

## SECOND ACP-EEC CONVENTION

Signed at Lomé on 31 October 1979

HIS MAJESTY THE KING OF THE BELGIANS,

HER MAJESTY THE QUEEN OF DENMARK,

THE PRESIDENT OF THE FEDERAL REPUBLIC OF GERMANY,

THE PRESIDENT OF THE FRENCH REPUBLIC,

THE PRESIDENT OF IRELAND,

THE PRESIDENT OF THE ITALIAN REPUBLIC,

HIS ROYAL HIGHNESS THE GRAND DUKE OF LUXEMBOURG,

HER MAJESTY THE QUEEN OF THE NETHERLANDS,

HER MAJESTY THE QUEEN OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND,

Contracting Parties to the Treaty establishing the European Economic Community, hereinafter referred to as "the Community", signed at Rome on 25 March 1957, whose States are hereinafter referred to as "the Member States";

and

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

of the one part, and

THE HEAD OF STATE OF THE BAHAMAS,

THE HEAD OF STATE OF BARBADOS,

THE PRESIDENT OF THE PEOPLE'S REPUBLIC OF BENIN,

THE PRESIDENT OF THE REPUBLIC OF BOTSWANA,

THE PRESIDENT OF THE REPUBLIC OF BURUNDI,

THE PRESIDENT OF THE UNITED REPUBLIC OF CAMEROON,

THE PRESIDENT OF THE REPUBLIC OF CAPE VERDE,

THE PRESIDENT OF THE CENTRAL AFRICAN REPUBLIC,

THE PRESIDENT OF THE FEDERAL ISLAMIC REPUBLIC OF THE COMOROS,

THE PRESIDENT OF THE PEOPLE'S REPUBLIC OF THE CONGO,

THE PRESIDENT OF THE REPUBLIC OF THE IVORY COAST,

THE PRESIDENT OF THE REPUBLIC OF JIBUTI,

THE PRIME MINISTER AND MINISTER OF EXTERNAL AFFAIRS OF THE INDEPENDENT STATE OF DOMINICA,

THE CHAIRMAN OF THE PROVISIONAL MILITARY ADMINISTRATIVE COUNCIL AND OF THE COUNCIL OF MINISTERS AND COMMANDER-IN-CHIEF OF THE REVOLUTIONARY ARMY OF ETHIOPIA,

HER MAJESTY THE QUEEN OF FIJI,

THE PRESIDENT OF THE GABONESE REPUBLIC,  
THE PRESIDENT OF THE REPUBLIC OF THE GAMBIA,  
THE PRESIDENT OF THE REPUBLIC OF GHANA,  
THE HEAD OF STATE OF GRENADA,  
THE PRESIDENT OF THE REPUBLIC OF GUINEA,  
THE PRESIDENT OF THE COUNCIL OF STATE OF GUINEA BISSAU,  
THE PRESIDENT OF THE REPUBLIC OF EQUATORIAL GUINEA,  
THE PRESIDENT OF THE REPUBLIC OF GUYANA,  
THE PRESIDENT OF THE REPUBLIC OF UPPER VOLTA,  
THE HEAD OF STATE OF JAMAICA,  
THE PRESIDENT OF THE REPUBLIC OF KENYA,  
THE PRESIDENT OF THE REPUBLIC OF KIRIBATI,  
HIS MAJESTY THE KING OF THE KINGDOM OF LESOTHO,  
THE PRESIDENT OF THE REPUBLIC OF LIBERIA,  
THE PRESIDENT OF THE DEMOCRATIC REPUBLIC OF MADAGASCAR,  
THE PRESIDENT OF THE REPUBLIC OF MALAWI,  
THE PRESIDENT OF THE REPUBLIC OF MALI,  
THE PRESIDENT OF THE ISLAMIC REPUBLIC OF MAURITANIA,  
HER MAJESTY THE QUEEN OF MAURITIUS,  
THE PRESIDENT OF THE REPUBLIC OF NIGER,  
THE HEAD OF THE FEDERAL GOVERNMENT OF NIGERIA,  
THE HEAD OF THE INDEPENDENT STATE OF PAPUA NEW GUINEA,  
THE PRESIDENT OF THE REPUBLIC OF RWANDA,  
THE PRESIDENT OF THE REPUBLIC OF SAINT LUCIA,  
THE HEAD OF STATE OF WESTERN SAMOA,  
THE PRESIDENT OF THE DEMOCRATIC REPUBLIC OF SAO TOME AND PRINCIPE,  
THE PRESIDENT OF THE REPUBLIC OF SENEGAL,  
THE PRESIDENT OF THE REPUBLIC OF SEYCHELLES,  
THE PRESIDENT OF THE REPUBLIC OF SIERRA LEONE,  
THE PRESIDENT OF THE INDEPENDENT STATE OF SOLOMON ISLANDS,  
THE PRESIDENT OF THE SOMALI DEMOCRATIC REPUBLIC, PRESIDENT OF THE SUPREME REVOLUTIONARY COUNCIL,  
THE PRESIDENT OF THE DEMOCRATIC REPUBLIC OF THE SUDAN,  
THE PRESIDENT OF THE REPUBLIC OF SURINAM,  
HIS MAJESTY THE KING OF THE KINGDOM OF SWAZILAND,  
THE PRESIDENT OF THE UNITED REPUBLIC OF TANZANIA,

THE PRESIDENT OF THE REPUBLIC OF CHAD,  
THE PRESIDENT OF THE REPUBLIC OF TOGO,  
HIS MAJESTY KING TAUFU'AHAU TUPOU IV OF TONGA,  
THE PRESIDENT OF THE REPUBLIC OF TRINIDAD AND TOBAGO,  
HER MAJESTY THE QUEEN OF TUVALU,  
THE PRESIDENT OF THE REPUBLIC OF UGANDA,  
THE PRESIDENT OF THE REPUBLIC OF ZAIRE,  
THE PRESIDENT OF THE REPUBLIC OF ZAMBIA,

whose States are hereinafter called "the ACP States",

of the other part,

HAVING REGARD to the Treaty establishing the European Economic Community, hereinafter referred to as "the Treaty", and to the Georgetown Agreement constituting the group of African, Caribbean and Pacific States;

ANXIOUS to reinforce, on the basis of complete equality between partners and in their mutual interest, close and continuing cooperation in the spirit of international solidarity;

RESOLVED to intensify their efforts together for the economic development and social progress of the ACP States, and to ensure the greater well-being of their populations;

WISHING to demonstrate their common desire to maintain and develop the friendly relations existing between their countries, in accordance with the principles of the United Nations Charter;

RESOLVED to continue and intensify their efforts to establish a model for relations between developed and developing States which is compatible with the aspirations of the international community towards the establishment of a new, more just and more balanced international economic order;

RESOLVED to promote, having regard to their respective levels of development, trade cooperation between the ACP States and the Community and to provide a sound basis therefor in conformity with their international obligations;

CONSCIOUS of the need to develop cooperation and trade among the ACP States as a whole and the particular need to accelerate economic cooperation and development within and between the regions of the ACP States;

CONSCIOUS of the particular importance of the agricultural and rural development of the ACP States and of the need to intensify efforts to that end;

DESIROUS of safeguarding the interests of the ACP States whose economies depend to a considerable extent on the export of commodities and of developing their resources;

ANXIOUS to promote the industrial development of the ACP States through increased cooperation between these States and the Member States;

ACKNOWLEDGING the need for special treatment to be accorded to the least-developed ACP States and for special measures to be introduced in favour of the land-locked and island ACP States in order to help them overcome the specific difficulties with which they are faced;

CONSCIOUS of the need to establish adequate machinery for widest possible consultations, with a view to promoting ACP-ECC cooperation;

HAVE DECIDED to conclude this Convention and to this end have designated as their Plenipotentiaries:

HIS MAJESTY THE KING OF THE BELGIANS:

Mr Paul NOTERDAEME, Ambassador, Permanent Representative to the European Communities;

HER MAJESTY THE QUEEN OF DENMARK:

Mr Niels ERSBOLL,

State Secretary, Ambassador,

Ministry of Foreign Affairs;

THE PRESIDENT OF THE FEDERAL REPUBLIC OF GERMANY:

Mr Klaus von DOHNANYI, Minister of State, Ministry of Foreign Affairs;

THE PRESIDENT OF THE FRENCH REPUBLIC:

Mr Robert GALLEY, Minister for Cooperation,

Mr Pierre BERNARD-REYMOND, State Secretary, Ministry of Foreign Affairs;

THE PRESIDENT OF IRELAND:

Mr Michael O'KENNEDY, Minister for Foreign Affairs of Ireland;

THE PRESIDENT OF THE ITALIAN REPUBLIC:

The Honourable Guiseppe ZAMBERLETTI, Under-Secretary of State for Foreign Affairs;

HIS ROYAL HIGHNESS THE GRAND DUKE OF LUXEMBOURG:

Mr Jean DONDELINGER, Ambassador;

Permanent Representative of Luxembourg to the European Communities;

HER MAJESTY THE QUEEN OF THE NETHERLANDS:

Mr D.F. VAN DER MEI, Secretary of State, Ministry of Foreign Affairs;

HER MAJESTY THE QUEEN OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND:

The Honourable Douglas Richard HURD, CBE, Member of Parliament, Minister of State for Foreign and Commonwealth Affairs;

THE COUNCIL OF THE EUROPEAN COMMUNITIES:

Mr Michael O'KENNEDY,

President-in-Office of the Council of the European Communities,

Minister for Foreign Affairs of Ireland;

Mr Claude CHEYSSON,

Member of the Commission of the European Communities;

THE HEAD OF STATE OF THE COMMONWEALTH OF THE BAHAMAS:

HE. Mr R.F. Anthony ROBERTS,

High Commissioner for the Commonwealth of the Bahamas in London;

THE HEAD OF STATE OF BARBADOS:

The Honourable Harold Bernard St JOHN, QC, MP,

Deputy Prime Minister and Minister of Trade, Tourism and Industry;

THE PRESIDENT OF THE PEOPLE'S REPUBLIC OF BENIN:

Mr André ATCHADE,

Minister for Trade and Tourism;

THE PRESIDENT OF THE REPUBLIC OF BOTSWANA:

Mr Archibald MOOKETSA MOGWE, Minister of External Affairs;

THE PRESIDENT OF THE REPUBLIC OF BURUNDI:

Mr Donatien BIHUTE, Minister for Planning;

THE PRESIDENT OF THE UNITED REPUBLIC OF CAMEROON:

Mr Robert NAAH, Deputy Minister for Economic Affairs and Planning;

THE PRESIDENT OF THE REPUBLIC OF CAPE VERDE:

Mr Abilio Augusto MONTERO DUARTE, Minister for Foreign Affairs;

THE PRESIDENT OF THE CENTRAL AFRICAN REPUBLIC:

Mr Jean-Pierre LE BOUDER,

Minister for Cooperation, Planning, General Statistics, Companies and Consultancy Bureaux on Projects relating inter alia to the Organization and Promotion of Agro-Industrial Operations;

THE PRESIDENT OF THE FEDERAL ISLAMIC REPUBLIC OF THE COMOROS:

Mr Ali MROUDJAE, Minister for Foreign Affairs and Cooperation;

THE PRESIDENT OF THE PEOPLE'S REPUBLIC OF THE CONGO:

Mr Elenga NGAPORO, Minister for Trade;

THE PRESIDENT OF THE REPUBLIC OF THE IVORY COAST: Mr Abdoulaye KONE, Minister for Economic Affairs, Financing and Planning;

THE PRESIDENT OF THE REPUBLIC OF JIBUTI:

H.E. Mr Ahmed Ibrahim ABDI, Ambassador Extraordinary and Plenipotentiary of the Republic of Jibuti to the French Government and to the European Economic Community;

THE PRIME MINISTER AND MINISTER OF EXTERNAL AFFAIRS OF THE COMMONWEALTH OF DOMINICA:

Mr Arden SHILLINGFORD, High Commissioner of Dominica in London;

THE CHAIRMAN OF THE PROVISIONAL MILITARY ADMINISTRATIVE COUNCIL AND OF THE COUNCIL OF MINISTERS AND COMMANDER-IN-CHIEF OF THE REVOLUTIONARY ARMY OF ETHIOPIA:

Mr Teferra WOLDE-SEMAIT, Minister of Finance;

HER MAJESTY THE QUEEN OF FIJI:

Mr Satya Nand NANDAN, Ambassador Extraordinary and Plenipotentiary, Head of the Mission of Fiji to the European Communities;

THE PRESIDENT OF THE GABONESE REPUBLIC:

Mr Michel ANCHOUEY, Minister for Planning, Development, Regional Planning and Tourism;

THE PRESIDENT OF THE REPUBLIC OF THE GAMBIA:

Mr Mohamadu CADI CHAM, Minister of Finance and Trade;

THE PRESIDENT OF THE REPUBLIC OF GHANA:

H.E. Mr Amon NIKOI, Minister of Finance and Economic Planning;

THE HEAD OF STATE OF GRENADA:

Mr Fennis AUGUSTINE, High Commissioner for Grenada in London;

THE PRESIDENT OF THE REPUBLIC OF GUINEA:

Mr N'Faly SANGARE, Minister Delegate to the European Communities;

THE PRESIDENT OF THE COUNCIL OF STATE OF GUINEA BISSAU:

H.E. Dr Vasco CABRAL, State Commissioner for Economic Coordination and Planning;

THE PRESIDENT OF THE REPUBLIC OF EQUATORIAL GUINEA:

Lieut. Cristino Seriche MALABO BICO, Member of the Supreme Military Council;

THE PRESIDENT OF THE REPUBLIC OF GUYANA:

Mr Sarfuel Rudolph INSANALLY, Guyana's Permanent Representative to the European Economic Community;

THE PRESIDENT OF THE REPUBLIC OF UPPER VOLTA:

Mr Georges SANOGO, Minister for Planning and Cooperation;

THE HEAD OF STATE OF JAMAICA:

H.E. Mr Donald RAINFORD, Ambassador Extraordinary and Plenipotentiary of Jamaica to the European Communities;

THE PRESIDENT OF THE REPUBLIC OF KENYA:

Mr Joseph MULIRO, Permanent Secretary, Ministry of Agriculture;

THE PRESIDENT OF THE REPUBLIC OF KIRIBATI:

The Honourable Douglas Richard HURD, CBE, MP, Minister of State for Foreign and Commonwealth Affairs of the United Kingdom of Great Britain and Northern Ireland;

HIS MAJESTY THE KING OF THE KINGDOM OF LESOTHO:

The Honourable Morena MAKHAOLA LEROTHOLI,

THE PRESIDENT OF THE REPUBLIC OF LIBERIA:

The Honourable D. Franklin NEAL, Minister of Planning and Economic Affairs;

THE PRESIDENT OF THE DEMOCRATIC REPUBLIC OF MADAGASCAR:

H.E. Mr Justin RARIVOSON, Minister for Economic Affairs and Trade;

THE PRESIDENT OF THE REPUBLIC OF MALAWI:

The Honourable Stott Zondwayo JERE, MP, Minister for Trade, Industry and Tourism;

THE PRESIDENT OF THE REPUBLIC OF MALI:

H.E. Mr Alioune Blondin BEYE, Minister for Foreign Affairs and International Cooperation;

THE PRESIDENT OF THE ISLAMIC REPUBLIC OF MAURITANIA:

Mr Abdellah OULD DADDAH,

Ambassador Extraordinary and Plenipotentiary, Representative of the Islamic Republic of Mauritania to the European Communities;

HER MAJESTY THE QUEEN OF MAURITIUS:

The Honourable Sir Sateam BOOLELL, Knight, Minister for Agriculture, Natural Resources and the Environment;

THE PRESIDENT OF THE REPUBLIC OF NIGER:

Mr Mai MAIGENA, Minister for Economic Affairs, Trade and Industry;

THE HEAD OF THE FEDERAL GOVERNMENT OF NIGERIA:

H.E. Mr P. Ayodele AFOLABI,

Ambassador Extraordinary and Plenipotentiary, Head of the Mission of the Federal Republic of Nigeria to the European Communities;

THE HEAD OF THE INDEPENDENT STATE OF PAPUA NEW GUINEA:

Mr Frederick Bernard Carl REIHER, Ambassador to the European Communities;

THE PRESIDENT OF THE REPUBLIC OF RWANDA:

Mr Ambroise MULINDANGABO, Minister for Planning;

THE PRESIDENT OF THE REPUBLIC OF SAINT LUCIA:

Mr George William ODLUM, Deputy Prime Minister, Minister for Foreign Affairs and Trade;

THE HEAD OF STATE OF WESTERN SAMOA:

The Honourable Filippo VAOVASAMANAIA, Minister for Finance;

THE PRESIDENT OF THE DEMOCRATIC REPUBLIC OF SAO TOME AND PRINCIPE:

Mrs Maria de AMORIM, Minister for Foreign Affairs and Cooperation;

THE PRESIDENT OF THE REPUBLIC OF SENEGAL:

Mr Ousmane SECK, Minister for Finance and Economic Affairs;

THE PRESIDENT OF THE REPUBLIC OF SEYCHELLES:

Mr Maxime FERRARI, Minister for Planning and Development;

THE PRESIDENT OF THE REPUBLIC OF SIERRA LEONE:

The Honourable Dr ILM. FOFANA, Minister for Trade and Industry;

THE PRESIDENT OF THE INDEPENDENT STATE OF SOLOMON ISLANDS:

The Honourable Douglas Richard HURD, CBE, MP, Minister of State, Ministry of Foreign and Commonwealth Affairs of the United Kingdom of Great Britain and Northern Ireland

THE PRESIDENT OF THE SOMALI DEMOCRATIC REPUBLIC, PRESIDENT OF THE SUPREME REVOLUTIONARY COUNCIL:

H.E. Mr Omar Salah AHMED, Ambassador Extraordinary and Plenipotentiary, Representative of the Somali Democratic Republic to the European Communities;

THE PRESIDENT OF THE DEMOCRATIC REPUBLIC OF THE SUDAN:

Mr IZZ EL DIN HAMID, Minister. of State in the Council of Ministers;

THE PRESIDENT OF THE REPUBLIC OF SURINAM:

Mr Ludwig C. ZUIVERLOON, Minister of Economic Affairs;

HIS MAJESTY THE KING OF THE KINGDOM OF SWAZILAND:

Mr DZABULUMJIVA H.S. NHLABATSI, Deputy Minister for Works, Power and Communications;

THE PRESIDENT OF THE UNITED REPUBLIC OF TANZANIA:

Mr Alphonse M. RULEGURA, Minister for Trade;

THE PRESIDENT OF THE REPUBLIC OF CHAD:

Mr Issaka Ramat AL HAMDOUN,

Chargé d'affaires a.i. Brussels Embassy of the Republic of Chad;

THE PRESIDENT OF THE REPUBLIC OF TOGO:

Mr Koudjolou DOGO, Minister for Planning, Industrial Development and Administrative Reform;

HIS MAJESTY KING TAUFU'AHU TUPOU IV OF TONGA:

H.R.H. Crown Prince TUPOUTO'A,

THE PRESIDENT OF THE REPUBLIC OF TRINIDAD AND TOBAGO:

H.E. Mr Eustace SEIGNORET, High Commissioner (London);

HER MAJESTY THE QUEEN OF TUVALU:

Mr Satya Nand NANDAN, Ambassador Extraordinary and Plenipotentiary, Head of the Mission of Fiji to the European Communities;

THE PRESIDENT OF THE REPUBLIC OF UGANDA:

The Honourable Ateker EJALU, Minister of Regional Cooperation;

THE PRESIDENT OF THE REPUBLIC OF ZAIRE:

Mr KIAKWAMA Kia KIZIKI,

State Commissioner for the Economy, Industry and Trade;

THE PRESIDENT OF THE REPUBLIC OF ZAMBIA:

Mr Remi CHISUPA, MP, Minister of Commerce and Industry;

WHO, having exchanged their full powers, found in good and due form,

HAVE AGREED AS FOLLOWS:

## **Title I. TRADE COOPERATION**

### **Article 1.**

In the field of trade cooperation, the object of this Convention is to promote trade between the ACP States and the Community, taking account of their respective levels of development, and also between the ACP States themselves.

In the pursuit of this objective, particular regard will be had to the need to secure effective additional benefits for the trade of the ACP States with the Community, in order to accelerate the growth of their trade and in particular of the flow of their exports to the Community and in order to improve the conditions of access for their products to the market of the Community, so as to ensure a better balance in the trade of the Contracting Parties.

