COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 3.5.2005
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Proposal for a

COUNCIL DECISION

concerning the signing, on behalf of the European Community, of the Agreement amending the Partnership Agreement signed in Cotonou on 23 June 2000 between the African, Caribbean and Pacific States, of the one part, and the European Community and its Member States, of the other part

Proposal for a

COUNCIL DECISION

concerning the conclusion of the Agreement amending the Partnership Agreement signed in Cotonou on 23 June 2000 between the African, Caribbean and Pacific States, of the one part, and the European Community and its Member States, of the other part

(presented by the Commission)

EXPLANATORY MEMORANDUM

General

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 Partnership Agreement between the ACP States and the European Community and its Member States.

2. The negotiations took place between 6 May 2004 and 23 February 2005.

3. The Commission considers that the revised Partnership Agreement conforms to the negotiating directives adopted by the Council on 27 April 2004.

4. The revised Agreement marks an improvement in the relationship between the ACP States and the Community and its Member States, while maintaining the *acquis* of the Cotonou Agreement.

5. The amendments relate to parts of the main body of the Agreement, Annexes I, II and IV and the new Annexes Ibis and VII.

6. Some components, such as the rules on the award of contracts and the modalities for implementation of the FLEX mechanism will be reviewed and adapted, if necessary, by the ACP-EC Council of Ministers.

7. The amendments cover a wide range of issues relating to the political dimension, development strategies, the Investment Facility and implementation and management procedures.

8. Provisions have been inserted concerning the international fight against terrorism, prevention of mercenary activities, cooperation in countering the proliferation of Weapons of Mass Destruction (WMD), commitment to the International Criminal Court and modalities for a more structured and formal political dialogue.

9. With regard to development strategies, the Agreement has been revised to include a number of new elements relating to the Millennium Development Goals (MDGs), the social sector, ICTs, youth, traditional knowledge, island ACP states, Non State Actors (NSAs) and regional cooperation.

10. A number of amendments were made to Annex II on the Investment Facility (IF). These include conditions relating to loans, interest rate subsidies, foreign exchange rate risks and Bank remuneration. The IF will be subject to a joint review of its performance at mid-term and at the end of the term of the Financial Protocol.

11. In order to improve efficiency and to promote harmonisation, a series of proposals were incorporated into Annex IV regarding management procedures and implementation. The proposals aim, inter alia, to introduce greater flexibility in the allocation of resources and in financial management

in crisis or conflict situations, promote further untying of aid, reformulate the role of management and execution agents and, more generally, simplify the procedures in place.

12. Two changes were made to the Financial Protocol. First, a provision on the financing of devolution was introduced into the existing Annex I. Second, a new Annex Ibis was added relating to the multiannual financial framework for cooperation under the revised Cotonou Agreement.

The proposal

13. For the reasons given above, the Commission considers that the revised Agreement should be concluded on behalf of the Community. Therefore the Commission proposes that the Council approve the text of the amendments and adopt the attached proposals. Since the Partnership Agreement is a mixed Agreement it will also have to be ratified by the Member States according to their constitutional provisions.

14. The proposal on signing authorises the President of the Council to designate the person empowered to sign the Agreement amending the Partnership Agreement on behalf of the Community.

15. The proposal on conclusion authorises the President of the Council to designate the person empowered to deposit the instrument of approval on behalf of the Community.

Proposal for a

COUNCIL DECISION

concerning the signing, on behalf of the European Community, of the Agreement amending the Partnership Agreement signed in Cotonou on 23 June 2000 between the African, Caribbean and Pacific States, of the one part, and the European Community and its Member States, of the other part

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community and in particular Article 310 thereof, in conjunction with the second sentence of the first subparagraph of Article 300(2) thereof,

Having regard to the proposal from the Commission,

Whereas the revised Agreement negotiated by the Commission between the African, Caribbean and Pacific States, of the one part, and the European Community and its Member States, of the other part, should be signed on behalf of the European Community,

HAS DECIDED AS FOLLOWS:

Sole Article

The President of the Council is hereby authorised to designate the person empowered to sign, on behalf of the European Community, the revised Partnership Agreement between the African, Caribbean and Pacific States, of the one part, and the European Community and its Member States, of the other part.

Done at Brussels,

The Council
The President

2005/0071(AVC)

Proposal for a

COUNCIL DECISION

concerning the conclusion of the Agreement amending the Partnership Agreement signed in Cotonou on 23 June 2000 between the African, Caribbean and Pacific States, of the one part, and the European Community and its Member States, of the other part

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 310 thereof in conjunction with the second sentence of Article 300(2) and the second subparagraph of Article 300(3),

Having regard to the proposal from the Commission,

Having regard to the assent of the European Parliament,

Whereas

(1) pursuant to Article 96 of the Partnership Agreement the party which after having conducted a strengthened political dialogue considers that another party fails to fulfil an obligation in respect of one of the essential elements referred to in Article 9 may invite the other party to hold consultations and, in certain circumstances, take appropriate measures, including where necessary, the partial or full suspension of application of the Partnership Agreement to the party concerned;

(2) pursuant to Article 97 of the Partnership agreement the party which considers that a serious case of corruption has occurred may invite the other party to hold consultations and, in certain circumstances, take appropriate measures, including where necessary, the partial or full suspension of application of the Partnership agreement to the party concerned;

(3) pursuant to Article 11ter of the Partnership agreement the party which, after having conducted a strengthened political dialogue, informed in particular by reports by the IAEA, the OPCW and other relevant multilateral institutions, considers that the other Party has failed to fulfil an obligation stemming from paragraph 1 of this article on non-proliferation of weapons of mass destruction, may invite the other party to hold consultations and, in certain circumstances, take appropriate measures, including where necessary, the partial or full suspension of application of the Partnership agreement to the party concerned;

(4) an effective procedure should be adopted when it is intended to take appropriate measures under Article 96, Article 97 or paragraphs 4, 5, 6 of Article 11ter of the Partnership Agreement,

(5) the Agreement amending the Partnership Agreement between the African Caribbean and Pacific States on the one part, and the European Community and its Member States, on the other part, signed in Cotonou on 23 June 2000 should be approved.

HAS DECIDED AS FOLLOWS:

Article 1

The revised Partnership Agreement between the African, Caribbean and Pacific States, of the one part, and the European Community and its Member States, of the other part, together with the revised and the new Annexes attached thereto and the declarations made by the Community unilaterally or jointly with other parties that are attached to the Final Act, are hereby approved on behalf of the European Community.

The texts of the amendments to the Agreement, Annexes, and Final Act are attached to this Decision.

Article 2

The President of the Council is hereby authorised to designate the person empowered to deposit the instrument of approval as required by Article 93 of the Agreement on behalf of the European Community.

Article 3

1. Where, at the initiative of the Commission or a Member State, after having exhausted all possible options for dialogue under Article 8, the Council considers that an ACP State fails to fulfil an obligation concerning one of the essential elements referred to in Article 9 of the Partnership Agreement, or in serious cases of corruption, the ACP State concerned shall be invited, unless there is special urgency, to hold consultations in accordance with Articles 96 and 97 of the Partnership Agreement.

   Where, at the initiative of the Commission or of a Member State, informed in particular by reports by the IAEA, the OPCW and other relevant multilateral institutions, the Council considers that an ACP State has failed to fulfil an obligation stemming from Article 11ter(1) on non-proliferation of weapons of mass destruction, the ACP State concerned shall be invited, unless there is special urgency, to hold consultations in accordance with Article 11ter(4), (5) and (6) of the Partnership Agreement.

   The Council shall act by a qualified majority.

In the consultations, the Community shall be represented by the Presidency of the Council and the Commission.

2. If, on expiry of the deadlines set in Articles 96 and 97 or Article 11ter for the consultations and despite all efforts, no solution has been found, or immediately in a case of urgency or refusal to hold consultations, the Council may, pursuant to those Articles, decide, on a proposal from the Commission, to take appropriate measures including partial suspension acting by a qualified majority.

The Council shall act unanimously in the case of a full suspension of application of the Partnership Agreement in relation to the ACP State concerned.

These measures shall remain in force until such time as the Council has used the applicable procedure as set out in the first subparagraph to take a decision amending or revoking the measures adopted previously, or where applicable, for the period indicated in the Decision.

For that purpose the Council shall proceed to review the above measures regularly and at least every six months.

The President of the Council shall notify the measures thus adopted to the ACP State concerned and to the Council of Ministers before they enter into force.

The Council's Decision shall be published in the Official Journal of the European Union. Where the measures are adopted immediately, notification thereof shall be addressed to the ACP State and to the Council of Ministers at the same time as an invitation to hold consultations.

3. The European Parliament shall be immediately and fully informed of any decision taken under paragraphs 1 and 2.

4. Should the Council of Ministers develop further modalities for consultation as referred to in Article 3(5) of the new Annex VII, the position to be taken by the Council within the joint ACP-EU Council will be based on a proposal by the Commission.

Article 4

This Decision shall be published in the *Official Journal of the European Union*.

Done at Brussels,

For the Council
The President

REVISION OF THE COTONOU AGREEMENT

Consolidated changes to the text of the Cotonou Agreement

Note:

- Agreement on new texts: <u>underlined</u>

- Agreement on text to be deleted: ~~strikethrough~~

- Only revised text is included: table of contents facilitates reader to place the amendments in the wider text of the Agreement (chapters with amendments: in bold and italics)

THE COTONOU AGREEMENT

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PREAMBLE

HAVING REGARD TO the Treaty establishing the European Community, on the one hand, and the Georgetown Agreement establishing the Group of African, Caribbean and Pacific States (ACP), on the other;

AFFIRMING their commitment to work together towards the achievement of the objectives of poverty eradication, sustainable development and the gradual integration of the ACP countries into the world economy;

ASSERTING their resolve to make, through their cooperation, a significant contribution to the economic, social and cultural development of the ACP States and to the greater well-being of their population, helping them facing the challenges of globalisation and strengthening the ACP-EU Partnership in the effort to give the process of globalisation a stronger social dimension;

REAFFIRMING their willingness to revitalise their special relationship and to implement a comprehensive and integrated approach for a strengthened partnership based on political dialogue, development cooperation and economic and trade relations;

ACKNOWLEDGING that a political environment guaranteeing peace, security and stability, respect for human rights, democratic principles and the rule of law, and good governance is part and parcel of long term development; acknowledging that responsibility for establishing such an environment rests primarily with the countries concerned;

ACKNOWLEDGING that sound and sustainable economic policies are prerequisites for development;

REFERRING to the principles of the Charter of the United Nations, and recalling the Universal Declaration of Human Rights, the conclusions of the 1993 Vienna Conference on Human Rights, the Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights, the Convention on the Rights of the Child, the Convention on the Elimination of all forms of Discrimination against Women, the International Convention on the Elimination of all forms of Racial Discrimination, the 1949 Geneva Conventions and the other instruments of international humanitarian law, the 1954 Convention relating to the status of stateless persons, the 1951 Geneva Convention relating to the Status of Refugees and the 1967 New York Protocol relating to the Status of Refugees;

CONSIDERING the Convention for the Protection of Human Rights and Fundamental Freedoms of the Council of Europe, the African Charter on Human and Peoples' Rights and the American Convention on Human Rights as positive regional contributions to the respect of human rights in the European Union and in the ACP States;

REAFFIRMING that the most serious crimes of concern to the international community must not go unpunished and that their effective prosecution must be ensured by taking measures at the national level and by enhancing global

collaboration; CONSIDERING that the establishment and effective functioning of the International Criminal Court constitute an important development for peace and international justice;

RECALLING the Libreville and Santo Domingo declarations of the Heads of State and Government of the ACP countries at their Summits in 1997 and 1999;

~~CONSIDERING that the development targets and principles agreed in United Nations Conferences and the target, set by the OECD Development Assistance Committee, to reduce by one half the proportion of people living in extreme poverty by the year 2015 provide a clear vision and must underpin ACP-EU cooperation within this Agreement;~~

CONSIDERING that the Millennium Development Goals emanating from the Millennium Declaration adopted by the United Nations General Assembly in 2000, in particular the eradication of extreme poverty and hunger, as well as the development targets and principles agreed in the United Nations Conferences, provide a clear vision and must underpin ACP-EU cooperation within this Agreement;

PAYING particular attention to the pledges made at the Rio, Vienna, Cairo, Copenhagen, Beijing, Istanbul and Rome UN conferences and acknowledging the need for further action to be taken in order to achieve the goals and implement the action programmes which have been drawn up in those fora;

ANXIOUS to respect basic labour rights, taking account of the principles laid down in the relevant conventions of the International Labour Organisation;

RECALLING the commitments within the framework of the World Trade Organisation,

HAVE DECIDED TO CONCLUDE THIS AGREEMENT:

PART 1

GENERAL PROVISIONS

TITLE I

OBJECTIVES, PRINCIPLES AND ACTORS

CHAPTER 2

THE ACTORS OF THE PARTNERSHIP

ARTICLE 4

General approach

The ACP States shall determine the development principles, strategies and models of their economies and societies in all sovereignty. They shall establish, with the

Community, the cooperation programmes provided for under this Agreement. However, the parties recognise the complementary role of and potential for contributions by non-State actors and *local decentralised authorities* [1] to the development process. To this end, under the conditions laid down in this Agreement, non-State actors and *local decentralised authorities* shall, where appropriate:

– be informed and involved in consultation on cooperation policies and strategies, on priorities for cooperation especially in areas that concern or directly affect them, and on the political dialogue;

– be provided with financial resources, under the conditions laid down in this Agreement in order to support local development processes;

– be involved in the implementation of cooperation project and programmes in areas that concern them or where these actors have a comparative advantage;

– be provided with capacity-building support in critical areas in order to reinforce the capabilities of these actors, particularly as regards organisation and representation, and the establishment of consultation mechanisms including channels of communication and dialogue, and to promote strategic alliances.

