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Proposal for a

# COUNCIL DECISION

**concerning the commitment of the funds stemming from reflows under the ACP Investment Facility from operations under the 9th, 10th and 11th European Development Funds, the balances from the 10th EDF or from previous EDFs, and the funds decommitted from projects under the 10th EDF or from previous EDFs**

# EXPLANATORY MEMORANDUM

The EU (and its Member States) are world leaders in international development cooperation. They have traditionally been at the forefront of international action as donors and also for their innovative role in development finance.

Although we have witnessed a global improvement in the living conditions of the most vulnerable, there remain substantial challenges. Global challenges have become more complex, multidimensional, and rapidly evolving. To address them effectively, the European Union needs to step up its external action and draw on a suite of flexible and efficient policy and financing instruments.

As the magnitude of the challenges exceeds current available resources, the EU is seeking new, innovative and efficient ways to create a financing framework for development. Leveraging the investment made by financial institutions and private-sector partners is an efficient way to make maximum use of the EU budget.

However, financial instruments still represent a very small fraction of the EU's budget for external action. The bulk of the budget for development (around 90% during the 2014-2020 multiannual financial framework (MFF)) is spent on traditional development grants, budget support and other arrangements for direct and indirect funding of partner countries.

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The ACP Investment Facility (ACP IF) was a pioneer financial instrument. It was set up in 2003 under the Internal Agreement between Representatives of the Governments of the Member States, meeting within the Council, on the Financing and Administration of Community Aid under the Financial Protocol to the Cotonou Partnership Agreement (CPA)[1] to promote growth in the private sector – and to help mobilise domestic and foreign capital for this purpose – in 78 countries located in Sub-Saharan Africa, in the Caribbean and in the Pacific.

So far managed by the European Investment Bank (EIB), it draws resources from the 9th, 10th and 11th European Development Funds, as well as from EIB own resources.

The legal framework of the ACP IF[2] establishes the following (for resources from the European Development Fund (EDF)):

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1 Internal Agreement between Representatives of the Governments of the Member States, meeting within the Council, on the Financing and Administration of Community Aid under the Financial Protocol to the Partnership Agreement between the African, Caribbean and Pacific States and the European Community and its Member States signed in Cotonou (Benin) on 23 June 2000 and the allocation of financial assistance for the Overseas Countries and Territories to which Part Four of the EC Treaty applies (OJ L 317, 15.12.2000, p. 355–372).

2 Article 76(1)(d) of the CPA, as amended for the second time in 2010, and Annex Ic and Annex II to the CPA (OJ L 317, 15.12.2000; OJ L 287, 28.10.2005; OJ L 287, 4.11.2010). The legal framework also comprises Articles 1(5), 2(d), 4(1), 5(3), 7(1) 9, 11(2) of the 11th European Development Fund 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 (OJ L 210, 6.8.2013) and Articles 45-52 of the 11th EDF Financial Regulation (Council Regulation (EU)2018/1877 on the financial regulation applicable to the 11th European Development Fund and repealing Regulation (EU)2015/323, OJ L 307, 3.12.2018).

- ‘proceeds and income’ (re-flows[3]) from operations under the ACP IF are used for further operations (under Article 5(3) of the 11th EDF Internal Agreement), functioning as a revolving fund.
- on expiry of the Financial Protocol to the CPA (and in the absence of a specific decision by the Council), cumulative net re-flows are carried over to the next protocol (Article 3(2) Annex II of the CPA);
- the total resources of the 11th EDF and the funds stemming from re-flows are no longer committed beyond 31 December 2020, unless the Council decides otherwise, acting unanimously on a proposal of the Commission (point 5 of the Annex Ic of the CPA and Article 1(5) of the 11th EDF Internal Agreement).
- In parralel, Article 1(5) of the 11th EDF Internal Agreement, juncto Article 47(2) of the 11th EDF Financial Regulation, foresees that the funds subscribed by the Member States under the 9th, 10th and 11th EDFs to finance the ACP IF shall remain available after 31 December 2020 for disbursement, until 31 December 2030.
- Article 14(3) of the 11th EDF Internal Agreement adds that this Agreement shall remain in force as long as it is necessary for all operations financed under the CPA and the 2014-2020 MFF to be fully executed (until repayment and closure of the operations).

This proposal is needed to allow commitment of the funds stemming from the reflows beyond 31 December 2020. In the absence of a Council decision, the funds stemming from the reflows must be paid back pro-rata to the Member States, in accordance with the table in the 11th EDF Internal Agreement (Article 1(2)(a)).

According to current EIB estimates, the re-flows amount to approximately EUR 3.2 billion (EUR 3.6 billion total endowment – from EU 28 – less management fees and costs).

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This proposal to use the re-flows of the ACP IF for new operations comes at a crucial time, when the EU is shaping its future development policy.