To this end the Contracting Parties shall apply the provisions of this Title and the other appropriate measures under Titles V, VI and VII.

## **Chapter 1. Trade Arrangements**

### **Article 2.**

1. Products originating in the ACP States shall be imported into the Community free of customs duties and charges having equivalent effect.

2. (a) Products originating in the ACP States:

- listed in Annex II to the Treaty when they come under a common organization of the market within the meaning of Article 40 of the Treaty, or

- subject, on import into the Community, to specific rules introduced as a result of the implementation of the common agricultural policy,

shall be imported into the Community notwithstanding the general arrangements applied in respect of third countries, in accordance with the following provisions:

(i) those products shall be imported free of customs duties for which Community provisions in force at the time of import do not provide, apart from customs duties, for the application of any other measure relating to their import;



(ii) for products other than those referred to under (i), the Community shall take the necessary measures to ensure more favourable treatment than that granted to third countries benefiting from the most-favoured-nation clause for the same products.

(b) If, during the application of this Convention, the ACP States request that new lines of agricultural production or agricultural products which are not the subject of specific arrangements upon the entry into force of this Convention should benefit from such arrangements, the Community shall examine these requests in consultation with the ACP States.

(c) The arrangements referred to in subparagraph (a) shall enter into force at the same time as this Convention and shall remain applicable for its duration.

If, however, during the application of this Convention, the Community:

- subjects one or more products to common organization of the market or to specific rules introduced as a result of the implementation of the common agricultural policy, it reserves the right to adapt the import treatment for these products originating in the ACP States, following consultations within the Council of Ministers. In such cases, the provisions of subparagraph (a) shall be applicable,

- modifies the common organization of the market in a particular product or the specific rules introduced as a result of the implementation of the common agricultural policy, it reserves the right to modify the arrangements laid down for products originating in the ACP States, following consultations within the Council of Ministers. In such cases, the Community undertakes to ensure that products originating in the ACP States continue to enjoy an advantage comparable to that previously enjoyed in relation to products originating in third countries benefiting from the most-favoured-nation clause.

(d) Where the Community envisages concluding a preferential agreement with third States it shall inform the ACP States thereof. Consultations shall take place, where the ACP States so request in order to safeguard their interests.

### **Article 3.**

1. The Community shall not apply to imports of products originating in the ACP States any quantitative restrictions or measures having equivalent effect.

2. Paragraph 1, however, shall not prejudice the import treatment applied to the products referred to in the first indent of Article 2 (2) (a).

The Community shall inform the ACP States when residual quantitative restrictions are eliminated in respect of any of these products.

### **Article 4.**

The provisions of this chapter shall not preclude any commitments which the Contracting Parties might have to enter into within the framework of International Community Agreements.

Consultations shall take place on this subject when Contracting Parties envisage concluding such Agreements with a view to taking into consideration the respective interests of all the Contracting Parties.

### **Article 5.**

1. The provisions of Article 3 shall not preclude prohibitions or restrictions on imports, exports or goods in transit justified on grounds of public morality, public policy or public security; the protection of health and life of humans, animals and plants; the protection of national treasures possessing artistic, historic or archeological value or the protection of industrial and commercial property.

2. Such prohibitions or restrictions shall not in any case constitute a means of arbitrary discrimination or a disguised restriction on trade generally.

3. In cases where the implementation of the measures referred to in paragraph 1 affect the interests of one or more ACP States, consultations shall be held at the request of the latter with a view to reaching a satisfactory solution.

### **Article 6.**

The treatment applied to imports of products originating in the ACP States may not be more favourable than that applied to

trade among the Member States.

## **Article 7.**

Where new measures or measures stipulated in programmes adopted by the Community for the approximation of laws and regulations in order to facilitate the movement of goods are likely to affect the interests of one or more ACP States the Community shall, prior to adopting such measures, inform the ACP States thereof through the Council of Ministers.

In order to enable the Community to take into consideration the interests of the ACP States concerned, consultations shall be held at the request of the latter with a view to reaching a satisfactory solution.

## **Article 8.**

1. Where existing rules or regulations of the Community adopted in order to facilitate the movement of goods affect the interests of one or more ACP States or where these interests are affected by the interpretation, application or administration of such rules or regulations, consultations shall be held at the request of the ACP States concerned with a view to reaching a satisfactory solution.

2. With a view to finding a satisfactory solution, the ACP States may also bring up within the Council of Ministers any other problems relating to the movement of goods which might result from measures taken or envisaged by the Member States.

3. The competent institutions of the Community shall to the greatest possible extent inform the Council of Ministers of such measures.

## **Article 9.**

1. In view of their present development needs, the ACP States shall not be required for the duration of this Convention to assume in respect of imports of products originating in the Community, obligations corresponding to the commitments entered into by the Community in respect of imports of the products originating in the ACP States, under this Chapter.

2. (a) In their trade with the Community, the ACP States shall not discriminate among the Member States, and shall grant to the Community treatment no less favourable than the most-favoured-nation treatment.

(b) The most-favoured-nation treatment referred to in subparagraph (a) shall not apply in respect of trade or economic relations between ACP States or between one or more ACP States and other developing countries.

## **Article 10.**

Unless it has already done so under the terms of the ACP-EEC Convention of Lomé, each Contracting Party shall communicate its customs tariff to the Council of Ministers within a period of three months following the entry into force of this Convention. Each Contracting Party shall also communicate any subsequent amendments to its tariff as and when they come into force.

## **Article 11.**

1. The concept of "originating products" for the purposes of implementing this chapter, and the methods of administrative cooperation relating thereto, are defined in Protocol 1.

2. The Council of Ministers may adopt any amendment to Protocol 1.

3. Where the concept of "originating products" has not yet been defined for a given product in implementation of paragraph 1 or 2, each Contracting Party shall continue to apply its own rules.

## **Article 12.**

1. If, as a result of applying the provisions of this Chapter, serious disturbances occur in a sector of the economy of the Community or of one or more of its Member States, or jeopardize their external financial stability, or if difficulties arise which may result in a deterioration in a sector of the economy of the Community or of a region thereof, the Community may take, or may authorize the Member State concerned to take, safeguard measures. These measures, their duration and their methods of application shall be notified immediately to the Council of Ministers.

2. The Community and its Member States undertake not to use safeguard measures or other means for protectionist purposes or to hamper structural development.
3. These safeguard measures shall be restricted to those which would least disturb trade between the Contracting Parties in implementing the objectives of the Convention and must not exceed the scope of what is strictly necessary to remedy the difficulties that have arisen.
4. Safeguard measures shall, at the time of their application, take account of the existing level of the ACP exports concerned to the Community and their potential for development.

### **Article 13.**

1. Prior consultations shall take place concerning the application of the safeguard clause, both when such measures are first adopted and when such measures are extended. The Community shall provide the ACP States with all the information necessary for such consultations and shall provide the necessary data from which to determine to what extent imports from an ACP State or ACP States of a specific product have caused the effects mentioned in Article 12 (1).
2. Where consultations have taken place, safeguard measures, or arrangements jointly agreed upon by the ACP States concerned and the Community, shall enter into force thereafter.
3. However, the prior consultations provided for in paragraphs 1 and 2 shall not prevent any immediate decisions which the Community or its Member States, in accordance with Article 12 (1), might take where special factors have necessitated these decisions.
4. In order to facilitate the examination of facts that may cause market disturbances a mechanism shall be instituted designed to ensure statistical surveillance of certain ACP exports to the Community.
5. The Contracting Parties undertake to hold regular consultations with the view to finding satisfactory solutions to problems which might result from the application of the safeguard clause.

### **Article 14.**

The Council of Ministers shall, at the request of any Contracting Party concerned, consider the economic and social effects of the application of the safeguard clause.

### **Article 15.**

When safeguard measures are being taken, modified or removed, particular attention will be paid to the interests of the least-developed, land-locked and island ACP States.

### **Article 16.**

In order to ensure effective implementation of the provisions of this Convention in the field of trade cooperation, the Contracting Parties agree to inform and consult each other.

In addition to the cases for which consultations are specifically provided in Articles 1 to 15, consultations shall also take place, at the request of the Community or of the ACP States, and in accordance with the conditions provided for in the rules of procedure in Article 168, particularly in the following cases:

1. where Contracting Parties envisage taking any trade measures affecting the interests of one or more Contracting Parties under this Convention, they shall inform the Council of Ministers thereof. Consultations shall take place, where the Contracting Parties concerned so request, in order to take account of their respective interests;
2. if, during the application of this Convention, the ACP States consider that agricultural products covered by Article 2 (2) (a) other than those subject to special treatment should benefit from such treatment, consultations may take place within the Council of Ministers;
3. where a Contracting Party considers that obstacles to the movement of goods arise as a result of the existing rules of another Contracting Party or the interpretation, application or administration thereof;
4. where the Community envisages concluding a preferential agreement with third States, it shall inform the ACP States thereof. Consultations shall take place, where the ACP States so request, in order to safeguard their interests;

5. where the Community or the Member States take safeguard measures in accordance with Article 12, consultations on these measures may take place within the Council of Ministers, where the Contracting Parties concerned so request, notably with a view to ensuring compliance with Article 12 (3).

## **Chapter 2. Special Undertakings on Rum and Bananas**

### **Article 17.**

Until the entry into force of a common organization of the market in spirits and notwithstanding the provisions of Article 2 (1), entry into the Community of products of subheading 22.09 C I - rum, arrack, tafia - originating in the ACP States shall be governed by the provisions of Protocol 5.

### **Article 18.**

In order to permit the improvement of the conditions under which bananas originating in the ACP States are produced and marketed, the Contracting Parties agree to the objectives set out in Protocol 4.

### **Article 19.**

This Chapter and Protocols 4 and 5 shall not apply to relations between the ACP States and the French overseas departments.

## **Chapter 3. Trade Promotion**

### **Article 20.**

With a view to attaining the objectives set in Article 1, the Contracting Parties shall implement trade promotion measures from the production stage to the final stage of distribution. The object is to ensure that the ACP States derive maximum benefit from the provisions of this Convention in the fields of trade, agricultural and industrial cooperation and can participate under the most favourable conditions in the Community, domestic, regional and international markets by diversifying the range and increasing the value and volume of ACP exports.

### **Article 21.**

The trade promotion measures provided for in Article 20 shall include the provision of technical and financial assistance for achieving the following objectives:

- (a) the establishment and/or improvement of the structure of organizations, centres or firms involved in the development of the trade of ACP States and the assessment of their staffing requirements, financial management and working methods;
- (b) basic training, management training, and vocational training of technicians in fields related to the development and promotion of national and international trade;
- (c) product policy inclusive of research, processing, quality guarantee and control, packaging and presentation;
- (d) development of supportive infrastructure, including transport and storage facilities, in order to facilitate the flow of exports from ACP States;
- (e) advertising;
- (f) establishing, promoting and improving cooperation among economic operators in ACP States and between such operators and those in the Member States of the Community and in third countries and introducing appropriate measures to promote such cooperation;
- (g) carrying out and making use of market research and marketing studies;
- (h) collecting, analysing and disseminating quantitative and qualitative trade information and facilitating free access to existing or future information systems or bodies in the Community and in the ACP States;
- (i) participation by the ACP States in fairs, exhibitions and, in particular, specialized international shows, the list of which shall be drawn up in consultation with the ACP States, and the organization of trade events;

(j) special assistance to small- and medium-sized undertakings for product identification and development, market outlets and joint marketing ventures;

(k) the participation of the least-developed ACP States in the various trade promotion activities envisaged shall be encouraged by special provisions inter alia the payment of travel expenses of personnel and costs of transporting articles and goods that are to be exhibited, on the occasion of their participation in fairs and exhibitions.

## **Article 22.**

In addition to the appropriations which, within the framework of the national indicative programme referred to in Article 109 may be allocated by each ACP State to the financing of trade promotion activities on the basis of their development aims and priorities, the contribution of the Community to the financing of this type of activity, on a regional basis, could reach - within the framework of the regional development cooperation programmes mentioned in Article 133 - a sum of 40 million European units of account (hereinafter referred to as "EUA").

## **Title II. EXPORT EARNINGS FROM COMMODITIES**

### **Chapter 1. Stabilization of Export Earnings**

#### **Article 23.**

1. With the aim of remedying the harmful effects of the instability of export earnings and to help the ACP States overcome one of the main obstacles to the stability, profitability and sustained growth of their economies, to support their development efforts and to enable them in this way to ensure economic and social progress for their peoples by helping to safeguard their purchasing power, a system shall be operated to guarantee the stabilization of earnings derived from the ACP States' exports to the Community of products on which their economies are dependent and which are affected by fluctuations in price or quantity or both these factors.

2. In order to attain these objectives, transfers must be devoted to maintaining financial flows in the sector in question or, for the purpose of promoting diversification, directed towards other appropriate sectors and used for economic and social development.

#### **Article 24.**

Export earnings to which the stabilization system applies shall be those accruing from the export by each ACP State to the Community of each of the products on the following list, in the drawing up of which account has been taken of factors such as employment, deterioration of the terms of trade between the Community and the ACP State concerned and the level of development of that ACP State.

#### **Article 25.**

1. The following products shall be covered:

	NIMEXE Codes
1. Groundnuts, shelled or not	12.01-31 to 12.01-35
2. Groundnut oil	15.07-74 and 15.07-87
3. Cocoa beans	18.01-00
4. Cocoa paste	18.03-10 to 18.03-30
5. Cocoa butter	18.04-00
6. Raw or roasted coffee	09.01-11 to 09.01-17

7. Extracts, essences or concentrates of coffee	21.02-11 to 21.02-15
8. Cotton, not carded or combed	55.01-10 to 55.01-90
9. Cotton linters	55.02-10 to 55.02-90
10. Coconuts	08.01-71 to 08.01-75
11. Copra	12.01-42
12. Coconut oil	15.07-29, 15.07-77 and 15.07-92
13. Palm oil	15.07-19, 15.07-61 and 15.07-63
14. Palm nut and kernel oil	15.07-31, 15.07-78 and 15.07-93
15. Palm nuts and kernels	12.01-44
16. Raw hides and skins	41.01-11 to 41.01-95
17. Bovine cattle leather	41.02-05 to 41.02-98
18. Sheep and lamb skin leather	41.03-10 to 41.03-99
19. Goat and kid skin leather	41.04-10 to 41.04-99
20. Wood in the rough	44.03-20 to 44.03-99
21. Wood roughly squared or half-squared, but not further manufactured	44.04-20 to 44.04-98
22. Wood sawn lengthwise, but not further prepared	44.05-10 to 44.05-79
23. Fresh bananas	08.01-31
24. Tea	09.02-10 to 09.02-90
25. Raw sisal	57.04-10
26. Vanilla	09.05-00
27. Cloves - whole fruit, cloves and stems	09.07-00
28. Sheep's or lambs' wool, not carded or combed	53.01-10 to 53.01-40
29. Fine animal hair of Angora goats' mohair	53.02-95
30. Gum arabic	13.02-91

31. Pyrethrum - flowers, leaves, stems, peel and roots; saps and extracts from pyrethrum	12.07-10 and 13.03-15
32. Essential oils, not terpeneless, of cloves, of niaouli and of ylang-ylang	33.01-23
33. Sesame seed	12.01-68
34. Cashew nuts and kernels	08.01-77
35. Pepper	09.04-11 and 09.04-70
36. Shrimps and prawns	03.03-43
37. Squid	03.03-68
38. Cotton seeds	12.01-66
39. Oil-cake	23.04-01 to 23.04-99
40. Rubber	40.01-20 to 40.01-60
41. Peas	07.01-41 to 07.01-43, 07.05-21 and 07.05-61
42. Beans	07.01-45 to 07.01-47, 07.05-25 and 07.05-65
43. Lentils	07.05-30 and 07.05-70
44. Iron ore (ores, concentrates, and roasted iron pyrites)	26.01-12 to 26.01-18

2. Exports of iron ores (ores, concentrates, roasted iron pyrites) from sites being worked when this Convention is signed shall be covered by Articles 23 to 47 for a period limited to the first five financial years of this system.

Upon expiry of that period, iron ore shall be wholly covered by Articles 49 to 59.

3. Upon presentation of each transfer request the ACP State shall choose between the following systems:

(a) each product listed in Article 25 (1) shall constitute a product within the meaning of Article 27 and 44

(b) product groups 1 and 2, 3 to 5, 6 and 7, 8 and 9, 10 to 12, 13 to 15, 16 to 19 and 20 to 22 shall each constitute a product within the meaning of Articles 27, 29, 36, 37, 38, 39, 42, 43 and 44.

## Article 26.

If, 12 months after the entry into force of this Convention, one or more products not contained in the list in Article 25, but upon which the economies of one or more ACP States depend to a considerable extent, are affected by sharp fluctuations, the Council of Ministers shall decide, not later than six months after the presentation of a request by the ACP State or States concerned, whether or not to include the said product or products in the list.

## Article 27.

If so requested by one or more ACP States in respect of one or more of the products listed in Article 25, the Council of

Ministers may decide, on the basis of a report established by the Commission of the European Communities, hereinafter referred to as "the Commission", in liaison with the requesting ACP State or States, to apply the system to exports of the products in question from the said ACP State or States to other ACP States.

### **Article 28.**

Each ACP State concerned shall certify that the products to which the system applies have originated in its territory within the meaning of Article 2 of Protocol 1.

### **Article 29.**

The system shall apply to the earnings derived from an ACP State's exports of the products listed in Article 25 if, during the year preceding the year of application, earnings from the export of each product to all destinations, re-exports excluded, represented at least 6-5 % of its total export earnings from their goods. The percentage shall be 5 % for sisal.

### **Article 30.**

1. The system shall be implemented in respect of the products listed in Article 25 where they are:

- (a) released for home use in the Community, or
- (b) brought under the inward processing arrangements there in order to be processed.

2. The statistics used to implement the system shall be:

- (a) those obtained by cross-checking Community and ACP State statistics, account being taken of fob values, or
- (b) those obtained by multiplying the unit values for the exports of the ACP State in question, as given in that ACP State's statistics, by the quantities imported by the Community, as shown in Community statistics.

3. When submitting the transfer request for each product, the requesting ACP State shall choose one of the two systems set out above.

### **Article 31.**

For the purposes specified in Article 23, the Community shall allocate to the system, for the duration of this Convention, an amount of \$50 million EUA to cover all its commitments under the system. This amount shall be managed by the Commission.

### **Article 32.**

1. The overall amount referred to in Article 31 shall be divided into a number of equal annual instalments corresponding to the number of years of application.

2. Whatever balance remains at the end of each of the first four years of application of the Convention shall be carried forward automatically to the following year.

### **Article 33.**

The resources available for each year of application are made up of the sum of the following elements:

- 1. the annual instalment, reduced by any amounts used under Article 34 (1);
- 2. the sums carried forward under Article 32 (2);
- 3. the amounts replenished under Articles 42 and 43;
- 4. any amounts made available under Article 34 (1).

### **Article 34.**

In the case of an insufficiency of funds for a year of application the Council of Ministers, on the basis of a report submitted



to it by the Commission, may:

1. authorize, for each year except the last, the use in advance of a maximum of 20 % of the following year's instalment;
2. reduce the amount of the transfers to be made.

### **Article 35.**

Before the expiry of the period referred to in Article 31, the Council of Ministers shall decide on the use of any balance remaining from the overall amount established in Article 31, as well as on the conditions for further use of any amounts still to be replenished by the ACP States under Articles 42 and 43, following the expiry of the period referred to in Article 31.

### **Article 36.**

1. In order to implement the system -a reference level shall be calculated for each ACP State and for each product.
2. This reference level shall correspond to the average of export earnings in the four years preceding each year of application.
3. Where, however, an ACP State:

- starts processing a product traditionally exported in the raw state, or
- begins exporting a product which it did not traditionally produce,

the system may be put into operation on the basis of a reference level calculated on the three years preceding the year of application.

### **Article 37.**

An ACP State shall be entitled to request a transfer if, on the basis of the results of a calendar year, its actual earnings, as defined in Article 30, from its exports of each product to the Community and, in the cases referred to in Article 27, to other ACP States or, in the cases referred to in Article 46 (3), to all destinations; are at least 6-5 % below the reference level.