TITLE II

THE POLITICAL DIMENSION

ARTICLE 8

Political dialogue

1. The Parties shall regularly engage in a comprehensive, balanced and deep political dialogue leading to commitments on both sides.

2. The objective of this dialogue shall be to exchange information, to foster mutual understanding, and to facilitate the establishment of agreed priorities and shared agendas, in particular by recognising existing links between the different aspects of the relations between the Parties and the various areas of cooperation as laid down in this Agreement. The dialogue shall facilitate consultations between the Parties within international fora. The objectives of the dialogue shall also include preventing situations arising in which one Party might deem it necessary to have recourse to the ~~non execution clause~~ *consultation procedures foreseen in Articles 96 and 97*.

3. The dialogue shall cover all the aims and objectives laid down in this Agreement as well as all questions of common, general, regional or sub-regional interest. Through dialogue, the Parties shall contribute to peace, security and stability and promote a stable and democratic political environment. It shall encompass cooperation strategies

[1] **Council – Commission Declaration**: For the purpose of this article, it is understood that the term 'local decentralised authorities' covers all levels of decentralisation including 'collectivités locales'

as well as global and sectoral policies, including environment, gender, migration and questions related to the cultural heritage.

4. The dialogue shall focus, inter alia, on specific political issues of mutual concern or of general significance for the attainment of the objectives of this Agreement, such as the arms trade, excessive military expenditure, drugs and organised crime, or ethnic, religious or racial discrimination. The dialogue shall also encompass a regular assessment of the developments concerning the respect for human rights, democratic principles, the rule of law and good governance.

5. Broadly based policies to promote peace and to prevent, manage and resolve violent conflicts shall play a prominent role in this dialogue, as shall the need to take full account of the objective of peace and democratic stability in the definition of priority areas of cooperation.

6. The dialogue shall be conducted in a flexible manner. Dialogue shall be formal or informal according to the need, and conducted within and outside the institutional framework *including the ACP Group, the ACP-EU Joint Parliamentary Assembly (JPA)*[2], in the appropriate format, and at the appropriate level including regional, sub-regional or national level.

6bis. Where appropriate, and in order to prevent situations arising in which one Party might deem it necessary to have recourse to the consultation procedure foreseen in Article 96, dialogue covering the essential elements shall be systematic and formalised in accordance with the modalities set out in Annex VII.

7. Regional and sub-regional organisations as well as representatives of civil society organisations shall be associated with this dialogue.

ARTICLE 9

Essential elements *regarding human rights, democratic principles and the rule of law*, and fundamental element *regarding good governance*

1. Cooperation shall be directed towards sustainable development centred on the human person, who is the main protagonist and beneficiary of development; this entails respect for and promotion of all human rights.

Respect for all human rights and fundamental freedoms, including respect for fundamental social rights, democracy based on the rule of law and transparent and accountable governance are an integral part of sustainable development.

2. The Parties refer to their international obligations and commitments concerning respect for human rights. They reiterate their deep attachment to human dignity and

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[2] ***Joint Declaration****: In relation to dialogue at national and regional levels, for the purpose of this Article, the 'ACP Group' shall be taken to mean the Troika of the ACP Committee of Ambassadors (CoA) and the Chairperson of the ACP Sub-committee on Political, Social, Humanitarian and Cultural Affairs (PSHCA); the ACP-EU Joint Parliamentary Assembly (JPA) shall be interpreted as the Co-Presidents of the ACP-EU JPA, or their designated nominees.*

human rights, which are legitimate aspirations of individuals and peoples. Human rights are universal, indivisible and inter-related. The Parties undertake to promote and protect all fundamental freedoms and human rights, be they civil and political, or economic, social and cultural. In this context, the Parties reaffirm the equality of men and women.

The Parties reaffirm that democratisation, development and the protection of fundamental freedoms and human rights are interrelated and mutually reinforcing. Democratic principles are universally recognised principles underpinning the organisation of the State to ensure the legitimacy of its authority, the legality of its actions reflected in its constitutional, legislative and regulatory system, and the existence of participatory mechanisms. On the basis of universally recognised principles, each country develops its democratic culture.

The structure of government and the prerogatives of the different powers shall be founded on rule of law, which shall entail in particular effective and accessible means of legal redress, an independent legal system guaranteeing equality before the law and an executive that is fully subject to the law.

Respect for human rights, democratic principles and the rule of law, which underpin the ACP-EU Partnership, shall underpin the domestic and international policies of the Parties and constitute the essential elements of this Agreement.

3. In the context of a political and institutional environment that upholds human rights, democratic principles and the rule of law, good governance is the transparent and accountable management of human, natural, economic and financial resources for the purposes of equitable and sustainable development. It entails clear decision-making procedures at the level of public authorities, transparent and accountable institutions, the primacy of law in the management and distribution of resources and capacity building for elaborating and implementing measures aiming in particular at preventing and combating corruption.

Good governance, which underpins the ACP-EU Partnership, shall underpin the domestic and international policies of the Parties and constitute a fundamental element of this Agreement. The Parties agree that only serious cases of corruption, including acts of bribery leading to such corruption, as defined in Article 97 constitute a violation of that element.

4. The Partnership shall actively support the promotion of human rights, processes of democratisation, consolidation of the rule of law, and good governance.

These areas will be an important subject for the political dialogue. In the context of this dialogue, the Parties shall attach particular importance to the changes underway and to the continuity of the progress achieved. This regular assessment shall take into account each country's economic, social, cultural and historical context.

These areas will also be a focus of support for development strategies. The Community shall provide support for political, institutional and legal reforms and for building the capacity of public and private actors and civil society in the framework of strategies agreed jointly between the State concerned and the Community.

ARTICLE 11

Peace-building policies, conflict prevention and resolution

1. The Parties shall pursue an active, comprehensive and integrated policy of peace-building and conflict prevention and resolution within the framework of the Partnership. This policy shall be based on the principle of ownership. It shall in particular focus on building regional, sub-regional and national capacities, and on preventing violent conflicts at an early stage by addressing their root-causes in a targeted manner, and with an adequate combination of all available instruments.

2. The activities in the field of peace-building, conflict prevention and resolution shall in particular include support for balancing political, economic, social and cultural opportunities among all segments of society, for strengthening the democratic legitimacy and effectiveness of governance, for establishing effective mechanisms for the peaceful conciliation of group interests, for bridging dividing lines among different segments of society as well as support for an active and organised civil society.

3. Relevant activities shall also include, inter alia, support for mediation, negotiation and reconciliation efforts, for effective regional management of shared, scarce natural resources, for demobilisation and reintegration of former combatants into the society, for addressing the problem of child soldiers, as well as for suitable action to set responsible limits to military expenditure and the arms trade, including through support for the promotion and application of agreed standards and codes of conduct. In this context, particular emphasis shall be given to the fight against anti-personnel landmines as well as to addressing an excessive and uncontrolled spread, illegal trafficking and accumulation of small arms and light weapons.

3bis. The parties also undertake to cooperate in the prevention of mercenary activities in accordance with their obligations under international conventions and instruments, and their respective legislations and regulations

4. In situations of violent conflict the Parties shall take all suitable action to prevent an intensification of violence, to limit its territorial spread, and to facilitate a peaceful settlement of the existing disputes. Particular attention shall be paid to ensuring that financial resources for cooperation are used in accordance with the principles and objectives of the Partnership, and to preventing a diversion of funds for belligerent purposes.

5. In post-conflict situations, the Parties shall take all suitable action to facilitate the return to a non-violent, stable and self-sustainable situation. The Parties shall ensure the creation of the necessary links between emergency measures, rehabilitation and development cooperation.

6. In promoting the strengthening of peace and international justice, the parties reaffirm their determination to:

- share experience on the adoption of legal adjustments required to allow for the ratification and implementation of the Rome Statute of the International Criminal Court and;

- fight against international crime in accordance with international law, giving due regard to the Rome Statute

The parties shall seek to take steps towards ratifying and implementing the Rome Statute and related instruments.

ARTICLE 11 (bis) Fight against terrorism

"The Parties reiterate their firm condemnation of all acts of terrorism, and undertake to combat terrorism through international cooperation, in accordance with the UN Charter and International Law, relevant conventions and instruments and in particular full implementation of UN Security Council Resolutions 1373 and 1456 and other relevant UN resolutions. To this end, the Parties agree to exchange:

– *information on terrorist groups and their support networks; and*

– *views on means and methods to counter terrorist acts, including in technical fields and training, and of experiences in relation to the prevention of terrorism.*[3]

ARTICLE 11 (ter)

Co-operation in countering the proliferation of weapons of mass destruction

1. *The Parties consider that the proliferation of weapons of mass destruction and their means of delivery, both to state and non-state actors, represents one of the most serious threats to international stability and security.*

   The Parties therefore agree to co-operate and to contribute to countering the proliferation of weapons of mass destruction and their means of delivery through full compliance with and national implementation of their existing obligations under international disarmament and non-proliferation treaties and agreements and other relevant international obligations.

   The parties agree that this provision constitutes an essential element of this agreement.

2. *The parties furthermore agree to cooperate and to contribute to the objective of non proliferation by:*

   – *taking steps to sign, ratify, or accede to, as appropriate, and fully implement all other relevant international instruments;*

[3] **Council – Commission Declaration:** Financial and technical assistance in the area of cooperation in the fight against terrorism will be financed by resources other than those intended for the financing of ACP-EC development cooperation.

– *the establishment of an effective system of national export controls, controlling the export as well as transit WMD related of goods, including a WMD end-use control on dual use technologies and containing effective sanctions for breaches of export controls*[4].

Financial and technical assistance in the area of cooperation to counter the proliferation of weapons of mass destruction will be financed by specific instruments other than those intended for the financing of ACP-EC Cooperation.

3. The Parties agree to establish a regular political dialogue that will accompany and consolidate their cooperation in this area.

4. If, after having conducted a strengthened political dialogue, a Party, informed in particular by reports by the IAEA, the OPCW and other relevant multilateral institutions, considers that the other Party has failed to fulfil an obligation stemming from paragraph 1 of this article on non-proliferation of weapons of mass destruction, it shall, except in cases of special urgency, supply the other Party and both the ACP and the EU Councils of Ministers with the relevant information required for a thorough examination of the situation with a view to seeking a solution acceptable to the Parties. To this end, it shall invite the other Party to hold consultations that focus on the measures taken or to be taken by the party concerned to remedy the situation

5. The consultations shall be conducted at the level and in the form considered most appropriate for finding a solution.

The consultations shall begin no later than 30 days after the invitation and shall continue for a period established by mutual agreement, depending on the nature and gravity of the violation. In any case, the dialogue under the consultation procedure shall last no longer than 120 days.

6. If the consultations do not lead to a solution acceptable to both Parties, if consultation is refused, or in cases of special urgency, appropriate measures may be taken. These measures shall be revoked as soon as the reasons for taking them have disappeared.

