DECISIONS

COUNCIL DECISION (EU) 2016/1098

of 4 July 2016

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

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 ([1]),

Having regard to the proposal from the European Commission,

Whereas:

(1) Article 100 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 ('ACP-EU Partnership Agreement') states that Annexes Ia, Ib, II, III, IV and VI thereto 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) At its 39th session held on 19 and 20 June 2014 in Nairobi, Kenya, the ACP-EU Council of Ministers agreed, in a Joint Declaration, to proceed with the orderly closing of the Centre for the Development of Enterprise ('CDE') and to the amendment of Annex III to the ACP-EU Partnership Agreement, and for this purpose, 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, including the relevant amendment to that Annex III.

(4) Annex III to the ACP-EU Partnership Agreement should be amended in order to establish the new legal framework of the CDE existing solely for the purposes of its liquidation.

(5) The position of the Union within the ACP-EU Committee of Ambassadors regarding the revision of Annex III to the ACP-EU Partnership Agreement should therefore be based on the attached draft Decision,

HAS ADOPTED THIS DECISION:

Article 1

1. The position to be taken on behalf of the Union within the ACP-EU Committee of Ambassadors regarding the revision of Annex III to the ACP-EU Partnership Agreement shall be based on the draft Decision of the ACP-EU Committee of Ambassadors attached to this Decision.

2. Minor technical 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.

([1]) Agreement signed in Cotonou on 23 June 2000 (OJ L 317, 15.12.2000, p. 3), 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).

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*.

Article 3

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

Done at Brussels, 4 July 2016.

For the Council
The President
M. LAJČÁK

DRAFT

DECISION No 2016/… OF THE ACP-EU COMMITTEE OF AMBASSADORS

of

regarding the revision of Annex III to 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 part [1] ('ACP-EU Partnership Agreement'), and in particular Article 100 thereof,

Whereas:

(1) Article 100 of the ACP-EU Partnership Agreement states that Annexes Ia, Ib, II, III, IV and VI thereto 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 to the ACP-EU Partnership Agreement relates to the Centre for the Development of Enterprise ('CDE'). Under point (a) of Article 2(6) of that Annex III, the ACP-EU Committee of Ambassadors is appointed as the supervisory authority of the CDE with, amongst other things, the responsibility to lay down the statutes of the CDE, which were adopted by Decision No 8/2005 of the ACP-EU Committee of Ambassadors [2] ('CDE Statutes'). Under point (a) of Article 2(7) of Annex III the CDE Executive Board is made, amongst other things, responsible for adopting the CDE's financial regulation and 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, Kenya, the ACP-EU Council of Ministers agreed, in a Joint Declaration, to proceed with the orderly closing of the CDE and to the amendment of Annex III to the ACP-EU Partnership Agreement, and for this purpose, 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, including the relevant amendment to that Annex III.

(7) That Joint Declaration of the ACP-EU Council of Ministers established the ACP-EU Joint Working Group to ensure that the CDE is closed under the best possible conditions.

(8) The ACP-EU Committee of Ambassadors, in its Decision No 4/2014 [3] authorised 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 Decision No 4/2014, the closure plan envisages the finalisation of the winding-up by 31 December 2016 ('closure phase'). With the CDE Executive Board's approval of the definitive closure plan on 29-30 June 2015, the CDE entered into its closure phase.

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[1] Agreement signed in Cotonou on 23 June 2000 (OJ L 317, 15.12.2000, p. 3), 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] Decision No 8/2005 of the ACP-EC Committee of Ambassadors of 20 July 2005 on the Statutes and rules of procedure of the Centre for the Development of Enterprise (OJ L 66, 8.3.2006, p. 16).

[3] Decision No 4/2014 of the ACP-EU Committee of Ambassadors of 23 October 2014 regarding the mandate to be given to the Executive Board of the Centre for the Development of Enterprise (CDE) (OJ L 330, 15.11.2014, p. 61).

(10) The closure phase should be followed by a 'passive phase' in which the CDE will solely exist for the purposes of its liquidation. The passive phase, to be managed by a Curator, may comprise administrative tasks, amongst other things, 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 should start on the day after the closure phase, namely on 1 January 2017. The passive phase should end after a period of four years, or when the CDE has settled all its liabilities and realised all its assets, whichever happens earlier.

(11) Under Article 26(1) of the CDE Financial Regulation, adopted by Decision No 5/2004 of the ACP-EC Committee of Ambassadors ([1]), the CDE's accounts should be closed at the end of the financial year in order to draw-up the CDE's financial statements. Therefore, the statutory audit of the year 2016 related to the closure phase should be finalised at the latest by 30 June 2017.

(12) The amendments to Annex III to the ACP-EU Partnership Agreement concern the deletion of the references to the CDE. This Decision constitutes the new legal framework of the CDE as from the start of the passive phase, namely as of 1 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 passive phase should therefore be determined also for the period after 29 February 2020,

HAS ADOPTED THIS DECISION:

Article 1

In order to reflect the cessation of activities of the CDE by 31 December 2016, 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, commercialisation, food security and rural development.'.

(3) Article 2 is deleted.

(4) Article 3 is renumbered as Article 2.

Article 2

1. Before the end of the closure phase, namely 31 December 2016, the European Commission shall contract a Curator to ensure the implementation of the passive phase as from 1 January 2017 for a period of four years, or until the CDE has settled all its liabilities and realised all its assets, whichever happens earlier.

2. The Curator shall be responsible for the implementation of the passive phase. The Curator shall provide annual reports to the ACP-EU Committee of Ambassadors on the progress made on the implementation of the passive phase.

([1]) Decision No 5/2004 of the ACP-EC Committee of Ambassadors of 17 December 2004 concerning the Financial Regulation of the Centre for the Development of Enterprise (OJ L 70, 9.3.2006, p. 52).

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.

This 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 purposes of the liquidation of the CDE.

3. During the passive phase, the CDE Executive Board, as established in Articles 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 Decision No 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 1 January 2017, it shall hold no more than one meeting per year. This does not exclude the possibility for the CDE Executive Board to decide by written procedure.

Unless decided otherwise by the ACP-EU Committee of Ambassadors, the discharge is deemed to be approved three months following the date of the transmission of the discharge proposal, or by 31 December 2017, whichever is the earlier.

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 three years as from 1 January 2017.

Article 4

The assignment of the ACP-EU Joint Working Group on the closure of the CDE, 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 Decision No 4/2014.

Article 5

This 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