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COUNCIL REGULATION (EU) 2015/323

of 2 March 2015

on the financial regulation applicable to the 11th European Development Fund

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COUNCIL REGULATION (EU) 2015/323

of 2 March 2015

on the financial regulation applicable to the 11th European Development Fund

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union and 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, as last amended ([1]) ('ACP-EU Partnership Agreement'),

Having regard to the Internal Agreement between the Representatives of the Governments of the Member States of the European Union, meeting within the Council, on the financing of European Union aid under the multiannual financial framework for the period 2014 to 2020, in accordance with the ACP-EU Partnership Agreement, and on the allocation of financial assistance for the Overseas Countries and Territories to which Part Four of the Treaty on the Functioning of the European Union applies ([2]) ('the Internal Agreement'), and in particular Article 10(2) thereof,

Having regard to the proposal from the European Commission,

Having regard to the opinion of the Court of Auditors ([3]),

Having regard to the opinion of the European Investment Bank,

Whereas:

(1) The detailed rules for the payment of the contributions by the Member States to the 11th European Development Fund (EDF), set up by the Internal Agreement, should be determined.

(2) The conditions in accordance with which the Court of Auditors must exercise its powers in respect of the 11th EDF should be laid down.

(3) The detailed rules for the financial implementation of the 11th EDF concerning in particular the applicable principles; the constitution of its resources; the financial actors and entities entrusted with budget-implementation tasks; the financing decisions, commitments and payments; the types of financing including procurement, grants, financial instruments and Union trust funds; the presentation of the accounts and accounting; the external audit by the Court of Auditors and discharge by the European Parliament; and the Investment Facility managed by the European Investment Bank (EIB), should be determined.

([1]) OJ L 317, 15.12.2000, p. 3.
([2]) OJ L 210, 6.8.2013, p. 1.
([3]) OJ C 370, 17.12.2013, p. 1.

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(4) For the sake of simplification and coherence, this Regulation should be aligned, as far as possible, with Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council ([1]) and Commission Delegated Regulation (EU) No 1268/2012 ([2]). Such alignment should be achieved by direct references to those regulations and should, on the one hand, allow for an easy identification of specificities in the financial implementation of the 11th EDF and, on the other hand, reduce the diversity of Union funding rules in the area of external action that creates an unnecessary burden for the recipients, the Commission as well as other actors involved.

(5) It should be recalled that the framework for financial implementation of the 11th EDF is constituted, in addition to this Regulation, by several instruments, namely by the ACP-EU Partnership Agreement, in particular its Annex IV, by the Internal Agreement, by Council Decision 2013/755/EU ([3]) ('the Overseas Association Decision'), and by Council Regulation (EU) 2015/322 ([4]) ('the Implementation Regulation').

(6) The financial implementation of the 11th EDF should be guided by the principles of unity and budgetary accuracy, unit of account, universality, specification, sound financial management and transparency. Having regard to the multiannual set-up of the 11th EDF, the budgetary principle of annuality should not apply to the 11th EDF.

(7) The resources for support measures to improve the impact of the 11th EDF programmes pursuant to Article 6 of the Internal Agreement should also be used to improve financial management and forecasting of the 11th EDF.

(8) The rules concerning the financial actors namely the authorising and accounting officers, the delegation of their tasks as well as their liability should be aligned with Regulation (EU, Euratom) No 966/2012 as the Commission exerts the same executive responsibility when implementing the 11th EDF.

(9) Detailed rules should be established in accordance with which the authorising officer empowered by the Commission establishes the necessary arrangements with the African, Caribbean and Pacific (ACP) group of States ('the ACP States') and the

([1]) Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002 (OJ L 298, 26.10.2012, p. 1).

([2]) Commission Delegated Regulation (EU) No 1268/2012 of 29 October 2012 on the rules of application of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council on the financial rules applicable to the general budget of the Union (OJ L 362, 31.12.2012, p. 1).

([3]) Council Decision 2013/755/EU of 25 November 2013 on the association of the overseas countries and territories with the European Union ('the Overseas Association Decision') (OJ L 344, 19.12.2013, p. 1).

([4]) Council Regulation (EU) 2015/322 of 2 March 2015 on the implementation of the 11th European Development Fund (See page 1 of this Official Journal).

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overseas countries and territories ('OCTs') to ensure the proper execution of operations, in close cooperation with the national, regional, intra-ACP or territorial authorising officer designated by the ACP States or OCTs.

(10) The rules on indirect management which entail the entrustment of budget-implementation tasks and of its conditions and limits should be aligned with Regulation (EU, Euratom) No 966/2012. In addition, a provision on sub-delegation of budget-implementation tasks reflecting that contained in Regulation (EU) No 1303/2013 of the European Parliament and the Council ([1]) should be laid down in order to ensure a coherent implementation of funding of external action. This Regulation should nonetheless contain specific provisions on temporary actors acting as the national authorising officer, on entrustment by the ACP States and OCTs to a service provider, and on strengthening the protection of Union financial interests in the case of indirect management with ACP States and OCTs.

(11) While EDF resources will not be implemented under shared management, this Regulation should enable that in the framework of regional cooperation between ACP States and OCTs, on the one hand, and the Union's outermost regions, on the other hand, EDF resources and support from the European Regional Development Fund (ERDF) favouring the Union's outermost regions can be implemented by the same entity in accordance with this Regulation as regards EDF resources and under shared management as regards the ERDF.

(12) The provisions on financing decisions should be aligned with those of Regulation (EU, Euratom) No 966/2012 where the Commission implements the 11th EDF.

(13) The rules on commitments should be aligned with those of Regulation (EU, Euratom) No 966/2012 with the exception of provisional commitments which should not be available in the 11th EDF. In addition, an extension of deadlines should be provided where it is necessary for actions carried out in indirect management by ACP States or OCTs.

(14) The time limits for payments should be aligned with those of Regulation (EU, Euratom) No 966/2012. Special provisions should be laid down for cases in which ACP States and OCTs are not entrusted with carrying out payments under indirect management and where, consequently, the Commission continues to carry out payments to recipients.

([1]) Regulation (EU) No 1303/2013 of the European Parliament and of the Council of 17 December 2013 laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund and laying down general provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund and repealing Council Regulation (EC) No 1083/2006 (OJ L 347, 20.12.2013, p. 320).

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(15) Various implementation provisions concerning the internal auditor, good administration and redress, the IT system, electronic transmission, e-Government, the administrative and financial penalties, and the use of the central exclusion database, should be aligned with those of Regulation (EU, Euratom) No 966/2012. In addition, the protection of Union financial interests through the application of administrative penalties should be strengthened and clarified where the 11th EDF is implemented under indirect management with ACP States and OCTs.

(16) The rules on procurement, grants, prizes, and experts should be aligned with those of Regulation (EU, Euratom) No 966/2012. The rules on financial instruments and Union trust funds should be aligned with adjustments due to the nature of the 11th EDF. Budget support to OCTs should take the institutional links with the Member States concerned into account.

(17) Short-term technical assistance and advice which Member States that acceded to the Union following a transition process received under the TAIEX programme and with which they had positive experience, should be available to ACP States and OCTs, where appropriate. In order to benefit from such assistance and advice in the long term, it should be possible to provide appropriate support to centres of knowledge and excellence on governance and reform in the public sector.

(18) The rules on presentation of the accounts and accounting, and on external audit and discharge, should reflect those of Regulation (EU, Euratom) No 966/2012 in order to provide a coherent framework for implementation and reporting.