PART 3

COOPERATION STRATEGIES

TITLE I

DEVELOPMENT STRATEGIES

[4] **Council – Commission Declaration:** It is understood that the measures set out in article 11ter (2) will be undertaken within an adapted timeframe that takes into account each country specific constraints.

CHAPTER 2

AREAS OF SUPPORT

SECTION 1

ECONOMIC DEVELOPMENT

ARTICLE 23

Economic sector development

Cooperation shall support sustainable policy and institutional reforms and the investments necessary for equitable access to economic activities and productive resources, particularly:

(a) the development of training systems that help increase productivity in both the formal and the informal sectors;

(b) capital, credit, land, especially as regards property rights and use;

(c) development of rural strategies aimed at establishing a framework for participatory decentralised planning, resource allocation and management;

(d) agricultural production strategies, national and regional food security policies, sustainable development of water resources and fisheries as well as marine resources within the economic exclusive zones of the ACP States. Any fishery agreement that may be negotiated between the Community and the ACP States shall pay due consideration to consistency with the development strategies in this area;

(e) economic and technological infrastructure and services, including transport, telecommunication systems, communication services and the development of information society;

(f) development of competitive industrial, mining and energy sectors, while encouraging private sector involvement and development;

(g) trade development, including the promotion of fair trade;

(h) development of business, finance and banking; and other service sectors;

(i) tourism development;

(j) development of scientific, technological and research infrastructure and services; including the enhancement, transfer and absorption of new technologies;

(k) the strengthening of capacities in productive areas, especially in public and private sectors; and.

(l) the promotion of traditional knowledge.

SECTION 2

SOCIAL AND HUMAN DEVELOPMENT

ARTICLE 25

Social sector development

1. Cooperation shall support ACP States' efforts at developing general and sectoral policies and reforms which improve the coverage, quality of and access to basic social infrastructure and services and take account of local needs and specific demands of the most vulnerable and disadvantaged, thus reducing the inequalities of access to these services. Special attention shall be paid to ensuring adequate levels of public spending in the social sectors. In this context, cooperation shall aim at:

(a) improving education and training, and building technical capacity and skills;

(b) improving health systems and nutrition, eliminating hunger and malnutrition, ensuring adequate food supply and security;

(c) integrating population issues into development strategies in order to improve reproductive health, primary health care, family planning; and prevention of female genital mutilation;

(d) Promoting the fight against:

- HIV/AIDS*, ensuring the protection of sexual and reproductive health and rights of women;*

- other poverty-related diseases, particularly Malaria and Tuberculosis;

(e) increasing the security of household water and improving access to safe water and adequate sanitation;

(f) improving the availability of affordable and adequate shelter for all through supporting low-cost and low-income housing programs and improving urban development; and

(g) encouraging the promotion of participatory methods of social dialogue as well as respect for basic social rights.

2. Cooperation shall also support capacity-building in social areas such as programmes for training in the design of social policies and modern methods for managing social projects and programmes; policies conducive to technological innovation and research; building local expertise and promoting partnerships; and round-table discussions at national and/or regional level.

3. Cooperation shall promote and support the development and implementation of policies and of systems of social protection and security in order to enhance social cohesion and to promote self-help and community solidarity. The focus of the support shall, inter-alia, be on developing initiatives based on economic solidarity, particularly by setting-up social development funds adapted to local needs and actors.

ARTICLE 26

Youth issues

Cooperation shall also support the establishment of a coherent and comprehensive policy for realising the potential of youth so that they are better integrated into society to achieve their full potential. In this context, cooperation shall support policies, measures and operations aimed at:

(a) protecting the rights of children and youth, especially those of girl children;

(b) promoting the skills, energy, innovation and potential of youth in order to enhance their economic, social and cultural opportunities and enlarge their employment opportunities in the productive sector;

(c) helping community-based institutions to give children the opportunity to develop their physical, psychological, social and economic potential;

(d) reintegrating into society children in post-conflict situations through rehabilitation programmes; and

(e) promoting the active participation of young citizens in public life and fostering student exchanges and interaction of ACP and EU Youth organisations.

SECTION 3

REGIONAL COOPERATION AND INTEGRATION

ARTICLE 28

General approach

Cooperation shall provide effective assistance to achieve the objectives and priorities which the ACP States have set themselves in the context of regional and sub-regional cooperation and integration, including inter-regional and intra-ACP cooperation. Regional Cooperation ~~can~~ *may also involve non-ACP developing countries as well as*[5] Overseas Countries and Territories (OCTs) and outermost regions. In this context, cooperation support shall aim to:

[5] **Council – Commission Declaration**: The implementation of these provisions (regarding regional cooperation where non-ACP countries are involved) depends on the implementation of equivalent provisions in the framework of the EC financial instruments on cooperation with other countries and regions of the world. The Union will inform the ACP Group upon the entry into force of these equivalent provisions.

(a) foster the gradual integration of the ACP States into the world economy;

(b) accelerate economic cooperation and development both within and between the regions of the ACP States;

(c) promote the free movement of persons, goods, services, capital, labour and technology among ACP countries;

(d) accelerate diversification of the economies of the ACP States; and coordination and harmonisation of regional and sub-regional cooperation policies; and

(e) promote and expand inter and intra-ACP trade and with third countries.

ARTICLE 29

Regional economic integration

Cooperation shall, in the area of regional economic integration, support:

(a) developing and strengthening the capacities of:

(i) regional integration institutions and organisations set up by the ACP States *and those with ACP State participation that*[6] ~~to promote~~ regional cooperation and integration, and

(ii) national governments and parliaments in matters of regional integration;

(b) fostering participation of Least Developed Countries (LDC) ACP States in the establishment of regional markets and sharing the benefits therefrom;

(c) implementation of sectoral reform policies at regional level;

(d) liberalisation of trade and payments;

(e) promoting cross-border investments both foreign and domestic, and other regional or sub-regional economic integration initiatives; and

(f) taking account of the effects of net transitional costs of regional integration on budget revenue and balance of payments.

ARTICLE 30

Regional Cooperation

1. Cooperation shall, in the area of regional cooperation, support a wide variety of functional and thematic fields which specifically address common problems and take advantage of scale of economies, including:

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6 **See declaration** (footnote 5)

(a) infrastructure particularly transport and communications and safety thereof and services, including the development of regional opportunities in the area of Information and Communication Technologies (ICT);

(b) the environment; water resource management and energy;

(c) health, education and training;

(d) research and technological development;

(e) regional initiatives for disaster preparedness and mitigation; and

(f) other areas, including arms control, action against drugs, organised crimes, money laundering, bribery and corruption.

2. Cooperation shall also support inter and intra-ACP cooperation schemes and initiatives*, including those involving non-ACP developing countries*[7].

3. Cooperation shall help promote and develop a regional political dialogue in areas of conflict prevention and resolution; human rights and democratisation; exchange, networking, and promotion of mobility between the different actors of development, in particular in civil society.

TITLE II

ECONOMIC AND TRADE COOPERATION

CHAPTER 4

TRADE IN SERVICES

ARTICLE 43

Information and Communication Technologies, and Information Society

1. The Parties recognise the important role of information and communication technologies, as well as the active participation in the Information Society, as a pre-requisite for the successful integration of the ACP countries into the world economy.

2. They therefore reconfirm their respective commitments under existing multilateral agreements, in particular the protocol on Basic Telecommunications attached to the GATS, and invite those ACP countries, which are not yet members of these agreements, to accede to them.

3. They furthermore agree to participate fully and actively in any future international negotiation, which might be conducted in this area.

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[7] **See declaration** (footnote 5)

4. The Parties will therefore take measures that will enable inhabitants of ACP countries easy access to information and communication technologies, through, amongst other, the following measures:

– the development and encouragement of the use of affordable renewable energy resources;

– the development and deployment of more extensive low-cost wireless networks; and

- *the development and encouragement of the use of local content for Information and Communication Technologies.*

5. The Parties also agree to step up cooperation between them in the area of information and communication technologies, and the Information Society. This cooperation shall, in particular, be directed towards greater complementarity and harmonisation of communication systems, at national, regional and international level and their adaptation to new technologies.

PART 4

DEVELOPMENT FINANCE COOPERATION

TITLE I

GENERAL PROVISIONS

CHAPTER 1

OBJECTIVES, PRINCIPLES, GUIDELINES AND ELIGIBILITY

ARTICLE 58

Eligibility for financing

1. The following entities or bodies shall be eligible for financial support provided under the Agreement:

(a) ACP States;

(b) regional or inter-State bodies to which one or more ACP States belong, *including bodies with non-ACP State members*[8], which are authorised by those *ACP* States; and

(c) joint bodies set up by the ACP States and the Community to pursue certain specific objectives.

[8] **See declaration** (footnote 5)

2. Subject to the agreement of the ACP State or ACP States concerned, the following shall also be eligible for financial support:

(a) national and/or regional public or semi-public agencies *and* departments of ~~or local authorities of~~ ACP States *including Parliaments* and, in particular, their financial institutions and development banks;

(b) companies, firms and other private organisations and private operators of ACP States;

(c) enterprises of a Community Member State to enable them, in addition to their own contribution, to undertake productive projects in the territory of an ACP State;

(d) ACP or Community financial intermediaries providing, promoting and financing private investments in ACP States;

(~~ee~~) ~~agents of decentralised cooperation and other non-State actors from the ACP States and from the Community~~ *local decentralised authorities from ACP States and the Community* [9]*; and*

(f) developing countries that are not part of the ACP Group where they participate in a joint initiative or regional organisation with ACP States. [10]

3. Non-state actors from ACP States and the Community, which have a local character, shall be eligible for financial support provided under the Agreement, according to the modalities agreed in the national and regional indicative programmes.

TITLE II

FINANCIAL COOPERATION

CHAPTER 3

SUPPORT IN CASES OF SHORT-TERM FLUCTUATIONS IN EXPORT EARNINGS

ARTICLE 68

1. The Parties recognise that instability of export earnings, particularly in the agricultural and mining sectors, may adversely affect the development of the ACP States and jeopardise the attainment of their development requirements. A system of additional support in order to mitigate the adverse effects of any instability in export earnings, including in the agricultural and mining sectors, is therefore set up within the financial envelope for support to long-term development.

2. The purpose of support in cases of short-term fluctuations in export earnings is to safeguard *socio-economic* ~~macroeconomic and sectoral~~ reforms and policies that

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[9] **See Declaration** (footnote 1)

[10] **See declaration** (footnote 5)

could be affected negatively ~~are at risk~~ as a result of a drop in revenue and *to* remedy the adverse effects of instability of export earnings, in particular from agricultural and mining products.

3. The extreme dependence of the ACP States' economies on exports, in particular from the agricultural and mining sectors, shall be taken into account in the allocation of resources in the year of application. In this context, the least developed, landlocked and island, *post-conflict and post natural disaster* ACP States shall receive more favourable treatment.

4. The additional resources shall be provided in accordance with the specific modalities of the support mechanism as set out in Annex II on Terms and Conditions of Financing.

5. The Community shall also provide support for market based insurance schemes designed for ACP States seeking to protect themselves against the risk of fluctuations in export earnings.

PART 5

GENERAL PROVISIONS FOR THE LEAST-DEVELOPED, LANDLOCKED AND ISLAND ACP STATES (LDLICs)

CHAPTER 4

ISLAND ACP STATES

ARTICLE 89

1. ~~Specific provisions and measures shall be established to support island ACP States in their efforts to overcome the natural and geographical difficulties and other obstacles hampering their development so as to enable them to step up their respective rates of development.~~

Specific actions shall be pursued to support island ACP states in their efforts to halt and reverse their increasing vulnerability caused by new and severe economic, social and ecological challenges. These actions shall seek to advance the implementation of the small island developing states priorities for sustainable development, while promoting a harmonised approach to their economic growth and human development.

2. The list of island ACP States is given in Annex VI. It may be amended by decision of the Council of Ministers when a third State in a comparable situation accedes to the Agreement.

PART 6

FINAL PROVISIONS

ARTICLE 96

Essential elements: consultation procedure and appropriate measures

as regards human rights, democratic principles and the rule of law

1. Within the meaning of this Article, the term "Party" refers to the Community and the Member States of the European Union, of the one part, and each ACP State, of the other part.

2. Both parties agree to exhaust all possible options for dialogue under Article 8, except in cases of special urgency, prior to commencement of the consultations referred to in paragraph 3 (a) of the present Article.