(1) For the next EU’s 2021-2027 MFF, the Commission has proposed to increase the budget for external action, including with funds from the European Recovery Instrument,[4] and to simplify its structure to make it more flexible and efficient to address global challenges.

(2) The Commission has also proposed one main instrument for external action: the Neighbourhood, Development and International Cooperation Instrument (NDICI), which includes an innovative and simplified financial architecture for investment outside the EU. It is based on the European Fund for Sustainable Development Plus

[3] By reflows, it is understood any income (e.g. interest payments, dividends, capital contributions, remuneration from treasury investments, guarantees, other fees and commissions and proceeds of redemption or sale of an ACP IF equity participation), repayments (e.g. release of funded ACP IF guarantees, capital repayments, repayments of the principal of loans), or Treasury amounts as of 1 January 2021, resulting from operations under the ACP IF. For the avoidance of doubt, funds stemming from the decommitment of reflows shall also be considered as reflows.

[4] Proposal for a Council Regulation establishing a European Union Recovery Instrument to support the recovery in the aftermath of the COVID-19 pandemic, COM(2020) 441 final 28.5.2020.

(EFSD+), supported by the new External Action Guarantee (EAG).[5] The NDICI proposal is under negotiation by the co-legislators.

The Commission's proposal draws on all these ongoing discussions and reports.

It also takes account of the findings and recommendations of the end-of-term review of the ACP IF,[6] which was published in 2019. The review concluded that, although the ACP IF contributed to the Cotonou objectives to reduce poverty, integrate ACP countries into the world economy and aid their sustainable development, it did not maximise its contribution in that regard.

Between 2003 and 2017, the revolving fund allocated EUR 5.2 billion to projects, with over EUR 4 billion financed through the EDF.

Financial 'additionality' (using EU funds to attract additional private investment that would not have occurred otherwise) was satisfactory, but not used to its full potential. This is manifested in the relatively limited use in low-income and fragile countries, where additional investment would have had the greatest impact. More than half of the investment facility operations under the ACP IF took place in low-middle income countries and 30% in a small number of low-income countries.

According to the findings of the review, there was a greater focus on financial sustainability than on the development objectives.

The evaluation also issued several recommendations. These include the need to find a better balance between development objectives and financial sustainability, putting a stronger focus on low-income and fragile countries, increasing the use of innovative financial tools such as guarantees, improving monitoring and evaluation of development outcomes and revising the operating model.

Previous evaluations, such as the 2010 mid-term evaluation of the External Lending Mandate guarantee[7] and the 2016 evaluation of blending[8], had also concluded that the EU's newly established financial mechanisms (blending and guarantees) do work, but that their development impact is closely linked to the policy steer.

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It is in this context that the Commission proposes to the Council to transfer re-flows from the ACP IF into the future NDICI's EFSD+. The Commission intends to invest them in ACP countries through the EIB.

As reflected in the 2019 European Commission-EIB non-paper drawn up in the context of the NDICI negotiation with regard to the 'former ACP IF', the EIB supports namely: to continue to use re-flows for a number of years; at no cost to the EU budget and under specific arrangements (on geography, eligibility, and risk profile) to be defined.

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5 The European Fund for Sustainable Development Plus (EFSD+), set up under the Regulation of the European Parliament and of the Council establishing the Neighbourhood, Development and International Cooperation Instrument, as stipulated in the Commission's Proposal for a Regulation of the European Parliament and of the Council establishing the Neighbourhood, Development and International Cooperation Instrument, COM(2018) 460 final.

6 End-of-term review of the ACP Investment Facility, final report, Aide à la Décision Economique (ADE), March 2020.

7 European Investment Bank's external lending mandate 2007-2013 – Mid-term review and recommendations of the Steering Committee of Wise Persons, February 2010, also known as the Camdessus report.

8 Evaluation of blending, final report, December 2016.

The Commission also proposes, in consultation with the EIB, that the use of re-flows through the EIB be primarily directed at development instruments with high financial risk, in particular impact finance, equity funds and operations in least-developed countries.

This proposal entails no additional contributions from the Member States.

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For the EU to contribute to achieving the Sustainable Development Goals (SDGs) set under the 2030 Agenda, it is key to maximise the potential to mobilise private capital using innovative financial instruments in addition to traditional development funding.

As the challenges are far greater than the resources available, it is necessary to prioritise.

It is therefore crucial to bring into the same governance framework the multiple instruments available for external action. This will ensure that the funds follow the 'policy first' principle, which in turn ensures coherence, complementarity and maximises development impact.

This proposal aims to provide a stronger policy steer and increase the development impact of the ACP IF re-flows. It will promote investment in ACP countries in a more strategic and efficient way. Investments will be based on the needs of the partner countries and on the EU's external action objectives, and will be deployed through the best mix of available financing, including under the EFSD+.

