



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 30.7.2008
SEC(2008) 2311 final

Proposal for a

COUNCIL DECISION

On the position to be adopted by the European Community within the ACP-EC Council of Ministers regarding a decision to revise the Annex IV to the Cotonou ACP-EC Partnership Agreement

(presented by the Commission)

EXPLANATORY MEMORANDUM

1. By means of a decision of 27 April 2004, the Council authorised the Commission to open negotiations with ACP States with a view to undertaking a revision of the ACP-EC Partnership Agreement (hereafter "the Cotonou Agreement"). Article 9 of this authorisation especially covers the progressive harmonisation of procedures, in order to promote a higher degree of efficiency.
2. The negotiations took place between 6 May 2004 and 23 February 2005.
3. The revised Cotonou Agreement was signed on 25 June 2005 and Declarations attached to the revised Agreement were also adopted. In the Joint Declaration VIII attached to the Agreement, the EU-ACP Council undertook to "examine the provisions of Annex IV concerning the awarding and performance of contracts with a view to adopting them before the Agreement amending the Cotonou Agreement enters into force".
4. The Services of the Commission subsequently submitted to the Secretariat of the African, Caribbean and Pacific Group of States a draft proposal for a new Article 19c. The main elements of the proposal regarded the harmonisation of rules and procedures for the awarding of procurement contracts, awarding of grants and contracts implementation through the replacement of EDF procedures by EC-Budget procedures, the possibility to resort to national procedures, progressively and after an evaluation, the introduction of an ethics clause.
5. Given the technical complexity and political sensitivity of the matter for ACP States, negotiations between the Secretariat of the African, Caribbean and Pacific Group of States and the Services of the Commission remained at a deadlock for a long time and could only resume in the first quarter of 2008.
6. At the end of the month of April 2008, political authorities of the ACP States decided to initiate discussions at a technical level in order to reach an agreement with the Services of the Commission regarding a revised text of Article 19c. Aiming at simplification, clarification and harmonisation, the new Article 19c would replace Articles 21, 23, 25, 27, 28 and 29 of Annex IV, while preserving the fundamental *acquis* of the Cotonou Agreement.
7. Paragraph 2 of the new Article 19c refers to decentralized management. In this context, it is possible to resort to local procedures only under the conditions that an evaluation of the procedures has been carried out and that the procedures comply with the principles of transparency, proportionality, equal treatment and non-discrimination, and prevent any conflict of interest. The decision to resort to local procedures remains under the sole authority of the Commission.
8. According to Article 100 of the Cotonou Agreement, Annexes attached to the Agreement may be revised, reviewed and / or amended by the Council of Ministers on the basis of a recommendation from the ACP-EC Development Finance Cooperation Committee.
9. The recommendation from the ACP-EC Development Finance Cooperation Committee that the Council mandates the ACPE-EC Committee of Ambassadors to

take a decision for the revision of rules and procedures of Annex IV of Cotonou, based on the approved text was adopted during the 17th ACP-EC Development Finance Cooperation Committee meeting on June 12, 2008.

10. The Commission therefore proposes that the Council adopts the attached decision, which concerns the position to be taken on behalf of the European Community within the Joint ACP-EC Council of Ministers.

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 300(2), 2nd subparagraph, thereof,

Having regard to the proposal from the Commission,

Whereas:

- (1) By virtue of a decision of 27 April 2004, the Council authorised the Commission to open negotiations with the ACP States with a view to undertaking a revision of the ACP-EC Partnership Agreement.
- (2) In the course of its revision, and in order to improve efficiency and to promote harmonisation, a series of provisions were incorporated into its Annex IV regarding management procedures and implementation. However, provisions in Annex IV concerning the awarding and performance of contracts remained under discussion.
- (3) The signature of the revised ACP-EC Partnership Agreement on 25 June 2005 was accompanied by Declaration n° VIII, under the title "Joint Declaration on Article 19a of Annex IV", which states that "In accordance with Article 100 of the Cotonou Agreement, the Council of Ministers will examine the provisions of Annex IV concerning the awarding and performance of contracts with a view to adopting them before the Agreement amending the Cotonou Agreement enters into force".
- (4) The Commission then proposed a text for an article 19C on the awarding of procurement contracts, awarding of grants and contracts implementation. However, the complexity of the issue required further discussions and consultations which prevented an agreement on the subject to be reached at the time.
- (5) In order to go forward with the negotiations, the ACP partners decided in 2007 to launch a detailed study to assess the full implications of the proposed changes for the ACP Group. The results of this study were discussed at technical and political level within the ACP states and with the Commission Services, between February and April 2008.
- (6) The ACP political authorities decided by the end of April 2008, to initiate discussions at a technical level in order to eventually reach an agreement with the Commission Services on a revised text of Article 19C.