~~2~~.3

(a) If, despite the political dialogue ~~conducted regularly between the Parties~~ *on the essential elements as provided for under Articles 8 and paragraph (2) of the present Article*, a Party considers that the other Party ~~has failed~~ *fails* to fulfil an obligation stemming from respect for human rights, democratic principles and the rule of law referred to in paragraph 2 of Article 9, it shall, except in cases of special urgency, supply the other Party and the Council of Ministers with the relevant information required for a thorough examination of the situation with a view to seeking a solution acceptable to the Parties. To this end, it shall invite the other Party to hold consultations that focus on the measures taken or to be taken by the party concerned to remedy the situation *in accordance with Annex VII.*

The consultations shall be conducted at the level and in the form considered most appropriate for finding a solution.

The consultations shall begin no later than ~~15~~ *30* days after the invitation and shall continue for a period established by mutual agreement, depending on the nature and gravity of the violation. In any case, the *dialogue under the* consultation~~s~~ *procedure* shall last no longer than ~~60~~ *120* days.

If the consultations do not lead to a solution acceptable to both Parties, if consultation is refused, or in cases of special urgency, appropriate measures may be taken. These measures shall be revoked as soon as the reasons for taking them have disappeared.

(b) The term "cases of special urgency" shall refer to exceptional cases of particularly serious and flagrant violation of one of the essential elements referred to in paragraph 2 of Article 9, that require an immediate reaction.

The Party resorting to the special urgency procedure shall inform the other Party and the Council of Ministers separately of the fact unless it does not have time to do so.

(c) The "appropriate measures" referred to in this Article are measures taken in accordance with international law, and proportional to the violation. In the selection of these measures, priority must be given to those which least disrupt the application of this agreement. It is understood that suspension would be a measure of last resort.

If measures are taken in cases of special urgency, they shall be immediately notified to the other Party and the Council of Ministers. At the request of the Party concerned, consultations may then be called in order to examine the situation thoroughly and, if possible, find solutions. These consultations shall be conducted according to the arrangements set out in the second and third subparagraphs of paragraph (a).

ARTICLE 97

Consultation procedure and appropriate measures

as regards corruption

1. The Parties consider that when the Community is a significant partner in terms of financial support to economic and sectoral policies and programmes, serious cases of corruption should give rise to consultations between the Parties.

2. In such cases either Party may invite the other to enter into consultations. Such consultations shall begin no later than ~~21~~ *30* days after the invitation and *dialogue under* the consultation~~s~~ *procedure* shall last no longer than ~~60~~ *120* days.

3. If the consultations do not lead to a solution acceptable to both Parties or if consultation is refused, the Parties shall take the appropriate measures. In all cases, it is above all incumbent on the Party where the serious cases of corruption have occurred to take the measures necessary to remedy the situation immediately. The measures taken by either Party must be proportional to the seriousness of the situation. In the selection of these measures, priority must be given to those which least disrupt the application of this agreement. It is understood that suspension would be a measure of last resort.

4. Within the meaning of this Article, the term "Party" refers to the Community and the Member States of the European Union, of the one part, and each ACP State, of the other part.

REVISION OF THE COTONOU AGREEMENT

Consolidated changes to Annex I of the Agreement

Note:

- Agreement on new texts: <u>underlined</u>

ANNEX I

FINANCIAL PROTOCOL

1. For the purposes set out in this Agreement and for a period of five years commencing 1 March 2000, the overall amount of the Community's financial assistance to the ACP States shall be EUR 15 200 million.

2. The Community's financial assistance shall comprise an amount up to EUR 13 500 million from the 9th European Development Fund (EDF).

3. The 9th EDF shall be allocated between the instruments of cooperation as follows:

(a) EUR 10 000 million in the form of grants shall be reserved for an envelope for support for long-term development. This envelope shall be used to finance national indicative programmes in accordance with Articles 1 to 5 of Annex IV "Implementation and management procedures" to this Agreement. From the envelope for support for long-term development :

(i) EUR 90 million shall be reserved for the financing of the budget of the Centre for the Development of Enterprise (CDE);

(ii) EUR 70 million shall be reserved for the financing of the budget of the Centre for the Development of Agriculture (CTA); and

(iii) an amount not exceeding EUR 4 million shall be reserved for the purposes referred to in Article 17 of this Agreement (Joint Parliamentary Assembly).

(b) EUR 1 300 million in the form of grants shall be reserved for the financing of support for regional cooperation and integration of the ACP States in accordance with Articles 6 to 14 of Annex IV "Implementation and management procedures" to this Agreement.

(c) EUR 2 200 million shall be allocated to finance the Investment Facility according to the terms and conditions set out in Annex II "Terms and conditions of financing" to this Agreement without prejudice to the financing of the interest rate subsidies provided for in Articles 2 and 4 of Annex II to this Agreement funded from the resources mentioned in paragraph 3(a) of this Annex.

4. An amount of up to EUR 1 700 million shall be provided from the European Investment Bank in the form of loans made from its own resources. These resources shall be granted for the purposes set out in Annex II "Terms and conditions of financing" to this Agreement in accordance with the conditions provided for by its statutes and the relevant provisions of the terms and conditions for investment financing as laid down in the aforementioned Annex. The Bank may, from the resources it manages, contribute to the financing of regional projects and programmes.

5. Any balances remaining from previous EDFs on the date of entry into force of this Financial Protocol, as well as any amounts that shall be decommitted at a later date

from ongoing projects under these Funds, shall be transferred to the 9th EDF and shall be used in accordance with the conditions laid down in this Agreement. Any resources thus transferred to the 9th EDF that previously had been allocated to the indicative programme of an ACP State or region shall remain allocated to that State or region. The overall amount of this Financial Protocol, supplemented by the transferred balances from previous EDFs, will cover the period of 2000 – 2007.

6. The Bank shall administer the loans made from its own resources, as well as the operations financed under the Investment Facility. All other financial resources of this Agreement shall be administered by the Commission.

7. Before the expiry of this Financial Protocol, the Parties shall assess the degree of realisation of commitments and disbursements. This assessment shall constitute the basis for re-evaluating the overall amount of resources as well for evaluating the need for new resources to support financial cooperation under this Agreement.

8. In the event of the funds provided for in any of the instruments of the Agreement being exhausted before the expiry of this Financial Protocol, the joint ACP-EC Council of Ministers shall take the appropriate measures.

9. By derogation to Article 58 of this Agreement, an amount of 90 million euro is transferred to the intra ACP envelope under the 9th EDF. This amount can be allocated to finance devolution for the period 2006-2007, and is managed directly by the Commission.

REVISION OF THE COTONOU AGREEMENT

New Annex I bis to be added to the Cotonou Agreement

Note:

- Agreement on new texts: <u>underlined</u>

ANNEXE I BIS [11]

Multi-annual financial framework of cooperation in the framework of the revised Cotonou Agreement

1 For the purposes set out in this agreement and for a period commencing from 1st March 2005, the new multi-annual financial framework of cooperation would cover commitments starting from 01 January 2008 for a period of five or six years.

2. For this new period, the European Union will maintain its aid effort to ACP Countries at least at the same level as that of the 9th EDF, not including balances; to this should be added, based on Community estimates, the effects of inflation, growth within the European Union, and enlargement to 10 new Member States in 2004.

3. Any required amendments to the multi-annual financial framework or relative parts of the Agreement will be decided by the ACP-EC Council of Ministers by derogation to article 95 of the present Agreement

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[11] **Declarations *by the Union*:**

1. The European Union undertakes to propose at the earliest opportunity, if at all possible by September 2005, an exact amount for the multiannual financial framework for cooperation under the revised Cotonou Agreement and its period of application.

2. The minimum aid effort referred to in paragraph 2 of Annex I bis is guaranteed, without prejudice to the eligibility of the ACP countries for additional resources under other financial instruments which already exist or, potentially, may be created in support of actions in areas such as emergency humanitarian aid, food security, poverty-related diseases, support for the implementation of the Economic Partnership Agreements, support for the measures envisaged following the reform of the sugar market, and relating to peace and stability.

3. The deadline for the commitment of funds of the 9th EDF, fixed at 31 December 2007, could be reviewed if necessary.

REVISION OF THE COTONOU AGREEMENT

Consolidated changes to Annex II of the Cotonou Agreement

Note:

- Agreement on new texts: <u>underlined</u>

- Agreement on text to be deleted: ~~strikethrough~~

- Only revised text is included.

ANNEXE II

TERMS AND CONDITIONS OF FINANCING

CHAPTER 1

INVESTMENT FINANCING

ARTICLE 2

Resources of the investment facility

1. The resources of the Facility may be used, *inter alia,* to:

(a) provide risk capital in the form of:

(i) equity participation in ACP enterprises, including financial institutions;

(ii) quasi-capital assistance to ACP enterprises, including financial institutions; and

(iii) guarantees and other credit enhancements which may be used to cover political and other investment-related risks, both for foreign and local investors or lenders.

(b) provide ordinary loans.

2. Equity participation shall normally be for non-controlling minority holdings and shall be remunerated on the basis of the performance of the project concerned.

3. Quasi-capital assistance may consist of shareholders' advances, convertible bonds, conditional, subordinated and participating loans or any other similar form of assistance. Such assistance may consist in particular of:

(a) conditional loans, the servicing and/or the duration of which shall be linked to the fulfilment of certain conditions with regard to the performance of the project; in the specific case of conditional loans for pre-investment studies or other project-related technical assistance, servicing may be waived if the investment is not carried out;

(b) participating loans, the servicing and/or the duration of which shall be linked to the financial return of the project; and

(c) subordinated loans, which shall be repaid only after other claims have been settled.

4. The remuneration of each operation shall be specified when the loan is made. However:

(a) in the case of conditional or participating loans, the remuneration shall normally comprise a fixed interest rate of not more than 3% and a variable component related to the performance of the project; and

(b) in the case of subordinated loans, the interest rate shall be market related.

5. Guarantees shall be priced so as to reflect the risks insured and the particular characteristics of the operation.

6. The interest rate of ordinary loans shall comprise a reference rate applied by the Bank for comparable loans with the same terms and conditions as to grace and repayment periods and a mark up determined by the Bank.

7. Ordinary loans may be extended on concessional terms and conditions in the following cases:

(a) for infrastructure projects in the Least Developed Countries, in post-conflict countries *and post-natural disaster countries – other than those referred to under (b)* - that are prerequisites for private sector development. In such cases, the interest rate of the loan will be reduced by 3 %;

(b) for infrastructure projects by commercially-run public entities, that are pre-requisites for private sector development in countries subject to restrictive borrowing conditions under the HIPC initiative or another internationally agreed debt sustainability framework. In such cases, the Bank will seek to reduce the average cost of funds through appropriate co-financing with other donors. Should this not be deemed possible, the interest rate of the loan can be reduced by such amount as required to comply with the level arising from the HIPC initiative or a new internationally agreed debt sustainability framework.

(~~b~~)(c) for projects which involve restructuring operations in the framework of privatisation or for projects with substantial and clearly demonstrable social or environmental benefits. In such cases, loans may be extended with an interest rate subsidy the amount and form of which will be decided with respect to the particular characteristics of the project. However, the interest rate subsidy shall not be higher than 3 %.

The final rate of loans falling *under § (a) or § (c)* shall, in any case, never be less than 50% of the reference rate;

8. *The funds to be provided for these concessional purposes will be made available from the Investment Facility. and shall not exceed 5% of the overall amount allocated for investment financing by the Investment Facility and by the Bank from its own resources.*

9. Interest subsidies may be capitalised or may be used in the form of grants. ~~to support project related technical assistance, particularly for financial institutions in the ACP countries.~~ ; *Up to 10% of the budget for interest rate subsidies can be used to support project related technical assistance in ACP countries.*

ARTICLE 3

Operations of the investment facility

1. The Investment Facility shall operate in all economic sectors and support investments of private and commercially run public sector entities, including revenue generating economic and technological infrastructure critical for the private sector. The Facility shall:

(a) be managed as a revolving fund and aim at being financially sustainable. Its operations shall be on market-related terms and conditions and shall avoid creating distortions on local markets and displacing private sources of finances; ~~and~~

(b) *support the ACP financial sector and* ~~endeavour~~ have a catalytic effect by encouraging the mobilisation of long-term local resources and attracting foreign private investors and lenders to projects in the ACP States;

(c) bear part of the risk of the projects it funds. Its financial sustainability being ensured through the portfolio as a whole and not from individual interventions; and

(d) seek to channel funds through ACP national and regional institutions and programs that promote the development of small-and medium-sized enterprises (SMEs).