(19) The conditions in accordance with which the EIB manages certain 11th EDF resources should be laid down.

(20) The provisions concerning scrutiny by the Court of Auditors of the 11th EDF resources managed by the EIB should comply with the tripartite agreement concluded between the Court of Auditors, the EIB, and the Commission as provided for in Article 287(3) of the Treaty on the Functioning of the European Union (TFEU).

(21) The transitional provisions should lay down the rules on treating balances and revenue from previous European Development Funds as well as the application of this Regulation to residual operations under those funds.

(22) In order to allow for timely programming and implementation of the 11th EDF programmes, this Regulation should enter into force on the third day following that of its publication in the *Official Journal of the European Union*,

HAS ADOPTED THIS REGULATION:

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PART ONE

MAIN PROVISIONS

TITLE I

Subject matter, scope and general provisions

Article 1

Scope

This Regulation lays down the rules for the financial implementation of the resources of the 11th European Development Fund, and the presentation and auditing of the accounts.

Article 2

Relation to Regulation (EU, Euratom) No 966/2012

1. Unless specifically provided otherwise, direct references in this Regulation to the provisions of Regulation (EU, Euratom) No 966/2012 shall be deemed to include also references to the corresponding provisions of Delegated Regulation (EU) No 1268/2012.

2. References in this Regulation to the applicable provisions of Regulation (EU, Euratom) No 966/2012 shall not be deemed to include procedural provisions which are not relevant to the 11th EDF, in particular those concerning the empowerment to adopt delegated acts.

3. Internal references in Regulation (EU, Euratom) No 966/2012 or in Delegated Regulation (EU) No 1268/2012 shall not render the provisions referred to indirectly applicable to the 11th EDF.

4. Terms used in this Regulation shall have the same meaning as those in Regulation (EU, Euratom) No 966/2012, with the exception of the definitions referred to in points (a) to (e) of Article 2 of that Regulation.

However, for the purposes of this Regulation, the following terms in Regulation (EU, Euratom) No 966/2012 shall be defined as follows:

(a) ‘budget’ or ‘budgetary’ means ‘11th EDF’;

(b) ‘budgetary commitment’ means ‘financial commitment’;

(c) ‘institution’ means ‘the Commission’;

(d) ‘appropriations’ or ‘operational appropriations’ means ‘11th EDF resources’;

(e) ‘budget line’ or ‘line in the budget’ means ‘allocation’;

(f) ‘basic act’ means, according to the relevant context, the Internal Agreement, the Overseas Association Decision, or the Implementation Regulation;

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(g) ‘third country’ means any beneficiary country or territory covered by the geographical scope of the 11th EDF.

5. The interpretation of this Regulation shall aim at preserving coherence with Regulation (EU, Euratom) No 966/2012 unless such interpretation would be incompatible with the specificities of the 11th EDF as provided for in the ACP-EU Partnership Agreement, the Internal Agreement, the Overseas Association Decision, or the Implementation Regulation.

Article 3

Periods, dates and time limits

Unless otherwise provided, Council Regulation (EEC, Euratom) No 1182/71 ([1]) shall apply to deadlines set by this Regulation.

Article 4

Protection of personal data

This Regulation is without prejudice to the requirements of Directive 95/46/EC of the European Parliament and of the Council ([2]) and to the requirements of Regulation (EC) No 45/2001 of the European Parliament and of the Council ([3]).

Article 29 of Delegated Regulation (EU) No 1268/2012 concerning information on transfers of personal data for audit purposes shall apply.

TITLE II

Financial principles

Article 5

Financial principles

The 11th EDF resources shall be implemented in compliance with the following principles:

(a) unity and budgetary accuracy;

(b) unit of account;

(c) universality;

(d) specification;

([1]) Council Regulation (EEC, Euratom) No 1182/71 of 3 June 1971 determining the rules applicable to periods, dates and time limits (OJ L 124, 8.6.1971, p. 1).

([2]) Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ L 281, 23.11.1995, p. 31).

([3]) Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (OJ L 8, 12.1.2001, p. 1).

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(e) sound financial management;

(f) transparency.

The financial year shall run from 1 January to 31 December.

Article 6

Principles of unity and budgetary accuracy

No revenue shall be collected and no expenditure effected unless booked to the EDF.

Article 8(2) and (3) and the first subparagraph of Article 8(4) of Regulation (EU, Euratom) No 966/2012 shall apply.

Article 7

Principle of unit of account

Article 19 of Regulation (EU, Euratom) No 966/2012 on the use of the euro shall apply *mutatis mutandis*.

Article 8

Principle of universality

Without prejudice to Article 9 of this Regulation, total revenue shall cover total estimated payments.

All revenue and expenditure shall be entered in full without any adjustment against each other, and without prejudice to Article 23 of Regulation (EU, Euratom) No 966/2012, concerning rules on deductions and exchange rate adjustments, which shall apply.

However, the revenue referred to in point (c) of Article 9(2) of this Regulation shall automatically decrease payments made against the commitment from which it was generated.

The Union may not raise loans within the framework of the 11th EDF.

Article 9

Assigned revenue

1. Assigned revenue shall be used to finance specific items of expenditure.

2. The following shall constitute assigned revenue:

(a) financial contributions from Member States and third countries, including in both cases their public agencies, entities or natural persons, and from international organisations to certain external aid projects or programmes financed by the Union and managed by the Commission or the EIB on their behalf in accordance with Article 10 of the Implementation Regulation;

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(b) revenue earmarked for a specific purpose, such as income from foundations, subsidies, gifts and bequests;

(c) revenue arising from the repayment, following recovery, of amounts wrongly paid;

(d) revenue generated by interest on prefinancing payments, subject to Article 8(4) of Regulation (EU, Euratom) No 966/2012;

(e) repayments and revenues generated by financial instruments pursuant to Article 140(6) of Regulation (EU, Euratom) No 966/2012;

(f) revenue arising from subsequent reimbursement of taxes pursuant to point (b) of Article 23(3) of Regulation (EU, Euratom) No 966/2012.

3. Assigned revenue referred to in points (a) and (b) of paragraph 2 shall finance such items of expenditure as are determined by the donor provided that it is accepted by the Commission.

Assigned revenue referred to in points (e) and (f) of paragraph 2 shall finance items of expenditure similar to those from which it was generated.

4. Article 184(3) of Regulation (EU, Euratom) No 966/2012 shall apply *mutatis mutandis*.

5. Article 22(1) and (2) of Regulation (EU, Euratom) No 966/2012 concerning donations shall apply to the assigned revenue referred to in point (b) of paragraph 2 of this Article. With regard to Article 22(2) of Regulation (EU, Euratom) No 966/2012, acceptance of a donation shall be subject to the authorisation of the Council.

6. The 11th EDF resources corresponding to assigned revenue shall be made available automatically when that revenue has been received by the Commission. However, an estimate of amounts receivable shall have the effect of making 11th EDF resources available in the case of assigned revenue referred to in point (a) of paragraph 2 where the agreement with the Member State is expressed in euro, payments may be carried out against such revenue only when it has been received.

Article 10

Principle of specification

11th EDF resources shall be earmarked for specific purposes per the ACP States or OCTs and in accordance with the main instruments of cooperation.

In respect of the ACP States, those instruments are laid down by the financial protocol set out in Annex Ic to the ACP-EU Partnership Agreement. The earmarking of resources (indicative allocations) shall also be based on the provisions of the Internal Agreement and of the Implementation Regulation and shall take account of the resources reserved for support expenditure linked to programming and implementation under Article 6 of the Internal Agreement.