### **Article 38.**

1. Requests for transfers shall be inadmissible in the following cases:

(a) if the request is presented after 31 March of the year following the year of application;

(b) if it emerges from the examination of the request, to be undertaken by the Commission in conjunction with the ACP State concerned, that the fall in earnings from exports to the Community is the result of a trade policy of that ACP State concerned adversely affecting exports to the Community in particular.

2. Requests for transfers may also be declared inadmissible if it emerges from the request, after

consultations, that the requesting ACP State has recorded earnings from its exports to all destinations during the year of application in excess of the average of its export earnings to all destinations in the four years preceding the year of application for each product for which a request has been made.

### **Article 39.**

1. Every request for transfer shall be addressed to the Commission, which shall examine it in conjunction with the ACP State concerned.

2. The difference between the reference level and actual earnings, plus 1% for statistical errors and omissions, shall constitute the basis of the transfer.

3. Should examination of the trend of the requesting ACP State's exports to all destinations and of the production of the product in question and of demand in the Community reveal significant changes, consultations shall take place between the Commission and the requesting State to determine whether those changes are such as to affect the amount of the transfer, and if so to what extent.

## **Article 40.**

1. The Commission shall adopt a transfer decision on completion of the examination carried out in conjunction with the requesting ACP State.
2. For each transfer a transfer agreement shall be concluded between the Commission and the ACP State concerned.
3. The Commission and the ACP State concerned shall take such steps as are required to ensure that transfers are made rapidly. To that end, provision shall be made for the payment of advances.
4. The amounts transferred shall not bear interest.

## **Article 41.**

1. The recipient ACP State shall decide how the resources will be used, subject to compliance with the objectives laid down in Article 23.
2. During the examination of the request, and in any case before the transfer agreement is signed, the requesting ACP State shall give the Commission some indication of the probable use to which the transfer will be put.
3. Within the 12 months following the signing of the transfer agreement the recipient ACP State shall inform the Commission of the use to which the funds transferred have been put.

## **Article 42.**

Subject to the provisions .of Article 46 (1) (c), ACP States which have received transfers shall, in accordance with the provisions of Article 43, contribute during the seven years following the year in which the transfer was paid, to the replenishment of the resources made available for the system by the Community.

## **Article 43.**

1. Where the trend of the export earnings derived from the product which sustained the drop in export earnings that gave rise to the transfer so permits, the ACP State concerned shall help replenish the resources of the system.
2. For the purposes of paragraph 1, the Commission shall determine:
  - at the beginning of each year during the seven years following the year during which the transfer was paid,
  - until such time as the whole amount of the transfer has been paid back into the system,
  - in accordance with the provisions of Article 30,whether, for the preceding year:
  - (a) the unit value of the product under consideration exported to the Community was higher than the average unit value during the four years prior to the preceding year;
  - (b) the quantity of the same product actually exported to the Community was at least equal to the average of the quantities exported to the Community during the four years prior to the preceding year;
  - (c) the earnings for the year and the product in question amount to at least 106.5 % of the average of earnings from exports to the Community during the four years prior to the preceding year.
3. If the three conditions set out in paragraph 2 are fulfilled simultaneously, the ACP State shall contribute to the system an amount equal to the difference between the actual earnings derived in the preceding year from exports to the Community and the average of earnings from exports to the Community during the four years prior to the preceding year, but in no case shall the amount of the contribution towards the replenishment of the resources of the system exceed the transfer in question.
4. This amount shall be contributed to the system at the rate of one fifth per year after a period of deferment of two years beginning in the year during which the obligation to contribute towards replenishment was established.
5. Should examination of the trend of exports to all destinations and of production of the product in question in the ACP

State concerned as well as of demand in the Community reveal significant changes, consultations shall be held between the Commission and the ACP State concerned in order to establish whether these changes are such as to justify a contribution to the replenishment of the resources of the system, and if so to what extent.

Where such justification exists, the ACP State shall contribute to the system, under the conditions set out in paragraph 4, the amount determined in the consultations.

6. On the basis of decisions taken by the Council of Ministers pursuant to Article 27, exports to other ACP States shall be added to the exports to the Community referred to in this Article.

#### **Article 44.**

If, on expiry of the seven-year period referred to in Article 42, the resources have not been fully replenished, the Council of Ministers, taking into consideration in particular the situation of and prospects for the balance of payments, exchange reserves and foreign indebtedness of the ACP State concerned, may decide that:

- the sums outstanding are to be replenished wholly or partially, in one or more instalments,
- rights to repayment are to be waived.

#### **Article 45.**

1. In order to ensure that the stabilization system functions efficiently and rapidly, statistical and customs cooperation shall be instituted between each ACP State and the Commission.

2. The ACP States and the Commission shall adopt by mutual agreement any measures facilitating inter alia the exchange of necessary information, the submission of requests for transfers, the provision of information concerning the use of transfers, the implementation of the replenishment provisions and of any other aspect of the system by means of the widest possible use of standard forms.

#### **Article 46.**

1. For the ACP: State listed in Article 155 (3) (a):

(a) the percentage fixed in Article 29 shall be 2 %;

(b) the percentage fixed in Article 37 shall be 2 %;

(c) no contribution shall be required towards the replenishment of the resources made available to the system.

2. In the application of Articles 24, 34 and 37 the special difficulties of the ACP States referred to above shall be taken into account.

3. In the case of certain ACP States which do not send the bulk of their exports to the Community, the Council of Ministers may decide, by way of derogation from Articles 24 and 30, that the system shall apply to their exports of the products in question whatever their destination. The system shall then operate on the basis of the export statistics of the ACP State in question.

#### **Article 47.**

1. For the ACP States listed in Article 155 (3) (b) and (c):

(a) the percentage fixed in Article 29 shall be 2 %;

(b) the percentage fixed in Article 37 shall be 2 %.

2. In the application of Article 24 the special difficulties of the above ACP States shall be taken into account.

## **Chapter 2. Special Undertakings on Sugar**

#### **Article 48.**

1. In accordance with Article 25 of the ACP-EEC Convention of Lomé and with Protocol 3 annexed to that Convention, the

Community has undertaken for an indefinite period, notwithstanding the other provisions of this Convention, to purchase and import, at guaranteed prices, specific quantities of cane sugar, raw or white, which originates in the ACP States producing and exporting cane sugar and which those States have undertaken to deliver to it.

2. The conditions for the implementation of Article 25 of the ACP-EEC Convention of Lomé have been laid down by Protocol 3 referred to in paragraph 1. The text of this Protocol is annexed to this Convention as Protocol 7.

3. The provisions of Article 12 of this Convention shall not apply within the framework of the said Protocol.

4. For the purpose of Article 8 of the said Protocol, the institutions established by the Convention may be used during the period of application of this Convention.

5. The provisions of Article 8 (2) of the said Protocol shall apply in the event of this Convention ceasing to be operative.

6. The declarations contained in Annexes XIII, XXI and XXII of the Final Act of the ACP-EEC Convention of Lomé are reaffirmed and their provisions shall continue to apply. These declarations are annexed as such to this Convention.

7. This Article and the Protocol 3 referred to in paragraph 1 shall not apply to relations between the ACP States and the French overseas departments.

### **Title III. MINERAL PRODUCTS**

## **Chapter 1. Project and Programme Aid**

### **Article 49.**

With a view to contributing towards the creation of a more solid basis for the development of the ACP States whose economies are largely dependent on the mining sectors and in particular towards helping them cope with a decline in their capacity to export mining products to the Community and the corresponding decline in their export earnings, a system shall be established to assist these States in their efforts to remedy the harmful effects on their income of serious temporary disruptions affecting those mining sectors and beyond the control of the ACP States concerned.

### **Article 50.**

1. The system laid down in Article 49 shall apply to the following products:

- copper, including associated production of cobalt,
- phosphates,
- manganese,
- bauxite and alumina,
- tin,
- roasted iron pyrites and iron ore, whether or not in agglomerate form (including pellets), excluding, during the period mentioned in Article 25 (2), the cases referred to in that Article.

2. If, not sooner than 12 months following the entry into force of this Convention, one or more products not contained in the above list, but upon which the economies of one or more ACP States depend to a considerable extent, are affected by serious disturbance, the Council of Ministers shall decide, not later than six months after the presentation of a request by the ACP State or States concerned, whether or not to include the said product or products in the list.

### **Article 51.**

1. For the purpose specified in Article 49, and for the period of application of this Convention, a special financing facility shall be set up to which the Community shall allocate an overall amount of 280 million EUA to cover all its commitments under this system.

(a) This amount shall be managed by the Commission.

(b) This overall amount shall be divided into a number of equal annual instalments corresponding to the number of years of application. Each year, except the last, the Council of Ministers, on the basis of a report submitted to it by the Commission,

may authorize, where required, a maximum of 50 % of the following year's instalment to be used in advance.

(c) Whatever balance remains at the end of each year of application of this Convention, except the last, shall be carried over automatically to the following year.

(d) If the resources available for any year of application are insufficient, the amounts due shall be reduced accordingly.

(e) The resources available for each year of application shall be made up of the following elements:

- the annual instalment, reduced by any amounts used under (b) above,
- the sums carried over under (c) above.

2. Before the expiry of the period referred to in Article 188, the Council of Ministers shall decide on the allocation of any balances remaining from the overall amount referred to in this Article.

## **Article 52.**

1. Possible recourse to the means of financing available under the special facility provided for in Article 51 shall be open to the countries eligible under Article 53 when, for a product covered by Article 50 and exported to the Community, a substantial fall is recorded, or can be expected over the following months, in their capacity to produce, or to export, or in their export earnings to such an extent as to seriously affect the development policy of the ACP State concerned by seriously compromising the profitability of an otherwise viable and economic line of production, thus preventing it from renewing at a normal rate or maintaining the production plant or export capacity.

2. The possible recourse referred to above shall also be available when a substantial fall in the production or export capacity is experienced, or is foreseen, owing to accidents and serious technical mishaps or grave political events, whether internal or external.

3. A substantial fall in production or export capacity shall be taken to mean 10 %.

## **Article 53.**

1. An ACP State which, during the preceding four years, has, as a general rule, derived at least 15 % of its export earnings from a product covered by Article 50 may apply for financial aid from the resources allocated to the special financing facility if the conditions laid down in Article 52 are fulfilled.

2. However, for the States listed in Article 155 (3), the figure stipulated in the first paragraph shall be 10 %.

3. The application for aid shall be made to the Commission, which shall examine it in conjunction with the ACP State concerned. The fact that the conditions have been fulfilled shall be established by common accord between the Community and the ACP State. Notification thereof by the Commission to the ACP State shall entitle the latter to Community aid from the special financing facility.

## **Article 54.**

1. The aid referred to in Article 53 shall be directed to the objectives defined in Article 49.

2. The amount of this aid to finance projects or programmes shall be determined by the Commission in the light of the funds available under the special financing facility, the nature of the projects or programmes proposed by the ACP States concerned and the possibilities for co-financing. In determining the amount, account shall be taken of the scale of the reduction in production or export capacity and of the losses of earnings suffered by the ACP States and corresponding to those identified in Article 52.

3. Under no circumstances may a single ACP State be eligible for more than 50 % of the funds available under an annual instalment.

4. The procedures applicable to assistance in the above circumstances and the implementing arrangements shall be as provided for under Title VI; they shall take account of the need for rapid implementation of the aid.

## **Article 55.**

1. To permit the implementation of precautionary measures to halt deterioration of production plant during the appraisal or

implementation of these projects or programmes, the Community may grant an advance to any ACP State which so requests. This possibility shall not exclude recourse by the ACP State concerned to the emergency aid provided for in Article 137.

2. Since an advance is granted as a means of pre-financing projects or programmes, which it precedes or to which it is preparatory, account shall be taken of the importance and nature of those projects or programmes when the amount of advance is fixed.

3. The advance shall take the form of supplies or of the provision of services, or of cash. payments if this arrangement is considered more appropriate.

4. It shall be incorporated in the amount earmarked for Community operations in the form of projects or programmes at the time when the financing agreement relating to such operations is signed.

### **Article 56.**

Aid granted from the special financing facility shall be reimbursed on the same terms and conditions as special loans, account being taken of the provisions adopted in favour of the States listed in Article 155 (3).

## **Chapter 2. Development of the Mining and Energy Potential of the ACP States**

### **Article 57.**

The Community shall be prepared to give its technical and financial assistance to help with the exploitation of the ACP States' mining and energy potential in accordance with the procedures peculiar to each of the instruments at its disposal and according to the provisions of this Convention.

### **Article 58.**

At the request of one or more ACP States the Community will carry out technical assistance activities to strengthen their scientific and technical capacity in the fields of geology and mining in order that they may derive greater benefit from available know-how and direct their research and exploration programmes accordingly.

Where appropriate, the Community will also give its technical and financial assistance to the establishment of national or regional exploration funds in the ACP States.

In the sphere of research and investment preparatory to the launching of mining and energy projects, the Community may give assistance in the form of risk capital, possibly in conjunction with contributions of capital from the ACP States concerned and other sources of financing in accordance with the procedures laid down in Article 105.

### **Article 59.**

The European Investment Bank, hereinafter called "the Bank" may, in accordance with its Statute, commit its own resources on a case-by-case basis beyond the amount fixed in Article 95 in mining investment projects and energy investment projects recognized by the ACP State concerned and by the Community as being of mutual interest.

## **Title IV. INVESTMENTS**

### **Article 60.**

The Community and the Member States shall endeavour to implement measures to encourage their economic operators to participate in the industrial development efforts of the ACP States, and shall encourage such economic operators to comply with the development objectives and priorities and the appropriate laws and regulations of the ACP States.

### **Article 61.**

Each ACP State shall take such steps as are necessary to promote effective cooperation within the framework of this Title with the Community and the Member States or with economic operators or nationals of Member States who comply with the development objectives and priorities of the host ACP State.

## **Article 62.**

Each ACP State shall endeavour to give as clear an indication as possible of its priority areas for industrial cooperation and the form it would like such cooperation to take.

## **Article 63.**

The Contracting Parties recognize the importance of investment for the promotion of their development cooperation and acknowledge in this respect the need to take such steps as would promote such investment in areas considered mutually desirable.

## **Article 64.**

The Contracting Parties agree that the treatment of investment coming from Member States to the ACP States shall be governed by the provisions of the joint declaration contained in Annex IX of the Final Act.

## **Title V. INDUSTRIAL COOPERATION**

### **Article 65.**

The Community and the ACP States, acknowledging the pressing need to promote the industrial development of the ACP States, agree to take all measures necessary to bring about effective industrial cooperation.

### **Article 66.**

Industrial cooperation between the Community and the ACP States shall have the following objectives:

- (a) to promote new relations of dynamic complementarity in the industrial field between the Community and the ACP States, notably by establishing new industrial and trade links between the industries of the Community and those of the ACP States;
- (b) to promote development and diversification of all types of industry in the ACP States and to foster in this respect cooperation at both regional and inter-regional levels;
- (c) to promote the establishment of integral industries capable of creating links between various industrial sectors in the ACP States in order to provide those States with the basis on which the build-up of their technology will principally rely;
- (d) to encourage the complementarity between industry and other sectors of the economy, in particular agriculture, by developing agro-allied industries in order to slow down the rural exodus, stimulate food and other production activities as well as to promote the establishment of further natural resource-based industries;
- (e) to facilitate the transfer of technology and to promote the adaptation of such technology to the specific conditions and needs of the ACP States, and to help the ACP States to identify, evaluate and select technologies required for their development and to develop their efforts to increase their capacity in applied research for adaptations of technology, and for training in industrial skills at all levels;
- (f) to foster the participation of nationals of ACP States in all the types of industry that are being developed in their countries;
- (g) to contribute as far as possible to the creation of jobs for nationals of the ACP States, to the supply of national and external markets and to the procurement of foreign exchange earnings for those States
- (h) to facilitate the overall industrial development of the ACP States, in particular their production of manufactured goods, by taking due account of their specific needs in the formulation of policies designed to adjust the industrial structures of the Community to changes occurring at the world level;
- (i) to encourage the establishment in the ACP States of joint ACP-EEC industrial ventures;
- (j) to encourage and promote the establishment and reinforcement of industrial, business and trade associations in the ACP States which would contribute to the full utilization of the internal resources of those States with a view to developing their national industries;

(k) to assist in the establishment and operation of institutions in the ACP States for the provision of regulatory and advisory services to industry;

(l) to strengthen the existing financial institutions and bring about conditions favourable to capital borrowing for the stimulation of the growth and development of industries in ACP States, including the promotion of the basic rural small- and medium-scale and labour-intensive industries.

### **Article 67.**

In order to attain the objectives set out in Article 66 the Community shall help to carry out, by all the means provided for in the Convention, programmes, projects and schemes submitted to it on the initiative or with the agreement of the ACP States in the fields of industrial training, small- and medium-sized industries, local processing of ACP raw materials, technology cooperation, industrial infrastructures, trade promotion, energy cooperation and industrial information and promotion.

### **Article 68.**

The Community shall provide by all the means available under financial and technical cooperation necessary assistance in the field of industrial training including that related to industrial investments, in particular of the Community and its Member States with a view to enabling ACP States to acquire, develop and adapt technological skills that are essential to their industrial growth and to the improvement of the quality of life of their peoples.

To this end the Community shall, on the basis of requests of ACP States, provide effective assistance in the evaluation of needs and the execution of appropriate schemes such as:

(a) the posting of nationals of ACP States in technical institutions and other appropriate institutes of higher learning;

(b) the setting-up and operation at national or regional level of ACP training and research institutes or centres;

(c) the establishment and implementation of programmes involving specialized industrial training for ACP nationals at all levels and the organization of practical training courses and attachments in undertakings and industries both in the Community and in the ACP States;

(d) the establishment and promotion of activities aimed at the consolidation of appropriate indigenous technologies and the acquisition of relevant foreign technologies, in particular those of other developing countries;

(e) the promotion of exchange and other forms of cooperation between universities and specialized institutes in the Community and in the ACP States.

### **Article 69.**

The Community shall contribute to the establishment and development of all types of small- and medium-sized industries identified by the ACP States as important in terms of their development objectives. through financial and technical cooperation schemes adapted to the specific needs of such industries in these States and through encouragement, by appropriate incentives, of the transfer of relevant resources from Community private undertakings inter alia through joint ventures. between small- and medium-sized industries of the Community and of the ACP States. These schemes shall cover inter alia:

1. the evaluation of the development potential of the small- and medium-sized industries sector;

2. the setting-up and strengthening of information, promotion, advisory, supervisory and credit institutions as well as facilities for the promotion of external and internal marketing;

3. the creation of appropriate infrastructure and industrial estates;

4. the provisions of basic and advanced training;

5. the setting-up of adequate structures aimed at appropriate technological transfer, adaptation and innovation;

6. the identification of possibilities for subcontracting and facilitating the implementation thereof;

7. the financing of schemes for small- and medium-sized industries.

### **Article 70.**



In the framework of overall cooperation with respect to industrial development, special emphasis will be placed on the domestic processing of ACP raw materials with a view to achieving a larger and equitable share of processed raw materials in both production and exports of the ACP States. In this context, account will be taken, where appropriate, of specific sectoral requirements, with adequate attention being paid to the food processing sector. The Community will contribute through the various means of financial and technical cooperation to:

1. the promotion, development and financing of processing industries in the ACP States;
2. feasibility studies;
3. the evaluation of processing possibilities and the provision of information on processing technologies;
4. the promotion within the Community and other markets of the exports of ACP processed products.

## **Article 71.**

With a view to assisting the ACP States to strengthen their indigenous capacity for scientific and technological development and to facilitating the acquisition, transfer and adaptation of technology on terms that will seek to bring about the greatest possible benefits and minimize costs, the Community, through the instruments of financial and technical cooperation is prepared inter alia to contribute to:

- (a) the establishment and strengthening of industry- related scientific and technical infrastructures in the ACP States;
- (b) the definition and implementation of research and development programmes;
- (c) the identification and creation of possibilities of collaboration among research institutes, institutions of higher learning and undertakings of ACP States, the Community, the Member States and other countries;
- (d) the identification, evaluation and acquisition of technology including the negotiation on favourable terms and conditions of foreign technology, patents and other industrial property, in particular through financing and/or through other suitable arrangements with firms and institutions within the Community;
- (e) the provision of advisory services to ACP States for the preparation of regulations governing the transfer of technology and for the supply of available information, in particular on the terms and conditions of technology contracts, the types and sources of technology, and the experience of ACP States and other countries with the use of certain technologies;
- (f) the promotion of technology cooperation between ACP States and between them and other developing countries in order to make best use of any particularly appropriate scientific and technical facilities those States may possess.