2. *The Bank will be remunerated for the cost incurrred in managing the Investment Facility. For the first two years after the entering into force of the second financial protocol this will be up to an amount of 2% p.a. of the total initial endowment of the Investment Facility. Thereafter, the remuneration of the Bank will include a fixed component of 0.5% p.a. of the initial endowment and a variable component of an amount of up to 1.5% p.a. of the portfolio of the Investment Facility that is invested in projects in ACP countries. The remuneration will be financed out of the Investment Facility*.

~~2.~~3. On expiry of the Financial Protocol, and in the absence of a specific decision by the Council of Ministers, the cumulative net reflows to the Investment Facility shall be carried over to the next Protocol.

ARTICLE 4

Bank own resource loans

1. The Bank shall:

(a) contribute, through the resources it manages, to the economic and industrial development of the ACP States on a national and regional basis; and to this end, finance as a priority productive projects and programmes or other investments aimed at promoting the private sector in all economic sectors;

(b) establish close cooperation links with national and regional development banks and with banking and financial institutions of the ACP States and of the EU; and

(c) in consultation with the ACP State concerned, adapt the arrangements and procedures for implementing development finance cooperation, as set out in this Agreement, if necessary, to take account of the nature of the projects and programmes and to act in accordance with the objectives of this Agreement, within the framework of the procedures laid down by its statute.

2. Loans from the Bank's own resources shall be granted under the following terms and conditions:

(a) the reference rate of interest shall be the rate applied by the Bank for a loan with the same conditions as to currency, and repayment period on the day of signature of the contract or on the date of disbursement;

(b) however :

(i) in principle, public sector projects shall be eligible for an interest rate subsidy of 3%;

(ii) private sector projects falling into the categories specified in Article *2(7)(c)* shall be eligible for interest rates subsidies on the same terms as those specified in Article *2(7)(c).*

. The final interest rate shall, in any case, never be less than 50% of the reference rate.

(c) the amount of the interest rate subsidy calculated in terms of its value at the times of disbursement of the loan shall be charged against the interest subsidy allocation of the ,Investment Facility as defined in Article 2(8) and 2(9), and paid directly to the Bank; and

(d) the repayment period of loans made by the Bank from its own resources shall be determined on the basis of the economic and financial characteristics of the project, but may not exceed 25 years. These loans shall normally comprise a grace period fixed by reference to the construction period of the project.

3. For investments financed by the Bank from its own resources in public sector companies, specific project-related guarantees or undertakings may be required from the ACP State concerned.

ARTICLE 5

Conditions for foreign exchange rate risk

In order to minimise the effects of exchange rate fluctuations, the problems of exchange rate risk shall be dealt with in the following way:

(a) in the case of equity participation designed to strengthen an enterprise's own funds, the exchange rate risk shall, as a general rule, be borne by the Investment Facility;

(b) in the case of *ordinary loans and* risk capital financing for small-and medium-sized enterprises (SMEs), the exchange rate risk shall, as a general rule, be shared by the Community, on the one part, and by the other parties involved, on the other. On average, the foreign exchange rate risk should shall be shared equally; and

(c) where feasible and appropriate, particularly in countries characterised by macroeconomic and financial stability, the Facility will endeavour to extend loans in local ACP currencies, thus de facto taking the foreign exchange risk.

ARTICLE 6bis

Annual reporting on the Investment Facility

Representatives of the EU Member States responsible for the Investment Facility, Representatives of ACP States, as well as the European Investment Bank, the European Commission, the EU Council secretariat and the ACP secretariat shall meet annually to discuss the operations, performance and policy questions concerning the Investment Facility.

ARTICLE 6ter

Review of performance of the Investment Facility

The overall performance of the Investment Facility shall be subject to a joint review at the mid and end-term of a financial protocol. Such an exercise may include recommendation

COTONOU AGREEMENT

REVISION OF ANNEX IV

Updated: 1 March 2005

- New text agreed on is underlined

- Deleted text is struck through (~~xxxx~~)

This document contains only provisions that have been amended. Use the table of contents to see where the amendments come in the Agreement (amended chapters are highlighted with bold and italics).

CHAPTER 1

PROGRAMMING (NATIONAL)

ARTICLE 3

Resource allocation

1. Resource allocation shall be based on needs and performance, as defined in this Agreement. In this context:

(a) needs shall be assessed on the basis of criteria pertaining to per capita income, population size, social indicators and level of indebtedness, export earning losses and dependence on export earnings, in particular in the sectors of agriculture and mining. Special treatment shall be accorded to the least developed ACP States and the vulnerability of island and landlocked states shall duly be taken into account. In addition, account shall be taken of the particular difficulties of countries *dealing with the aftermath of conflict or natural disaster*; and

(b) performance shall be assessed in an objective and transparent manner on the basis of the following parameters: progress in implementing institutional reforms, country performance in the use of resources, effective implementation of current operations, poverty alleviation or reduction, sustainable development measures and macroeconomic and sectoral policy performance.

2. The allocated resources shall comprise two elements:

(a) an allocation to cover macroeconomic support, sectoral policies, programmes and projects in support of the focal or non-focal areas of Community assistance; and

(b) an allocation to cover unforeseen needs such as emergency assistance where such support cannot be financed from the EU budget, contributions to internationally agreed debt relief initiatives and support to mitigate adverse effects of instability in export earnings.

3. This indicative amount shall facilitate the long-term programming of Community aid for the country concerned. Together with the uncommitted balances of resources allocated to the country under previous EDFs, and wherever possible Community budget resources, these allocations shall be the basis for the preparation of the indicative programme for the country concerned.

4. Provision will be made for those countries which, due to exceptional circumstances, cannot access normal programmable resources.

5. Without prejudice to Article 5(7) concerning reviews, the Community may, in order to take account of special needs or exceptional performance, increase a country's allocation.[12]

[12] EU-ACP declaration: "special needs" are needs resulting from exceptional or unforeseen circumstances, such as post-crisis situations. "Exceptional performance" means a situation in

ARTICLE 4

Preparation and adoption of the indicative programme

1. Upon receipt of the information referred to above, each ACP State shall draw up and submit to the Community a draft indicative programme on the basis of and consistent with its development objectives and priorities as expressed in the CSS. The draft indicative programme shall contain:

(a) the focal sector, sectors or areas on which support should be concentrated;

(b) the most appropriate measures and operations for attaining the objectives and targets in the focal sector, sectors or areas;

(c) the resources reserved for ~~projects and programmes~~*programmes and projects* outside the focal sector(s) and/or the broad outlines of such activities, as well as an indication of the resources to be deployed for each of these elements;

(d) *the* types of non-state actors eligible *for funding, in accordance with the criteria laid down by the Council of Ministers,* ~~and~~ the resources allocated for non-state actors *and the type of activities to be supported, which must be not-for-profit*;

(e) proposals for regional ~~projects and programmes~~*programmes and projects*; and

(f) a reserve for insurance against possible claims and to cover cost increases and contingencies.

2. The draft indicative programme shall, as appropriate, contain the resources reserved to reinforce human, material and institutional ACP capacity for preparing and implementing national and regional indicative programmes and for improving the management of the ACP States' public investment projects cycle.

3. The draft indicative programme shall be the subject of an exchange of views between the ACP State *concerned and the Community*. The indicative programme shall be adopted by common agreement between *the Commission on behalf of* the Community and the ACP State concerned. It shall, when adopted, be binding on both the Community and that State. This indicative programme shall be annexed to the CSS and shall in addition contain:

(a) specific and clearly identified operations, especially those that can be committed before the next review;

(b) a timetable for implementation and review of the indicative programme, including commitments and disbursements of resources; and

(c) the parameters and criteria for the reviews.

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which, outside the mid-term and end-of-term reviews, a country's allocation is totally committed and additional funding from the national indicative programme can be absorbed against a background of effective poverty-reduction policies and sound financial management.

4. The Community and the ACP State concerned shall take all necessary measures to ensure that the programming process is completed within the shortest possible time and, save in exceptional circumstances, within twelve months of the signing of the Financial Protocol. In this context, the preparation of the CSS and the indicative programme must be part of a continuous process leading to the adoption of a single document.

5. When an ACP State faces a crisis situation as the result of a war or other conflict, or exceptional circumstances with a comparable effect, preventing the National Authorising Officer from carrying out his duty, the Commission may itself manage the resources allocated to the State in question in accordance with Article 3 and use it for special support. Special support may concern peace-building policies, conflict management and resolution, post-conflict support, including institution-building, economic and social-development activities, taking particular account of the needs of the most vulnerable sections of the population. The Commission and the ACP State concerned must revert to normal implementation and normal management procedures as soon as the authorities responsible for managing cooperation are able to do so once more.

ARTICLE 5

Review process

1. Financial cooperation between the ACP State and the Community shall be sufficiently flexible to ensure that operations are kept constantly in line with the objectives of this Agreement and to take account of any changes occurring in the economic situation, priorities and objectives of the ACP State concerned. In this context, the National Authorizing Officer and the ~~*Head of Delegation*~~*Commission* shall:

(a) annually undertake an operational review of the indicative programme; and

(b) undertake a mid-term and end-of-term review of the CSS and the indicative programme in the light of current needs and performance.

2. In exceptional circumstances referred to in the provisions on humanitarian and emergency assistance, the review can be carried out on the demand of either Party.

3. The National Authorising Officer and ~~the Head of Delegation~~ *the Commission* shall:

(a) take all necessary measures to ensure adherence to the provisions of the indicative programme, including ensuring that the timetable of commitments and disbursements agreed at the time of programming is adhered to; and

(b) determine any causes of delay in implementation and propose suitable measures to remedy the situation.

4. The annual operational review of the indicative programme shall consist of a joint assessment of the implementation of the programme and take into account the results of relevant activities of monitoring and evaluation. This review shall be conducted

locally and shall be finalised between the National Authorizing Officer and ~~Head of Delegation~~*the Commission* within a period of 60 days. It shall in particular cover an assessment of:

(a) the results achieved in the focal sector(s) measured against the identified targets and impact indicators and sectoral policy commitments;

(b) ~~projects and programmes~~ *programmes and projects* outside the focal sector(s) ~~and/or in the framework of multi-annual programmes~~;

(c) the use of resources set aside for non-state actors;

(d) the effectiveness of implementation of current operations and the extent to which the timetable for commitments and payments has been respected; and

(e) an extension of the programming perspective for the following years.

5. The National Authorising Officer and ~~Head of Delegation~~ *the Commission* shall submit a report on the conclusions of the operational review to the Development Finance Cooperation Committee within 30 days. The Committee shall examine the report in accordance with its responsibilities and powers under the Agreement.

6. In the light of the annual operational reviews, *the Commission and* the National Authorising Officer ~~Head of Delegation~~ may at the mid-term and end-of-term reviews, and within the above time frames, review and adapt the CSS:

(a) where the operational reviews indicate specific problems; and/or

(b) in the light of changed circumstances of an ACP State.

These reviews shall be completed within 30 days of the finalisation of the mid-term and end-of-term reviews. The final review of the Financial Protocol shall also include adjustments for the new financial protocol in terms of both resource allocation and preparation for the next programme.

7. Following the completion of the mid-term and end-of-term reviews, *the Commission* may, *on behalf of the Community*, revise the resource allocation in the light of current needs and performance of the ACP State concerned.

CHAPTER 2

PROGRAMMING AND PREPARATION (REGIONAL)

ARTICLE 6

Participation

1. Regional cooperation shall cover operations benefiting and involving:

(a) two or more or all ACP States *as well as any non-ACP developing countries participating in these operations*[13] and/or

(b) a regional body of which at least two ACP States are members, *including those with members which are non-ACP countries*.[14]

2. Regional cooperation can also involve Overseas Countries and Territories and outermost regions. The funding to enable participation of these territories shall be additional to funds allocated to the ACP States under the Agreement.

ARTICLE 9

Resource allocation

1. At the beginning of the period covered by the Financial Protocol, each region shall receive from the Community an indication of the volume of resources from which it may benefit during a five-year period. The indicative resource allocation shall be based on an estimate of needs and the progress and prospects in the process of regional co-operation and integration. In order to achieve an adequate scale and to increase efficiency, regional and national funds may be mixed for financing regional operations with a distinct national component.

