



Brussels, 7.2.2023
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COMMISSION IMPLEMENTING DECISION

of 7.2.2023

on the financing of the individual measure regarding the multiannual work programme contributing to an ACP Trust Fund in favour of private sector operations in ACP countries,
on the individual measure regarding the multiannual work programme for operations in ACP countries under the External Action Guarantee and
on the approval of the conclusion of the related External Action Guarantee agreement

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THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union (TFEU),

Having regard to Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012¹, and in particular Articles 110 and 219(5) thereof,

Having regard to Regulation (EU) 2021/947 of the European Parliament and of the Council of 9 June 2021 establishing the Neighbourhood, Development and International Cooperation Instrument – Global Europe, amending and repealing Decision No 466/2014/EU and repealing Regulation (EU) 2017/1601 and Council Regulation (EC, Euratom) No 480/2009², and in particular Articles 23(3) and 35 thereof,

Having regard to the Council Decision (EU) 2020/2233 of 23 December 2020 concerning the commitment of the funds stemming from reflows under the ACP Investment Facility from operations under the 9th, 10th and 11th European Development Funds³,

Whereas:

- (1) Regulation (EU) 2021/947 has established the Neighbourhood, Development and International Cooperation Instrument – Global Europe including the European Fund for Sustainable Development Plus (EFSD+). The EFSD+ supports financing and investment operations in partner countries in Africa, the European Neighbourhood, Asia and the Pacific, the Americas and the Caribbean. Under the EFSD+, the EIB is entrusted with the implementation of a dedicated investment window covering comprehensive risk cover for operations with sovereign counterparts and non-commercial sub-sovereign counterparts. Additional dedicated investment windows will be established for the EIB, if appropriate, to provide comprehensive risk cover for operations with commercial sub-sovereign counterparts and to provide a political risk cover for private sector operations. The Commission has full visibility on pipeline creation and will ensure complementarity of all EIB operations across all Investment Windows.

¹ OJ L 193, 30.7.2018, p.1.

² OJ L 209, 14.6.2021, p.1.

³ OJ L 437, 28.12.2020, p. 188.

- (8) The agreements to be signed with the EIB will take into account the relevant programming documents, taking into account the specific realities and needs of each partner country programming priorities. The information contained in the programming documents will also be part of the assessment of each of the financing and investment operations proposed by the EIB. Operations will only be eligible if they are in line with the programming priorities identified in the relevant programming documents.
- (9) It is therefore justified to adopt these measures to allow for the effective implementation of EFSD+ operations through a stand-alone financial instrument (ACP Trust Fund) and through an External Action Guarantee.
- (10) The measures provided for in this Decision contribute to mainstreaming climate action in line with the European Green Deal and the inter-institutional agreement.
- (11) The envisaged assistance is to comply with the conditions and procedures set out by the restrictive measures adopted pursuant to Article 215 TFEU.
- (12) The Commission should acknowledge and accept contributions from other donors in accordance with Article 21(2) of the Financial Regulation, subject to the conclusion of the relevant agreement, including funds under Council Decision (EU) 2020/2233. Where such contributions are not denominated in euro, a reasonable estimate of conversion should be made.
- (13) Pursuant to Article 26(1) of Regulation (EU) 2021/947 indirect management is to be used for the implementation of the measures.
- (14) The ACP Trust Fund will undertake operations with high risk and high impact, in particular in Least Developed Countries and fragile contexts. It is envisaged that part of the technical assistance support necessary is provided by EIB staff. This technical assistance support shall aim to develop a pipeline of operations and to monitor them. Due to the complex character of the envisaged operations, it is appropriate to make use of the EIB expertise and experience to design and implement the planned financial instruments and to mobilise EIB representative offices in the selected countries.
- (15) Pursuant to Article 38(1) of Regulation (EU) 2021/947, the implementation of the ACP private sector operations External Action Guarantee is subject to the conclusion of External Action Guarantee agreement by the Commission with the EIB.
- (16) The Commission is to ensure a level of protection of the financial interests of the Union with regards to entities and persons entrusted with the implementation of Union funds by indirect management as provided for in Article 154(3) of the Financial Regulation, the Commission is to select the eligible counterparts pursuant to Article 154 of the Financial Regulation. To this end, such entities and persons are to be subject to an assessment of their systems and procedures in accordance with Article 154(4) of the Financial Regulation⁸ and, if necessary, to appropriate supervisory measures in accordance with Article 154(5) thereof before a contribution agreement can be signed.
- (17) It is necessary to allow for the payment of interest due for late payment on the basis of Article 116(5) of the Financial Regulation.
- (18) In order to allow for flexibility in the implementation of the ACP Trust Fund, it is appropriate to allow changes which should not be considered substantial for the purposes of Article 110(5) of the Financial Regulation.

⁸ Except for the cases of Article 154(6) of the Financial Regulation, where the Commission may decide, not to require an ex-ante assessment.

- (19) The measures provided for in this Decision are in accordance with the opinion of the Neighbourhood, Development and International Cooperation Instrument Committee established under Article 45 of Regulation (EU) 2021/947,

HAS DECIDED AS FOLLOWS:

Article 1
The measures

The individual measures including the multiannual work programme decision for:

- the private sector operations under an ACP Trust Fund (also a financing decision), as set out in Annex I,
- ACP private sector operations under the External Action Guarantee entrusted to the EIB and in accordance with Article 3 of this Decision, as set out in Annex II, are adopted.

Article 2
Union contribution

The maximum Union contribution for the implementation of the ACP Trust Fund measure for the years 2022-2027 is set at EUR 500 000 000⁹ and shall be financed from the funds stemming from the reflows pursuant Council Decision (EU) 2020/2233 of 23 December 2020 entered in the following line of the general budget of the Union, as set out in Annex I:

Budget line 14 02 01 60 European Development Fund — ACP Investment Facility Reflows: EUR 125 500 000 for 2022; and EUR 374 500 000¹⁰ for years 2023 to 2027.

The implementation of this Decision is subject to the availability of the appropriations provided for in the general budget of the Union for 2022-2027 following the receipt of the external assigned revenues.

Article 3
Methods of implementation and entrusted entities or persons

The implementation of the actions carried out by way of indirect management as set in the annexes may be entrusted to the European Investment Bank.

Article 4
Flexibility clause

For the ACP Trust Fund measure, increases or decreases of up to EUR 10 000 000 not exceeding 20% of the contribution set in the first paragraph of Article 2, or cumulated changes to the allocations of specific actions not exceeding 20% of that contribution, as well as extensions of the implementation period shall not be considered substantial for the purposes of Article 110(5) of Regulation (EU, Euratom) 2018/1046, provided that these changes do not significantly affect the nature and objectives of the action. The authorising officer responsible may apply the changes referred to in the first paragraph. Those changes shall be applied in accordance with the principles of sound financial management and proportionality.

⁹ In 2018 prices.

¹⁰ In 2018 prices.

Article 5
Adoption of the guarantee tool

The guarantee tool for investment under the External Action Guarantee, as set out in the Annex II, is hereby approved.

Article 6
Delegation to the authorising officer responsible

The authorising officer responsible is hereby authorised to conclude, in accordance with Article 38(1) of Regulation (EU) 2021/947 and the Annex II to this Decision, the External Action Guarantee agreement with the European Investment Bank.

Done at Brussels, 7.2.2023

For the Commission
Jutta URPILAINEN
Member of the Commission