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In respect of the OCTs, those instruments are laid down in Part Four of the Overseas Association Decision and Annex II thereto. The earmarking of those resources shall also take into account the non-allocated reserve provided for in Article 3(3) of that Annex and the resources for studies or technical assistance measures under point (c) of Article 1(1) thereof.

Article 11

Principle of sound financial management

1. Article 30(1) and (2) of Regulation (EU, Euratom) No 966/2012 concerning the principles of economy, efficiency and effectiveness shall apply. Without prejudice to point (a) of paragraph 3 of this Article, Article 18 of Delegated Regulation (EU) No 1268/2012 shall not apply.

2. Specific, measurable, achievable, relevant and timed objectives shall be set. The achievement of those objectives shall be monitored by performance indicators.

3. In order to improve decision-making, in particular to justify and specify the determination of the contributions to be paid by Member States referred to in Article 21 of this Regulation, the following evaluations are required:

(a) the use of 11th EDF resources shall be preceded by an *ex ante* evaluation of the operation to be undertaken covering the elements listed in Article 18(1) of Delegated Regulation (EU) No 1268/2012;

(b) the operation shall be subject to an *ex post* evaluation with a view to ensuring that the intended results justified the means deployed.

4. The types of financing provided for in Title VIII of this Regulation and the methods of implementation provided for in Article 17 of this Regulation shall be chosen on the basis of their ability to achieve the specific objectives of the actions and their ability to deliver results, taking into account, in particular, the costs of controls, the administrative burden, and the expected risk of non-compliance. For grants, this shall include a consideration of the use of lump sums, flat rates and unit costs.

Article 12

Internal control

Article 32 of Regulation (EU, Euratom) No 966/2012 shall apply.

Article 13

Principle of transparency

1. The 11th EDF shall be implemented and the accounts presented in accordance with the principle of transparency.

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2. The annual statement of the commitments, payments and the annual amount of calls for contributions under Article 7 of the Internal Agreement shall be published in the *Official Journal of the European Union*.

3. Without prejudice to Article 4 of this Regulation, the first subparagraph of Article 35(2) and Article 35(3) of Regulation (EU, Euratom) No 966/2012, concerning the publication of information on recipients and other information, shall apply. For the purpose of the second subparagraph of Article 21(2) of Delegated Regulation (EU) No 1268/2012, the term 'locality' shall mean, where necessary, the equivalent to the region at NUTS 2 level when the recipient is a natural person.

4. Actions financed under the 11th EDF may be implemented with parallel or joint co-financing.

In the case of parallel co-financing, an action is to be split into a number of clearly identifiable components which are each financed by the different partners providing co-financing in such a way that the end-use of the financing can always be identified.

In the case of joint co-financing, the total cost of an action is to be shared between the partners providing the co-financing and the resources are to be pooled in such a way that it is no longer possible to identify the source of financing for any given activity undertaken as part of the action. In such cases, *ex post* publication of grant and procurement contracts as required by the first subparagraph of Article 35(2) and Article 35(3) of Regulation (EU, Euratom) No 966/2012 shall comply with the rules of the entrusted entity, if any.

5. When providing financial assistance, the Commission shall, where appropriate, take all necessary measures in order to ensure the visibility of the Union's financial support. This shall include measures imposing visibility requirements on recipients of Union funds, except in duly justified cases. The Commission shall be responsible for monitoring recipients' compliance with those requirements.

TITLE III

11th EDF resources and implementation

Article 14

Sources of 11th EDF resources

The 11th EDF resources shall consist of the ceiling referred to in Article 1(2), (4) and (6) of the Internal Agreement, of the funds referred to in Article 1(9) thereof and of other assigned revenue referred to in Article 9 of this Regulation.

Article 15

Structure of the 11th EDF

The 11th EDF revenue and expenditure shall be classified according to their type or the use to which they are assigned.

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Article 16

11th EDF implementation in accordance with the principle of sound financial management

1. The Commission shall assume the responsibilities of the Union as defined in Article 57 of the ACP-EU Partnership Agreement and in the Overseas Association Decision. To that end, it shall implement the revenue and expenditure of the 11th EDF in accordance with the provisions of this Part and Part Three of this Regulation, under its own responsibility and within the limits of the 11th EDF resources.

2. The Member States shall cooperate with the Commission so that the 11th EDF resources are used in accordance with the principle of sound financial management.

Article 17

Methods of implementation

1. Articles 56 and 57 of Regulation (EU, Euratom) No 966/2012 shall apply.

2. Subject to the provisions of paragraphs 3 to 5 of this Article, the rules on methods of implementation provided for in Chapter 2 of Title IV of Part One of Regulation (EU, Euratom) No 966/2012, and Articles 188 and 193 of that Regulation, shall apply. However, point (b) of Article 58(1) and Article 59 of that Regulation, concerning shared management with Member States, shall not apply.

3. The entrusted entities shall ensure consistency with the Union's external policy and may entrust budget-implementation tasks to other entities under conditions equivalent to those applying to the Commission. They shall fulfil their obligations under Article 60(5) of Regulation (EU, Euratom) No 966/2012 annually. The audit opinion shall be submitted within one month of the report and management declaration, to be taken into account in the assurance of the Commission.

International organisations as referred to in in point (c)(ii) of Article 58(1) of Regulation (EU, Euratom) No 966/2012 and bodies of the Member States as referred to in points (c) (v) and (vi) of Article 58(1) of Regulation (EU, Euratom) No 966/2012 which have been entrusted by the Commission may also entrust budget-implementation tasks to non-profit organisations possessing the appropriate operational and financial capacity, under conditions equivalent to those applying to the Commission.

ACP States and OCTs may also entrust budget-implementation tasks to their departments and to bodies governed by private law on the basis of a service contract. Those bodies shall be selected on the basis of open, transparent, proportionate and non-discriminatory procedures, avoiding conflict of interests. The financing agreement shall stipulate the terms of the service contract.

4. Where the 11th EDF is implemented in indirect management with ACP States or OCTs, without prejudice to the responsibilities of the ACP States or the OCTs acting in their capacity of contracting authorities, the Commission:

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(a) shall, where necessary, recover amounts due from recipients according to Article 80 of Regulation (EU, Euratom) No 966/2012, including by means of a decision which shall be enforceable under the same conditions as those laid down in Article 299 TFEU;

(b) may, where the circumstances so require, impose administrative and/or financial penalties under the same conditions as those laid down in Article 109 of Regulation (EU, Euratom) No 966/2012.

The financing agreement shall contain provisions on the cooperation between the Commission and the ACP State or OCTs to this end.

5. The Union's financial assistance may be provided through contributions to international, regional or national funds, such as those established or managed by the EIB, Member States, or by partner countries and regions or by international organisations, for attracting joint financing from a number of donors, or to funds set up by one or more donors for the purpose of the joint implementation of projects.

Reciprocal access by Union financial institutions to financial instruments set up by other organisations shall be promoted, as appropriate.

TITLE IV

Financial actors

Article 18

General provisions on financial actors and their liability

1. The Commission shall provide each financial actor with the resources required to perform his or her duties and a charter describing in detail his or her tasks, rights, and obligations.

2. Article 64 of Regulation (EU, Euratom) No 966/2012 on the segregation of duties shall apply.

3. Chapter IV of Title IV of Part One of Regulation (EU, Euratom) No 966/2012 concerning the liability of the financial actors shall apply *mutatis mutandis*.