2. Without prejudice to Article 11 concerning reviews, the Community may, in order to take account of new needs or exceptional performance, increase a region's allocation.[15]

ARTICLE 10

Regional indicative programme

1. On the basis of the resource allocation indicated above, the duly mandated regional organisation(s), or in the absence of such a mandate, the National Authorising Officers of the countries in the region, shall draw up a draft Regional Indicative Programme. In particular, the draft programme shall specify:

(a) the focal sectors and themes of Community aid;

(b) the most appropriate measures and operations to achieve the objectives set for those sectors and themes; and

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13 *Council-Commission Declaration: Implementation of these provisions (concerning regional cooperation involving non-ACP countries) will be subject to the implementation of equivalent provisions in the rules governing the Community's financial instruments for cooperation with other countries and regions. The EU will inform the ACP Group when these equivalent provision are implemented.*

14 *See declaration (footnote 2).*

15 *EU-ACP declaration: "new needs" are needs resulting from exceptional or unforeseen circumstances, such as post-crisis situations. "Exceptional performance" means a situation in which, outside the mid-term and end-of-term reviews, a region's allocation is totally committed and additional funding from the regional indicative programme can be absorbed against a background of effective regional-integration policies and sound financial management.*

(c) the ~~projects and programmes~~ *programmes and projects* enabling those objectives to be attained, insofar as they have been clearly identified as well as an indication of the resources to be deployed for each of these elements and a timetable for their implementation.

2. The Regional Indicative Programmes shall be adopted by common agreement between the Community and the ACP States concerned.

ARTICLE 12

Intra-ACP cooperation

1. At the beginning of the period covered by the Financial Protocol, the Community shall indicate to the ACP Council of Ministers the part of the funds earmarked for regional operations that shall be set aside for operations that benefit many or all ACP States. Such operations may transcend the concept of geographic location.

2. The Community may, in order to take account of new needs for increasing the impact of intra-ACP activities, increase the allocation for intra-ACP cooperation[16].

[16] *EU-ACP Declaration: "New needs" are needs which may arise from exceptional or unforeseen circumstances, such as those arising from new commitments to international initiatives or to address challenges which are common to ACP countries.*

ARTICLE 13

Requests for financing

1. Requests for financing of regional programmes shall be submitted by:

(a) a duly mandated regional body or organisation; or

(b) a duly mandated *sub*-regional body or organisation or an ACP State in the region concerned at the programming stage, provided that the operation has been identified in the RIP.

2. Requests for financing of intra-ACP programmes shall be submitted by:

(a) at least 3 duly mandated regional bodies or organisations belonging to different geographic regions, or *at least two ACP States* ~~the National Authorising Officers of~~ *from each* of the *three* regions; or

(b) the ACP Council of Ministers, or~~, by specific delegation,~~ the ACP Committee of Ambassadors; or

(c) international organisations carrying out operations that contribute to the objectives of regional cooperation and integration, *such as the African Union,* subject to prior approval by the ACP Committee of Ambassadors.[17]

[17] **ACP-EU Declaration:** '*In view of the particular geographic situation of the Caribbean and Pacific regions, the ACP Council of Ministers or the ACP Committee of Ambassadors may, notwithstanding subparagraph 2(a) of the present Article, present a specific funding request for one or the other of these regions.*

ARTICLE 14

Procedures for implementation

~~1. Regional programmes shall be implemented by the requesting body or any other duly authorised institution or body.~~

~~2. Intra-ACP programmes shall be implemented by the requesting body or their duly authorised agent. In the absence of a duly authorised implementing body, and without prejudice to ad hoc projects and programmes managed by the ACP Secretariat, the Commission shall be responsible for the implementation of intra-ACP operations.~~

~~3~~*1* Account being taken of the objectives and inherent characteristics of regional cooperation, *including intra-ACP cooperation,* operations undertaken in this sphere shall be governed by the procedures established for development finance cooperation where applicable.

2. In particular and subject to paragraphs 3 and 4, any regional programme or project financed from the Fund shall give rise to:

(a) either, in accordance with Article 17, a financing agreement drawn up between the Commission and the bodies mentioned in Article 13; in such cases, the relevant body shall designate a Regional Authorising Officer whose duties correspond mutatis mutandis with those of the National Authorising Officer;

(b) or a grant contract as defined in Article xx drawn up between the Commission and the bodies mentioned in Article 13, depending on the nature of the measure and where the relevant body, other than an ACP State, is responsible for carrying out the programme or project.

3. Programmes and projects financed from the Fund and for which requests for financing have been presented by international organisations in accordance with Article 13(2)(c) shall give rise to the drawing up of a grant contract

4. Programmes and projects financed from the Fund for which requests for financing have been presented by the ACP Council of Ministers or Committee of Ambassadors shall be implemented either by the ACP Group Secretariat, in which case a financing agreement is drawn up between the Commission and the Secretariat in accordance with Article 17, or by the Commission, depending on the nature of the action.

CHAPTER III

APPRAISAL AND FINANCING ~~Project implementation~~

ARTICLE 15

~~Project~~ Identification, preparation and appraisal *of programmes and projects*

1. ~~Projects and programmes~~ *Programmes and projects* that have been presented by the ACP State *concerned* shall be subject to joint appraisal. The ACP-EC Development Finance Cooperation Committee shall develop the general guidelines and criteria for appraisal of ~~projects and programmes~~ *programmes and projects*. *These programmes and projects are generally multi-annual and can incorporate a whole range of actions of a limited size in a particular area.*

2. ~~Project or programme~~ *Programme and project* dossiers prepared and submitted for financing must contain all information necessary for the appraisal of the ~~projects or programmes~~ *programmes and projects* or, where such ~~projects and programmes~~ *programmes and projects* have not been completely defined, provide the broad outlines necessary for their appraisal. ~~Such dossiers shall be officially transmitted to the Community by the ACP States or the other eligible beneficiaries in accordance with this Agreement.~~

3. ~~Project and programme~~*Programme and project* appraisal shall take due account of national human resource constraints and ensure a strategy favourable to the promotion of such resources. It shall also take into account the specific characteristics and constraints of each ACP State.

4. Programmes and projects to be implemented by non-state actors which are eligible in accordance with this Agreement may be appraised by the Commission alone and give rise to the establishment of grant contracts between the Commission and non-state actors in accordance with Article xx. This appraisal should comply with Article 4(1)(d) regarding the types of actors, their eligibility and the type of activity to be supported. The Commission, through the Head of Delegation, shall inform the National Authorising Officer of such allocated grants.

ARTICLE 16

Financing proposal and decision

1. The conclusions of the appraisal shall be summarised in a financing proposal*, the final version of which shall be* drawn up by the ~~Community~~ Commission in close collaboration with the ACP State concerned. ~~This financing proposal shall be submitted for approval by the Commission's decision-making body.~~

~~2. The financing proposal shall contain an advance timetable for the technical and financial implementation of the project or programme, including multi-annual programmes and global allocations for operations of a small financial scale, and shall deal with the duration of the different phases of implementation. The financing proposal shall:~~

~~(a) take into account the comments of the ACP State or States concerned; and~~

~~(b) be forwarded simultaneously to the ACP State or States concerned and the Community.~~

~~3. The Commission shall finalise the financing proposal and forward it, with or without amendment, to the Community's decision-making body. The ACP State or States concerned shall be given an opportunity to comment on any amendment of substance which the Commission intends to make to the document. These comments shall be reflected in the amended financing proposal.~~

~~4~~ *2.* ~~The Community's decision-making body~~*The Commission, acting on behalf of the Community,* shall communicate its *financing* decision *to the ACP State concerned* within ~~120~~ *90* days from the date of ~~communication~~ *finalisation* of the *final version of the* financial proposal. ~~referred to above~~.

~~5~~ *3.* Where the financing proposal is not adopted *by the Commission on behalf of the* Community, the ACP State ~~or States~~ concerned shall be informed immediately of the reasons for that decision. In such a case, the representatives of the ACP State ~~or States~~ concerned may, within 60 days thereafter, request either:

(a) that the matter be referred to the ACP-EC Development Finance Cooperation Committee set up under *this* ~~the~~ Agreement; or

(b) that they be given a hearing *by the Community's representatives.*

~~6~~ *4.* Following such a hearing, a definitive decision to adopt or reject the financing proposal shall be taken by ~~the relevant Community body~~ *the Commission on behalf of the Community. Before any decision is taken,* the ~~The~~ ACP State ~~or States~~ concerned may forward~~, before any decision is taken,~~ *to the Commission* any facts which may appear necessary to supplement the information available to it.

~~7. Multi-annual programmes shall, inter alia, finance training, decentralised operations, micro-projects, trade promotion and trade development, sets of operations of a limited scale in a specific sector, project/programme management support and technical cooperation.~~

~~8. In cases referred to above, the ACP State concerned may submit to the Head of Delegation a multi-annual programme setting out its broad outlines, the types of actions envisaged and the financial commitment proposed:~~

~~(a) the financing decision on each multi-annual programme shall be taken by the Chief Authorising Officer. The letter from the Chief Authorizing Officer to the National Authorizing Officer notifying such decision shall constitute the financing agreement; and~~

~~(b) within the framework of multi-annual programmes thus adopted, the National Authorising Officer or, when the case arises, the agent of decentralised cooperation which has been delegated functions for this purpose or, in appropriate cases, other eligible beneficiaries shall implement each individual action in accordance with the relevant provisions of this Agreement and the terms of the financing agreement referred to above. Where implementation is to be carried out by agents of decentralised cooperation or other eligible beneficiaries, the National Authorising Officer and the Head of Delegation shall maintain financial responsibility and monitor the operations regularly with a view to enabling them, inter alia, to carry out their obligations.~~

~~9. At the end of each year, the National Authorising Officer in consultation with the Head of Delegation, shall forward a report to the Commission on the implementation of the multi-annual programmes.~~

ARTICLE 17

Financing Agreement

1. Save as otherwise provided for in this Agreement, for any ~~project or programme~~ *programme or project* financed ~~by a grant~~ from the Fund, a financing agreement shall be drawn up between the Commission and the ACP State ~~or States~~ concerned. ~~. Where the direct beneficiary is not an ACP State, the Commission shall formalise the financing decision by means of an exchange of letters with the beneficiary concerned.~~

2. The financing agreement shall be drawn up between the Commission and the ACP State ~~or States~~ concerned within 60 days of the decision *taken by the Commission on behalf* of the Community~~'s decision-making body~~. The *financing* agreement shall:

(a) specify, in particular, the details of the ~~Fund's financial commitment~~*Community's financial contribution*, the financing arrangements and terms and the general and specific provisions relating to the ~~project or programme~~*programme or project* concerned ~~and shall also incorporate the advance timetable for the technical implementation of the project or programme contained in the financing proposal;~~ and

(b) make adequate provision for appropriations to cover cost increases and contingencies.

3. ~~Once the financing agreement has been signed, disbursements shall be made in accordance with the financing plan laid down therein.~~ Any unexpended balance left upon closure of ~~the~~ *programme or project* accounts ~~of projects and programmes~~ shall accrue to the ACP State *or States* concerned ~~and shall be so specified in the Fund's books. It may be used in the manner laid down in this Agreement for the financing of projects and programmes.~~

ARTICLE 18

Overrun

1. Once it appears that *there is a risk of* cost over-runs ~~beyond~~ *over and above the financing available under* ~~beyond the limit set in~~ the financing agreement ~~are likely to be incurred~~ the National Authorising Officer shall ~~through the Head of Delegation~~, notify the ~~Chief Authorising Officer accordingly~~ *Commission and request its prior approval on*~~, as well as of~~ the measures which the National Authorising Officer intends to take in order to cover such cost over-runs ~~over the allocated appropriations~~, either by reducing the scale of the *programme or project*~~project or programme~~ or by calling on national or other non-Community resources.

2. *If it is not possible to reduce the scale of the programme or project or to cover the over-runs with other resources, the Commission, acting on behalf of the Community, may, on the basis of a reasoned request from the National Authorising Officer, take an additional financing decision on resources from the national indicative programme.*~~If it is decided by agreement with the Community not to scale down the project or programme or if it is not possible to cover them by other resources, then such over-runs may be financed up to 20% of the financial commitment for the project or programme concerned from the indicative programme.~~

ARTICLE 19

Retroactive financing

1. In order to ensure early project start-up, avoid gaps between sequential projects and prevent delays, the ACP States~~, in agreement with the Commission,~~ may, on completion of project appraisal and before the financing decision is taken

~~(a) issue invitations to tender for all types of contracts, with a suspension clause; and~~

~~(b)~~ pre-finance activities linked to the start-up of programmes, preliminary and seasonal work, orders for equipment with long delivery lead times as well as some on-going operations. Such expenditure must satisfy the procedures provided for in the Agreement.