## **Article 72.**

The Community shall contribute by all the means available under financial and technical cooperation to the setting-up and the extension in the ACP States of the infrastructure necessary for industrial development, particularly in the fields of transport and communications, energy, research and adaptation of technology, industrial training and the location of industries.

## **Article 73.**

1. The Community shall contribute to the setting-up and the extension in the ACP States of undertakings in particular in the following fields:

- (a) integral industries capable of creating linkages between the different sectors of the economy;
- (b) industries processing the ACP State's natural resources; ;
- (c) industries linked to the development of agriculture and the promotion of agricultural produce;
- (d) any other line of production which may increase value added locally, have a favourable effect on employment or the trade balance, facilitate the diversification or regional balance of industry or foster industrial or inter-regional cooperation.

2. Community financing shall take the form, as a matter of priority, of loans from the Bank and risk capital, which are the specific financing methods for industrial undertakings. The methods for employment of risk capital are defined in Title VI with the purpose of their adaptation to the particular difficulties inherent in the financing of industrial undertakings in the ACP States.

## **Article 74.**

In order to enable the ACP States to obtain full benefit from the trade arrangements and other provisions of this Convention, trade promotion schemes shall be carried out to encourage the marketing of industrial products of ACP States both in Community and in other external markets, and also in order to stimulate and develop trade in industrial products among the ACP States, in accordance with the provisions of Article 93.

## **Article 75.**

Programmes, projects or schemes undertaken in the field of industrial cooperation and involving Community financing shall be implemented in accordance with Title VII, taking into account the particular characteristics of operations in the industrial sector.

## **Article 76.**

1. The Community and the ACP States recognize the mutual benefits of cooperation in the field of energy. With a view to developing the conventional and non-conventional energy potential and the self-sufficiency of the ACP States, the Community will assist inter alia in the following areas:

- (a) preparation of inventories on energy resources and demand, adequate attention being paid to non-commercial energy demand;
- (b) implementation of alternative energy strategies in programmes and projects that will take special account of the experience of the ACP States and cover inter alia wind, solar, geothermal and hydro-energy sources;
- (c) development of the investment potential for the exploration and development of national and regional energy sources as well as the development of sites of exceptional energy production enabling the establishment of energy-intensive industry;
- (d) strengthening of the management and control of the ACP States of their energy resources in terms of their development objectives by all the means provided for in this Convention;
- (e) establishment of a rural energy programme with emphasis on rural energy technologies and energy planning that meet basic needs;
- (f) promotion of research, adaptation and dissemination of appropriate technology as well as the training needed to meet energy-related manpower needs;
- (g) production in the ACP States of equipment for the production and distribution of energy as well as the application of energy-saving techniques;
- (h) implementation of measures that will minimize the negative impact of energy production on the environment as well as promote environmentally positive projects;
- (i) conservation of existing and future energy resources of the ACP States, whether conventional or non-conventional.

2. Programmes projects or schemes undertaken in the field of energy cooperation and involving Community financing shall be implemented in accordance with Title VII.

In relation to research and experimental projects as well as exploration and development projects of mutual interest, the resources provided for under Title VII may be supplemented by:

- (a) other Community financial and technical resources;
- (b) actions aimed at the mobilization of public and private capital, notably co-financing.

## **Article 77.**

1. Industrial information and promotion activities will be undertaken so as to ensure and intensify regular information exchanges and the organization of the necessary contacts in the industrial field between the Community and the ACP States.
2. These industrial information and promotion activities could have in particular the following aims:

- (a) to gather and disseminate all relevant information concerning trends in industrial policies in the Community, the ACP States and the world at large, and on the conditions of and possibilities for industrial development in the ACP States;
- (b) to organize at the request of the Community or of the ACP States meetings to review the subjects mentioned under (a);
- (c) to organize and facilitate all other forms of contacts and meetings between industrial policy-makers, promoters and economic operators from the Community and the ACP States;
- (d) to carry out studies and appraisals aimed at pinpointing practical opportunities for industrial cooperation with the Community in order to promote the industrial development of the ACP States, and at facilitating the implementation of such schemes;
- (e) to contribute, through appropriate technical cooperation schemes, to the setting up, launching and running of the ACP States' industrial promotion bodies;
- (f) to facilitate access to and use of documentary and other data sources available in the Community.

## **Article 78.**

1. A Committee on Industrial Cooperation supervised by the Committee of Ambassadors shall:

- (a) review progress in the implementation of the overall programme of industrial cooperation resulting from this Convention and, where appropriate, submit recommendations to the Committee of Ambassadors;
- (b) examine problems and policy issues in the field of industrial cooperation submitted to it by the ACP States or by the Community, and undertake where necessary its own evaluations of these matters with a view to suggesting appropriate solutions;
- (c) organize, at the request of the Community or of the ACP States, a review of trends in industrial policies of the ACP States, and of the Member States as well as developments in the world industrial situation with a view to exchanging information necessary for improving industrial cooperation and facilitating the industrial development of the ACP States;
- (d) guide, supervise and control the activities of the Centre for Industrial Development referred to in Article 79, and report to the Committee of Ambassadors and, through it, to the Council of Ministers;
- (e) perform such other functions as may be assigned to it by the Committee of Ambassadors.

2. The composition of the Committee on Industrial Cooperation and the detailed rules for its operation shall be determined by the Council of Ministers.

## **Article 79.**

The Centre for Industrial Development, set up under Article 36 of the ACP-EEC Convention of Lomé, shall help within the framework of the provisions and principles of this Title to establish and strengthen industrial undertakings in the ACP States, particularly by encouraging initiatives by economic operators of the Community and the ACP States.

As a practical operational instrument, the Centre for this purpose shall assist in the promotion of viable industrial projects that meet the needs of ACP States and take special account of the importance of internal and external market opportunities, the processing of raw materials and the use of local materials for manufacturing. Such activity will be undertaken in close cooperation with the ACP States, the Member States, as well as the Commission and the Bank within their respective powers.

In its programme on industrial promotion, special emphasis shall be placed on the identification and exploitation of the possibilities of joint ventures and subcontracting as well as of the potential of small- and medium-sized industries. Adequate attention shall also be paid to the development and consolidation of regional industrial projects.

In its effort to help in establishing and strengthening industrial undertakings in the ACP States the Centre shall adopt appropriate measures within the limits of its resources and its functions in the field of transfer and development of technology, industrial training and information.

## **Article 80.**

In order to attain its objective, the Centre shall:

(a) gather and disseminate all relevant information on the conditions and opportunities for industrial cooperation as well as organize and facilitate contacts and meetings of all kinds between Community and ACP States' industrial policy-makers, promoters and economic and financial operators;

(b) supply information as well as specific advisory services and expertise, including feasibility studies, for the purpose of accelerating the establishment of industrial undertakings required by the ACP States and ensuring viability of existing undertakings; the Centre will, if necessary, assist in the follow-up and implementation;

(c) identify and evaluate, on the basis of needs indicated by ACP States, opportunities for industrial training to meet requirements of already existing as well as projected industrial undertakings in ACP States, taking into account the various facilities available for conducting and financing such training schemes and, where appropriate, assist in their implementation;

(d) identify, evaluate and supply information and advice on the acquisition, the adaptation and development of appropriate industrial technology, including technological infrastructure, relating to concrete projects of interest to the ACP States;

(e) identify and provide information where necessary on possible sources of finance.

2. In the implementation of its functions, the Centre will pay attention to the special problems of least-developed, land-locked and island ACP States.

## **Article 81.**

1. The Committee on Industrial Cooperation shall be the supervisory authority of the Centre.

2. The Centre shall be headed by a director assisted by a deputy director both of whom shall be appointed by the Committee. The Committee shall adopt the arrangements applicable to the staff of the Centre.

3. An Advisory Council shall have the task of advising and assisting the Centre in the programming and development of its industrial activities. The Advisory Council shall be consulted by the director, when appropriate, on any proposed operations and on important matters arising from the activities of the Centre. It may also, on its own initiative, make any suggestion or submit to the director any question that it deems useful. It shall give its opinion on the annual programme of work, budget and general report.

4. The Advisory Council of the Centre shall be composed of persons with experience in the industrial field especially in the manufacturing sector. They shall be chosen on a personal basis on the grounds of their qualifications from nationals of the States which are party to this Convention and shall be appointed by the Committee under the conditions laid down by it.

5. The budget of the Centre, together with the opinion of the Advisory Council, shall be examined and adopted by the Committee on Industrial Cooperation. The Committee shall adopt the financial regulation of the Centre. The Community shall contribute to the financing of this budget by means of a separate allocation up to a ceiling of 25 million EUA taken from the resources earmarked under Article 133 for the financing of regional cooperation projects.

6. Two auditors shall check the financial management of the Centre.

7. The statutes and rules of the procedure of the Centre shall be adopted by the Council of Ministers on a proposal by the Committee of Ambassadors after the entry into force of this Convention.

## **Article 82.**

Within the framework of the implementation of the provisions of this Title, the Community shall meet the special needs and problems of the least-developed, land-locked and island ACP States, according to the priorities which these States establish inter alia for the processing of their raw materials, the development, transfer and adaptation of technology, the development of small- and medium-sized industries, the development of their infrastructure and energy and mineral resources, and adequate training in the scientific, technological and technical fields.

## **Title VI. AGRICULTURAL COOPERATION**

### **Article 83.**

1. The basic objective of agricultural cooperation between the Community and the ACP States must be to assist the latter in their efforts to resolve problems relating to rural development and the improvement and expansion of agricultural

production for domestic consumption and export and problems they may encounter with regard to security of food supplies for their populations.

2. Accordingly, cooperation in rural development shall contribute in particular, within the general objectives of financial and technical cooperation:

(a) to a higher standard of living for the rural population, in particular by raising incomes and creating jobs, by means of increasing agricultural production generally;

(b) to reinforcing the security of the food supplies of the ACP States and to satisfying their nutritional requirements, particularly by improving the quantity and quality of food production;

(c) to improving the productivity of and diversifying rural activities, in particular through the transfer of appropriate technology and rational use of crop and livestock resources while protecting the environment;

(d) to local exploitation of agricultural produce, in particular through the processing of crops and livestock products in the countries concerned;

(e) to the social and cultural development of the rural community, in particular through integrated health and educational schemes;

(f) to increasing the populations' capacity for self-development, notably, through greater control over their technical and economic environment.

## **Article 84.**

In order to help attain the objectives referred to in Article 83, cooperation schemes in the field of rural development shall take the form inter alia of:

(a) integrated rural development projects involving in particular peasant family holdings and cooperatives and also fostering craft and trading activities in rural areas;

(b) different kinds of hydro-agricultural improvement schemes using available water resources; village water-engineering microprojects, stabilization of water courses and land development involving partial or total water control;

(c) projects for crop protection, preservation and storage and for marketing agricultural products designed to bring about conditions giving farmers an incentive to produce;

(d) the establishment of agro-industrial units combining primary agricultural production, processing, and the preparation, packaging and marketing of the finished product; :

(e) stock-farming projects; protection, exploitation and improvement of livestock and the development of livestock products;

(f) fishery and fish farming projects: exploitation of natural resources and development of new products; preservation and marketing of products;

(g) exploitation and development of forestry resources for production or environmental protection purposes;

(h) the implementation of measures to raise the standard of living in rural areas, for example by improving the social infrastructure, drinking water supply and communication networks;

(i) such applied agronomic and livestock research projects as prove necessary prior to or in the course of the implementation of agricultural cooperation schemes;

(j) training schemes at all levels for national supervisory staff who will have to take over responsibility for the planning, execution and management of rural development operations and applied agronomic and livestock research projects.

## **Article 85.**

Rural cooperation schemes as defined in Article 84 shall form part of the development policy of the ACP States in accordance with the options and priorities to be determined by the ACP States themselves. The financial and technical resources from the Community required for the execution of such schemes as stated in indicative programmes shall be additional to the ACP States' own resources and shall be put to use in accordance with the provisions of Title VII.

## **Article 86.**

For the purpose of implementing the cooperation schemes referred to in Article 84 and in order to improve the efficiency of the different departments of the ACP States, both national and inter-State, that deal with rural development, the latter may call on technical assistance in the form of individual experts or consultancy teams, in particular for the following tasks:

- the formulation of rural development policies,
- the identification and preparation of projects in that field,
- project execution, management and evaluation,
- applied research activities,
- the training of national personnel.

Technical assistance shall be provided within the framework of terms of reference specifying the tasks to be accomplished for a period determined in accordance with the provisions of Title VII. Assistance schemes must form part of national indicative programmes or of regional programmes.

## **Article 87.**

1. In order to enable the ACP States to derive greater advantage from the opportunities for inter-State action and cooperation in rural development, the Community is ready to contribute from regional cooperation appropriations to initiatives devised and put into effect by two or more ACP States, involving production, research or training projects.

2. Assistance for cooperation in this field shall be provided preferably through existing national or inter-State organizations, in accordance with the provisions and procedures relating to regional cooperation.

## **Article 88.**

1. A Technical Centre for Agricultural and Rural Cooperation shall be established.

The Centre shall be at the disposal of the ACP States' authorities responsible for agricultural development in order to provide them with better access to information, research, training and innovations in the agricultural and rural field. In matters within its powers it shall act in close cooperation with the institutions and bodies referred to in this Convention or in the declarations annexed hereto.

2. The functions of the Centre shall be:

(a) to ensure, in particular when requested by the ACP States, the dissemination of scientific and technical information relating to particular questions of agricultural development raised by those States;

(b) to direct to the bodies qualified to deal with them the ACP States' requests in respect of specific techniques or their adaptation in the field of agriculture;

(c) to help make scientific publications on agricultural matters available to the ACP States' agronomic research institutions and provide them with access to data banks;

(d) to facilitate the flow of information on the programming of agronomic research in accordance with priority development requirements;

(e) to bring about meetings between research workers, planners and development personnel so as to improve the exchange of experience gained on matters relating to specific ecological zones and particular topics;

(f) to foster the exchange of information and the results of field work between the bodies specializing in the various aspects of tropical agriculture and the rural community;

(g) to help facilitate the adaptation of available information to the needs of extension work and development;

(h) to facilitate access by the ACP States' training and extension personnel to the information they need to carry out their tasks;

(i) to direct requests for specific training to the relevant existing bodies;

(j) in general, to help facilitate access by the ACP States to the results of work by the national, regional and international bodies, particularly those located in the Community and in the ACP States, technically qualified in agricultural and rural development matters and to maintain contact with those bodies.

3. In order to determine appropriate solutions to the problems encountered by the ACP States, in particular for the purpose of improving their access to information, technical innovations and research in the field of rural development, the Centre shall arrange meetings of delegates from the ACP States' and Member States' organizations specializing in applied agronomic research relating in particular to tropical agriculture and/or questions of rural development, such organizations having been approved by the Committee of Ambassadors or the bodies which it has delegated.

4. (a) The Committee of Ambassadors shall be the supervising authority for the Centre.

(b) The Centre shall be headed by a director appointed by the Committee of Ambassadors as from the entry into force of this Convention.

(c) The director of the Centre shall report on its activities to the Committee of Ambassadors.

(d) The detailed rules of operation and procedures for the adoption of the Centre's budget shall be laid down by the Committee of Ambassadors. The budget shall be financed in accordance with the procedures laid down in the Convention in respect of financial and technical cooperation. The director of the Centre shall be aided by a staff recruited within the limits of the budgetary establishment adopted by the Committee of Ambassadors.

## **Article 89.**

Food aid is a temporary measure and the ultimate aim of ACP States is to become self-sufficient in food production.

The Community and the ACP States will seek better ways of combining, as far as possible, any food-aid measures on behalf of any ACP State that are decided upon unilaterally by the Community in accordance with the specific rules and criteria for the allocation of this type of aid, with schemes carried out using the resources provided for in this Convention.

## **Article 90.**

In the implementation of the provisions of this Title special priority shall be accorded to the specific problems and difficulties of the least-developed ACP States, particularly in the areas of production, processing, training, research, transport, marketing, packaging and the establishment of storage infrastructure.

## **Title VII. FINANCIAL AND TECHNICAL COOPERATION**

### **Chapter 1. General Provisions**

#### **Article 91.**

1. The objective of financial and technical cooperation shall be to promote the economic and social development of the ACP States on the basis of the priorities laid down by those States and in the mutual interest of the parties.

2. This cooperation shall complement the efforts of the ACP States and shall be in keeping with them. It shall relate to the preparation, financing and implementation of projects and programmes that contribute to the economic and social development of the ACP States and whose nature is adapted to the needs and characteristics of each of those States.

3. It should help the least-developed, land-locked and island ACP States to overcome the specific obstacles which hamper their development efforts.

4. It should encourage the regional cooperation of the ACP States.

#### **Article 92.**

1. Financial and technical cooperation shall take account of the need to comply with the conditions specific to each State, especially as regards its development policy, the strategies to be followed, the priorities it has set itself, its potential and its own resources.

2. In this context, projects and programmes shall help achieve some or all of the following effects:

(a) to give the ACP States the means of improving and gaining more control over the conditions of their economic and social development;

(b) to contribute to the sustained and harmonious growth of the ACP States' economies by raising the quantity and quality of their production and, hence, their national income, and by correcting structural imbalances, through the diversification and integration of their economies;

(c) to raise the standard of living of the ACP States' population;

(d) to enable the ACP States faced with serious economic and social difficulties of an exceptional nature resulting from natural disasters or extraordinary circumstances having comparable effects to benefit from emergency aid;

(e) to enable thus the establishment of more balanced economic relations between the ACP States and the rest of the world and greater participation by those States in international trade.

3. The implementation of financial and technical cooperation calls for real and effective participation by the ACP States and the Community, at all levels, in the management and operation of the instruments of financial and technical cooperation and the concurrent and ex-post evaluation of the projects and programmes of such cooperation, as laid down in Article 108.

### **Article 93.**

1. Projects and programmes may involve:

- capital projects, including the support costs and running costs defined in Articles 152 and 153,

- technical cooperation.

2. The projects and programmes may, within the framework of the priorities adopted at the programming level as well as within the framework of regional cooperation, apply inter alia to:

(a) rural development, industrialization, craft development, energy, mining, tourism and economic and social infrastructure;

(b) structural improvement of the productive sectors of the economy;

(c) protection of the environment;

(d) prospecting and exploration and exploitation of natural resources;

(e) training, applied scientific research and applied technology, technological adaptation or innovation and the transfer of technology;

(f) industrial promotion and information;

(g) marketing and sales promotion;

(h) promotion of small- and medium-sized national undertakings;

(i) micro-projects for grassroots development.

3. The funds provided may be used to cover external costs and local expenditure required for the execution of projects and programmes.

4. Financial and technical cooperation may cover current administrative, maintenance and operating expenses which are the responsibility of the ACP States or any other recipients only on the conditions laid down in Articles 152 and 153.

5. In order to take account of the specific problems facing the land-locked ACP States because of their geographical position, the Community shall accord priority to:

(a) such studies, projects, programmes and training and technical assistance schemes presented by the land-locked States as make it possible to reduce the particular difficulties resulting from their land-locked situation, notably transport, communication and energy supply problems;

(b) the research needed for the development of energy and mining resources and, where necessary, for carrying out relevant capital projects.

6. The Community, recognizing the special problems of island ACP States and in particular their transport and



communication difficulties, within their territories, among themselves, and with the Community, shall give priority attention to appropriate measures aimed at:

- (a) promoting, in the field of air and sea transport, the movement of goods and persons;
- (b) developing sea fishing activities;
- (c) contributing, if necessary, towards exploration for and development of energy resources;
- (d) reducing the adverse effects of the special difficulties of those States which are further handicapped by reason of their distant location from their overseas markets, internal fragmented physical character, and their particular susceptibility to natural disasters.

## **Article 94.**

1. The following shall be eligible for financial and technical cooperation:

- (a) ACP States;
- (b) regional or inter-state bodies to which one or more ACP States belong and which are authorized by the said States;
- (c) joint bodies set up by the Community and the ACP States and authorized by the latter to attain certain specific objectives, notably in the spheres of agricultural, industrial and trade cooperation.