Article 19

Authorising officer

1. Articles 65, 66 and 67 of Regulation (EU, Euratom) No 966/2012 concerning, respectively, the authorising officer, his or her powers and duties, and those of Heads of Union Delegations, shall apply.

The annual activity report referred to in Article 66(9) of Regulation (EU, Euratom) No 966/2012 shall include, as an annex, tables showing by allocation, country, territory, region or sub-region, the total commitments, assigned funds and payments effected during the financial year and aggregate totals since the opening of the respective EDF.

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2. Where the responsible authorising officer of the Commission becomes aware of problems in carrying out procedures relating to the management of 11th EDF resources, he or she shall, in conjunction with the appointed national, regional, intra-ACP or territorial authorising officer, make all contacts necessary to remedy the situation and take any steps that are necessary. In case the national, regional, intra-ACP or territorial authorising officer does not or is unable to perform the duties incumbent on him or her under the ACP-EU Partnership Agreement or the Overseas Association Decision, the responsible authorising officer of the Commission may temporarily take the former's place and act in the name and on behalf of the former. In such a case, the Commission may receive, from the resources allocated to the ACP State or OCTs in question, financial compensation for the additional administrative workload incurred.

Article 20

Accounting officer

1. The accounting officer of the Commission shall be the accounting officer of the 11th EDF.

2. Article 68, with the exception of the second subparagraph of its paragraph 1, and Article 69 of Regulation (EU, Euratom) No 966/2012, concerning respectively the powers and duties of the accounting officer, and the powers which may be delegated by the accounting officer, shall apply. Article 54 and Article 57(3), the second subparagraph of Article 58(5) and Article 58(6) of Delegated Regulation (EU) No 1268/2012 shall not apply.

TITLE V

Revenue operations

Article 21

Annual contribution and its instalments

1. In accordance with Article 7 of the Internal Agreement, the ceiling for the annual amount of the contribution for the year n + 2 and the annual amount of the contribution for the year n + 1, as well as its payment in three instalments, shall be determined in accordance with the procedure set out in paragraphs 2 to 7 of this Article.

The instalments to be paid by each Member State shall be set in such a way as to be in proportion to that Member State's contributions to the 11th EDF as fixed in Article 1(2) of the Internal Agreement.

2. The Commission shall present a proposal by 15 October of the year n, setting out:

(a) the ceiling for the annual amount of the contribution for the year n + 2;

(b) the annual amount of the contribution for the year n + 1;

(c) the amount of the first instalment of the contribution for the year n + 1;

(d) an indicative, non-binding forecast based on a statistical approach for the expected annual amounts of contributions for the years n + 3 and n + 4.

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The Council shall decide on that proposal by 15 November of the year n.

The Member States shall pay the first instalment of the contribution for the year n + 1 at the latest by 21 January of the year n + 1.

3. The Commission shall present a proposal by 15 June of the year n + 1, setting out:

(a) the amount of the second instalment of the contribution for the year n + 1;

(b) a revised annual amount of the contribution for the year n + 1 in line with actual needs, in cases where, in accordance with Article 7(3) of the Internal Agreement, the annual amount deviates from actual needs.

The Council shall decide on the proposal at the latest 21 calendar days following the presentation by the Commission of its proposal.

The Member States shall pay the second instalment at the latest 21 calendar days following the adoption of the Council decision.

4. By 15 June of the year n + 1, the Commission, taking into account the EIB's forecasts concerning the management and operation of the Investment Facility, including those interest rates subsidies which are implemented by the EIB, shall establish and communicate to the Council a statement of the commitments, payments, and the annual amount of the calls for contributions made in the year n and to be made in the years n + 1 and n + 2. The Commission shall provide the annual amounts of the contributions by Member State, as well as the amount still to be paid by the EDF, distinguishing between the shares of the EIB and of the Commission. The amounts for the years n + 1 and n + 2 shall be based on the capacity to deliver effectively the proposed level of resources while endeavouring to avoid significant variations between the different years, as well as significant end-of-year balances.

5. The Commission shall present a proposal by 10 October of the year n + 1, setting out:

(a) the amount of the third instalment of the contribution for the year n + 1;

(b) a revised annual amount of the contribution for the year n + 1 in line with actual needs, in cases where in accordance with Article 7(3) of the Internal Agreement the annual amount deviates from actual needs.

The Council shall decide on the proposal at the latest 21 calendar days following the presentation by the Commission of its proposal.

The Member States shall pay the third instalment at the latest 21 calendar days following the adoption of the Council decision.

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6. The sum of the instalments relating to a certain year shall not exceed the annual amount of the contribution determined for that year. The annual amount of the contribution shall not exceed the ceiling determined for that year. The ceiling shall not be increased except in accordance with Article 7(4) of the Internal Agreement. A possible increase of the ceiling shall be made part of the proposals referred to in paragraphs 2, 3 and 5 of this Article.

7. The ceiling for the annual amount of the contribution to be paid by each Member State for the year n + 2, the annual amount of the contribution for the year n + 1 and the instalments of the contributions shall specify:

(a) the amount managed by the Commission; and

(b) the amount managed by the EIB, including the interest rates subsidies managed by it.

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Article 22

Payment of the instalments

1. Calls for contributions shall first use up the amounts laid down for previous European Development Funds, one after the other.

2. The contributions of the Member States shall be expressed in euro and shall be paid in euro.

3. The contribution referred to in point (a) of Article 21(7) shall be credited by each Member State to a special account entitled ‘European Commission — European Development Fund’ opened with the central bank of the relevant Member State or the financial institution designated by it. The amount of such contributions shall remain in those special accounts until the payments need to be made.

4. The account referred to in paragraph 3 shall be kept free of any charge and interest.

5. Where negative interest is applied to the account referred to in paragraph 3, the Member State concerned shall, at the latest on the date of payment of each instalment referred to in Article 21, credit the account with an amount corresponding to the amount of such negative interest applied until the first day of the month preceding the payment of the instalment.

6. Without prejudice to paragraph 7, the Commission shall endeavour to make any withdrawals from the special accounts in such a way as to maintain a distribution of assets in those accounts that corresponds to the contribution key pursuant to point (a) of Article 1(2) of the Internal Agreement.

7. When covering the EDF cash resource requirements in accordance with paragraph 3, the Commission shall aim to reduce the impact of the obligation on Member States to credit amounts of negative interest pursuant to paragraph 5 by drawing with priority on the sums credited to the accounts concerned.

▼M1

8. The contribution referred to in point (b) of Article 21(7) shall be credited by each Member State in accordance with Article 53(1).

▼B

Article 23

Interest for unpaid contribution amounts

1. On expiry of the time limits laid down in Article 21(2), (3) and (5), the Member State concerned shall be obliged to pay interest in accordance with the following conditions:

(a) the interest rate shall be the rate applied by the European Central Bank to its principal refinancing operations, as published in the C series of the *Official Journal of the European Union*, in force on the first calendar day of the month in which the time limit expires, increased by two percentage points. That rate shall be increased by a quarter of a percentage point for each month of delay;

(b) the interest shall be payable for the period elapsing from the calendar day following expiry of the time limit for payment up to the day of payment.

2. In respect of the contribution referred to in point (a) of Article 21(7) of this Regulation, the interest shall be credited to one of the accounts provided for in Article 1(6) of the Internal Agreement.

In respect of the contribution referred to in in point (b) of Article 21(7) of this Regulation, the interest shall be credited to the Investment Facility in accordance with Article 53(1) of this Regulation.