2. *This provision must be mentioned in the financing proposal and shall be without prejudice to the financing decision taken by the Commission on behalf of the Community.*~~These decisions do not prejudge the powers of the Community's decision-making body.~~

3. Expenditure made by the ACP State in pursuance of this provision shall be retroactively financed under the ~~project or programme~~*programme or project*, once the financing agreement is signed.

CHAPTER 4

~~COMPETITION AND PREFERENCES~~

IMPLEMENTATION

ARTICLE xx[18]

Implementation measures

1. Implementation of programmes and projects financed from the Fund shall, where financial execution is the Commission's responsibility, consist chiefly of the following:

(a) awarding of contracts;

(b) awarding of grants;

(c) performance by direct labour;

[18] ***Joint declaration:*** *In accordance with Article 100 of the Cotonou Agreement, the ACP-EC Council will examine the provisions in Annex IV to the Agreement concerning the awarding and performance of contracts with a view to adopting them before the revised Agreement enters into force.*

(d) direct payments as budgetary support, support for sectoral programmes, debt relief and support to cover short-term fluctuations in export earnings.

2. Procurement contracts are contracts for pecuniary interest concluded in writing in order to obtain, against payment of a price, the supply of movable assets, the execution of works or the provision of services.

3. In the context of this Annex, grants are direct financial contributions awarded by way of a donation in order to finance:

(a) either a measure designed to help achieve an objective of this Agreement or of a programme or project adopted in accordance with this Agreement, or

(b) the functioning of a body which pursues such an objective.

They shall be covered by a written agreement.

ARTICLE zz

Tender procedure with suspension clause

In order to ensure early project start-up, the ACP States may, in all duly substantiated cases and in agreement with the Commission, issue invitations to tender for all types of contracts with a suspension clause, once project appraisal is completed but before the financing decision is taken. Such a provision must be mentioned in the financing proposal.

ARTICLE 20

Eligibility

Save where a derogation is granted in accordance with Article 22, and without prejudice to Article 26:

1) Participation in procedures for the awarding of public procurement contracts or grants financed from the Fund shall be open to all natural and legal persons from ACP States and Member States of the European Community.

2) Supplies and materials purchased under a contract financed from the Fund must originate in a country that is eligible under paragraph 1. In this context, the definition of the concept of 'originating products' shall be assessed by reference to the relevant international agreements, and supplies originating in the Community shall include supplies originating in the Overseas Countries and Territories.

3) Participation in procedures for the awarding of public procurement contracts or grants financed from the Fund shall be open to international organisations.

4) Whenever the Fund finances an operation implemented through an international organisation, participation in procedures for the awarding of public procurement contracts or grants shall be open to all natural and legal persons who are eligible under paragraph 1, and to all natural and legal persons who are eligible according to the rules of the organisation, care being taken to ensure equal treatment of all donors. The same rules apply for supplies and materials.

5) Whenever the Fund finances an operation implemented as part of a regional initiative, participation in procedures for the awarding of public procurement contracts or grants shall be open to all natural and legal persons who are eligible under paragraph 1, and to all natural and legal persons from a country participating in the relevant initiative. The same rules apply for supplies and materials.19

6) Whenever the Fund finances an operation co-financed with a third State, participation in procedures for the awarding of public procurement contracts or grants shall be open to all natural and legal persons eligible under paragraph 1, and to all persons eligible under the rules of the above mentioned third State. The same rules apply for supplies and materials.

~~Save where a derogation is granted in accordance with the General Regulations for contracts or Article 22:~~

~~(a) participation in invitations to tender and the award of the contracts financed by the Fund shall be open on equal terms to:~~

(i) natural persons, companies or firms or public or semi-public agencies of the ACP States and the Member States;

(ii) (ii) cooperative societies and other legal persons governed by public or private law, of the Member States and/or the ACP States;

(iii) and (iii) joint ventures or groupings of companies or firms of ACP States and/or of a Member State.

~~(b) supplies must originate in the Community and/or the ACP States. In this context, the definition of the concept of 'originating products' shall be assessed by reference to the relevant international agreements, and supplies originating in the Community shall include supplies originating in the Overseas Countries and Territories.~~

ARTICLE 22

Derogations

1. ~~In order to ensure the optimum cost-effectiveness of the system, natural or legal persons from non-ACP developing countries may be authorised to participate in~~

19 See declaration (footnote 2).

~~contracts financed by the Community at the request of the ACP States concerned. The ACP States concerned shall, on each occasion, provide the Head of Delegation with the information needed for the Community to decide on such derogation, with particular attention being given to:~~*In exceptional, duly substantiated circumstances, natural or legal persons from third countries not eligible under Article 20 may be authorised to participate in procedures for the awarding of public procurement contracts or grants financed by the Community at the justified request of the ACP States concerned. The ACP States concerned shall, on each occasion, provide the Commission with the information needed to decide on such derogation, with particular attention being given to:*

(a) the geographical location of the ACP State concerned;

(b) the competitiveness of contractors, suppliers and consultants from the Member States and the ACP States;

(c) the need to avoid excessive increases in the cost of performance of the contract;

(d) transport difficulties or delays due to delivery times or other similar problems; and

(e) technology that is the most appropriate and best suited to local conditions;

(f) cases of extreme urgency;

(g) the availability of products and services in the relevant markets.

2. In the case of projects financed from the Investment Facility, EIB procurement rules shall apply.

~~2. Participation by third countries in contracts financed by the Community may also be authorised:~~

~~(a) where the Community participates in the financing of regional or inter-regional schemes involving such countries;~~

~~(b) in the case of co-financing projects and programmes; and~~

~~(c) in the case of emergency assistance.~~

~~3. In exceptional cases and in agreement with the Commission, consultancy firms with experts who are nationals of third countries may participate in service contracts.~~

ARTICLE 24

(this Article to be moved to the end of the chapter before the Article on tax and customs arrangements)

Implementation by direct labour

1. In the case of direct-labour *operations*, ~~projects and programmes~~ *programmes and projects* shall be implemented through public or semi-public agencies or departments of the ACP State or States concerned or by the *legal* person responsible for executing the operation.

2. The Community shall contribute to the costs of the department involved by providing the equipment and/or materials that it lacks and/or resources to allow it to acquire additional staff required in the form of experts from within the ACP States concerned or other ACP States. The Community's participation shall cover only costs incurred by supplementary measures and temporary expenditure relating to execution that are strictly confined to the requirements of the project in question.

3. Programme estimates implementing direct-labour operations must comply with the Community rules, procedures and standard documents laid down by the Commission, as applicable at the time of approval of the programme estimates.[20]

ARTICLE 26

Preferences

1. Measures shall be taken to encourage the widest participation of the natural and legal persons of ACP States in the performance of contracts financed by the Fund in order to permit the optimization of the physical and human resources of those States. To this end:

(a) for works contracts of a value of less than EUR 5 000 000, tenderers from the ACP States, provided that at least one quarter of the capital stock and management staff originates from one or more ACP States, shall be accorded a 10% price preference where tenders of an equivalent economic, technical and administrative quality are compared;

(b) for supply contracts, irrespective of the value of the supplies, tenderers from the ACP States who offer supplies of at least 50% in contract value of ACP origin, shall be accorded a 15% price preference where tenders of equivalent economic, technical and administrative quality are compared;

(c) in respect of service contracts, *where tenders of equivalent economic and technical quality are compared* preference shall be given to:

(i) experts, institutions or consultancy companies or firms from ACP State*s with the required competence;*~~where tenders of equivalent economic and technical quality are compared~~

(ii) offers submitted by an ACP firm in a consortium with European partners; and

[20] *ACP-EU Declaration: The ACP States will be consulted, a priori, on any amendments to the Community rules referred to in Article 24(3).*

(iii) offers presented by European tenderers with ACP sub-contractors or experts.

(d) where subcontracting is envisaged, preference shall be given by the successful tenderer to natural persons, companies and firms of ACP States capable of performing the contract required on similar terms; and

(e) the ACP State may, in the invitation to tender, offer prospective tenderers assistance from other ACP States' companies or firms or national experts or consultants selected by mutual agreement. This co-operation may take the form either of a joint venture, or of a subcontract or of on-the-job training of trainees.

2. Where two tenders are acknowledged to be equivalent on the basis of the criteria stated above, preference shall be given:

(a) to the tenderer of an ACP State; or

(b) if no such tender is forthcoming, to the tenderer who:

(i) allows for the best possible use of the physical and human resources of the ACP States;

(ii) offers the greatest subcontracting possibilities for ACP companies, firms or natural persons; or

(iii) is a consortium of natural persons, companies and firms from ACP States and the Community.

CHAPTER 6

FUND-RESOURCE MANAGEMENT AND EXECUTING AGENTS

ARTICLE 34

~~The Chief Authorising Officer~~ The Commission

1. The Commission shall undertake the financial execution of operations carried out with Fund resources, with the exception of the Investment Facility and interest-rate subsidies, using the following main methods of management:

(a) centralised management;

(b) decentralised management

2. As a general rule, the financial execution of the Fund resources by the Commission shall be decentralised.

In this instance, the execution duties shall be carried out by the ACP States in accordance with Article 35.

3. In order to carry out the financial execution of the Fund resources, the Commission shall delegate executive powers to the Commission departments. The Commission shall inform the ACP States and the Development Finance Committee (DFC) of the delegation of tasks within its departments.[21]

~~1. The Commission shall appoint the Chief Authorising Officer of the Fund, who shall be responsible for managing the resources of the Fund. The Chief Authorising Officer shall be responsible for commitment, clearance, authorisation and accounting of expenditure under the Fund.~~

~~2. The Chief Authorising Officer shall:~~

~~(a) commit, clear and authorise expenditure and keep accounts of commitments and authorisations;~~

~~(b) ensure that financing decisions are carried out;~~

~~(c) in close cooperation with the National Authorising Officer, make commitment decisions and financial arrangements that prove necessary to ensure proper execution of approved operations from the economic and technical viewpoints;~~

~~(d) prepare the tender dossier before the invitations to tender are issued, for:~~

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[21] ***Commission declaration****: the detailed respective responsibilities of management and executing agents of Fund resources are included in a manual on procedures upon which ACP States will be consulted in accordance with Article 12 of the Cotonou Agreement. The manual will be made available to ACP States from the entry into force of the revised Agreement. Any amendments to the manual will be subject to the same procedure.*

~~(i) open international tender, and~~

~~(ii) restricted international invitation to tender with prequalification.~~

~~(e) approve the proposals for the placing of contracts subject to the powers exercised by the Head of Delegation under Article 36;~~

~~(f) ensure publication in reasonable time of international invitations to tender.~~

~~3. The Chief Authorising Officer shall, at the end of each year, make available a detailed balance sheet of the Fund showing balances of contributions paid into the Fund by the Member States and global disbursements in respect of each financing heading.~~

ARTICLE 35

National Authorising Officer

1. The Government of each ACP State shall appoint a National Authorising Officer to represent it in all operations financed from the resources of the Fund managed by the Commission and the Bank. *The National Authorising Officer shall appoint one or more deputy National Authorising Officers to replace him when he is unable to carry out his duties and shall inform the Commission of this appointment.*~~The National Authorising Officer may delegate some of these functions.~~ *Wherever the conditions regarding institutional capacity and proper financial management are met, the National Authorising Officer may delegate his functions for implementation of the programmes and projects concerned to the body responsible within his national administration*. The National Authorising Officer shall inform the ~~Chief Authorising Officer~~*the Commission of any such delegation.*

2. If the Commission becomes aware of problems with implementation of procedures for the management of Fund resources, it shall hold discussions with the National Authorising Officer in order to rectify the situation and shall adopt, where necessary, all appropriate measures.