2. The following shall also be eligible for financial and technical cooperation, subject to the agreement of the ACP State or States concerned, in respect of projects or programmes approved by the latter:

- (a) public-or semi-public development agencies of the ACP States, and in particular their development banks;
- (b) local authorities and private bodies working in the countries concerned for their economic and social development;
- (c) undertakings carrying out their activities in accordance with industrial and business management methods and formed as companies or firms of an ACP State within the meaning of Article 161;
- (d) groups of producers that are nationals of the ACP States or like bodies, and, where no such groups or bodies exist, the producers themselves;
- (e) for training purposes, award holders and trainees.

## **Chapter 2. Financial Resources and Methods of Financing**

### **Article 95.**

For the duration of the Convention, the overall amount of the Community's financial assistance shall be 5 227 million EUA.

This amount shall comprise:

1. 4542 million EUA from the European Development Fund hereinafter referred to as "the Fund", allocated as follows:

- (a) for the purposes set out in Articles 91 and 92, 3 712 million EUA, consisting of:
  - 2928 million EUA in the form of grants,
  - 504 million EUA in the form of special loans,
  - 280 million EUA in the form of risk capital;
- (b) for the purposes set out in Title II, up to 550 million EUA in the form of transfers for the stabilization of export earnings;
- (c) for the purposes set out in Title III, Chapter 1, a special financing facility up to 280 million EUA;

2. for the purposes set out in Articles 91 and 92, up to 685 million EUA in the form of loans from the Bank, made from its own resources in accordance with the terms and conditions provided for in its Statute. These loans shall carry, under the conditions laid down in Article 104, a 3 % interest rate subsidy, the cost of which shall be charged against the amounts of aid provided for in 1 (a).

## **Article 96.**

At the request of the ACP States and by consent of the parties the financial resources of the Community may be applied to co-financing, where that permits an increase in the financial flows to the ACP States and supports their efforts to harmonize international cooperation for their development. Special consideration shall be given in particular to:

- (a) large projects which cannot be financed by any one source of financing alone;
- (b) projects in which participation by the Community and input of its project expertise might facilitate the participation of other financing institutions;
- (c) projects for which diversification of financing might be advantageous, from the point of view of the terms of financing or the cost of the investment, and particularly projects of a social nature;
- (d) projects of a regional or inter-regional nature.

## **Article 97.**

Co-financing may take the form of joint or parallel financing. Preference shall be given to the solution that is best from a cost and efficiency viewpoint.

## **Article 98.**

With the agreement of the parties concerned, and without prejudice to the particular rules of each financing institution, necessary measures shall be taken to coordinate and harmonize operations of the Community and of the other co-financing bodies during the preparation and implementation of the project or programme being co-financed in order to avoid an increase in the number of procedures to be implemented by the ACP States and to allow those procedures to be made more flexible.

## **Article 99.**

With the agreement of the ACP State concerned, the Community may provide the other co-financing bodies with administrative help, should they so desire, in order to facilitate the implementation of the project or programme being co-financed.

## **Article 100.**

At the request of the ACP State in question and with the agreement of the other parties concerned the Commission or the Bank may act as a leading or coordinating agency for projects part-financed by them.

## **Article 101.**

1. Projects or programmes may be financed by grant, or by special loan, or by risk capital, or by loans from the Bank from its own resources, or jointly by two or more of these means of financing.
2. The financing of productive investment projects in industry, agro-industry, tourism, mining and energy production linked with investment in those sectors shall be borne in the first place by loans from the Bank from its own resources and by risk capital.
3. For resources of the Fund which are managed by the Commission the means of financing shall be fixed jointly in accordance with the level of development and the geographical, economic and financial situation of the ACP State or States concerned, so as to ensure the best use of available resources. Account may also be taken of their economic and social impact.
4. For resources managed by the Bank, the means of financing shall be fixed in accordance with the nature of the project, the prospects for its economic and financial return and the stage of development and economic and financial situation of the ACP State or States concerned. Account shall be taken in addition of factors guaranteeing the servicing of repayable aid.

## **Article 102.**

Special loans shall be made for a duration of 40 years, with a grace period of 10 years. They shall bear interest at the rate of 1 % per annum.

### **Article 103.**

1. Grants or special loans may be accorded to an ACP State or may be channelled by that State to a final recipient.
2. In the latter case, the terms on which the money may be made available, by the ACP State to the final recipient shall be laid down in the financing agreement.
3. Any profit accruing to the ACP State because it receives either a grant or a loan for which the interest rate or the repayment period is more favourable than that of the final loan shall be used by the ACP State for development purposes on the conditions laid down in the financing agreement.
4. Taking account of a request of the ACP State concerned, the Bank may, in accordance with Article 101, grant finance which it shall administer either directly to the final recipient, via a development bank, or via the ACP State concerned.

### **Article 104.**

1. Scrutiny by the Bank of eligibility of projects and the provision of loans from its own resources shall be effected in conjunction with the ACP State or States concerned in accordance with the rules, conditions and procedures provided for in the Bank's Statute and in this Convention, consideration being given to the economic and financial situation of the ACP State or States concerned and to the factors which guarantee the servicing of repayable aid.
2. The duration of loans made by the Bank from its own resources shall be governed by terms stipulated on the basis of the economic and financial characteristics of the project, but may not exceed 25 years.
3. The rate of interest shall be the rate charged by the Bank at the time of signing of each loan contract. This rate shall be reduced by 3 % by means of an interest rate subsidy, except where loans are intended for investment in the oil sector.  
  
This interest rate subsidy shall, however, be automatically adjusted so that the interest rate actually borne by the borrower will be neither less than 5 % nor more than 8 %.
4. The aggregate amount of interest rate subsidies, calculated in terms of its value at the time of the signature of the loan contract at a rate and according to detailed rules to be laid down by the Community, shall be charged against the amount of grant aid specified in Article 95 and shall be paid direct to the Bank.

### **Article 105.**

1. In order to enable projects to be carried out in industry, agro-industry, mining, tourism, and, in exceptional circumstances, transport and telecommunications, and in energy production linked with investment in those sectors, the Community may grant financial assistance in the form of risk capital where they are of general interest to the economy of the ACP State or States concerned.
2. Risk capital assistance may be used inter alia for:
  - (a) increasing directly or indirectly the own resources or resources assimilated thereto of public, semi-public or private undertakings and granting quasi-capital assistance to such undertakings;
  - (b) financing specific studies for the preparation and the drawing up of projects and providing assistance to undertakings during the start-up period;
  - (c) financing research and investment in preparation for the launching of projects in the mining and energy sectors.
3. To attain these objectives the Community may acquire temporary minority holdings in the capital of the undertakings concerned or in that of institutions for financing development in the ACP States. Such holdings may be acquired in conjunction with a loan from the Bank or with another form of risk-capital assistance. As soon as the conditions are met they shall be transferred, preferably to nationals or institutions of the ACP States.
4. Quasi-capital assistance may also take the form of:
  - (a) subordinated loans, which shall be redeemed and in respect of which interest, if any, shall be paid only after other bank claims have been settled;

(b) conditional loans, the repayment or duration of which shall be governed by terms laid down when the loan is made. Conditional loans may be made directly, with the agreement of the ACP State concerned, to a given firm. They may also be granted to an ACP State or to institutions in the ACP States specializing in development financing to enable them to acquire a holding in the capital of undertakings operating in the sectors referred to in paragraph 1, where such an operation comes under the financing of preparatory or new productive investments and may be supplemented by other Community financing, possibly together with other sources of financing, as a co-financing operation;

(c) loans made to development financing institutions in the ACP States, where the characteristics of their activities and management so permit. Such loans may be used for on lending to other firms and acquiring holdings in other undertakings.

5. The terms of the quasi-capital assistance referred to in paragraph 4 shall be determined case by case by reference to the characteristics of the projects financed. However, the terms on which quasi-capital assistance is granted shall generally be more favourable than those for subsidized loans from the Bank. The interest rate shall not be greater than that on subsidized loans.

6. Where the assistance referred to in this Article is granted to consultancy firms or is used to finance research or investment in preparation for the launching of a project, it may be incorporated in any capital assistance to which the promoting company may be entitled if the project is carried out.

### **Article 106.**

1. Special treatment shall be accorded to the least- developed ACP States when determining the volume of the financial resources which such States may expect from the Community for the purpose of their indicative programmes.

In addition, account shall be taken of the particular difficulties of the land-locked or island ACP States.

2. These financial resources shall be combined with particularly favourable terms of financing, having regard to the economic situation and the nature of the needs specific to each State. They shall consist essentially of grants and, in appropriate cases, of special loans or risk capital.

3. Special loans for the least-developed ACP States shall be made for a duration of 40 years with a grace period of 10 years. They shall bear an interest rate of 0-75 % per annum.

4. The Community shall as a matter of priority facilitate access for the least-developed ACP States to risk capital assistance administered by the Bank.

5. Loans from the Bank's own resources may also be granted in the least-developed ACP States, having regard to the criteria laid down in Article 104.

### **Article 107.**

At the request of the least-developed ACP States, the Community may, under the conditions laid down in Article 139 (4), lend assistance in studying solutions to their indebtedness, debt-servicing and balance-of- payments problems.

## **Chapter 3. ACP and EEC Responsibilities**

### **Article 108.**

1. Operations financed by the Community shall be implemented by the ACP States and the Community in close cooperation, the concept of equality between the partners being recognized.

2. The ACP States shall be responsible for:

(a) defining the objectives and priorities on which the indicative programmes drawn up by them shall be based;

(b) choosing the projects and programmes which they decide to put forward for Community financing;

(c) preparing and presenting to the Community the dossiers of projects and programmes;

(d) preparing, negotiating and concluding contracts;

(e) implementing projects and programmes financed by the Community;

(f) managing and maintaining operations carried out in the context of financial and technical cooperation.

3. If requested by the ACP States, the Community may provide them with technical assistance in performing the tasks referred to in paragraph 2. It shall examine in particular specific measures for alleviating the particular difficulties encountered by the least-developed, land-locked and island ACP States in the implementation of their projects and programmes.

4. The ACP States and the Community shall bear joint responsibility for:

(a) defining, within the joint institutions, the general policy and guidelines of financial and technical cooperation;

(b) adopting the indicative programmes of Community aid;

(c) appraising projects and programmes, and examining the extent to which they fit the objectives and priorities and comply with the provisions of the Convention;

(d) taking the necessary implementing measures to ensure equality of conditions for participation in invitations to tender and contracts;

(e) evaluating the effects and results of projects and programmes completed or under way;

(f) ensuring that the projects and programmes, financed by the Community are executed in accordance with the arrangements decided upon and with the provisions of the Convention.

5. The Community shall be responsible for preparing and taking financing decisions on projects and programmes.

6. (a) An ACP-EEC Committee shall be set up within the Council of Ministers to study, in general terms and on the basis of specific examples, suitable measures to improve the implementation of financial and technical cooperation, notably by accelerating and streamlining procedures.

(b) The Committee shall be composed, on a basis of parity, of representatives of the ACP States and of the Community appointed by the Council of Ministers, or their authorized representatives. It shall meet every quarter and at least once a year at ministerial level.

A representative of the Bank shall be present at Committee meetings.

(c) The Council of Ministers shall lay down the Committee's rules of procedure in particular the conditions for representation and the number of members of the Committee, the detailed arrangements for their deliberations and the conditions for holding the chair.

(d) Within the powers delegated to it by the Council of Ministers the Committee shall carry out the following tasks:

(i) it shall collect information on existing procedures relating to the implementation of financial and technical cooperation and give any necessary clarification on these procedures;

(ii) it shall examine, at the request of the Community or of the ACP States, any specific difficulties which may arise in the course of implementing such financial and technical cooperation;

(iii) it shall inform the Council of Ministers in the annual report referred to in subparagraph (f), of any comments and suggestions on the annual report referred to in Article 119;

(iv) it shall submit to the Council of Ministers any suggestions likely to lead to improvement or acceleration in the implementation of financial and technical cooperation;

(v) it shall examine any problems in connection with the implementation of the timetables of commitments, execution and payments as provided for in Article 110, with a view to facilitating the removal of any difficulties and bottlenecks discovered at different levels;

(vi) it shall carry out such other tasks entrusted to it by the Council of Ministers.

(e) With the agreement of the Committee of Ambassadors, the Committee may convene meetings of experts to study periodically the causes of any difficulties or bottlenecks which may arise in implementing financial and technical cooperation. These experts shall suggest to the Committee possible ways of removing such difficulties and bottlenecks.

(f) The Committee shall examine the annual report on the management of Community financial and technical aid, which shall be forwarded to it by the Commission pursuant to Article 119 (2). It shall draw up, for the attention of the Council of

Ministers, recommendations and resolutions relating to measures directed towards attainment of the objectives of financial and technical cooperation, within the framework of the powers conferred upon it by that Council. It shall draw up an annual report giving details of progress, which shall be examined by the Council at its annual meeting on the definition of the policy and guidelines for financial and technical cooperation referred to in Article 119.

7. Where the financing of projects within the Bank's sphere of competence is concerned, the arrangements and procedures for implementing financial and technical cooperation, as set out in Chapters 4, 6, 7 and 8, may, in coordination with the ACP States concerned, be adapted to take account of the nature of the projects financed by the Bank and to permit it, within the framework of the procedures laid down by its Statute, to act in accordance with the objectives of this Convention.

## **Chapter 4. Programming, Appraisal, Implementation and Evaluation**

### **Article 109.**

1. The schemes financed by the Community, which are complementary to the ACP States' own efforts, shall be integrated into the economic and social development plans and programmes of the said States and shall tie in with the development objectives and priorities which they set both at national and regional level.

2. At the beginning of the period covered by this Convention, financial and technical cooperation shall be programmed so as to enable:

(a) each ACP State to have the clearest and earliest possible indication, before the indicative programme is drawn up, of the amount of the financial assistance administered by the Commission and from which it may benefit during that period and of the terms and conditions which may be attached thereto;

(b) the Contracting Parties to ensure that optimum use is made of the different instruments and means of cooperation provided for in this Convention; in order to attain the objectives of financial and technical cooperation; ,

(c) the Community to know the development objectives and priorities set by each ACP State and the projects and programmes which the ACP States decide to put forward for financing in the framework of their objectives and priorities.

3. An indicative programme shall be adopted by mutual agreement between the Community and each ACP State on the basis of proposals made by that State. The programme shall set out:

(a) the guidelines and scope of financial and technical cooperation as they emerge from the exchange of views between the representatives of the ACP State and those of the Community;

(b) the ACP State's objectives and priorities for which the Community's financial support is seen as particularly appropriate;

(c) specific projects and programmes, where they have been clearly identified, to achieve the development objectives. These projects and programmes together with those subsequently identified in the light of the objectives and priorities. written into the indicative programme, shall then be appraised in accordance with Article 112.

4. In the light of these various aspects, an optimum rate of commitment shall be determined under the conditions set out in Article 110.

5. The indicative programmes shall be sufficiently flexible to take account of any changes occurring in the economic situation of each of the ACP States, and any modifications of their initial priorities and objectives. Each programme may be revised at the request of the ACP State concerned. In any case, it shall be reviewed at least once during the period covered by this Convention.

6. These programmes shall not cover the emergency aid referred to in Article 137 or the measures for stabilizing export earnings referred to in Title II.

7. When the indicative programme of an ACP State is drawn up, its representatives and those of the Community shall hold an exchange of views on the ACP State's priorities and objectives at regional level. Note shall be taken of specific projects and programmes enabling these objectives to be attained in the context of regional cooperation.

### **Article 110.**

1. (a) When the Fund's resources administered by the Commission are programmed the optimum pace for overall commitments, year by year, shall be worked out with the ACP State concerned in the light of the various constraints on the

parties and priorities to be observed by them.

(b) This optimum pace shall be determined in such a way that the overall amount of sums to be committed each year is distributed as evenly as possible throughout the period of application of this Convention.

(c) Any balance remaining from the Fund that has not been committed by the end of the last year of the application of this Convention will be utilized until it has been exhausted, in accordance with the same conditions as those laid down in this Convention.

2. Where the ACP State has presented a complete project dossier within the meaning of the second subparagraph of Article 111 (1), an advance timetable for appraisal, lasting until the stage when the financing proposal is drawn up, shall be adopted by the Commission and the ACP State concerned.

3. The financing proposal shall contain an advance timetable for the technical and financial implementation of the project, which shall be reproduced in the financing agreement and deal with the duration of the different phases of implementation.

4. A comparative account of commitments and payments shall be drawn up each year by the national authorizing officer and the Commission delegate to determine the causes of delays recorded in the execution of the indicative timetable so that the necessary remedial measures can be proposed.

## **Article 111.**

1. (a) Preparation of the dossiers of projects or programmes proposed under the indicative programmes shall be the responsibility of the ACP States concerned or of other beneficiaries approved by them.

(b) The dossiers must contain all the information necessary for the appraisal of the project.

(c) Where so requested the Community may provide assistance for drawing up the dossiers.

2. Such dossiers shall be officially transmitted to the Community by the ACP States or the other beneficiaries specified in Article 94 (1). Where the beneficiaries specified in Article 94 (2) are concerned, the express agreement of the State or States concerned shall be required.

3. All projects or programmes transmitted officially in accordance with paragraph 2 shall be brought to the attention of the Community body responsible for taking financing decisions.

## **Article 112.**

1. (a) Project and programme appraisal shall be undertaken in close collaboration between the Community and the ACP States or any other beneficiaries.

(b) The various aspects of the projects and programmes shall be appraised, in particular economic, social, technical, financial and administrative aspects.

(c) Appraisal should ensure that the projects and programmes really meet the criteria defined in paragraph 2.

2. The criteria used for appraising projects and programmes shall be as follows:

(a) projects and programmes must correspond to the objectives and priorities of the ACP State. They must take account of national efforts and of other resources of external origin and dovetail with them and the provisions of this Convention;

(b) the effectiveness of projects and programmes shall be assessed by means of an analysis comparing the means to be employed with the effects expected from the technical, social, economic and financial aspects; possible variants shall be examined;

(c) projects and programmes shall be assessed for their viability from the viewpoint of the different economic agents involved, be they the State, an undertaking or local communities. This part of the appraisal procedure is to ascertain that the project will produce the expected effects in a period considered normal for the type of scheme concerned.

It is also to make sure that any staff and other resources, in particular financial, necessary for operating and maintaining the capital projects and for covering any incidental project costs are actually available locally.

This shall be achieved by establishing forward budgets and assessing the opportunities for adapting the project to local constraints and resources;

(d) appraisal of the economic return shall be directed at the various effects expected of the project, notably the physical, economic, social and financial effects, if possible on the basis of a cost-benefit analysis;

(e) appraisal must take account of the non-quantifiable effects of projects, and particular attention shall be paid to the effects of the project on the environment.

3. The specific difficulties and constraints peculiar to the least-developed ACP States which affect the effectiveness, viability and economic return of projects and programmes shall be taken into account when the said projects and programmes are appraised.

### **Article 113.**

1. The conclusions of the appraisal shall be summarized in a financing proposal, which shall serve as the basis for the Community's decision.

2. The financing proposals, drawn up by the relevant departments of the Community, shall be transmitted to the ACP States concerned.

3. (a) Where the Community body responsible for delivering an opinion on projects fails to deliver a favourable opinion, the relevant departments of the Community shall consult the representatives of the ACP State or States concerned on further action to be taken, in particular on the advisability of submitting the dossier afresh, possibly in a modified form, to the relevant Community body.

(b) Before that body gives its final opinion, the representatives of the ACP State or States concerned shall, at their request, be heard by the Community representatives on that body in order to be able to state their grounds for the project.

4. Should the final opinion delivered by that body not be favourable, the competent departments of the Community shall consult afresh with the representatives of the ACP State or States concerned so as to find out whether the project should be submitted as it stands to the Community bodies or whether it should be withdrawn or modified.

5. In the event of the ACP State considering that the project should be submitted as it stands to the decision-making body of the Community, that State may communicate any facts which appear necessary to supplement the information available to that body before the final decision. It may also, before a decision is taken by that body, be heard by the President and the members of the Council of the European Communities in order to submit information additional to that mentioned above.

6. Where the Community's decision-making bodies are unable to pass a project for financing, the ACP State concerned shall be informed of the reasons for such a decision.

### **Article 114.**

1. With a view to accelerating the procedures, financing proposals may deal with multiannual programmes or overall amounts where the financing concerns:

(a) sets of training schemes;

(b) micro-project programmes;

(c) sets of technical cooperation and trade promotion schemes.