Article 24

Calling on unpaid contributions

Upon expiry of the financial protocol set out in Annex Ic to the ACP-EU Partnership Agreement, the part of the contributions which the Member States remain obliged to pay in accordance with Article 21 of this Regulation shall be called on by the Commission and the EIB, as required, in accordance with the conditions laid down in this Regulation.

Article 25

Other revenue operations

1. Articles 77 to 79, Article 80(1) and (2) and Articles 81 and 82 of Regulation (EU, Euratom) No 966/2012, concerning the estimate of the amount receivable, the establishment of amounts receivable, the authorisation and rules of recovery, the limitation period and national treatment of Union entitlements, shall apply. Recovery may be done by way of a Commission decision enforceable pursuant to Article 299 TFEU.

▼B

2. With regard to Articles 77(3) and 78(2) of Regulation (EU, Euratom) No 966/2012, the reference to own resources shall be understood as reference to the Member States' contributions defined in Article 21 of this Regulation.

3. Article 83(2) of Delegated Regulation (EU) No 1268/2012 shall apply to recoveries established in euro. For recoveries in local currency, it shall apply using the rate of the central bank of the country issuing the currency in force on the first calendar day of the month in which the recovery order is established.

4. With regard to Article 84(3) of Delegated Regulation (EU) No 1268/2012, the list of entitlements shall be established separately for the 11th EDF and shall be added to the report referred to in Article 44(2) of this Regulation.

5. Articles 85 and 90 of Delegated Regulation (EU) No 1268/2012 shall not apply.

TITLE VI

Expenditure operations

Article 26

Financing decisions

The commitment of expenditure shall be preceded by a financing decision adopted by the Commission.

Article 84 of Regulation (EU, Euratom) No 966/2012 shall apply, with the exception of paragraph 2 thereof.

Article 27

Rules applicable to commitments

1. Article 85, with the exception of point (c) of paragraph 3 thereof, Articles 86, 87, 185 and Article 189(1) and (2) of Regulation (EU, Euratom) No 966/2012 concerning commitments and the implementation of external actions shall apply. Article 95(2), points (a) and (e) of Article 97(1) and Article 98 of Delegated Regulation (EU) No 1268/2012 shall not apply.

2. With regard to the application of Article 189(2) of Regulation (EU, Euratom) No 966/2012, the period to conclude individual contracts and grants agreements which implement the action may be extended beyond three years following the date of the conclusion of the financing agreement where ACP States and OCTs entrust budget-implementation tasks pursuant to Article 17(3) of this Regulation.

3. Where the 11th EDF resources are implemented in indirect management with ACP States or OCTs, the responsible authorising officer may, upon accepting justification, extend the two-year period referred to in the third subparagraph of Article 86(5) of Regulation (EU, Euratom) No 966/2012 and the three-year period referred to in the second subparagraph of Article 189(2) thereof.

▼B

4. At the end of the extended periods referred to in paragraph 3 of this Article, or the periods referred to in the third subparagraph of Article 86(5) and in the second subparagraph of Article 189(2) of Regulation (EU, Euratom) No 966/2012, the unused balances shall be, as applicable, decommitted.

5. Where measures are adopted under Articles 96 and 97 of the ACP-EU Partnership Agreement, the running of the extended periods referred to in paragraph 3 of this Article, in the third subparagraph of Article 86(5) and the second subparagraph of Article 189(2) of Regulation (EU, Euratom) No 966/2012 may be suspended.

6. For the purposes of point (c) of paragraph 1 and of point (b) of paragraph 2 of Article 87 of Regulation (EU, Euratom) No 966/2012, compliance and regularity shall be assessed against the relevant provisions, in particular the Treaties, the ACP-EU Partnership Agreement, the Overseas Association Decision, the Internal Agreement, this Regulation, and all acts adopted in implementation of those provisions.

7. Each legal commitment shall expressly provide for the Commission and the Court of Auditors to have the power of verification and audit and for European Anti-Fraud Office (OLAF) to have the power of investigations, on the basis of documents and on the spot, over all beneficiaries, contractors, and subcontractors who have received 11th EDF funds.

Article 28

Validation, authorisation and payment of expenditure

Articles 88, 89, Article 90, with the exception of the second subparagraph of paragraph 4 thereof, Article 91 and Article 184(4) of Regulation (EU, Euratom) No 966/2012 shall apply.

Article 29

Time limits for payment

1. Subject to paragraph 2, Article 92 of Regulation (EU, Euratom) No 966/2012 shall apply to payments carried out by the Commission.

2. Where 11th EDF resources are implemented under indirect management with ACP States or OCTs and the Commission executes payments on their behalf, the time limit referred to in point (b) of Article 92(1) of Regulation (EU, Euratom) No 966/2012 shall apply to all payments not referred to in point (a) thereof. The financing agreement shall contain the necessary provisions to ensure the timely collaboration of the contracting authority.

3. Claims for delayed payments for which the Commission is responsible shall be charged to the account or accounts provided for in Article 1(6) of the Internal Agreement.

▼B

TITLE VII

Various implementation provisions

Article 30

Internal auditor

The internal auditor of the Commission shall be the internal auditor of the 11th EDF. Articles 99 and 100 of Regulation (EU, Euratom) No 996/2012 shall apply.

Article 31

IT systems, electronic transmission and e-Government

Articles 93, 94 and 95 of Regulation (EU, Euratom) No 966/2012, concerning the electronic management of operations and documents, shall apply to the 11th EDF *mutatis mutandis*.

Article 32

Good administration and redress

Articles 96 and 97 of Regulation (EU, Euratom) No 966/2012 shall apply.

Article 33

Use of the central exclusion database

The central exclusion database set up pursuant to Article 108(1) of Regulation (EU, Euratom) No 966/2012 which contains details of candidates and tenderers, and applicants and beneficiaries who are in one of the situations referred to in Article 106, point (b) of the first subparagraph of Article 109(1) and point (a) of Article 109(2) of that Regulation, shall be used for the implementation of the 11th EDF.

Article 108(2) and (5) of Regulation (EU, Euratom) No 966/2012 and Articles 142 and 144 of Delegated Regulation (EU) No 1268/2012 on the use of the central exclusion database and on the access to it shall apply *mutatis mutandis*.

With regard to Article 108(2) of Regulation (EU, Euratom) No 966/2012, the Union's financial interests shall include the implementation of the 11th EDF.

Article 34

Administrative arrangements with the European External Action Service

Detailed arrangements may be agreed between the European External Action Service and the Commission services in order to facilitate the implementation by Union Delegations of the resources foreseen for support expenditure linked to the 11th EDF under Article 6 of the Internal Agreement.

▼B

TITLE VIII

Types of financing

Article 35

General provisions on types of financing

1. For the purpose of providing financial assistance under this Title, cooperation between the Union, the ACP States and OCTs may take the form, inter alia, of:

(a) triangular arrangements by which the Union coordinates with any third country its assistance to an ACP State, OCTs or region;

(b) administrative cooperation measures such as twinning between the public institutions, local authorities, national public bodies or private law entities entrusted with public service tasks of a Member State or an outermost region, and those of an ACP State or OCTs or their region, as well as cooperation measures involving public-sector experts dispatched from the Member States and their regional and local authorities;

(c) expert facilities for targeted capacity building in the ACP State, OCTs or their region and short-term technical assistance and advice to them, as well as support of sustainable centres of knowledge and excellence on governance and reform in the public sector;

(d) contributions to the costs necessary to set up and administer a public-private partnership;

(e) sector policy support programmes, by which the Union provides support to an ACP State's or OCTs' sector programme; or

(f) interest rate subsidies in accordance with Article 37.

