Ambassadors³, and the Financial Regulation of the Centre for the Development of the Enterprise⁴, adopted by Decision No 5/2004 of the ACP-EU Committee of Ambassadors (hereinafter referred to as 'CDE Financial Regulation').

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. In this Joint Declaration, the Council of Ministers delegated powers to the ACP-EU Committee of Ambassadors to adopt the necessary decisions to take the closure of the CDE forward.

Since June 2014, progressive steps have been completed in view of the CDE closure. In the process towards closure of the CDE, some adjustments of the CDE Financial Regulation are required in this specific context.

The CDE Financial Regulation was adopted by the ACP-EU Committee of Ambassadors, being the Supervisory Authority of the CDE as per the CDE Statutes. In a letter dated 19 October 2015, the CDE Executive Board is therefore requesting the ACP-EU Committee of Ambassadors a prior approval to derogate to the CDE Financial Regulation. These derogations concern:

- i) the possibility to organise one multiannual statutory audit for the last four years of the existence of the CDE (i.e. from 2013 to 2016) instead of the obligation of annual statutory audits as foreseen in Article 27.5 of the CDE Financial Regulation,*
- ii) to that end, the possibility to sign a contract with one audit firm, despite the fact that the CDE Financial Regulation foresees in Article 27.1 that the same audit firm cannot be appointed for more than three consecutive years.*

In order to ensure a smooth implementation of the CDE closure, it is proposed that the ACP-EU Committee of Ambassadors grants a delegation of power to the CDE Executive Board to adjust the aforementioned CDE Regulations according to its specific needs in the framework of its orderly closure.

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 L 209, 11.8.2005, p.27) and by the Agreement signed in Ouagadougou on 22 June 2010 (OJ L 287, 4.11.2010, p 3).

² OJ L 66, 8.03.2006, p.16.

³ OJ L 348, 30.12.2005, p.54.

⁴ OJ L 70, 9.3.2006, p. 52.

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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 Annex III 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 (hereinafter referred to as 'ACP-EU Partnership Agreement')⁵, and in particular Article 2(6) thereof,

Having regard to the Decision No 5/2004 of the ACP-EU Committee of Ambassadors of 17 December 2004 concerning the Financial Regulation of the Centre for the Development of Enterprise (hereinafter referred to as 'CDE Financial Regulation')⁶,

Having regard to the proposal from the European Commission,

Whereas:

- (1) The ACP-EU Council of Ministers, at its 39th session held from 19 to 20 June 2014 in Nairobi, has agreed, in a Joint Declaration, to proceed with the orderly closing of the Centre for the Development of Enterprise ('CDE') and the amendment of the Annex III to the ACP-EU Partnership Agreement and, for that purpose, to grant a delegation of powers to the ACP-EU Committee of Ambassadors to take this matter forward with a view to adopt the necessary decisions.
- (2) In its Decision No 4/2014 on 23 October 2014⁷, the ACP-EU Committee of Ambassadors recalls that the closure of the CDE shall respect the competences of the CDE's supervisory authorities determined in Annex III to the ACP-EU Partnership Agreement and the modalities laid down by the ACP-EU Council of Ministers in its Joint Declaration.
- (3) Article 2(6) d) of the Annex III to the ACP-EU Partnership Agreement requires the ACP-EU Committee of Ambassadors to monitor the overall strategy of the Centre and supervise the work of the Executive Board.
- (4) Article 2(7) a) of the Annex III to the ACP-EU Partnership Agreement requires the CDE Executive Board to "*lay down the financial and staff regulations and the rules of operations*".

⁵ 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).

⁶ OJ L 70, 9.3.2006, p. 52.

⁷ OJ L 330, 15.11.2014, p. 61.

- (5) The request from the CDE Executive Board to the ACP-EU Committee of Ambassadors by letter dated 19 October 2015, explaining that in the context of the closing down of the Centre, the CDE Executive Board wishes to derogate to Article 27.1 and 27.5 of the CDE Financial Regulation and seeks prior approval to be granted by the Supervisory Authorities.
- (6) The modification of or derogations to the CDE Financial Regulation and Staff Regulation of the Centre for the Development of Enterprise⁸ (hereinafter referred to as the 'CDE Staff Regulation'), according to the needs that may arise from the implementation of the orderly closure process of the CDE, necessitates a flexible procedure.
- (7) The requirements to appoint a firm of auditors for a period of three years foreseen as per Article 27.1 of the CDE Financial Regulation and the requirement for this firm to draw up each year a statutory audit report as per Article 27.5 of the CDE Financial Regulation, not being relevant anymore in the current context of the closing down of the organisation

HAS ADOPTED THIS DECISION:

Article 1

1. The position to be adopted by the Union in the ACP-EU Committee of Ambassadors regarding the approval of the derogations to the CDE Financial Regulation is established under the terms of the draft Decision of the ACP-EU Committee of Ambassadors annexed to this Decision.
2. Minor changes to the draft Decision may be agreed by the representatives of the Union in the ACP-EU Committee of Ambassadors without further decision of the Council.

Article 2

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

Done at Brussels,

For the Council
The President

⁸ OJ L348, 30.12.2005, p.54.