- (7) The text for the new Article 19C replacing Articles 21, 23, 25 27, 28 and 29 of Annexe IV fulfils the objectives of simplification, clarification and harmonisation of procurement and management procedures governing contracts which are funded by the European Community.

HAS DECIDED AS FOLLOWS:

Sole Article

The European Community position within the ACP-EC Council of Ministers regarding the introduction of a new Article 19c in Annex IV of the Cotonou Agreement, replacing Articles 21, 23, 25, 27, 28 and 29 of Annex IV is to support the attached draft ACP-EC Council of Ministers Decision amending Annex IV to the Agreement.

Done at Brussels,

*For the Council
The President*

ANNEX

Draft

DECISION OF THE ACP-EC COUNCIL OF MINISTERS

to adopt amendments to Annex IV of to the Partnership Agreement

THE ACP-EC COUNCIL OF MINISTERS,

Having regard to the Partnership Agreement between the members of the African, Caribbean and Pacific Group of States (hereinafter called "the ACP") of the one part, and the European Community and its Member States, of the other part, signed in Cotonou (Benin) on 23 June 2000 and revised in Luxembourg on 25 June 2005 (hereinafter called "the ACP-EC Partnership Agreement")¹, and in particular Articles 15.3, 81 and 100 thereof,

Having regard to the recommendation of the ACP-EC Development Finance Cooperation Committee

Whereas:

- (8) In order to improve efficiency and to promote harmonisation, a series of provisions were incorporated into Annex IV of the ACP-EC Partnership Agreement regarding management procedures and implementation. However, the provisions of Annex IV concerning the awarding and performance of contracts remained under discussion.
- (9) The signature of the revised ACP-EC Partnership Agreement on 25 June 2005 was accompanied by Declaration n° VIII, under the title "Joint Declaration on Article 19a of Annex IV", which states that "In accordance with Article 100 of the Cotonou Agreement, the Council of Ministers will examine the provisions of Annex IV concerning the awarding and performance of contracts with a view to adopting them before the Agreement amending the Cotonou Agreement enters into force".
- (10) The text for the new Article 19C replacing Articles 21, 23, 25, 27, 28 and 29 of Annex IV fulfils the objectives of simplification, clarification and harmonisation of procurement and management procedures governing contracts which are funded by the European Community.
- (11) It is therefore appropriate to amend Annex IV of the ACP-EC Partnership Agreement accordingly;

HAS DECIDED AS FOLLOWS:

Article 1

Articles 21, 23, 25, 27, 28 and 29 of Annex IV of the Cotonou Agreement are deleted.

¹ OJ L 287, 28.10.2005, p.4.

Article 2

A new Article 19c is inserted in Annex IV as follows:

“Article 19c

Awarding contracts, awarding grants and performing contracts

1. Except as provided for in Article 26, contracts and grants shall be attributed and implemented according to Community rules and, except in the specific cases provided for by these rules, according to the standard procedures and documentation set and published by the Commission for the purposes of implementing cooperation actions with third countries and in force at the time the procedure in question is launched.
2. In decentralised management, where a joint assessment shows that the procedures for awarding contracts and grants in the ACP State or the recipient region or the procedures approved by the fund providers are in accordance with the principles of transparency, proportionality, equal treatment and non-discrimination and preclude any kind of conflict of interest, the Commission shall use these procedures, in accordance with the Paris Declaration and without prejudice to Article 26, in full respect of the rules governing the exercise of its powers in this field.
3. The ACP State or recipient region shall undertake to check regularly that the operations financed by the Fund have been properly implemented, to take appropriate measures to prevent irregularities and fraud, and, if necessary, to take legal action to recover unduly paid funds.
4. In decentralised management, contracts are negotiated, established, signed and performed by the ACP States. These States may, however, call upon the Commission to negotiate, establish, sign and perform contracts on their behalf.
5. Pursuant to the commitment referred to in Article 50 of this Agreement, contracts and grants financed from Fund resources shall be performed in accordance with internationally recognised basic standards in the field of labour law.
6. An expert group of representatives of the Secretariat of the ACP Group of States and the Commission shall be set up to identify, at the request of one or other of the parties, any appropriate alterations and to suggest amendments and improvements to the rules and procedures referred to in paragraphs 1 and 2.

This group shall also submit a periodic report to the ACP-EC Development Finance Cooperation Committee to assist it in its task of examining the problems surrounding the implementation of development cooperation activities and proposing appropriate measures.”

Article 3

The procedure for adoption of the present Decision within the ACP-EC Council of Ministers shall be a written procedure.

Done at Brussels,

*For the ACP-EC Council of Ministers
The President*