Financing decisions on individual schemes and projects shall be taken within the framework of such programmes and overall amounts.

2. In the same spirit, decisions on projects and programmes involving a limited amount may be taken by accelerated procedure.

3. Any measures required to streamline and speed up procedures shall be taken in respect of all projects and programmes implemented under this Convention.

### **Article 115.**

1. In respect of the Fund's resources administered by the Commission, for any project or programme on which a financing decision has been taken a financing agreement shall be drawn up between the Commission, acting on behalf of the Community, and the ACP State or States concerned. The agreement shall specify in particular the details of the Fund's



financial commitment and the arrangements for and terms of the financing. A timetable for commitments and payments shall be annexed to the financing agreement.

2. In addition, for any project or programme financed by a special loan, a loan contract shall be drawn up between the Commission, acting on behalf of the Community, and the borrower.

### **Article 116.**

Any unexpended balance left upon closure of the accounts of projects or programmes financed from the Fund's resources administered by the Commission shall accrue to the ACP State concerned and shall be so specified in the Fund's books. It may be used in the manner laid down in this Convention for the financing of projects and programmes.

### **Article 117.**

1. (a) Cost overruns incurred during the implementation of projects or programmes financed from the Fund's resources administered by the Commission shall be borne by the ACP State or States concerned, subject to the following provisions.

(b) However, the financing agreements for all projects shall make provision for appropriations to cover cost increases and contingencies.

(c) The ACP States may also set aside a reserve. for this purpose in their indicative programmes.

2. As soon as it appears that cost overruns are likely to be incurred, the national authorizing officer shall so inform the chief authorizing officer through the Commission delegate. The chief authorizing officer shall on this occasion be informed of the measures the national authorizing officer intends to take in order to cover such cost overruns, whether by reducing the scale of the project or programme or by calling on national or other non-Community resources.

3. If it appears impossible to reduce the scale of the project or programme or to cover the cost overruns by drawing on national or other non-Community resources, the Community body responsible for taking the financing decisions may, in each case, take a supplementary commitment decision and finance the relevant expenditure.

4. Without prejudice to the arrangements provided for in paragraphs 2 and 3, the national authorizing officer shall, in coordination with the chief authorizing officer, use the unexpended balances referred to in Article 116 for covering cost overruns on a project or programme, within the limits of a ceiling set at 15 % of the financial commitment for the project or programme concerned.

### **Article 118.**

1. (a) Evaluation may be undertaken during the implementation of projects and programmes. The ACP States concerned and the Community shall draw up a joint progress report, at agreed intervals, on the various aspects of the project and its results.

(b) Such a report may serve to re-orient the project during implementation if a joint decision is taken to this effect.

2. (a) The ACP States concerned and the Community shall organize the joint evaluation of completed projects and programmes. Evaluation shall concern the results, by comparison with the objectives, and also the administration, operation and maintenance of the schemes. The two parties shall study the results of such evaluations.

(b) The relevant authorities of the Community and of the ACP States concerned shall each take the appropriate measures called for by the results of the evaluation work.

## **Chapter 5. Policy and Guidelines**

### **Article 119.**

1. The Council of Ministers shall examine at least once a year whether the objectives of financial and technical cooperation are being attained and shall also examine the general problems resulting from implementation of that cooperation. This examination shall also cover regional cooperation and measures in favour of the least-developed, land-locked and island ACP States.

2. To this end the Commission shall submit to the Council of Ministers an annual report on the management of Community financial and technical aid. This report, which shall be drawn up in collaboration with the Bank for the parts of the report

which concern it, shall be forwarded to the ACP-EEC Committee referred to in Article 108 (6). It shall in particular show the position as to the commitment, implementation and use of the aid, broken down by type of financing and by recipient State, and the results of work done to evaluate projects and programmes.

3. This information shall be accompanied by the results of the work of the ACP-EEC Committee referred to in Article 108 (6) on the general problems of improving the implementation of financial and technical cooperation and by the reports drawn up by groups of experts whom the Council of Ministers may periodically instruct to study the causes of, and means of eliminating, any difficulties or bottlenecks on either side.

4. On the basis of the information referred to in paragraphs 2 and 3, the Council of Ministers shall define the policy and guidelines of financial and technical cooperation and shall adopt resolutions on the measures to be taken by the Community and the ACP States in order to ensure that the objectives of such cooperation are attained.

## **Chapter 6. Execution of Financial and Technical Cooperation**

### **Article 120.**

The ACP States, and the other beneficiaries authorized by them in accordance with Article 94, shall implement the projects and programmes financed by the Community.

Accordingly, they shall be responsible in particular for preparing negotiating and concluding the necessary contracts for the implementation of the operations.

### **Article 121.**

1. The Commission shall appoint the chief authorizing officer of the Fund, who shall ensure that financing decisions are carried out and shall be responsible for managing the Fund's resources. Taking account in particular of the advance timetables for commitments and payments referred to in, Article 110, the chief authorizing officer shall accordingly commit, clear and authorize expenditure, and keep the accounts of commitments and authorizations.

2. In close cooperation with the national authorizing officer, the chief authorizing officer shall ensure equality of conditions for participations in invitations to tender, and see to it that there is no discrimination and that the tender selected is economically the most advantageous. In this connection the chief authorizing officer shall approve the dossiers before invitations to tender are issued, receive the result of the examination of the tenders and approve the proposal for the placing of the contract, subject to the powers exercised by the Commission delegate under Article 123.

3. Subject to the powers exercised by the national authorizing officer under Article 122 (4), the chief authorizing officer shall take any adaptation measures and commitment decisions necessary to ensure the proper execution of approved projects and programmes under the best economic and technical conditions.

### **Article 122.**

1. (a) The government of each ACP State shall appoint a national authorizing officer to represent the authorities of that officer's country in all operations financed from the Fund's resources administered by the Commission.

(b) The national authorizing officer may delegate some of these functions and shall inform the chief authorizing officer of any such delegation.

2. In addition to the functions of the national authorizing officer in connection with the preparation, submission and appraisal of projects, that officer shall:

(a) ensure, in close cooperation with the chief authorizing officer, that there is equality of conditions for participation in invitations to tender, that there is no discrimination and that the tender which is economically the most advantageous is chosen;

(b) prepare invitation to tender dossiers and submit them to the delegate for agreement before issuing invitations to tender;

(c) issue invitations to tender;

(d) receive tenders, preside over the examination of tenders, decide the outcome of the said examination and transmit it to the delegate with a proposal for the placing of the contract;

(e) sign contracts and riders thereto and estimates, and notify the Commission delegate thereof.

3. The national authorizing officer shall clear and authorize expenditure within the limits of the funds assigned, taking account, in particular, of the advance timetables for commitments and payments referred to in Article 110. The national authorizing officer shall remain responsible for the funds entrusted to him until the Commission authorizes the operations for the execution of which the funds were entrusted to him.

4. During the implementation of projects, and subject to the requirement to inform the Commission delegate, the national authorizing officer shall take any adaptation measures necessary to ensure the proper execution of approved projects or programmes under the best economic and technical conditions.

Accordingly, the national authorizing officer shall decide on:

(a) technical adjustments and alterations on matters of detail, so long as they do not affect the technical solutions adopted and remain within the limits of the provision for minor adjustments;

(b) minor alterations to estimates during implementation;

(c) transfers from item to item within estimates;

(d) changes of site for multiple-unit projects where justified on technical or economic grounds;

(e) imposition or remission of penalties for delay;

(f) acts discharging guarantors;

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

(h) 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;

(i) subcontracting;

(j) final acceptance; however, the delegate must be present at provisional acceptances and endorse the corresponding minutes and, where appropriate, be present at the final acceptance, in particular where the extent of the reservations recorded at the provisional acceptance necessitates major additional work,

5. For contracts of less than 3-5 million EUA and in general for all contracts to which the accelerated procedure applies, decisions taken by the national authorizing officer under the powers vested in that officer shall be deemed approved by the Commission within 30 days of the notification to the Commission delegate.

## **Article 123.**

1. (a) The Commission shall appoint a delegate to each ACP State or group of ACP States to represent it for the purpose of facilitating the application of the Convention. The appointment of the Commission delegate shall be agreed by the ACP State or States concerned.

(b) Where a delegate is appointed to a group of ACP States, appropriate steps shall be taken to ensure that the delegate is represented by a deputy resident in each of the States concerned in which the delegate is not resident.

2. The Commission shall give its delegate the necessary instructions and delegated powers to facilitate and expedite the preparation, appraisal and implementation of projects financed from the Fund's resources administered by it. The delegate shall work in close cooperation with the national authorizing officer and deal with that officer on behalf of the Commission. In this capacity the delegate shall:

(a) approve the invitation to tender dossier wherever invitations to tender are to be issued by accelerated procedure, or in other cases transmit it to the chief authorizing officer for that officer's agreement;

(b) be present at the opening of tenders, and receive a copy of them and of the results of their examination;

(c) approve within one month the national authorizing officer's proposal for the placing of the contract wherever the three following conditions are fulfilled: the tender selected is the lowest, it is economically the most advantageous and does not exceed the sum earmarked for the contract;

(d) approve within one month the proposal for the placing of the contract in all cases where invitations to tender are issued

by the accelerated procedure;

(e) where the conditions set out in (c) are not fulfilled, forward the proposal for the placing of the contract to the chief authorizing officer for agreement, and the chief authorizing officer shall decide thereon within two months of the receipt by the Commission delegate of the final outcome of examination of the tenders and the proposal for the placing of the contract;

(f) participate in the preparation and negotiation of service contracts,

3. (a) The delegate shall make sure, on behalf of the Commission, that the projects and programmes financed from the Fund's resources administered by the Commission are properly implemented from the financial and technical angles.

(b) Accordingly, the delegate shall endorse contracts, riders thereto and estimates, as well as payment authorizations issued by the national authorizing officer.

4. Each year the delegate shall prepare a summary of the Fund's operations in the ACP State or States to which he or she is appointed. The report shall be communicated by the Commission to the ACP State or States concerned.

5. The delegate shall cooperate with the national authorities in evaluating completed projects and programmes. Reports on the outcome of the evaluation shall be drawn up and communicated to the ACP States concerned and the Commission.

6. The delegate shall inform the national authorities of Community activities which may directly concern cooperation between the ACP States and the Community.

7. (a) The delegate shall maintain continuous contact with the national authorizing officer for the purpose of analyzing and remedying specific problems encountered in the implementation of financial and technical cooperation.

(b) To that end the delegate shall in particular make regular checks to see that operations are proceeding in accordance with the schedules laid down in the advance timetables established under Article 110.

8. The delegate shall communicate to the ACP State all information and relevant documents on the procedures for implementing financial and technical cooperation.

9. The delegate shall prepare the financing proposals.

## **Article 124.**

1. For the purpose of effecting payments in the national currencies of the ACP States, accounts denominated in the currency of one of the Member States shall be opened in each ACP State in the Commission's name with a national public or semi-public financial institution, chosen by mutual agreement between the ACP State and the Commission. This institution shall exercise the functions of paying agent.

2. The accounts referred to in paragraph 1 shall be replenished by the Commission by reference to actual cash requirements, account being taken of the advance timetable for payments provided for in Article 110. Transfers shall be made in the currency of one of the Member States and shall be converted into the national currency of the ACP State as and when payments fall due.

3. The paying agent shall not be remunerated for its services; no interest shall be payable on deposited funds.

4. Within the limits of the funds available, the paying agent shall make the disbursements authorized after verifying that the supporting documents provided are substantively correct and in order, and that the discharge is valid.

5. For the purpose of effecting payments in currencies other than the national currencies of the ACP States, payment for services provided shall be made on the instructions of the Commission by drawing on its accounts.

## **Chapter 7. Competition and Preferences**

### **Article 125.**

1. As regards operations financed by the Community, participation in invitations to tender and contracts shall be open on equal terms to all natural persons and companies or firms falling within the scope of the Treaty and to all natural persons and companies or firms of the ACP States.

The companies or firms referred to in the preceding paragraph shall be those defined in Article 161 of the Convention.

2. Measures to encourage the participation of ACP States' undertakings in the execution of contracts shall be taken in order to permit optimum use of these States' natural and human resources.
3. Paragraph 1 shall not imply that the funds provided by the Community must be used exclusively for purchases of goods or payment for services in the Member States and the ACP States.
4. Any participation by third countries in contracts financed by the Community must be of an exceptional nature and be authorized case by case, at the reasoned request of the ACP State concerned, by the competent body of the Community. Unless other appropriate factors prevail account shall be taken of a desire to avoid excessive increases in the cost of projects attributable either to the distances involved and transport difficulties or to the delivery date, notably in the case of the least-developed, land-locked and island ACP States.
5. The Commission and the ACP State concerned shall take the appropriate measures to provide the Community body with the information needed for a decision on such derogations. This body shall examine the information with particular attention in the case of ACP States whose geographical location greatly reduces the competitiveness of suppliers and contractors from the Community and the ACP States.
6. Participation by third countries in contracts financed by the Community may be authorized where the Community participates in the financing of regional or inter-regional cooperation schemes involving third countries and in the joint financing of projects with other providers of funds.

## **Article 126.**

1. The ACP States and the Commission shall take the necessary measures to ensure the widest possible participation on equal terms in invitations to tender and works and supply contracts financed by the Fund's resources managed by the Commission.
2. The purpose of these measures shall be in particular:
  - (a) to ensure advance publication in reasonable time of invitations to tender in the Official Journal of the European Communities, the official journals of the ACP States and any other suitable information media;
  - (b) to eliminate discriminatory practices or technical specifications which might stand in the way of widespread participation on equal terms;
  - (c) to encourage cooperation between the undertakings of the Member States and of the ACP States, for example by means of preselection and the creation of groups.

## **Article 127.**

1. As a general rule, works and supply contracts financed by the Fund's resources managed by the Commission shall be concluded following an open invitation to tender.
2. However, for operations relating to emergency aid, and for other operations where the urgency of the situation is recognized or where the nature, minor importance or particular characteristics of the works or supplies so warrant, the ACP States may, in agreement with the Commission, exceptionally authorize:
  - the placing of contracts after restricted invitations to tender,
  - the conclusion of contracts by direct agreement,
  - the performance of contracts through public works departments.
3. Furthermore, for operations costing under 3-5 million EUA, recourse to public works departments may be authorized where the recipient ACP State has sufficient suitable equipment and qualified staff available in its national departments.

## **Article 128.**

To promote the widest possible participation by national undertakings of the ACP States in the performance of works and supply contracts financed from the Fund's resources managed by the Commission:

- (a) an accelerated procedure for issuing invitations to tender shall be used for carrying out works estimated to cost less than 3-5 million EUA. Under this procedure, publication shall be confined to the ACP State concerned and the neighbouring ACP

States and the time limits for the submission of tenders shall be fixed in accordance with the rules in force in the ACP State concerned.

The use of this accelerated procedure shall not exclude the possibility of the Commission's proposing an international invitation to tender to the ACP State concerned where the nature of the works to be undertaken or the advantages of wider participation would appear to justify inviting international competition;

(b) for carrying out works whose value is less than 3-5 million EUA, national undertakings of the ACP States shall be accorded a 10 % preference where tenders shall be fixed in accordance with the rules in force in the ACP State concerned.

This preference shall be confined to national undertakings of the ACP States within the meaning of the national laws of these States provided that their residence for tax purposes and main business are established in an ACP State and that a significant share of the capital and management staff is supplied by one or more ACP States;

(c) for the delivery of supplies, undertakings involved in industrial or craft production of the ACP States shall be accorded a 15 % preference where tenders of equivalent technical and economic quality are compared.

This preference shall be confined to national undertakings of the ACP States which provide a sufficient margin of added value.

## **Article 129.**

In order to ensure the rapid and effective implementation of projects and programmes financed by the Community in the least-developed ACP States, the Community shall give special priority to the application of specific measures in the following areas:

(a) the award of contracts following accelerated invitations to tender on the terms specified in Article 128;

(b) the placing of contracts following restricted invitations to tender and the conclusion of contracts by direct agreement on the terms specified in Article 127;

(c) the performance of contracts through public works departments on the terms specified in Article 127;

(d) the placing of service contracts by the Commission, in agreement with the ACP State concerned where the scheme is urgent, of minor importance or short duration, particularly in the case of appraisals concerned with the preparation of projects and programmes;

(e) the arrangement of payment procedures in such a way that the States concerned do not have to bear any pre-financing costs.

## **Article 130.**

1. For each operation the criteria for selecting the tender that is economically the most advantageous shall take into account inter alia the qualifications of and the guarantees offered by the tenderers, the nature and conditions of implementation of the works or supplies and the price, operating costs and technical value of those works or supplies.

2. Where two tenders are acknowledged to be equivalent on the basis of the criteria stated above, preference shall be given to the tender of the undertaking which is a national of an ACP State or if no such tender is forthcoming to the one which permits the greatest possible use of the physical and human resources of the ACP States,

3. The ACP States and the Commission shall ensure that all the selection criteria are specified in the invitation to tender dossier.

## **Article 131.**

The general conditions applicable to the award and performance of works and supply contracts financed from the Fund's resources administered by the Commission are contained in the general conditions which, on a proposal from the Commission, shall be adopted by decision of the Council of Ministers at its first meeting following the entry into force of this Convention.

## **Article 132.**

1. Any dispute arising between the authorities of an ACP State and a contractor, supplier or provider of services on the occasion of the placing or performance of a contract financed by the Fund shall be settled by arbitration in accordance with rules of procedure adopted by the Council of Ministers.

2. The rules of procedure referred to above shall be adopted, on a proposal, by a decision of the Council of Ministers not later than its first meeting following the entry into force of this Convention.

## **Chapter 8. Regional Cooperation**

### **Article 133.**

1. In the implementation of financial and technical cooperation, the Community shall provide effective assistance for attaining the objectives which the ACP States set themselves in the context of regional and inter-regional cooperation. This assistance shall aim to:

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

(b) accelerate diversification of the economies of the ACP States;

(c) reduce the economic dependence of the ACP States on imports by maximizing output of those products for which the ACP States in question have real potential;

(d) create sufficiently wide markets within the ACP States and neighbouring States by removing the obstacles which hinder the development and integration of those markets;

(e) promote and expand trade between the ACP States and with neighbouring third countries;

(f) maximize the use of resources and services in the ACP States;

(g) strengthen organizations set up by the ACP States to promote regional cooperation and integration;

(h) implement specific measures in favour of the land-locked and island countries, notably in respect of transport and communications.

2. To this end, an amount of 600 million EUA from the financial resources provided for in Article 95 for the economic and social development of the ACP States shall be reserved for financing their regional and inter-regional projects and for participation in any co-financing arrangements that may be made to implement such projects.

### **Article 134.**

1. (a) Within the meaning of the Convention, regional cooperation shall apply to relations either between two or more ACP States, or between one or more ACP States on the one hand and one or more neighbouring non-ACP countries on the other.

(b) Inter-regional cooperation shall apply to relations either between two or more regional organizations of which ACP States form part or between one or more ACP States and a regional organization.

2. Within the meaning of the Convention, regional projects are those which help directly to solve a development problem common to two or more countries through joint schemes or coordinated national schemes,

### **Article 135.**

1. The scope of regional and inter-regional cooperation shall include in particular:

(a) acceleration of industrialization in the ACP States through the setting-up of regional and inter-regional undertakings, account being taken of the establishment of back-up infrastructure;

(b) transport and communications: roads, railways, air and sea transport, inland waterways, postal services and telecommunications;

(c) the production of energy and joint exploitation of natural resources;

(d) research and technology applied to intensifying regional and inter-regional cooperation;

(e) agriculture, notably stock-farming, industry and the promotion of intra-ACP trade in the products of these sectors;

(f) education and training, including the establishment of joint institutions of advanced technology, in the context of training programmes to enable nationals to participate fully in economic development;

(g) control of major endemic diseases and, more generally, measures to improve the health of the population;

(h) cooperation in tourism, including the establishment of tourist promotion centres or the strengthening of existing ones on a regional basis, in order to increase regional and international tourism;

(i) technical assistance for the establishment of regional cooperation bodies or the development of new activities in existing regional bodies, including the preparation of specific programmes and projects;

(j) assistance for action by ACP-EEC business organizations set up with the aim of improving production and the marketing of products on external markets.