3. The National Authorising Officer shall assume financial responsibility only for the executive tasks entrusted to him.

4. Where Fund resources are managed in a decentralised way and subject to any additional powers that might be granted by the Commission, the National Authorising Officer shall:

(a) be responsible for the coordination, programming, regular monitoring and annual, mid-term and end-of-term reviews of implementation of cooperation, and for coordination with donors;

~~a~~ *(b)* in close cooperation with the ~~Head of Delegation~~*Commission,* be responsible for the preparation, submission and appraisal of ~~projects and programmes~~*programmes and projects;*

(c) prepare tender documents and, where appropriate, the documents for calls for proposals;

(d) submit tender documents and, where appropriate, documents for calls for proposals, to the Commission for approval before launching invitations to tender and, where appropriate, calls for proposals;

(e) in close cooperation with ~~Head of delegation~~*the Commission,* launch invitations to ~~local open~~ tender and, *where appropriate, calls for proposals,*

(f) receive tenders~~, both local and international (open and restricted)~~, *and, if applicable, proposals, and transmit copies of tenders to the Commission;* preside over the opening of tenders and decide on the results of their examination *within the period of validity of the tenders, taking account of the time required for approval of contracts;*~~sign contracts and riders thereto and approve expenditure;~~

(g) invite the Commission to the opening of tenders and, if applicable, proposals and notify the Commission of the results of the examination of tenders and proposals for approval of the proposals for the award of contracts and grants;

~~) submit, before issuing local open invitations to tender, the invitation to tender dossier to the Head of Delegation who shall give his agreement within 30 days;~~

~~) complete the evaluation of tenders within the tender validity period taking into consideration the period required for the approval of contracts;~~

(h) submit contracts and programme estimates and any addenda thereto to the Commission for approval;

(i) sign the contracts and addenda thereto approved by the Commission;

(j) clear and authorise expenditure within the limits of the funds assigned to him; and

(k) during the execution operations, make any adaptation arrangements necessary to ensure the proper execution of approved ~~projects or programmes~~*programmes or projects* from the economic and technical viewpoint.

5 The National Authorising Officer shall, during the execution of operations and subject to the requirement to inform the ~~Head of Delegation~~*Commission*, decide on:

(a) technical adjustments and alterations *to programmes and* projects in matters of detail so long as they do not affect the technical solution adopted and remain within the limits of the reserve for adjustments *provided for in the financing agreement;*

~~(b) alterations to estimates during execution;~~

~~(c) transfers from item to item within estimates;~~

(b) changes of site for multiple-unit ~~projects or programmes~~*programmes or projects* where justified on technical, economic or social grounds;

(c) imposition or remission of penalties for delay;

(d) acts discharging guarantors;

(e) purchase of goods, irrespective of their origin, on the local market;

(f) use of construction equipment and machinery not originating in the Member States or ACP States provided there is no production of comparable equipment and machinery in the Member States or ACP States;

(g) subcontracting;

(h) final acceptance, provided that a ~~Head of Delegation~~*the Commission* is present at provisional acceptance, endorses the corresponding minutes and, where appropriate, is present at the final acceptance, in particular where the extent of the reservations recorded at the provisional acceptance necessitates major additional work;[22] and

(k) hiring of consultants and other technical assistance experts.

[22] ***Commission declaration***: *the detailed respective responsibilities of management and executing agents of Fund resources are included in a manual on procedures upon which ACP States will be consulted in accordance with Article 12 of the Cotonou Agreement. The manual will be made available to ACP States from the entry into force of the revised Agreemen. Any amendments to the manual will be subject to the same procedure*.

ARTICLE 36

Head of Delegation

1. The Commission shall be represented in each ACP State or in each regional grouping which expressly so requests, by a delegation under the authority of a Head of Delegation, with the approval of the ACP State or States concerned. Appropriate measures shall be taken in any case in which a Head of Delegation is appointed to a group of ACP States. The Head of Delegation shall represent the Commission in all spheres of its competence and in all its activities.

2. The Head of Delegation shall be the main contact for ACP States and bodies or organisations eligible for financial support under the Agreement. He shall cooperate and work in close cooperation with the National Authorising Officer.[23]

3. The Head of Delegation shall have the necessary instructions and delegated powers to facilitate and expedite all operations under the Agreement.

4. On a regular basis, the Head of Delegation shall inform the national authorities of Community activities which may directly concern cooperation between the Community and the ACP States.

~~1. The Commission shall be represented in each ACP State or in each regional grouping which expressly so requests, by a delegation under the authority of a Head of Delegation, with the approval of the ACP State or States concerned. Where a Head of Delegation is appointed to a group of ACP States, appropriate steps shall be taken to ensure that the Head of Delegation is represented by a deputy resident in each of the States in which the Head of Delegation is not resident. The Head of Delegation shall represent the Commission in all spheres of its competence and in all its activities.~~

~~2. To this end, and in close cooperation with the National Authorising Officer, the Head of Delegation shall:~~

~~(a) at the request of the ACP State concerned, participate and give assistance in the preparation of projects and programmes and in negotiating technical assistance contracts;~~

~~(b) participate in appraising projects and programmes, preparing tender dossiers and seeking ways to simplify project and programme appraisal and implementation procedures;~~

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23 ***Commission declaration****: the detailed respective responsibilities of management and executing agents of Fund resources are included in a manual on procedures upon which ACP States will be consulted in accordance with Article 12 of the Cotonou Agreement. The manual will be made available to ACP States from the entry into force of the revised Agreement. Any amendments to the manual will be subject to the same procedure.*

(c) prepare financing proposals;

(d) approve, before the National Authorising Officer issues them, the local open invitation to tender and the emergency assistance contract dossiers within 30 days of their submission to him by the National Authorising Officer;

(e) be present at the opening of tenders and receive copies of them and of the results of their examination;

(f) approve, within 30 days, the National Authorising Officer's proposal for the placing of local open tenders, direct agreement contracts, emergency assistance contracts, service contracts and works contracts with a value less than EUR 5 million and supply contracts with a value less than EUR 1 million;

(g) for all other contracts not covered by the above, approve within 30 days the National Authorising Officer's proposal for the placing of the contract wherever the following conditions are fulfilled:

(i) the tender selected is the lowest of those conforming to the requirements of the tender dossier;

(ii) the tender selected meets all the selection criteria stated in the tender dossier; and

(iii) the tender selected does not exceed the sum earmarked for the contract.

(h) where the conditions set out in paragraph (g) are not fulfilled, forward the proposal to the Chief Authorising Officer who shall decide thereon within 60 days of the receipt of the Head of Delegation. Where the price of the selected tender exceeds the sum earmarked for the contract, the Chief Authorising Officer shall, upon giving approval to the award, make the necessary financial commitment;

(i) endorse contracts and estimates in the case of direct labour, riders thereto as well as payment authorisations issued by the National Authorising Officer;

(j) ensure that the projects and programmes financed from the resources of the Fund managed by the Commission are properly executed from the financial and technical viewpoints;

(k) cooperate with the national authorities of the ACP State where he represents the Commission in evaluating operations regularly;

(l) communicate to the ACP State all information and relevant documents on the procedures for implementing development finance cooperation especially as regards appraisal criteria and tender evaluation criteria; and

~~(m) on a regular basis, inform the national authorities of Community activities which may directly concern cooperation between the Community and the ACP States.~~

~~3. The Head of Delegation shall have the necessary instructions and delegated powers to facilitate and expedite all operations under the Agreement. Any further delegation of administrative and/or financial powers to the Head of Delegation other than described in this Article shall be notified to the National Authorising Officers and the ACP Council of Ministers.~~

ARTICLE 37

Payments ~~and paying agents~~

1. For the purpose of effecting payments in the national currencies of the ACP States, accounts denominated in the currencies of the Members States or in euro ~~shall~~*may* be opened in ~~each ACP State~~ the ACP States *by and* in the name of the Commission with a national public or semi-public financial institution chosen by agreement between the ACP State and the Commission. This institution shall exercise the functions of National Paying Agent.

2. The National Paying Agent shall receive no remuneration for its services and no interest shall be payable by it on deposited funds. The local accounts shall be replenished by the Commission in the currency of one of the Member States or in euro, based on estimates of future cash requirements, which shall be made sufficiently in advance to avoid the need for pre-financing by ACP States and to prevent delayed disbursements.

~~3. For the purpose of effecting payments in Euro, accounts denominated in Euro shall be opened in the name of the Commission with financing institutions in the Member States. These institutions shall exercise the functions of Paying Agents in Europe.~~

4. ~~Payments from the European accounts, which will be executed on the instruction of the Commission or by the Head of Delegation acting on its behalf, may be made in respect of expenditure authorised by the National Authorising Officer or by the Chief Authorising Officer with the prior authorisation of the National Authorising Officer.~~ *Payments shall be made by the Commission in accordance with the rules laid down by the Community and the Commission, where appropriate after the expenditure has been cleared and authorised by the National Authorising Officer.*

~~5. Within the limits of the funds available in the accounts, the Paying Agents shall make disbursements authorised by the National Authorising Officer or, as appropriate, the Chief Authorising Officer, after verifying that the supporting documents provided are substantially correct and in order, and that the discharge given for payment is valid.~~

6. The procedures for clearance, authorisation and payment of expenditure must be completed within a period of 90 days from the date on which the payment becomes due. The National Authorising Officer shall process and deliver the payment authorisation to the Head of Delegation not later than 45 days before the due date.

7. Claims for delayed payments shall be borne by the ACP State or States concerned, and by the Commission from its own resources, for that part of the delay for which each party is responsible in accordance with the above procedures.

~~8. The Paying Agents, the National Authorising Officer, the Head of Delegation and the responsible Commission departments shall remain financially liable until the Commission gives final clearance for the operations for the execution of which they are responsible.~~

REVISION OF THE COTONOU AGREEMENT

New Annex VII to be added to the Cotonou Agreement

Note:

- Agreement on new texts: <u>underlined</u>

ANNEX VII

POLITICAL DIALOGUE AS REGARDS HUMAN RIGHTS, DEMOCRATIC PRINCIPLES AND THE RULE OF LAW

ARTICLE 1

Objectives

1. The consultations foreseen in Article 96(3) (a) will take place, except in cases of special urgency, after exhaustive political dialogue as foreseen in Articles 8 and 9(4) of the Agreement.

2. Both Parties should conduct such political dialogue in the spirit of the Agreement and bearing in mind the Guidelines for ACP-EU Political Dialogue established by the Council of Ministers.

3. Political Dialogue is a process which should foster the strengthening of ACP-EU relations and contribute towards achieving the objectives of the Partnership.

ARTICLE 2

Intensified Political Dialogue preceding Article 96 Consultations

1. Political dialogue concerning respect for human rights, democratic principles and the rule of law shall be conducted pursuant to Articles 9(4) and 8 of the Partnership Agreement and within the parameters of internationally recognised standards and norms[24]. In the framework of this dialogue the Parties may agree on joint agendas and priorities.

2. The Parties may jointly develop and agree specific benchmarks or targets with regard to human rights, democratic principles and the rule of law, within the framework of internationally agreed standards and norms, taking into account special and particular circumstances of the ACP State concerned. Benchmarks are mechanisms for reaching targets through the setting of intermediate objectives and timeframes for compliance.

3. The political dialogue set out in paragraphs 1 and 2 shall be systematic and formal and shall exhaust all possible options prior to Article 96 consultations.

4. Except for cases of special urgency as defined in Article 96(3)(b) of the Agreement, Article 96 consultations may also go ahead without preceding intensified political dialogue, when there is persistent lack of compliance with commitments taken by one of the Parties during an earlier dialogue, or by a failure to engage in dialogue in good faith.

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[24] ***Joint Declaration****: The internationally recognised standards and norms are those of the instruments referred to in the Preamble of this Agreement.*

5. Political dialogue under Article 8 will also be utilized between the Parties to assist countries subject to appropriate measures under Article 96, to normalise the relationship.

ARTICLE 3

Additional rules on consultation under Article 96 of the Agreement

1. The Parties shall strive to promote equality in the level of representation during consultations under Articles 96.

2. The Parties are committed to transparent interaction prior to, during and after the formal consultations, bearing in mind the specific benchmarks and targets referred to in Article 2(2) of this annex.

3. The Parties shall use the 30-day notification period as provided for in Article 96(3) of the Agreement for effective preparation by the parties, as well as for deeper consultations within the ACP Group and among the Community and its Member States. During the consultation process, the Parties should agree flexible timeframes, whilst acknowledging that cases of special urgency, as defined in Article 96 3(b) and Article 2 (4) above, may require an immediate reaction.

4. The Parties acknowledge the role of the ACP Group in political dialogue based on modalities to be determined by the ACP Group and communicated to the European Community and its Member States.

5. The Parties acknowledge the need for structured and continuous consultations under Article 96. The Council of Ministers may develop further modalities to this end.[25]

[25] ***Declaration of the Commission and Council of the European Union****: As regards the modalities foreseen in article 3 of Annex VII, the position to be taken by the Council of the European Union within the joint ACP-EU Council will be based on a proposal by the Commission.*