2. In addition to the types of financing provided for in Articles 36 to 42, financial assistance may also be provided through the following:

(a) debt relief, under internationally agreed debt relief programmes;

(b) in exceptional cases, sectoral and general import programmes, which may take the form of:

— sectoral import programmes in kind,

— sectoral import programmes providing foreign exchange to finance imports for the sector in question, or

— general import programmes providing foreign exchange to finance general imports of a wide range of products.

▼B

3. Financial assistance may also be provided through contributions to international, regional or national funds, such as those established or managed by the EIB, Member States or by ACP States or OCTs and regions or by international organisations, for attracting joint financing from a number of donors, or to funds set up by one or more donors for the purpose of the joint implementation of projects.

Reciprocal access by Union financial institutions to financial instruments set up by other organisations shall be promoted, as appropriate.

4. In implementing its support to transition and reform in ACP States and OCTs, the Union shall draw on and share the experiences of Member States and lessons learned.

Article 36

Procurement

1. Article 101 of Regulation (EU, Euratom) No 966/2012 defining public contracts shall apply.

2. For the purposes of this Regulation, the contracting authorities shall be:

(a) the Commission on behalf of, and on account of, one or more ACP States or OCTs;

(b) entities and persons referred to in Article 185 of Regulation (EU, Euratom) No 966/2012 and entrusted with the corresponding budget-implementation tasks.

3. For procurement contracts awarded by the contracting authorities referred to in paragraph 2 of this Article, or on their behalf, the provisions of Chapter 1 of Title V of Part One and of Chapter 3 of Title IV of Part Two of Regulation (EU, Euratom) No 966/2012 shall apply, with the exception of:

(a) Article 103, the second subparagraph of Article 104(1) and Article 111 of Regulation (EU, Euratom) No 966/2012;

(b) Article 127(3) and (4), Article 128, Articles 134 to 137, Article 139(3) to (6), Article 148(4), Article 151(2), Article 160, Article 164, the second sentence of Article 260, and Article 262 of Delegated Regulation (EU) No 1268/2012.

Article 124(2) of Delegated Regulation (EU) No 1268/2012 shall apply to building contracts.

The first subparagraph of this paragraph shall not apply to the contracting authorities referred to in point (b) of paragraph 2 of this Article where, following the checks referred to in Article 61 of Regulation (EU, Euratom) No 966/2012, the Commission has authorised them to use their own procurement procedures.

▼B

4. For procurement contracts awarded by the Commission on its own account as well as the implementing actions relating to crisis management aid and civil protection and humanitarian aid operations, the provisions of Title V of Part One of Regulation (EU, Euratom) No 966/2012 shall apply.

5. In the event of failure to comply with the procedures referred to in paragraph 3, expenditure relating to the operations in question shall not be eligible for 11th EDF financing.

6. The procurement procedures referred to in paragraph 3 shall be laid down in the financing agreement.

7. With regard to point (a) of Article 263(1) of Delegated Regulation (EU) No 1268/2012:

(a) 'a prior information notice' means the notice by which the contracting authorities make known, by way of indication, the estimated total value and subject of contracts and framework contracts which they intend to award during a financial year, but excluding contracts under the negotiated procedure without prior publication of a contract notice;

(b) 'a contract notice' means the means by which the contracting authorities make known their intention to launch a procedure for the award of a contract or framework contract or to set up a dynamic purchasing system in accordance with Article 131 of Delegated Regulation (EU) No 1268/2012;

(c) 'an award notice' means the notice which gives the outcome of the procedure for the award of contracts, framework contracts or contracts based on a dynamic purchasing system.

Article 37

Grants

1. Subject to paragraphs 2 and 3 of this Article, Title VI of Part One and Article 192 of Regulation (EU, Euratom) No 966/2012 shall apply.

2. Grants are direct financial contributions, by way of donation, from the 11th EDF in order to finance any of the following:

(a) an action intended to help achieve an objective of the ACP-EU Partnership Agreement or the Overseas Association Decision, or of a programme or project adopted in accordance with that Agreement or Decision; or

(b) the functioning of a body which pursues an objective referred to in point (a).

A grant within the meaning of point (a) may be awarded to a body referred to in Article 208(1) of Regulation (EU, Euratom) No 966/2012.

▼B

3. When working with stakeholders of ACP States and OCTs, the Commission shall take into account their specificities, including needs and context, when defining the modalities of financing, the type of contribution, the award modalities and the administrative provisions for the management of grants with the purpose of reaching and best responding to the widest possible range of stakeholders of ACP States and OCTs, and most efficiently achieving the objectives of the ACP-EU Partnership Agreement or the Overseas Association Decision. Specific modalities shall be encouraged, such as partnership agreements, financial support to third parties, direct award or eligibility-restricted calls for proposals or lump sums.

4. The following shall not constitute grants within the meaning of this Regulation:

(a) items referred to in points (b) to (f), (h) and (i) of Article 121(2) of Regulation (EU, Euratom) No 966/2012;

(b) financial assistance referred to in Article 35(2) of this Regulation.

5. Articles 175 and 177 of Delegated Regulation (EU) No 1268/2012 shall not apply.

Article 38

Prizes

Title VII of Part One of Regulation (EU, Euratom) No 966/2012 shall apply, with the exception of the second subparagraph of Article 138(2) thereof.

Article 39

Budget support

Article 186 of Regulation (EU, Euratom) No 966/2012 shall apply.

Union general or sector budget support shall be based on mutual accountability and shared commitments to universal values, and shall aim at strengthening contractual partnerships between Union and ACP States or OCTs in order to promote democracy, human rights and the rule of law, to support sustainable and inclusive economic growth and to eradicate poverty.

Any decision to provide budget support shall be based on budget support policies agreed by the Union, a clear set of eligibility criteria and a careful assessment of the risks and benefits.

One of the key determinants of such a decision shall be an assessment of the commitment, record and progress of ACP States and OCTs with regard to democracy, human rights and the rule of law. Budget support shall be differentiated to better respond to the political, economic and social context of the ACP States and OCTs, taking into account situations of fragility.

▼B

When providing budget support, the Commission shall clearly define and monitor its conditionality, and shall also support the development of parliamentary control and audit capacities and increase transparency and public access to information.

Disbursement of budget support shall be conditional on satisfactory progress towards achieving the objectives agreed with the ACP States and OCTs.

When providing budget support to OCTs, their institutional links to the Member State concerned shall be taken into account.

Article 40

Financial instruments

Financial instruments may be established in the financing decisions referred to in Article 26. They shall be, whenever possible, under the lead of the EIB, a multilateral European financial institution, such as the European Bank for Reconstruction and Development, or a bilateral European financial institution, such as bilateral development banks, possibly pooled with additional grants from other sources.

The Commission may implement financial instruments under direct management, or under indirect management by entrusting tasks to entities pursuant to points (c) (ii), (iii), (v) and (vi) of Article 58(1) of Regulation (EU, Euratom) No 966/2012. Those entities shall fulfil the requirements of Regulation (EU, Euratom) No 966/2012 and shall comply with Union objectives, standards and policies, as well as best practices regarding the use of and reporting on Union funds.

Entities which fulfil the criteria of Article 60(2) of Regulation (EU, Euratom) No 966/2012 are deemed to meet the selection criteria referred to in Article 139 of that Regulation. Title VIII of Part One of Regulation (EU, Euratom) No 966/2012 shall apply, with the exception of paragraph 1, the first subparagraph of paragraph 4 and paragraph 5 of Article 139 thereof.