2. For the purpose of promoting their regional cooperation the least-developed ACP States shall have a priority claim to the application of the relevant provisions in respect of projects concerning at least one least-developed ACP State, notably where infrastructure projects relating to transport, communications, telecommunications, energy and the development of production are concerned.

## **Article 136.**

1. An ACP State or group of ACP States participating with neighbouring non-ACP countries in a regional or inter-regional project may request the Community to finance that part of the project for which it is responsible.

2. Existing regional cooperation bodies or any- such bodies which may be set up may make a request for Community financing on behalf of their ACP Member States with the latter's explicit agreement.

3. Where a project or programme is financed by the Community through a regional institution, the terms and conditions of such financing applicable to the ultimate beneficiaries shall, in agreement with the ACP State or States concerned, be agreed between the Community and the regional institution.

## **Chapter 9. Emergency Aid**

### **Article 137.**

1. Emergency aid may be granted to ACP States faced with serious economic and social difficulties of an exceptional nature resulting from natural disasters or extraordinary circumstances having comparable effects.

2. For the purpose of financing the emergency aid referred to in paragraph 1, a special appropriation shall be constituted within the Fund.

3. (a) The special appropriation shall initially be fixed at 60 million EUA. At the end of each year of application of this Convention this appropriation shall be restored to its initial level.

(b) The total amount of monies which may be transferred from the Fund to the special appropriation during the period of application of this Convention may not exceed 200 million EUA.

(c) Upon expiry of this Convention any monies transferred to the special appropriation which have not been committed for emergency aid shall be returned to the Fund proper for financing other schemes falling within the scope of financing and technical cooperation, unless the Council of Ministers decides otherwise.

(d) In the event of the special appropriation being exhausted before the expiry of this Convention, the ACP States and the Community shall adopt, within the relevant joint bodies, appropriate measures to deal with the situations described in paragraph 1.

4. Emergency aid shall be non-reimbursable. It shall be allocated on a case by case basis.

5. (a) Emergency aid shall help finance the most suitable means of remedying as effectively and speedily as possible the serious difficulties referred to in paragraph 1.

(b) These means may consist of works, supplies or the provision of services and cash payments and, in exceptional cases, reimbursement in whole or in part of the sums already spent by the ACP State on implementing schemes included in the financing agreement relating to the emergency aid in question.



(c) The ACP State receiving emergency aid shall obtain its supplies from the markets of the Community, ACP States or third countries under the conditions laid down in Article 125.

(d) Where appropriate, such aid may, with the agreement of the ACP State concerned, be implemented via specialized agencies or directly by the Commission.

6. Emergency aid shall not be used for dealing with the harmful effects of the instability of export earnings, which are the subject of Title II.

7. The detailed rules for the allocation of such aid shall be the subject of an emergency procedure. The conditions governing the payment and implementation of such aid shall be determined on a case by case basis; advances may be granted by the national authorizing officer where implementation is based on an estimate.

8. (a) Operations financed by emergency aid must be carried out as quickly as possible and, whatever the circumstances, the monies must be used within six months of the implementing arrangements being established, unless otherwise stipulated by those arrangements and provided that it is not agreed by common accord during the implementation period, to extend that time limit owing to extraordinary circumstances.

(b) Where the monies made available have not all been used up within the time limit set, the fund commitment may be reduced to an amount corresponding to the monies used within that time limit.

(c) The unexpended portion shall then be paid back into the special appropriation.

## **Chapter 10. Technical Cooperation**

### **Article 138.**

The technical cooperation referred to in Article 93 shall cover the following:

(a) general studies, notably in the technical, economic, organizational, training or management spheres;

(b) studies for a particular project or programme;

(c) supervisory, advisory or administrative services or provision of technical cooperation personnel at the implementation stage of a project or programme;

(d) technical cooperation services other than those linked to the implementation of a project or programme.

### **Article 139.**

1. Technical cooperation may be either linked with projects or programmes or of a general nature.

2. Technical cooperation linked with projects or programmes comprises inter alia:

(a) development studies;

(b) technical, economic, financial and commercial studies, and research and surveys required to prepare projects or programmes;

(c) help with the preparation of dossiers;

(d) help with the implementation and supervision of work;

(e) temporarily meeting the cost of technicians and providing the resources needed for them to accomplish their assignment;

(f) technical cooperation measures which may be required temporarily to permit the establishment, launching, operation or maintenance of a specific project, including where necessary appropriate technical assistance and the training of nationals of the country or countries concerned.

3. General technical cooperation comprises inter alia:

(a) studies of the prospects and means for economic development and diversification in the ACP States, and of problems of interest to groups of ACP States or to the ACP States as a whole;

(b) sectoral or product studies;

(c) the provision in the ACP States of experts, advisers, technicians and instructors of the Member States or the ACP States for specific assignments and for limited periods;

(d) the supply of instructional, experimentation and demonstration equipment;

(e) general information and documentation to promote the development of the ACP States and the achievement of the aims of cooperation.

4. At the request of the least-developed ACP States the Community shall give special priority to technical cooperation schemes aimed at:

(a) identifying, preparing and carrying out projects and programmes which form part of the indicative programmes;

(b) facilitating the implementation of the system for the stabilization of export earnings;

(c) promoting technical cooperation between ACP States;

(d) carrying out studies and research work directed towards solving specific economic and social development problems, in particular as regards technological adjustment to the special conditions and features of the least-developed ACP States.

## **Article 140.**

1. Technical cooperation shall be provided under service contracts concluded with consultancy firms or consulting engineers or experts recruited with reference in particular to their professional qualifications and practical experience of problems of the type to be dealt with. Given equal competence, preference will be given to ACP experts or consultancy firms. In exceptional cases technical cooperation may also be undertaken through public works departments.

2. In order to speed up the procedures, service contracts, including those covering the recruitment of consultants and other technical assistance specialists, may be negotiated, drawn up and concluded either by the national authorizing officer on a proposal from the Commission or with its agreement or by the Commission in agreement with the ACP State concerned, where the scheme is urgent, of minor importance or short duration, particularly in the case of appraisals concerned with the preparation of projects and programmes.

## **Article 141.**

1. Technical cooperation in training shall be based on multiannual training programmes and specific schemes.

2. The aim of the multiannual programmes shall be:

(a) to train nationals of the ACP States in accordance with the educational and vocational training priorities expressed by the ACP States;

(b) to train staff, notably middle management and technical staff, associated with the different development projects being financed by the Community in each ACP State so as to phase out technical assistance and to staff capital projects entirely with ACP nationals on a permanent basis.

3. The specific schemes shall deal with vocational training, technological research and innovation at State or regional organization level. Their aim shall be to provide vocational or advanced training for the staff of public services and institutions and of agricultural, industrial and commercial undertakings and services as well as training for instructors in these different fields.

4. Technical cooperation in the field of training shall be achieved through:

(a) awards to nationals of the ACP States for studies and training courses; or

(b) the provision in the ACP States of experts and instructors who are nationals of the Member States or the ACP States, for specific assignments and for limited periods;

(c) the organization of seminars, training and advanced training courses for nationals of the ACP States;

(d) the supply of teaching, instructional, experimentation, demonstration and research equipment;

(e) collaboration between training or research establishments and universities in the Member States and corresponding

bodies in the ACP States.

5. The above activities shall as a matter of priority be undertaken in the recipient ACP State or at regional level. They may where necessary be undertaken in another ACP State or in a Member State. In the case of specialized training particularly suited to the ACP States' requirements, training may in exceptional cases be provided in another developing country.

6. At the request of the least-developed ACP States, the Community shall give special priority to schemes concerned with:

(a) training for management and other staff of public administrative departments and of the technical departments responsible for economic and social development, with the aim of increasing their efficiency and thus deriving maximum benefit from the possibilities offered by this Convention;

(b) basic and further training for management and other staff in the private sector.

## **Article 142.**

1. The rules governing the placing and award of service contracts shall be determined by a decision of the Council of Ministers at its first meeting after the entry into force of this Convention.

2. However, until the entry into force of that decision, Articles 24 to 27 of Protocol 2 to the ACP-EEC Convention of Lomé and the joint declaration on Article 26 of the said Protocol, as annexed, to the Final Act of this Convention shall apply to service contracts concluded after 1 March 1980.

## **Article 143.**

1. Where an ACP State has, within its administrative and technical staff, national personnel making up a substantial part of the work force necessary for the execution by the public works department of a technical cooperation project, the Community may, in exceptional cases, contribute to the costs of the public works department by providing certain apparatus that it lacks, or supply the required additional staff in the form of experts from another State.

2. The participation of the Community shall cover only costs incurred by supplementary measures and temporary expenditure relating to execution strictly confined to the requirements of the project in question and shall exclude all current operational expenditure.

# **Chapter 11. Technical Assistance and the Financing of Small- and Medium-sized Undertakings**

## **Article 144.**

1. The Community shall finance schemes in favour of small- and medium-sized undertakings in the ACP States. The methods of financing shall be determined by reference to the nature of the programmes presented by those States.

2. Technical cooperation from the Community shall help to reinforce the activities of bodies in the ACP States working for the development of small- and medium-sized undertakings and to provide the necessary vocational training for such undertakings.

3. Community financing, undertaken in the form of reimbursable aid or possibly grants, shall as a general rule be through an intermediary. Such financing may also be direct. Financing through an intermediary shall be given priority whenever there exists in the ACP State concerned a bank or other national body contributing to the aim in question. Finance through an intermediary may be accorded:

- by the Bank from the resources administered by it to banks or financial institutions for onlending to small- and medium-sized industrial, agro-industrial or tourist undertakings,

- by the Commission from the resources administered by it to public bodies, local authorities or cooperatives aimed at developing craft, commercial and agricultural sectors.

4. Where the financing is undertaken via an onlending body, it shall be that body's responsibility to present individual projects within the programme already approved and to administer the monies placed at its disposal. The methods, terms and conditions for financing the final recipient shall be determined by mutual agreement between the ACP State concerned, the competent Community authority and the onlending body.

5. The projects shall be appraised by the financial body. This body shall decide, on its own financial responsibility, on final loans to be granted on terms established by reference to those obtaining for this type of operation in the ACP State in question.

6. The financing terms accorded by the Community to the financing body shall take into consideration the latter's need to cover its administrative costs, exchange and financial risks and the cost of technical assistance given to the undertakings or final borrowers.

## **Chapter 12. Micro-projects**

### **Article 145.**

1. In order to respond concretely to the needs of local communities with regard to development, the Fund shall participate in the financing of micro-projects at the ACP States' request.

2. To this end, the requisite amounts shall be included in the indicative programme of Community aid referred to in Article 109 (3) and the corresponding funds shall be deducted from the grants provided for in the first indent of Article 95 (1) (a) and may be used to cover commitments relating to this type of scheme.

3. Special priority shall be accorded to the preparation and implementation of micro-projects in the least-developed ACP States.

### **Article 146.**

1. (a) In order to be eligible for Community financing micro-projects must:

- meet a real priority need at local level,
- ensure the active participation of the local community.

(b) The Fund's contribution to each micro-project may not exceed 150 000 EUA.

2. Programmes for micro-projects shall cover small projects making an economic and social impact on the life of the people and the local communities in the ACP States. These projects shall normally be located in rural areas; however, the Community may also assist in the financing of micro-projects in urban areas.

3. Micro-projects shall include: dams, wells and water supply systems, silos and warehouses for storing provisions and crops, rural electrification, rural service tracks and bridges, rural landing strips, jetties, animal vaccination pens and corridors, primary schools, training colleges, craft industries such as centres and cooperatives, maternity homes, social assistance centres, community centres, market buildings, urban sanitation and land development, premises to encourage commercial activity and other projects which meet the criteria referred to in paragraph 1.

### **Article 147.**

1. Each project for which Community assistance is requested must stem from an initiative taken by the local community which will benefit therefrom. The financing of micro-projects shall in principle have a tripartite structure and shall stem from:

- the community concerned, in the form of a contribution, in cash or in kind or through the provision of services adapted to its capacity to contribute,
- the ACP State, in the form of a financial contribution, the use of public equipment or the supply of services,
- the Fund.

2. The total of the shares contributed by the ACP State and the local community concerned must normally be at least equal to the grant requested from the Fund. The three participants' contributions shall be mobilized at the same time. For each project, the local community shall undertake to maintain and run the project, in conjunction with the national authorities as appropriate.

### **Article 148.**

1. (a) The ACP State concerned shall prepare and submit to the Commission an annual programme setting forth the broad outlines of the projects planned.

(b) After examination by the Commission's departments these programmes shall be submitted to the relevant bodies of the Community for financing decisions in accordance with Article 113.

2. Within the framework of the annual programmes thus drawn up the financing decision relating to each micro-project shall be taken by the ACP State concerned, with the agreement of the Commission delegate; agreement shall be deemed to be given once a month has elapsed from notification of such decision.

### **Article 149.**

Upon completion of each micro-project programme the ACP State concerned, in consultation with the Commission delegate, shall forward a report on its implementation to the Commission.

## **Chapter 13. Taxation, Customs and other Provisions**

### **Article 150.**

The taxation and customs arrangements applicable in the ACP States to contracts financed by the Community are covered by Protocol 6.

### **Article 151.**

In the event of an ACP State failing to ratify or denouncing this Convention in accordance with Title XI, the Contracting Parties shall be obliged to adjust the amounts of the funds provided for in the Convention. Such adjustment shall also apply on the conditions stipulated in Articles 185 and 186 upon the accession of new ACP States to the Convention.

### **Article 152.**

1. The financing of projects and programmes may cover expenditure incurred in and strictly limited to the start-up period, for example for the maintenance and operation of plant that is not yet fully productive, provided that such expenditure, identified in the financing proposal, is considered necessary for setting up, launching and operating the capital projects in question.

2. Special priority shall be accorded to the financing of support costs in the least-developed ACP States.

### **Article 153.**

1. Pursuant to Article 93 (4), running costs may be financed as specified in paragraph 2, 3 or 4 of this Article.

2. The financing of running costs may serve to cover the cost of operating, maintaining or managing capital projects implemented previously, in order to ensure that full use is made of such projects, in particular by providing maintenance equipment and/or carrying out large-scale repair work.

3. Such aid shall be provided temporarily and on a diminishing scale.

4. It must be confined to exceptional cases, account being taken of the needs and resources of each ACP State concerned.

5. Special priority shall be accorded to the financing of running costs in the least-developed ACP States.

### **Article 154.**

Upon expiry of this Convention:

- the appropriations provided for under Article 95 in the form of risk capital but not committed shall be added to those provided for in the form of special loans in the same Article,

- the appropriations provided for under Article 133 for financing regional projects but not committed shall be made available for financing, as a priority, other regional projects and programmes in the same sub-region.

## **Title VIII. GENERAL PROVISIONS CONCERNING THE LEAST-DEVELOPED, LAND-LOCKED AND ISLAND ACP STATES**

### **Article 155.**

1. Under this Convention the least-developed ACP States are accorded special treatment and special measures are provided for the land-locked and island ACP States in order to enable them to overcome the specific difficulties and obstacles resulting from the nature of their needs in the first case and their geographical location in the second and to take full advantage of the opportunities offered by the Convention.

2. The specific provisions laid down pursuant to this Title in respect of the least-developed ACP States on the one hand and the land-locked and island ACP States on the other are contained in Articles 15, 21, 46, 47, 53, 82, 90, 93, 106, 107, 112, 125, 129, 133, 135, 139, 141, 145, 152, 153 and Article 30 of Protocol 1.

3. In accordance with their needs and individual characteristics the ACP States referred to in the following three lists shall be eligible for the special measures referred to in this Article:

#### (a) least-developed ACP States

Benin

Chad

Botswana

Comoros

Burundi

Dominica

Cape Verde

Ethiopia

Central African Republic

Gambia

Grenada

Guinea

Guinea Bissau

Jibuti

Lesotho

Malawi

Mali

Mauritania

Niger

Rwanda

Sao Tome and Principe

Seychelles

Sierra Leone

Solomon Islands

Somalia

St Lucia

Sudan

Swaziland

Tanzania

Togo

Tonga

Tuvalu

Uganda

Upper Volta

Western Samoa

(b) land-locked ACP States

Botswana

Burundi

Central African Republic

Chad

Lesotho

Malawi

Mali

Niger

Rwanda

Swaziland

Uganda

Upper Volta

Zambia

(c) island ACP States

Bahamas

Barbados

Cape Verde

Comoros

Dominica

Fiji

Grenada

Jamaica

Madagascar

Mauritius

Papua New Guinea

Sao Tome and Principe

Seychelles

Solomon Islands

St Lucia

Tonga

Trinidad and Tobago

Tuvalu

Western Samoa

4. The lists of the ACP States referred to in paragraph

3 may be amended by decision of the Council of Ministers:

- where a third State in a comparable situation accedes to this Convention,

- where the economic situation of an ACP State undergoes a significant and lasting change either so as to necessitate its inclusion in the category of least-developed ACP States or so that its inclusion in that category is no longer warranted.

## **Title IX. PROVISIONS RELATING TO PAYMENTS AND CAPITAL MOVEMENTS, ESTABLISHMENT AND SERVICES**

### **Chapter 1. Provisions Relating to Current Payments and Capital Movements**

#### **Article 156.**

With regard to capital movements linked with investments and to current payments, the Contracting Parties shall refrain from taking action in the field of foreign exchange transactions which would be incompatible with their obligations under this Convention resulting from the provisions relating to trade in goods, services, establishment and industrial cooperation. These obligations shall not, however, prevent the Contracting Parties from adopting the necessary protective measures should this be justified by reasons relating to serious economic difficulties or severe balance of payments problems.

#### **Article 157.**

1. In respect of foreign exchange transactions linked with investments and current payments, the ACP States on the one hand and the Member States on the other shall avoid, as far as possible, taking discriminatory measures vis-a-vis each other or according more favourable treatment to third States, taking full account of the evolving nature of the international monetary system, the existence of specific monetary arrangements and balance of payments problems.

2. To the extent that such measures or treatment are unavoidable they will be maintained or introduced in accordance with international monetary rules and every effort will be made to minimize any adverse effects on the Parties concerned.

#### **Article 158.**

Throughout the duration of the loans and risk capital operations provided for in Article 95, each of the ACP States undertakes:

(a) to place at the disposal of the beneficiaries referred to in Article 94 the currency necessary for the payment of interest and commission on and amortization of loans and quasi-capital aid granted for the implementation of aid measures on their territory;

(b) to make available to the Bank the foreign currency necessary for the transfer of all sums received by it in national currency which represent the net revenue and proceeds from transactions involving the acquisition by the Community of holdings in the capital of firms.



## **Article 159.**

At the request of the Community or of the ACP States, the Council of Ministers shall examine any problems raised by the application of Articles 156, 157 and 158. It shall also formulate any relevant recommendations.

## **Chapter 2. Provisions Relating to Establishment and Services**

### **Article 160.**

As regards the arrangements that may be applied in matters of establishment and provision of services, the ACP States on the one hand and the Member States on the other shall treat nationals and companies or firms of Member States and nationals and companies or firms of the ACP States respectively on a non-discriminatory basis. However, if, for a given activity, an ACP State or a Member State is unable to provide such treatment, the Member States or the ACP States, as the case may be, shall not be bound to accord such treatment for this activity to the nationals and companies or firms of the State concerned.

### **Article 161.**

For the purpose of this Convention "companies or firms" means companies or firms constituted under civil or commercial law, including cooperative societies and other legal persons governed by public or private law, save for those which are non-profit-making.

"Companies or firms of a Member State or of an ACP State" means companies or firms formed in accordance with the law of a Member State or an ACP State and whose registered office, central administration or principal place of business is in a Member State or ACP State; however, a company or firm having only its registered office in a Member State or an ACP State must be engaged in an activity which has an effective and continuous link with the economy of that Member State or the ACP State.

### **Article 162.**

At the request of the Community or of the ACP States, the Council of Ministers shall examine any problems raised by the application of Articles 160 and 161. It shall also formulate any relevant recommendations.

## **Title X. INSTITUTIONS**

### **Article 163.**

The institutions of this Convention are the Council of Ministers, the Committee of Ambassadors and the Consultative Assembly.

### **Article 164.**

1. The Council of Ministers shall be composed, on the one hand, of the members of the Council of the European Communities and of members of the Commission of the European Communities and, on the other hand, of a member of the government of each of the ACP States.
2. Any member of the Council of Ministers unable to attend may be represented. The representative shall exercise all the rights of the accredited member.
3. The proceedings of the Council of Ministers shall be valid only if half the members of the Council of the European Communities, one member of the Commission and two-thirds of the accredited members representing the governments of the ACP States are present.
4. The Council of Ministers shall lay down its rules of procedure.