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The EFSD+ is embedded in the NDICI, an ambitious proposal with a global scope, increased financial means and a strengthened policy steer, guided by the 'policy first' principle.

The NDICI will provide optimal policy and financial framework, as it will bring blended finance (blending) and guarantees as sources of financing under a single and simplified governance, to be managed together with other implementing tools (grants, technical assistance, budget support, etc.).

The EFSD+ will be fully subject to the priorities, objectives and indicative allocations established under the programming process, with the ultimate aim of supporting investment outside the EU in a strategic and coherent manner, for the benefit of sustainable development.

This implies that all investment activities will be planned so as to achieve the highest development impact and maximise coherence of EU external action. Programming of operations must be an inclusive process, involving consultation with the public and private sector, Member States, financial institutions, civil society and other parties involved.

The EFSD+ builds on the successful experience of its predecessor, the European Sustainable Development Fund (EFSD), which is the cornerstone of the current External Investment Plan (EIP) and the financial arm of the Africa-Europe Alliance.

A recent independent assessment[9] has found the EFSD to be highly relevant to the investment needs of the regions covered (Sub-Saharan Africa and the EU Neighbourhood countries), and to the EU's priorities and commitments.

On the **blending** side (combining public and private funds), EUR 3.1 billion was allocated between 2017 and 2019 to finance 154 projects across the African continent and the EU Neighbourhood countries. This EU contribution has encouraged additional financing to come in, expected to cover about EUR 30 billion in overall investment, mainly in the energy and transport sectors, but also in support of the private sector development and agriculture.

[9] Report from the Commission to the European Parliament and the Council on the implementation of the European Fund for Sustainable Development, COM(2020) 224 final, June 2020.

In Sub-Saharan Africa, the EFSD, through the EU contribution of EUR 1.8 billion, leveraged a total of EUR 13.5 billion, funding 78 operations. In the Neighbourhood countries, the EU contribution of EUR 1.3 billion unlocked investment for a total of EUR 16.2 billion, funding 76 operations.

In addition, an EU contribution of EUR 1.55 billion has been allocated to 22 proposed **guarantee** programmes. These are expected to unlock EUR 17.5 billion in overall investment.

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In terms of coherence, this proposal also builds on the 2017 joint statement on the new European Consensus on Development[10], which formed part of the EU's response to the UN 2030 Agenda for Sustainable Development and its SDGs[11]. The European Consensus on Development already prescribed the need to combine aid with other resources, build better-tailored partnerships with a wider range of stakeholders and reaffirmed the commitment to policy coherence for development.

In addition, this proposal ensures that the EU will abide by the principles and criteria laid down in the Commission's communication on the role of the private sector in achieving inclusive and sustainable growth[12] .

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The Commission has informed the EIB of the content of this proposal.

[10] The new European Consensus on Development, 'Our world, our dignity, our future' – Joint statement by the Council and the Representatives of the Governments of the Member States, meeting within the Council, the European Parliament and the European Commission, 2017 (OJ C 210, 30.06.2017).

[11] UN resolution: Transforming our World: The 2030 Agenda for Sustainable Development, 2015.

[12] COM(2014) 263 final.

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union and the Treaty on the Functioning of the European Union,

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[13] ('the 11th EDF Internal Agreement'), and in particular Article 1 (3), (4) and (5) thereof,

Having regard to the proposal from the European Commission,

Whereas:

(1) Funds stemming from reflows under the ACP Investment Facility from operations under the 9th, 10th and 11th European Development Funds ('the EDFs') cannot be committed beyond 31 December 2020, unless the Council acting unanimously on a proposal of the Commission decides otherwise.

(2) There is strong evidence that while the ACP Investment Facility contributed to the objectives of poverty reduction, integration into the world economy and sustainable development of the African, Caribbean and Pacific countries, as stipulated in the the ACP-EU Partnership Agreement, it did not maximise its contribution in that regard. The continued use of the ACP Investment Facility reflows under a new framework and governance could lead to better development results.

(3) [On 14 June 2018 the Commission adopted a proposal for a Regulation of the European Parliament and of the Council establishing the Neighbourhood, Development and International Cooperation Instrument ('NDICI') [14], which provides for the establishment of the European Fund for Sustainable Development Plus ('EFSD+') supported by an External Action Guarantee, to which Member States could make contributions that they could earmark for the initiation of actions in specific regions, countries, sectors or existing investment windows.]

13 OJ L 210, 6.8.2013, p. 1.
14 COM(2018) 460 final.

(4) The European Fund for Sustainable Development[15] ('EFSD') has been considered as being highly relevant to the investment needs of the regions covered (Sub-Saharan Africa and the EU Neighbourhood), as well as to the Union's priorities and commitments.