Financial instruments may be grouped into facilities for implementation and reporting purposes.

Article 41

Experts

The second paragraph of Article 204 of Regulation (EU, Euratom) No 966/2012 and Article 287 of Delegated Regulation (EU) No 1268/2012 concerning remunerated external experts shall apply.

Article 42

Union trust funds

1. Subject to paragraph 2 of this Article, Article 187 of Regulation (EU, Euratom) No 966/2012 shall apply.

▼B

2. With regard to Article 187(8) of Regulation (EU, Euratom) No 966/2012, the competent committee shall be the committee referred to in Article 8 of the Internal Agreement.

TITLE IX

Presentation of the accounts and accounting

Article 43

11th EDF accounts

1. The 11th EDF accounts describing its financial situation as of 31 December of a given year shall comprise:

(a) the financial statements;

(b) the report on financial implementation.

The financial statements shall be accompanied by the information supplied by the EIB in accordance with Article 57.

2. The accounting officer shall send the provisional accounts to the Court of Auditors by 31 March of the following year.

3. The Court of Auditors shall, by 15 June of the following year, make its observations on the provisional accounts as regards the part of the 11th EDF resources for the financial management of which the Commission is responsible, so that the Commission can make the corrections deemed necessary for drawing up the final accounts.

4. The Commission shall approve the final accounts and send them to the European Parliament, to the Council and to the Court of Auditors by 31 July of the following year at the latest.

5. The second subparagraph of Article 148(3) of Regulation (EU, Euratom) No 966/2012 shall apply.

6. The final accounts shall be published in the *Official Journal of the European Union* together with the statement of assurance given by the Court of Auditors in accordance with Article 49 by 15 November of the following year.

7. The provisional and final accounts may be sent pursuant to paragraphs 2 and 4, by electronic means.

Article 44

Financial statements and the report on financial implementation

1. Article 145 of Regulation (EU, Euratom) No 966/2012 shall apply.

▼B

2. The report on financial implementation shall be prepared by the responsible authorising officer and transmitted to the accounting officer by 15 March for inclusion in the 11th EDF accounts. It shall present a true and fair view of the revenue and expenditure operations from 11th EDF resources. It shall be presented in millions of euro and shall comprise:

(a) the financial outturn account, which sets out all financial operations for the year in terms of revenue and expenditure;

(b) the annex to the financial outturn account, which shall supplement and comment on the information given in that account.

3. The financial outturn account shall contain the following:

(a) a table describing changes over the preceding financial year in the allocations;

(b) a table showing by allocation the total commitments, assigned funds and payments effected during the financial year and aggregate totals since the opening of the 11th EDF.

Article 45

Monitoring and reporting by the Commission and the EIB

1. The Commission and the EIB shall monitor, each to the extent to which it is concerned, the use of 11th EDF assistance by the ACP States, the OCTs or any other beneficiary, and the implementation of projects financed by the 11th EDF, having particular regard to the objectives referred to in Articles 55 and 56 of the ACP-EU Partnership Agreement and in the corresponding provisions of the Overseas Association Decision.

2. The EIB shall periodically inform the Commission regarding the implementation of projects financed by the 11th EDF resources it administers, following the procedures set out in the operational guidelines of the Investment Facility.

3. The Commission and the EIB shall provide the Member States with information on the operational implementation of 11th EDF resources as foreseen in Article 18 of the Implementation Regulation. The Commission shall send that information to the Court of Auditors in accordance with Article 11(6) of the Internal Agreement.

Article 46

Accounting

The accounting rules referred to in Article 143(1) of Regulation (EU, Euratom) No 966/2012 shall apply to the 11th EDF resources managed by the Commission. Those rules shall be applied to the 11th EDF while taking into account the specific nature of its activities.

▼B

The accounting principles contained in Article 144 of Regulation (EU, Euratom) No 966/2012 shall apply to the financial statements referred to in Article 44 of this Regulation.

Articles 151, 153, 154 and 155 of Regulation (EU, Euratom) No 966/2012 shall apply.

The accounting officer shall prepare and, after consulting the responsible authorising officer, adopt the chart of accounts to be applied to the 11th EDF's operations.

Article 47

Budgetary accounting

1. The budgetary accounts shall provide a detailed record of the financial implementation of the 11th EDF resources.

2. The budgetary accounts shall show all:

(a) allocations and the corresponding 11th EDF resources;

(b) financial commitments;

(c) payments; and

(d) established debts and collection operations for the financial year, in full and without any adjustment against each other.

3. When commitments, payments and debts are expressed in national currencies, the accounting system shall make it possible, where necessary, for them to be recorded in national currencies as well as in euro.

4. Global financial commitments shall be recorded in euro for the value of the financing decisions taken by the Commission. Individual financial commitments shall be recorded in euro at the equivalent of the value of the legal commitments. That value shall include, where appropriate:

(a) provision for the payment of reimbursable expenses on presentation of supporting documents;

(b) provision for the revision of prices, for the increase in quantities, and for contingencies as defined in 11th EDF-funded contracts;

(c) financial provision for exchange rate fluctuations.

5. All accounting records referring to the fulfilment of a commitment shall be kept for a period of five years from the date of the decision giving discharge in respect of the financial implementation of 11th EDF resources, referred to in Article 50, concerning the financial year during which the commitment was closed for accounting purposes.

▼B

TITLE X

External audit and discharge

Article 48

External audit and discharge regarding the Commission

1. Regarding the operations financed from 11th EDF resources managed by the Commission in accordance with Article 16, the Court of Auditors shall exercise its powers in accordance with this Article and Article 49.

2. Articles 159, 160, Article 161, with the exception of paragraph 6 thereof, Article 162, with the exception of the first sentence of paragraph 3 and of paragraph 5 thereof, and Article 163 of Regulation (EU, Euratom) No 966/2012 shall apply.

3. For the purposes of Article 159(1) of Regulation (EU, Euratom) No 966/2012, the Court of Auditors shall have regard to the Treaties, the ACP-EU Partnership Agreement, the Overseas Association Decision, the Internal Agreement, this Regulation and all other acts adopted pursuant to those instruments.

4. For the purposes of Article 162(1) of Regulation (EU, Euratom) No 966/2012, the date set out in the first sentence shall be 15 June.

5. The Court of Auditors shall be informed of the internal rules referred to in Article 56(1) of Regulation (EU, Euratom) No 966/2012, including the appointment of authorising officers, as well as of the instrument of delegation referred to in Article 69 of Regulation (EU, Euratom) No 966/2012.

6. The national audit authorities of the ACP States and the OCTs shall be encouraged to cooperate with the Court of Auditors at its invitation.

7. The Court of Auditors may, at the request of one of the other Union institutions, issue opinions on matters relating to the 11th EDF.

Article 49

Statement of assurance

At the same time as the annual report referred to in Article 162 of Regulation (EU, Euratom) No 966/2012, the Court of Auditors shall provide the European Parliament and the Council with a statement of assurance as to the reliability of the accounts and the legality and regularity of the underlying transactions, which shall be published in the *Official Journal of the European Union*.

Article 50

Discharge

1. The discharge decision shall cover the accounts referred to in Article 43, except the part thereof provided by the EIB in accordance with Article 57, and shall be adopted in accordance with Article 164 and Article 165(2) and (3) of Regulation (EU, Euratom) No 966/2012.