### **Article 165.**

The office of President of the Council of Ministers shall be held alternately by a member of the Council of the European Communities and a member of the government of an ACP State, the latter to be designated by the ACP States.

## **Article 166.**

1. Meetings of the Council of Ministers shall be called once a year by its President.
2. The Council of Ministers shall, in addition, meet whenever necessary, in accordance with the conditions laid down in the rules of procedure.
3. The rules of procedure of the Council of Ministers shall stipulate that the Co-Presidents assisted by advisers may have regular consultations and exchanges of views between meetings of the Council of Ministers.

## **Article 167.**

1. The Council of Ministers shall act by mutual agreement between the Community on the one hand and the ACP States on the other.
2. The Community on the one hand and the ACP States on the other shall each, by means of an internal protocol, determine the procedure for arriving at their respective positions.

## **Article 168.**

1. The Council of Ministers shall define the broad outline of the work to be undertaken in the context of the application of this Convention.
2. The Council of Ministers shall periodically review the results of the arrangements under this Convention and shall take such measures as may be necessary for the attainment of the objectives of this Convention.

The Council of Ministers may, to that end, take into consideration any resolutions or recommendations made in that respect by the Consultative Assembly.

3. Decisions taken by the Council of Ministers in the cases provided for by this Convention shall be binding on the Contracting Parties which shall take such measures as are necessary to implement those decisions.
4. The Council of Ministers may also formulate such resolutions, declarations, recommendations or opinions as it may deem necessary to attain the objectives and to ensure the smooth functioning of the Convention.
5. The Council of Ministers shall publish an annual report and such other information as it considers appropriate.
6. The Council of Ministers may make all the arrangements that are appropriate for ensuring the maintenance of effective contacts, consultations and cooperation between the economic and social sectors of the Member States and of the ACP States.
7. The Community or the ACP States may raise in the Council of Ministers any problems arising from the application of this Convention,
8. Where provided for in this Convention consultations shall take place, at the request of the Community or of the ACP States, within the Council of Ministers, in accordance with its rules of procedure.
9. The Council of Ministers may set up committees or groups or ad hoc working groups to undertake such activities as it may determine.
10. At the request of one of the Contracting Parties, exchanges of view may take place on questions having direct bearing on the matters covered by this Convention.
11. By agreement among the Parties, exchanges of view may take place on other economic or technical questions which are of mutual interest.

## **Article 169.**

The Council of Ministers may, where necessary, delegate to the Committee of Ambassadors any of its powers. In this event, the Committee of Ambassadors shall take its decisions in accordance with the conditions laid down in Article 167.

## **Article 170.**

The Committee of Ambassadors shall be composed, on the one hand, of one representative of each Member State and one representative of the Commission and, on the other, of one representative of each ACP State.

### **Article 171.**

1. The Committee of Ambassadors shall assist the Council of Ministers in the performance of its functions and shall carry out any mandate entrusted to it by the Council of Ministers.
2. The Committee of Ambassadors shall exercise such other duties as are assigned to it by the Council of Ministers.
3. The Committee of Ambassadors shall keep under review the functioning of this Convention and the progress towards the realization of the objectives defined by the Council of Ministers.
4. The Committee of Ambassadors shall account for its actions to the Council of Ministers particularly in matters which have been the subject of delegation of powers. It shall also submit to the Council of Ministers any proposals, resolutions, recommendations or opinions which it may deem necessary or consider appropriate.
5. The Committee of Ambassadors shall supervise the work of all the committees and all other bodies or working groups, whether standing or ad hoc, established or provided for under this Convention and submit periodic reports to the Council of Ministers.
6. In the discharge of its duties the Committee of Ambassadors shall meet at least every six months.

### **Article 172.**

1. The office of the Chairman of the Committee of Ambassadors shall be held alternately by a representative of a Member State designated by the Community and a representative of an ACP State designated by the ACP States. ,
2. The Committee of Ambassadors shall lay down its rules which shall be submitted to the Council of Ministers for approval.

### **Article 173.**

A representative of the Bank shall be present at meetings of the Council of Ministers or Committee of Ambassadors when matters from the areas which concern the Bank are on the agenda.

### **Article 174.**

The secretariat duties and other work necessary for the functioning of the Council of Ministers and the Committee of Ambassadors or other joint bodies shall be carried out on a basis of parity and in accordance with the conditions laid down in the rules of procedure of the Council of Ministers.

### **Article 175.**

1. The Consultative Assembly shall be composed on a basis of parity of members of the European Parliament on the side of the Community and of members of parliament or representatives designated by the ACP on the other.
2. The Consultative Assembly shall consider ways and means of strengthening the cooperation between the Community and the ACP States and furthering the objectives of this Convention. It may submit to the Council of Ministers any conclusions and make any recommendations it considers appropriate, in particular when examining the Council of Ministers' annual report.
3. The Consultative Assembly shall appoint its Bureau and shall adopt its own rules of procedure.
4. The Consultative Assembly shall meet at least once a year.
5. The proceedings of the Consultative Assembly shall be prepared by a Joint Committee. The Consultative Assembly may in addition set up ad hoc consultative committees to undertake such specific activities as it shall determine.
6. The Consultative Assembly shall consider the annual report drawn up under Article 168 (5).
7. The Consultative Assembly may, on an ad hoc basis, establish such contacts as it considers desirable in order to obtain the views of the economic and social circles on cooperation under this Convention.

8. The Consultative Assembly may adopt resolutions on matters concerning or covered by this Convention.

9. The secretariat duties and other work necessary to the functioning of the Consultative Assembly shall be carried out on the basis of parity and in accordance with the conditions laid down in the rules of procedure of the Consultative Assembly.

### **Article 176.**

1. Any dispute which arises between one or more Member States or the Community on the one hand, and one or more ACP States on the other, concerning the interpretation or the application of this Convention may be placed before the Council of Ministers.

2. If the Council of Ministers fails to settle the dispute, the Council may, at the request of either of the Contracting Parties concerned, establish a good offices procedure, the result of which shall be transmitted in a report of the Council at its next meeting.

3. (a) If a settlement of the dispute is not reached, the Council of Ministers shall, at the request of either of the Contracting Parties concerned, appoint an arbitrator. Two additional arbitrators shall then within two months be appointed by the Parties to the dispute, one by either side as defined in paragraph 1.

(b) The decision of the arbitrators shall be taken by majority vote within 18 months.

(c) Each Party to the dispute must take the measures required for the implementation of the arbitrator's decision.

### **Article 177.**

The operating expenses of the Institutions of this Convention shall be defrayed in accordance with the terms set out in Protocol 2.

### **Article 178.**

The privileges and immunities for the purposes of this Convention shall be as laid down in Protocol 3.

## **Title XI. GENERAL AND FINAL PROVISIONS**

### **Article 179.**

No treaty, convention, agreement or arrangement of any kind between one or more Member States and one or more ACP States may impede the implementation of this Convention.

### **Article 180.**

Subject to the special provisions regarding the relations between the ACP States and the French overseas departments provided for therein, this Convention shall apply, on the one hand, to the territories in which the Treaty establishing the European Economic Community is applied and under the conditions laid down in that Treaty and, on the other hand, to the territories of the ACP States.

### **Article 181.**

In the event of accession of a thirdcountry to the Community, the Contracting Parties agree to take, as necessary, the appropriate measures of adaptation and transition.

### **Article 182.**

1. (a) As regards the Community, this Convention shall be validly concluded by a decision of the Council of the European Communities taken in accordance with the provisions of the Treaty and notified to the Parties.

(b) It will be ratified by the signatory States in conformity with their respective constitutional requirements.

(c) Ratification of this Convention shall also be deemed to constitute ratification of the Agreement on products within the province of the European Coal and Steel Community, signed this same day.

2. The instruments of ratification and the act of notification of the conclusion of this Convention shall be deposited, as concerns the ACP States, with the Secretariat of the Council of the European Communities and, as concerns the Community and the Member States, with the Secretariat of the ACP States. The Secretariats shall forthwith give notice thereof to the signatory States and the Community.

### **Article 183.**

1. This Convention shall enter into force on the first day of the second month following the date of deposit of the instruments of ratification of the Member States and of at least two-thirds of the ACP States, and of the act of notification of the conclusion of the Convention by the Community.

2. Any ACP State which has not completed the procedures set out in Article 182 by the date of the entry into force of this Convention as specified in paragraph 1 may do so only within the 12 months following such entry into force and shall be able to proceed with these procedures only during the 12 months following such entry into force, unless before the expiry of this period it gives notice to the Council of Ministers of its intention to complete these procedures not later than six months after this period and on the condition that it undertakes the deposit of its instrument of ratification within the same time limit.

3. As regards those ACP States which have not completed the procedures set out in Article 182 by the date of entry into force of this Convention as specified in paragraph 1, this Convention shall become applicable on the first day of the second month following: the completion of the said procedures.

4. Signatory ACP States which ratify this Convention in accordance with the conditions laid down in paragraph 2 shall recognize the validity of all measures taken in implementation of this Convention between the date of its entry into force and the date when its provisions become applicable to them. Subject to any extension which may be granted to them by the Council of Ministers they shall, not later than six months following the completion of the procedures referred to in Article 182, carry out all the obligations which devolve upon them under the terms of this Convention or of implementing decisions adopted by the Council of Ministers.

5. The rules of procedure of the institutions: set up under this Convention shall lay down whether and under what conditions the representatives of signatory States which, on the date of entry into force of this Convention have not yet completed the procedures referred to in Article 182, shall sit in those institutions as observers. The arrangements thus adopted shall be effective only until the date on which this Convention becomes applicable to these States; such arrangements shall in any case cease to apply on the date on which, pursuant to paragraph 2, the State concerned may no longer ratify this Convention.

### **Article 184.**

1. The Council of Ministers shall be informed of any request by any State for membership of, or association with, the Community.

2. The Council of Ministers shall be informed of any request made by any State wishing to become a member of an economic grouping composed of ACP States.

### **Article 185.**

1. Any request for accession to this Convention by a country or territory to which Part Four of the Treaty applies, and which becomes independent, shall be referred to the Council of Ministers.

2. With the approval of the Council of Ministers, the country in question shall accede to this Convention by depositing an instrument of accession with the Secretariat of the Council of the European Communities which shall transmit a certified copy to the Secretariat of the ACP States and shall give notice thereof to the signatory States.

3. That State shall then enjoy the same rights and be subject to the same obligations as the ACP States. Such accession shall not adversely affect the advantages accruing to the ACP States signatory to this Convention from the provisions on financial and technical cooperation and on the stabilization of export earnings.

### **Article 186.**

1. Any request for accession to this Convention submitted by a State whose economic structure and production are comparable with those of the ACP States shall require approval by the Council of Ministers. The State concerned may accede

to this Convention by concluding an agreement with the Community.

2. That State shall then enjoy the same rights and be subject to the same obligations as the ACP States.

3. The agreement may however stipulate the date on which certain of those rights and obligations shall become applicable to that State.

4. Such accession shall not, however, adversely affect the advantages accruing to the ACP States signatory to this Convention under the provisions on financial and technical cooperation, the stabilization of export earnings and industrial cooperation.

### **Article 187.**

As from the entry into force of this Convention, the powers conferred upon the Council of Ministers by the ACP-EEC Convention of Lomé shall be exercised, in so far as is necessary and in compliance with the relevant provisions of the said Convention, by the Council of Ministers set up by this Convention.

### **Article 188.**

1. This Convention shall expire after a period of five years from the first day of March 1980, namely the 28th day of February 1985.

2. 18 months before the end of this period the Contracting Parties shall enter into negotiations in order to examine what provisions shall subsequently govern relations between the Community and the Member States on the one hand and the ACP States on the other.

3. The Council of Ministers shall adopt any transitional measures that may be required until the new Convention comes into force.

### **Article 189.**

This Convention may be denounced by the Community in respect of each ACP State and by each ACP State in respect of the Community, upon six months' notice.

### **Article 190.**

The Protocols annexed to this Convention shall form an integral part thereof.

### **Article 191.**

This Convention, drawn up in two copies in the Danish, Dutch, English, French, German and Italian languages, all texts being equally authentic, shall be deposited in the archives of the General Secretariat of the Council of the European Communities and the Secretariat of the ACP States, which shall both transmit a certified copy to the government of each of the signatory States.

In witness whereof, the undersigned Plenipotentiaries have affixed their signatures below this Convention.

Done at Lomé on the thirty-first day of October in the year one thousand nine hundred and seventy-nine.FOR

FOR HIS MAJESTY THE KING OF THE BELGIANS,

FOR HER MAJESTY THE QUEEN OF DENMARK,

FOR THE PRESIDENT OF THE FEDERAL REPUBLIC OF GERMANY,

FOR THE PRESIDENT OF THE FRENCH REPUBLIC,

FOR THE PRESIDENT OF IRELAND,

FOR THE PRESIDENT OF THE ITALIAN REPUBLIC,

FOR HIS ROYAL HIGHNESS THE GRAND DUKE OF LUXEMBOURG,  
FOR HER MAJESTY THE QUEEN OF THE NETHERLANDS,  
FOR HER MAJESTY THE QUEEN OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND,  
FOR THE COUNCIL OF THE EUROPEAN COMMUNITIES  
FOR THE HEAD OF STATE OF THE BAHAMAS,  
FOR THE HEAD OF STATE OF BARBADOS,  
FOR THE PRESIDENT OF THE PEOPLE'S REPUBLIC OF BENIN,  
FOR THE PRESIDENT OF THE REPUBLIC OF BOTSWANA,  
FOR THE PRESIDENT OF THE REPUBLIC OF BURUNDI,  
FOR THE PRESIDENT OF THE UNITED REPUBLIC OF CAMEROON,  
FOR THE PRESIDENT OF THE REPUBLIC OF CAPE VERDE  
FOR THE PRESIDENT OF THE CENTRAL AFRICAN REPUBLIC,  
FOR THE PRESIDENT OF THE FEDERAL ISLAMIC REPUBLIC OF THE COMOROS,  
FOR THE PRESIDENT OF THE PEOPLE'S REPUBLIC OF THE CONGO,  
FOR THE PRESIDENT OF THE REPUBLIC OF THE IVORY COAST,  
FOR THE PRESIDENT OF THE REPUBLIC OF JIBUTI,  
FOR THE PRIME MINISTER AND MINISTER OF EXTERNAL AFFAIRS OF THE INDEPENDENT STATE OF DOMINICA,  
FOR THE CHAIRMAN OF THE PROVISIONAL MILITARY ADMINISTRATIVE COUNCIL AND OF THE COUNCIL OF MINISTERS AND  
COMMANDER-IN-CHIEF OF THE REVOLUTIONARY ARMY OF ETHIOPIA,  
FOR HER MAJESTY THE QUEEN OF FIJI,  
FOR THE PRESIDENT OF THE GABONESE REPUBLIC,  
FOR THE PRESIDENT OF THE REPUBLIC OF THE GAMBIA,  
FOR THE PRESIDENT OF THE REPUBLIC OF GHANA,  
FOR THE HEAD OF STATE OF GRENADA,  
FOR THE PRESIDENT OF THE REPUBLIC OF GUINEA,  
FOR THE PRESIDENT OF THE COUNCIL OF STATE OF GUINEA BISSAU,  
FOR THE PRESIDENT OF THE REPUBLIC OF EQUATORIAL GUINEA,  
FOR THE PRESIDENT OF THE REPUBLIC OF GUYANA,  
FOR THE PRESIDENT OF THE REPUBLIC OF UPPER VOLTA,  
FOR THE HEAD OF STATE OF JAMAICA,  
FOR THE PRESIDENT OF THE REPUBLIC OF KENYA,  
FOR THE PRESIDENT OF THE REPUBLIC OF KIRIBATI,  
FOR HIS MAJESTY THE KING OF THE KINGDOM OF LESOTHO,  
FOR THE PRESIDENT OF THE REPUBLIC OF LIBERIA,  
FOR THE PRESIDENT OF THE DEMOCRATIC REPUBLIC OF MADAGASCAR,  
FOR THE PRESIDENT OF THE REPUBLIC OF MALAWI,

FOR THE PRESIDENT OF THE REPUBLIC OF MALI,  
FOR THE PRESIDENT OF THE ISLAMIC REPUBLIC OF MAURITANIA,  
FOR HER MAJESTY THE QUEEN OF MAURITIUS,  
FOR THE PRESIDENT OF THE REPUBLIC OF NIGER,  
FOR THE HEAD OF THE FEDERAL GOVERNMENT OF NIGERIA,  
FOR THE HEAD OF THE INDEPENDENT STATE OF PAPUA NEW GUINEA,  
FOR THE PRESIDENT OF THE REPUBLIC OF RWANDA,  
FOR THE PRESIDENT OF THE REPUBLIC OF SAINT LUCIA,  
FOR THE HEAD OF STATE OF WESTERN SAMOA,  
FOR THE PRESIDENT OF THE DEMOCRATIC REPUBLIC OF SAO TOME AND PRINCIPE,  
FOR THE PRESIDENT OF THE REPUBLIC OF SENEGAL,  
FOR THE PRESIDENT OF THE REPUBLIC OF SEYCHELLES,  
FOR THE PRESIDENT OF THE REPUBLIC OF SIERRA LEONE,  
FOR THE PRESIDENT OF THE INDEPENDENT STATE OF SOLOMON ISLANDS,  
FOR THE PRESIDENT OF THE SOMALI DEMOCRATIC REPUBLIC, PRESIDENT OF THE SUPREMEREVOLUTIONARY COUNCIL,  
FOR THE PRESIDENT OF THE DEMOCRATIC REPUBLIC OF THE SUDAN,  
FOR THE PRESIDENT OF THE REPUBLIC OF SURINAM,  
FOR HIS MAJESTY THE KING OF THE KINGDOM OF SWAZILAND,  
FOR THE PRESIDENT OF THE UNITED REPUBLIC OF TANZANIA,  
FOR THE PRESIDENT OF THE REPUBLIC OF CHAD,  
FOR THE PRESIDENT OF THE REPUBLIC OF TOGO,  
FOR HIS MAJESTY KING TAUFU'AHU TUPOU IV OF TONGA,  
FOR THE PRESIDENT OF THE REPUBLIC OF TRINIDAD AND TOBAGO,  
FOR HER MAJESTY THE QUEEN OF TUVALU,  
FOR THE PRESIDENT OF THE REPUBLIC OF UGANDA,  
FOR THE PRESIDENT OF THE REPUBLIC OF ZAIRE,  
FOR THE PRESIDENT OF THE REPUBLIC OF ZAMBIA

## **ANNEX VIII. Joint declaration on the encouragement of mining investment**

In order to encourage European investments in mining and energy development projects promoted by the ACP States, the Community and the Member States, on the one hand, and the ACP States, on the other, pursuant to the general aims of the treatment of investments referred to in Title IV, may also conclude agreements relating to individual projects where the Community and possibly European undertakings contribute towards their financing.

## **ANNEX IX. Joint declaration on investments relating to Article 64 of the Convention**

1 . Where an ACP State has entered, or enters, into an inter-governmental agreement relating to the treatment of investments with any Member States, the ACP State concerned recognizes that the right of non-discriminatory treatment of



investments coming from Member States of the Community in ACP States takes effect from the entry into force of the Convention.

2. (a) The application of this right shall be based on bilateral inter-governmental investment agreements which shall serve as reference agreements.

(b) As regards such bilateral inter-governmental investment agreements concluded before the entry into force of this Convention, the application of non-discriminatory treatment shall take into account any provisions in the reference agreement. The ACP State shall have the right to modify or adapt this treatment when international obligations and/or changed de facto circumstances so necessitate.

3 . For the purpose of applying non-discriminatory treatment on the basis of paragraph 2 (a), the Contracting States shall proceed to bilateral inter-governmental exchanges of letters or other appropriate form required by law of a Contracting State.

4. Any Contracting State has the right to ask for such an agreement. The agreement when concluded shall come into effect without delay in accordance with the law of the ACP State concerned.

5. Such agreements shall cover disputes relating to investments arising only after the entry into force of the new Convention.

6 . The treatment of investments made before the entry into force of this Convention shall be examined by the two parties in the light of the provisions of the agreement of reference.