(5) In their Joint Communication "Towards a Comprehensive Strategy with Africa"[16] the Commission and the High Representative of the Union for Foreign Affairs and Security Policy called for the Union to support sustainable growth and jobs throughout the African continent. Among other measures, the Union wants to partner with Africa on the promotion of investments by scaling up the use of innovative financing mechanisms.

(6) In that Joint Communication, the Commission and the High Representative of the Union for Foreign Affairs and Security Policy stated that financial instruments are to encourage investments with a high development impact, largely in support of the private sector, following the criteria established by the Commission Communication "A Stronger Role of the Private Sector in Achieving Inclusive and Sustainable Growth in Developing Countries"[17], i.e. measurable development impact, additionality, neutrality, shared interest and co-financing, demonstration effect and adherence to social, environmental and fiscal standards.

(7) Therefore it is necessary to allow for the reflows and the treasury amounts referred to in this Decision to constitute contributions to the European Fund for Sustainable Development Plus (EFSD+) and the External Action Guarantee ('earmarked external assigned revenue'). Those reflows and treasury amounts will not be received as external assigned revenue by the NDICI beyond 31 December 2027. After that date, the funds will be received by subsequent financing mechanisms until they are exhausted.

(8) The ACP Investment Facility reflows should be transferred annually as a top-up to the geographical budget lines of the NDICI to be invested through the EFSD + in line with the programming documents.

(9) The Commission will channel the investments through the European Investment Bank, with the aim of maximising their development impact and additionality, and also taking into account debt sustainability issues.

(10) [In line with Regulation (EU) XXX/XXXX of the European Parliament and of the Council [*establishing the Neighbourhood, Development and International Cooperation Instrument*], the funds should be primarily directed at development instruments with high financial risks, in particular impact finance, equity funds and activity in least developed countries (LDCs). The operations should seek to maximise the development impact.]

(11) Pursuant to Article 152(4) of the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community[18], the United Kingdom's share of the ACP Investment Facility from the EDF, accummulated through successive EDF periods, are to be reimbursed to the United Kingdom as the investment matures. Unless agreed

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[15] Regulation (EU) 2017/1601 of 26 September 2017 establishing the European Fund for Sustainable Development (EFSD), the EFSD Guarantee and the EFSD Guarantee Fund (OJ L 249, 27.9.2017, p. 1).

[16] JOIN(2020) 4 final.

[17] COM(2014) 263 final.

[18] OJ L 29, 31.1.2020, p. 7.

otherwise, the United Kingdom's capital share should not be recommitted beyond the end of the 11th EDF commitment period or rolled over into subsequent periods.

(12) The entry into force and application of this Decision should be subject to the entry into force of Regulation (EU) XXXX/XXXX of the European Parliament and of the Council [*establishing the Neighbourhood, Development and International Cooperation Instrument*]. Therefore, the dates for entry into force and application of this Decision and of Regulation (EU) XXXX/XXXX of the European Parliament and of the Council [*establishing the Neighbourhood, Development and International Cooperation Instrument*] shall coincide,

HAS ADOPTED THIS DECISION:

*Article 1*

(1) The funds stemming from the reflows under the ACP Investment Facility for operations under the 9th, 10th, and 11th European Development Funds, the balances from the 10th EDF or from previous EDFs, and the funds decommitted from projects under the 10th EDF or from previous EDF on…..[*date of the entry into force of this Decision*] shall constitute contributions [to the European Fund for Sustainable Development Plus (EFSD+) and the External Action Guarantee under Article 1 of Regulation (EU) XXX/XXX of the European Parliament and of the Council [*establishing the Neighbourhood, Development and International Cooperation Instrument*] for the purposes of providing funding through budgetary guarantees under Article 23(1)(f) and blending under Article 23(1)(g) of that Regulation].

(2) For the purposes of this Decision, ‘reflows’ means any income, including dividends, capital gains, guarantee fees and interest on loans, on amounts on any account opened for the purpose of recording cash held for the account of the ACP Investment Facility and remuneration from treasury investments, and repayments, ncluding capital repayments, guarantees released and repayment of the principal of loans resulting from operations under the ACP Investment Facility. Funds stemming from the decommitment of reflows shall also be considered as reflows.

(3) The reflows shall be subject to the applicable rules and procedures of the EFSD+ as laid down in Regulation (EU) XXXX/XXXX of the European Parliament and of the Council [*establishing the Neighbourhood, Development and International Cooperation Instrument*.]

*Article 2*

The contributions shall be earmarked for African, Caribbean and Pacific countries.

*Article 3*

This Decision shall enter into force on the date of entry into force of Regulation (EU) XXXX/XXXX of the European Parliament and of the Council [*establishing the Neighbourhood, Development and International Cooperation Instrument*.]. It shall apply from 1 January 2021.

Done at Brussels,

*For the Council*
*The President*