▼B

The discharge referred to in Article 164(1) of Regulation (EU, Euratom) No 966/2012 shall be given in respect of those 11th EDF resources that are managed by the Commission in accordance with Article 16(1) of this Regulation for year n.

2. The discharge decision shall be published in the *Official Journal of the European Union*.

3. Articles 166 and 167 of Regulation (EU, Euratom) No 966/2012 shall apply.

PART TWO

INVESTMENT FACILITY

Article 51

Role of the European Investment Bank

The EIB shall manage the Investment Facility and conduct operations thereunder, including interest rate subsidies and technical assistance, on behalf of the Union in accordance with Part Two of this Regulation.

In addition, the EIB shall undertake the financial implementation of other operations carried out by means of financing from its own resources in accordance with Article 4 of the Internal Agreement, where applicable combined with interest rate subsidies drawn from the 11th EDF resources.

The implementation of Part Two of this Regulation shall not give rise to any obligations or liabilities on the part of the Commission.

Article 52

Estimates of commitments and payments of the Investment Facility

Before 1 September of each year, the EIB shall send the Commission its estimates of commitments and payments, which are necessary for drawing up the statement referred to in Article 7(1) of the Internal Agreement, in respect of the operations of the Investment Facility, including those interest rate subsidies that it implements, in accordance with the Internal Agreement. The EIB shall send the Commission updated estimates of commitments and payments when deemed necessary. Modalities shall be defined in the management agreement provided for in Article 55(4) of this Regulation.

Article 53

Management of contributions to the Investment Facility

1. The contributions referred to in point (b) of Article 21(7) and adopted by the Council shall be paid without cost for the beneficiary by the Member States to the EIB via a special account opened by the EIB in the name of the Investment Facility in accordance with detailed rules laid down in the management agreement provided for in Article 55(4).

▼B

2. The date referred to in Article 1(5) of the Internal Agreement shall be 31 December 2030.

3. Save where the Council decides otherwise regarding the remuneration of the EIB, in accordance with Article 5 of the Internal Agreement, proceeds received by the EIB via the credit balance of the special accounts referred to in paragraph 1 shall supplement the Investment Facility and shall be taken into consideration for the calls for contribution referred to in Article 21 and shall be used to meet any financial obligation after 31 December 2030.

4. The EIB shall undertake the treasury management of the amounts referred to in paragraph 1 in accordance with the detailed rules laid down in the management agreement provided for in Article 55(4).

5. The Investment Facility shall be managed in accordance with the conditions laid down in the ACP-EU Partnership Agreement, the Overseas Association Decision, the Internal Agreement and Part Two of this Regulation.

Article 54

Remuneration of the EIB

The EIB shall be remunerated on a full indemnity basis for the management of the Investment Facility operations. The Council shall decide on the resources and mechanisms for remuneration of the EIB in accordance with Article 5(4) of the Internal Agreement. The measures implementing that decision shall be incorporated in the management agreement provided for in Article 55(4).

Article 55

Implementation of the Investment Facility

1. The EIB's own rules shall apply to instruments financed by the 11th EDF resources which it manages.

2. Where programmes or projects are co-financed by the Member States or their implementing bodies, and correspond to the priorities which are laid down in the Country Cooperation Strategies and Programming Documents provided for in the Implementation Regulation and foreseen in the second and third subparagraphs of Article 10(1) of the Internal Agreement and in Article 74 of the Overseas Association Decision, the EIB may entrust tasks relating to the implementation of the Investment Facility to Member States or their implementing bodies.

3. The names of the recipients of financial support under the Investment Facility shall be published by the EIB, unless such disclosure risks harming the commercial interests of the recipients, while duly observing of the requirements of confidentiality and security, in particular the protection of personal data. The criteria for disclosure and the level of detail published shall take into account specificities of the sector and the nature of the Investment Facility.

▼B

4. The detailed rules for implementing this Part shall be the subject of a management agreement between the Commission, acting on behalf of the Union, and the EIB.

Article 56

Reporting under the Investment Facility

The EIB shall regularly inform the Commission of the operations carried out under the Investment Facility, including interest rate subsidies, the use made of each call for contributions paid to the EIB, and, in particular, of the total quarterly amounts of commitments, contracts and payments, in accordance with the detailed rules laid down in the management agreement provided for in Article 55(4).

Article 57

Accounting and financial statements of the Investment Facility

1. The EIB shall keep the accounts of the Investment Facility, including those interest rate subsidies that are implemented by it and financed by the EDF, to provide a trail for the full circuit of the funds, from receipt to disbursement and then to the revenue to which they give rise and any subsequent recoveries. The EIB shall draw up the relevant accounting rules and methods which are guided by international accounting standards and inform the Commission and the Member States accordingly.

2. Each year the EIB shall send the Council and the Commission a report on the implementation of operations financed from 11th EDF resources under its management, including the financial statements drawn up in accordance with the rules and methods referred to in paragraph 1 and the information referred to in Article 44(3).

Those documents shall be submitted in draft form no later than 28 February and in their final version no later than 30 June of the financial year following the financial year which they concern, so that they can be used by the Commission in preparing the accounts referred to in Article 43 of this Regulation in accordance with Article 11(6) of the Internal Agreement. The report on the financial management of the resources managed by the EIB shall be submitted by the latter to the Commission by 31 March.

Article 58

External audit and discharge relating to EIB operations

The operations financed from 11th EDF resources managed by the EIB in accordance with this Part shall be subject to the audit and discharge procedures that the EIB applies for third party mandate accounts. Detailed rules for auditing by the Court of Auditors are set out in a Tripartite Agreement between the EIB, the Commission and the Court of Auditors.

▼B

PART THREE

TRANSITIONAL AND FINAL PROVISIONS

TITLE I

Transitional provisions

Article 59

Transfer of balances remaining from previous European Development Funds

Transfers to the 11th EDF of the balances remaining from resources constituted under the Internal Agreements relating to the Eighth, Ninth and Tenth European Development Funds ('previous EDFs') shall be made in accordance with point (b) of Article 1(2) and Article 1(3) and (4) of the Internal Agreement.

Article 60

Revenue from interest on resources of previous EDFs

The balance of revenue accruing from interest on the resources of previous EDFs shall be transferred to the 11th EDF and allocated for the same purposes as the revenue provided for in Article 1(6) of the Internal Agreement. The same shall apply to miscellaneous revenue of previous EDFs comprising, for example, default interest received in the event of late payment of contributions to those EDFs by Member States. The interest generated by the EDF resources managed by the EIB shall supplement the Investment Facility.

Article 61

Reduction of contributions by remaining balances

The amounts from projects under the 10th EDF or from previous EDFs not committed according to Article 1(3) of the Internal Agreement, or decommitted according to Article 1(4) of the Internal Agreement, unless decided otherwise by the Council unanimously, shall reduce that part of Member States' contributions stated in point (a) of Article 1(2) of the Internal Agreement.

The impact on the contribution of each Member State shall be calculated in proportion to the contribution of each Member State to the 9th and 10th EDF. The impact shall be calculated annually.

Article 62

Application of this Regulation to operations under previous EDFs

The provisions of this Regulation shall apply to operations financed from previous EDFs without prejudice to existing legal commitments. Those provisions shall not apply to the Investment Facility.

▼B

Article 63

Commencement of contribution procedures

The procedure concerning Member States' contributions laid down in Articles 21 to 24 of this Regulation shall apply for the first time with regard to the contributions of the year N + 2, provided that the Internal Agreement enters into force between 1 October of year N and 30 September of year N + 1.

TITLE II

Final provisions

Article 64

Entry into force

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.